

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-10

Z.C. Case No. 13-10

ZP Georgia, LLC

**(Consolidated Planned Unit Development & Zoning Map Amendment @ Square 2892,
Lots 102, 103, 104, 105, 879, and 910)**

June 9, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 13, 2014, to consider applications from ZP Georgia, LLC (the "Applicant"), for the consolidated review and approval of a planned unit development ("PUD") and a related zoning map amendment to rezone Lots 102, 103, 104, 105, 879, and 910 in Square 2892 from the GA/C-2-A District to the GA/C-2-B Zone District. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On October 17, 2013, the Applicant filed applications with the Commission for the consolidated review and approval of a PUD and related zoning map amendment to rezone Lots 102, 103, 104, 105, 879, and 910 in Square 2892 (the "Subject Property") from the GA/C-2-A Zone District to the GA/C-2-B Zone District. The Subject Property's current zoning designation of GA/C-2-A means that it is in the C-2-A Zone District as well as the Georgia Avenue Commercial Overlay District.
2. The Subject Property has a land area of approximately 16,756 square feet and is located on the west side of Georgia Avenue between Lamont Street, N.W. to the north and Kenyon Street, N.W. to the south. The Property has approximately 116.67 linear feet of frontage on Georgia Avenue, N.W. and backs onto a public alley at the rear of the site. Square 2892 is bounded by Lamont Street to the north, Georgia Avenue to the east, Kenyon Street to the south, and Sherman Avenue to the west, all located in the northwest quadrant of Washington, D.C. The Subject Property is within walking distance of the Georgia Avenue Metrorail Station, which is located north of the site. The Subject Property is currently improved with surface parking and a number of low-rise

commercial buildings that the Applicant proposes to raze in connection with redevelopment of the site.

3. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The project will have a maximum density of 5.95 floor area ratio ("FAR"), which is less than the maximum permitted 6.0 FAR under the C-2-B PUD requirements. The project will include approximately 96,000 square feet of residential uses, comprised of 105 units (plus or minus 10%), and approximately 3,816 square feet of retail uses. A total of eight percent of the residential gross floor area devoted to residential use will be dedicated as affordable. The building will have a maximum height of approximately 87 feet, and will have a minimum of 36 off-street parking spaces.
4. At its public meeting held on December 9, 2013, the Commission voted to schedule a public hearing on the application.
5. On December 23, 2013, the Applicant submitted a Prehearing Statement. (Exhibit ["Ex.,"] 15.) The Prehearing Statement included revised plans showing additional details regarding the project's design and materials (Ex. 15A1-6), additional information regarding the project's proposed public benefits and amenities, additional information regarding the pavers proposed within public space, and the additional materials required pursuant to § 3013 of the Zoning Regulations.
6. On February 11, 2014, the Applicant submitted a Supplemental Prehearing Statement. (Ex. 23.) This submission included an updated set of architectural plans and elevations prepared by Hickok Cole Architects, dated February 7, 2014 (the "Approved Plans"), and a Traffic Impact Study prepared by Gorove/Slade Associates, Inc., dated January 17, 2014, which was submitted to the District Department of Transportation ("DDOT"). (Ex. 23B.)
7. On February 20, 2014, the Office of Zoning rescheduled the public hearing date from Monday, March 3, 2014, to Thursday, March 13, 2014, due to the Mayor's "State of the City" address. (Ex. 27.)
8. On February 20, 2014, Mr. Romeo Morgan filed a Party Status Request to participate at the hearing in opposition to the applications. (Ex. 24.) In its Party Status Request materials, Mr. Morgan ("Party in Opposition") stated that that he is the owner of two of the four properties that directly abut the Subject Property to the south, and that those properties have an implied easement over the Subject Property for rear egress.¹

¹ The Commission notes that only one of the four properties that directly abut the Subject Property to the south appears to be owned by the Party in Opposition. According to the D.C. Office of Tax and Revenue's records, Lot 804 is owned by Mr. David Gullick, Lot 805 is owned by Mr. Guy E. Streat, Lot 806 is owned by the District of Columbia, and Lot 909 is owned by Mr. Anthony R. Williams (also known as Romeo Morgan).

9. After proper notice, the Commission held a public hearing on the application on March 13, 2014.
10. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 1A, the ANC within which the Subject Property is located, and the Party in Opposition.
11. At the hearing, the Applicant submitted a brief response to the issues raised by the Party in Opposition, a copy of a report prepared by Mr. Steven E. Sher, the hearing PowerPoint presentation, and a materials board. (Ex.35-38.)
12. The following principal witnesses testified on behalf of the Applicant at the public hearing: Steven Zuckerman, on behalf of the Applicant; Jeffrey Lockwood, on behalf of Hickok Cole Architects, as an expert in residential and retail design; Erwin N. Andres, on behalf of Gorove/Slade Associates, Inc., as an expert in transportation planning and analysis; and Steven E. Sher, Director of Zoning and Land Use Services, on behalf of Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Lockwood, Mr. Andres, and Mr. Sher were qualified by the Commission as experts in their respective fields.
13. The Office of Planning ("OP") testified in support of the project at the public hearing. DDOT testified in support of the project at the public hearing.
14. ANC 1A submitted a resolution in support of the application. (Ex. 16.) ANC 1A's resolution indicated that at a duly noticed public meeting on January 8, 2014, at which notice was properly given and a quorum was present, ANC 1A voted 8-1-1 to support the application. ANC 1A indicated that it believes the project will have a significant positive impact on the development of the community, particularly given the Applicant's commitment to providing public benefits and amenities to the Georgia Avenue Corridor, by providing new neighborhood-serving retail, new housing options including affordable housing, and the creation of jobs and an increased tax base. ANC 1A also noted that the Applicant's proposal constitutes a major benefit, and that the project will also help to implement a number of the recommendations of the *Georgia Avenue-Petworth Metro Station & Corridor Plan*. ANC 1A also stated that it strongly supports the Applicant's plan to pay the Capitol Hill Business Improvement District/Ready, Willing & Working to provide beautification and clean-up services entirely within the ANC 1A09 boundaries, which will include trash removal, graffiti and posted bill removal, weeding and mulching of public space tree boxes, and street cleaning and sweeping, among others. ANC 1A also stated that it strongly supports the Applicant's proposal to pay Cultural Tourism D.C. for the installation of eight plaques within the communities served by Georgia Avenue to expand the African American Heritage Trail. Overall, ANC 1A indicated that it believes the amenities proposed for the project are important for the community and are generally

appropriate to the degree of development incentives requested by the Applicant, especially since the project will not have any adverse effects on the neighborhood.

15. At the hearing, the Party in Opposition submitted written and oral testimony in opposition to the application. The Party in Opposition alleged that he owns two properties abutting the Subject Property to the south: 3200 Georgia Avenue, N.W. (Morgan's Seafood restaurant) and 707 Kenyon Street, N.W. (a residential apartment building). The Party in Opposition stated that his family has owned and operated Morgan's Seafood for 80 years and that an easement exists over the Subject Property to provide rear egress from the properties located at 705-709 Kenyon Street, N.W. and 3200 Georgia Avenue, N.W.
16. Two witnesses testified at the hearing in opposition to the application, both of whom are tenants of the Party in Opposition and reside at the 707 Kenyon Street, N.W. Property.
17. One witness testified at the hearing neither in support nor in opposition to the application. The witness stated that he was in support of development on this section of Georgia Avenue, N.W., but that he was concerned about eliminating egress from the properties abutting the Subject Property.
18. On March 31, 2014, the Applicant submitted a Post-Hearing Submission. (Ex. 43.) The Post-Hearing Submission included: 1) revised Approved Plans addressing the Commission's comment to provide two roof structures instead of four as originally proposed; 2) a statement addressing the impact on development of the Subject Property if a five-foot easement is established on the southern-most edge of the Subject Property; 3) a memo describing why an implied easement does not exist on the Subject Property; and 4) a summary of the outcomes from the Applicant's post-hearing meeting with the Party in Opposition.
19. On March 31, 2014, the Party in Opposition submitted a Post-Hearing Submission which stated that: 1) the proposed development on the Subject Property will create fire and public safety hazards and may violate fire safety regulations; and 2) that the Party in Opposition's history of use of the "alleyway" on the Subject Property constituted either an easement by prescription and/or necessity, or a public easement. (Ex. 44.)
20. At its public meeting held on April 15, 2014, the Commission considered whether to take proposed action. In its deliberations, the Commission noted that the Applicant was claiming compliance with the Inclusionary Zoning ("IZ") set aside requirements as a public benefit. Subsection 2403.9 (f) provides in part that:

[A]ffordable housing provided in compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds what would have been required through matter of right development under existing zoning. In determining whether this standard has been met, the Commission shall balance any net gain in

gross floor area against any loss of gross floor area that would have been set-aside for “low-income households” as defined in § 2601.1.

21. For the purposes of this Order, any reference to low-income household or moderate income house shall have the same meaning as is given those terms in the definitions set forth in § 2601.1, which are as follows:

Low-income household - a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the [Inclusionary Zoning] Act.

Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

22. Although the Applicant demonstrated that the amount of affordable housing being provided under the proposed C-2-B rezoning would exceed what would have been required under the existing C-2-A zoning, it did not identify the amount of low-income housing that would have been required under C-2-A zoning that would not be required in the C-2-B Zone District.
23. The Commission therefore requested that the Applicant provide this information and undertake the balancing analysis required by § 2403.9 (f).
24. The Commission then took proposed action to approve the applications and the plans that were submitted to the record.
25. On April 18, 2014, the Applicant provided its list of PUD proffers and draft conditions required pursuant to 11 DCMR § 2403.19. (Ex. 48.) In response to the Commission’s request to provide the necessary information for it to determine whether IZ compliance was a public benefit, the Applicant amended its proffer of public benefits of the PUD to provide that it would set aside the same amount of gross floor area for low-income households as would be required under C-2-A zoning. Since there will be a net gain of affordable units and no loss of low-income units, the information requested was no longer needed and the test for IZ compliance being a public benefit was met as to the extent of the net gain achieved.
26. On May 6, 2014, the Applicant provided its final list of proffers and draft conditions. (Ex. 49.)
27. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) under the terms of the District of Columbia Home Rule Act.

NCPC's Executive Director, by delegated action dated April 24, 2014, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 50.)

28. The Commission took final action to approve the application on June 9, 2014.

The PUD Project

29. The Subject Property is situated in Ward 1 and consists of Lots 102, 103, 104, 105, 879, and 910 in Square 2892. The Subject Property's current zoning designation of GA/C-2-A means that it is in the C-2-A Zone District as well as the Georgia Avenue Commercial Overlay District. The Subject Property has a land area of approximately 16,756 square feet and is located on the west side of Georgia Avenue between Lamont Street, N.W. to the north and Kenyon Street, N.W. to the south.
30. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The project will have a maximum density of 5.95 FAR, which is less than the maximum permitted 6.0 FAR under the C-2-B PUD requirements. The project will include approximately 96,000 square feet of residential uses, comprised of 105 units (plus or minus 10%), and approximately 3,816 square feet of retail uses. A minimum of eight percent of total residential gross floor area will be dedicated as affordable housing as required by the IZ Regulations. Based upon the expected size and mix of the units in the project, eight percent will result in approximately 7,680 square feet and nine IZ units. The affordable units will be divided such that 2,625 square feet of the affordable units shall be affordable to households earning up to 50% of the area medium income ("AMI") and 5,055 square feet of the affordable units shall be affordable to households earning up to 80% of the AMI. The building will have a maximum building height of approximately 87 feet, and will have 36 on-site parking spaces.

Development Under Existing Zoning

31. The Subject Property is currently zoned GA/C-2-A. The Applicant is seeking to rezone the Subject Property to GA/C-2-B in connection with this Application. The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone District includes the following development requirements:
- The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet with no limit on the number of stories; (11 DCMR § 770.1.)

- The maximum density in the C-2-A Zone District is 2.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses; (11 DCMR § 771.2.)
 - The maximum percentage of lot occupancy for a building or portion of building devoted to residential use is 60%; (11 DCMR § 772.1.)
 - A minimum rear yard depth of 15 feet; (11 DCMR § 774.1.)
 - If provided, a side yard at least two inches wide per foot of building height, but not less than six feet; (11 DCMR § 775.5.)
 - If provided for a building or portion of building devoted to residential uses, at any elevation in the court, the width of court must be a minimum of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet. (11 DCMR § 776.3.) In the case of a closed court for a building or portion of a building devoted to residential uses, the minimum area must be at least twice the square of the width of court based upon the height of court, but not less than 350 square feet; (11 DCMR § 776.4.)
 - For an apartment house, one off-street parking space for each two dwelling units; (11 DCMR § 2101.1.)
 - For an apartment house with 50 or more units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep; and (11 DCMR § 2201.1.)
 - A development that is subject to the Inclusionary Zoning regulations and which is of steel and concrete frame construction, must set aside the greater of eight percent of the gross floor area devoted to residential use or 50% of the bonus density utilized for inclusionary units (11 DCMR § 2603.2.), with 50% of the inclusionary units set aside for eligible low-income households and 50% of the inclusionary units set aside for moderate-income households. (11 DCMR § 2603.3.)
32. The Subject Property is also located in the Georgia Avenue Commercial (“GA”) Overlay District, which applies to certain properties zoned C-2-A and/or C-3-A along both sides of Georgia Avenue. (11 DCMR § 1327.1.) The GA Overlay includes a number of design requirements in § 1328 of the Zoning Regulations, including the following:
- Buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way;

- Buildings on corner lots must be constructed to all property lines abutting public streets;
 - In the GA/C-2-A Zone District, 70% lot occupancy is permitted for mixed use buildings that include residential use;
 - On-grade parking structures with frontage on Georgia Avenue, N.W. must provide not less than 65% of the ground level frontage as commercial space;
 - Each building on a lot that fronts on Georgia Avenue, N.W. must devote not less than 50% of the surface area of the street wall at the ground level to entrances to commercial uses or to the building's main lobby, and to display windows having clear or clear/low emissivity glass. Decorative or architectural accents do not count toward the 50% requirement;
 - Security grilles over windows or doors shall have no less than 70% transparency;
 - Each commercial use with frontage on Georgia Avenue, N.W. must have an individual public entrance directly accessible from the public sidewalk;
 - Buildings must be designed so as not to preclude an entrance every 40 feet on average for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground-floor uses and the main lobby;
 - The ground-floor level of each building or building addition must have a uniform minimum clear floor-to-ceiling height of 14 feet;
 - Buildings that have a minimum clear floor-to-ceiling height of 14 feet on the ground floor level are permitted an additional five feet of building height over that permitted as a matter-of-right in the underlying zone; and
 - Off-street surface parking is permitted in rear yards only.
33. The GA Overlay also prohibits certain uses, such as drive-through and automobile-related uses (11 DCMR § 1329), includes special exception provisions for certain uses (11 DCMR § 1330), and includes PUD provisions (11 DCMR § 1331).
34. The Commission finds that the proposed PUD meets the applicable requirements of the GA Overlay, as set forth in the report and testimony of the Applicant's land use and zoning expert and the report of the Office of Planning, except for the requirement that buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way.

35. Subsection 1330.1(b) of the Zoning Regulations requires special exception approval by the Board of Zoning Adjustment for the construction of any new building on a lot consisting of 12,000 square feet or more. The Subject Property consists of 16,756 square feet. However, § 2405.7 of the Zoning Regulations gives the Commission authority to approve any special exception as a part of a PUD application, which the Commission approves as part of approving this application.

Development Under Proposed GA/C-2-B Requirements

36. The Applicant proposes to rezone the Subject Property to GA/C-2-B in connection with this application. The C-2-B Zone District is designed to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed-uses. (11 DCMR § 720.6.) The C-2-B Zone Districts are compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) Buildings may be entirely residential or a mixture of residential and commercial uses in the C-2-B Zone District. (11 DCMR § 720.8.)
37. The C-2-B Zone District includes the following development requirements:
- A maximum matter-of-right height of 65 feet with no limit on the number of stories (11 DCMR § 770.1), and a maximum height of 90 feet under the PUD requirements (11 DCMR § 2405.1);
 - A maximum matter-of-right density of 3.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses (11 DCMR § 771.2), and a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to nonresidential uses under the PUD requirements (11 DCMR § 2405.2);
 - For a building devoted to residential use, a minimum lot occupancy of 80% (11 DCMR § 772.1);
 - A minimum rear yard depth of 15 feet (11 DCMR § 774.1) and, if provided, a side yard at least two inches wide per foot of building height, but not less than six feet (11 DCMR § 775.5);
 - If provided for a residential use, a minimum court width of four inches per foot of height, but not less than 15 feet (11 DCMR § 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (11 DCMR § 776.4);
 - For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 750 square feet of gross floor area (11 DCMR § 2101.1);

- For an apartment house, one off-street parking space for each three dwelling units (11 DCMR § 2101.1);
- For a retail establishment with 5,000 to 20,000 square feet of gross floor area, one loading berth at 30 feet deep and one loading platform at 100 square feet (no service/delivery loading space is required) (11 DCMR § 2201.1);
- For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (11 DCMR § 2201.1); and
- A development that is subject to the Inclusionary Zoning regulations must devote the greater of eight percent of the gross floor area devoted to residential use, or 50% of the bonus density utilized for inclusionary units for moderate income households (11 DCMR § 2603.2 and 2603.3).

Development Incentives and Flexibility

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

- a. ***Flexibility From Rear Yard Requirements.*** Pursuant to § 774.1 of the Zoning Regulations, buildings in the C-2-B Zone District are required to provide a rear yard with a minimum depth of 15 feet. However, due to the Subject Property's irregular shape, the asymmetrical rear lot line, and the existence of a bio-retention basin to be located at the rear of the building, the project does not include a rear setback across the full width of the Subject Property. The Commission finds that although the project does not include a full rear setback, the rear of the Subject Property abuts a public alley, so there will be open space between the rear of the proposed building and the properties to the west of the Subject Property. The Commission further finds that given the design of the building, the residential units will have adequate access to light and air. The Commission also notes that even though the project does not include a full rear setback, the total square footage of open space on the site exceeds the square footage that would exist if the Applicant provided a compliant rear yard. Therefore, the Commission finds that flexibility is appropriate in this case;
- b. ***Flexibility From The Off-Street Loading Requirements.*** The Applicant requests relief from the off-street loading requirements. Pursuant to § 2201.1 of the Zoning Regulations, the Applicant is required to provide: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. However, due to the anticipated needs of the residential and retail uses, the Applicant is seeking flexibility to provide one loading berth at 30 feet

deep and one loading platform at 200 square feet to be shared by the retail and residential uses. The Commission finds that the Applicant's requested flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, provide shared loading spaces in mixed-use buildings, and minimize curb cuts on streets to the greatest extent possible. In addition, the Commission finds that given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot tractor-trailer trucks, and that the loading areas are primarily to be used by the residents only when they move in or out of the building. The Commission further finds that the retail users will typically use the loading facilities during times that cause the least amount of conflict with the loading needs of the residents. Therefore, the Commission finds that the proposed shared loading facilities will be able to accommodate both the residential and retail uses, and thus approves the requested loading flexibility;

- c. ***Flexibility from Compact Parking Space Location Requirements.*** Subsection 2115.4 of the Zoning Regulations requires compact spaces to be placed in groups of at least five contiguous spaces with access from the same aisle. However, the Applicant proposes to provide two compact parking spaces grouped together at the rear of the building, separate from the 34 parking spaces located in the below-grade garage. Therefore, flexibility is required from § 2115.4. The Commission finds that the parking layout has been designed to operate efficiently and to provide adequate access and circulation for the site. However, due to the goal of meeting the parking requirements, combined with the lack of sufficient space to provide standard sized parking spaces at the rear of the building, the Applicant cannot group the two surface compact spaces with the other compact spaces in the garage. The Commission further finds that approval of this requested flexibility will not have any adverse impacts since the Applicant will be meeting the parking requirements, and the garage has been designed to operate efficiently;
- d. ***Flexibility From Roof Structure Requirements.*** The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because there will be multiple roof structures (§ 411.3 and § 770.6(a)); the structures cannot be setback from all exterior walls a distance equal to their height above the roof (§§ 411.2 and 770.6(b)); and the enclosing walls of the roof structures are not of an equal height (§ 411.4). The Commission finds that each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The Commission finds that the location and number of roof structures is driven by the layout and design of the residential units within the building, as well as the location of the core features such as the elevator. In addition, the Applicant is providing the greatest setbacks possible given the size of the roof and the interior configuration of the proposed building.

Setback relief is only requested for the internal corners of the building, since the roof structures meet all of the setbacks requirements from the street and alley elevations. Thus, the requested roof structure design will not adversely impact the light and air of adjacent buildings. Therefore, the Commission finds that the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected by granting this flexibility;

- e. ***Flexibility from Georgia Avenue Overlay.*** The Applicant requests flexibility from § 1328.2 of the Georgia Avenue Overlay's design requirements. Pursuant to § 1328.2, buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way. In this case, only 57% of the street wall at the street level is being constructed to the property line abutting Georgia Avenue, N.W. The Commission finds that the slight deviation from § 1328.2 is caused by the Property's irregular shape and asymmetrical front (eastern) lot line, which extends five feet, six inches farther east toward Georgia Avenue on the southern portion of the Subject Property than on the northern portion. The Commission also finds that the proposed street wall creates enhanced pedestrian access and amenities and allows for additional space between the building and sidewalk amenities, which include street trees, planting beds, bicycle racks, and pedestrian-oriented lighting. The Commission also notes that flexibility from § 1328.2 will provide an enhanced experience for residents and visitors of the building and pedestrians on Georgia Avenue; and
- f. ***Additional Areas of Flexibility.*** The Applicant also requests flexibility in the following areas:
- (i) To be able to provide a range in the number of residential units of plus or minus 10% from the 105 depicted on the plans;
 - (ii) 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 materially change the exterior configuration of the building;
 - (iii) To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the minimum level required by the Zoning Regulations;
 - (iv) To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 60 points under the LEED 2009 for New Construction and Major Renovations rating standards;

- (v) 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, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and
- (vi) If the retail area is leased by a restaurant user, flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use.

Public Benefits and Amenities

39. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
- a. *Urban Design, Architecture, Landscaping and Open Space.* The project implements a number of urban design and architectural best practices, and will assist in the further development of Georgia Avenue, N.W. into a major mixed-use corridor with higher-density residential uses and high-quality community oriented retail uses. Moreover, given the width of the Georgia Avenue right-of-way, taller buildings holding a uniform street wall will create a well proportioned street section with a better sense of enclosure and place. This new street section, in combination with the mix of uses and streetscape improvements employed, will support the ultimate revitalization of this portion of Georgia Avenue into another great Washington, D.C. mixed-use, multi-modal main street;
 - b. *First Source Employment Agreement.* The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services. Execution and implementation of this agreement will help to expand employment opportunities for residents of the District in connection with construction of the project;
 - c. *Housing and Affordable Housing.* The proposed PUD will contain approximately 96,000 square feet of gross floor area dedicated to residential use. The Applicant is therefore significantly under-building the amount of commercial use permitted on the site. Thus, the Applicant's proposal to provide additional housing is consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and

the Mayor's housing initiative, all of which provide that the single greatest benefit to the area, and the city as a whole, is the creation of new housing opportunities;

In addition, eight percent of the residential gross floor area will be set aside as IZ units, which is the minimum amount required pursuant to § 2603.2. As noted, the PUD regulations at §2403.9 (f) provide in part that:

[A]ffordable housing provided in compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds what would have been required through matter of right development under existing zoning. In determining whether this standard has been met, the Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set aside for “low-income households” as defined in § 2601.1.

Under the existing C-2-A zoning the Applicant would be required to set aside 5,249 square feet of gross floor area for affordable units. Under the proposed C-2-B rezoning, minimum compliance with the set-aside requirement would require the Applicant to reserve 7,680 square feet. The resulting 2,431 additional square feet can therefore be potentially recognized as a public benefit. However, under C-2-A zoning, the Applicant would have to set-aside 50% of the affordable units for low-income households, with the first inclusionary unit and each additional odd number unit to be set aside for low-income households. Thus, assuming an even number of equally sized units, at least 2,625 square feet of gross floor area would have been reserved for low-income households under C-2-A zoning, whereas all 7,680 square feet is ordinarily to be reserved for moderate-income households under C-2-B. However, the Commission need not balance any loss of gross floor area for low-income households because the Applicant has agreed to reserve the identical 2,625 square feet of gross floor area for low-income households as would have been required under C-2-A. This not only allows the 2,431 additional square feet for IZ units to be recognized as a public benefit, but the voluntary set aside for low-income households may also be viewed a distinct public benefit of this PUD;

- d. *Transportation Demand Management.* The Applicant will implement the following Transportation Demand Management ("TDM") measures for the project, which go beyond the measures necessary to mitigate any adverse impacts generated by the project:
 - (i) Identify a TDM Leader (for planning, construction, and operations) and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates;

- (ii) Provide an adequate amount of short- and long-term bicycle parking spaces, including a secure bicycle room within the building that can house up to 35 bicycles, and 10 additional secure spaces in the garage;
 - (iii) Unbundle parking costs from the cost of lease or purchase;
 - (iv) Post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - (v) Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites;
 - (vi) Install a TransitScreen in the lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. The TDM Leader will make printed materials related to local transportation alternatives available to residents and employees upon request and at move-in for new tenants; and
 - (vii) For a period of five years, offer a membership fee at initial lease and/or sale of units in a car sharing and/or Capital Bikeshare program for each residential unit;
- e. *Environmental Benefits.* The proposed development will help to ensure the environmental, economic, and social sustainability of its residents through the implementation of sustainable design features. A number of strategies will be implemented to enhance the inherently sustainable nature of the site's location and to promote a healthy, desirable, and comfortable lifestyle that will fully benefit the project's residents while minimizing impacts on the environment. The proposed development will provide a number of environmental benefits, including street tree planting and maintenance, landscaping, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. Although the Applicant is not seeking LEED-certification for the building, the project will meet a LEED-gold equivalent rating and will be designed to meet rigorous energy and environmental design standards using the LEED 2009 for New Construction and Major Renovations rating system as a guide and performance metric; and
- f. *Uses of Special Value to the Neighborhood.* As part of the PUD process, the Applicant worked with ANC 1A and other community groups to develop an appropriate off-site amenity that has special value to the neighborhood and would be a community investment that will last for the life of the PUD project. As a result of this process, the Applicant agreed to pay the Capitol Hill Business Improvement District/Ready, Willing & Working to provide beautification and

clean-up services within the ANC 1A09 boundaries, including trash removal, graffiti and posted bill removal, weeding and mulching of public space tree boxes, and street cleaning and sweeping, among others. The Applicant also agreed to pay Cultural Tourism D.C. for the installation of eight plaques in ANC 1A at various points along the African American Heritage Trail to highlight the significance of African Americans in Washington, D.C. throughout the city's history.

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

40. The District of Columbia Comprehensive Plan Future Land Use Map designates the Subject Property in the Mixed-Use, Medium-Density Residential and Moderate-Density Commercial land use category. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium-Density designation, although other zones may apply in some locations. The Moderate-Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.
41. The District of Columbia Comprehensive Plan Generalized Policy Map designates the Subject Property in a Main Street Mixed Use Corridor area. Main Street Mixed Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.
42. The Commission finds that the Applicant's proposal to rezone the property from the GA/C-2-A Zone District to the GA/C-2-B Zone District to construct a mixed-use

development on the Subject Property is consistent with the Comprehensive Plan designation of the Subject Property. The Applicant proposes to construct 5.73 FAR of residential use on the Subject Property, which is consistent with the amount of residential density permitted in medium-density zones. Moreover, the proposed C-2-B zoning classification is specifically identified as a moderate-density commercial zone district. In addition, one of the primary purposes of the C-2-B Zone District is to provide commercial and residential functions within a single building, which is also consistent with the stated principle of the mixed-use designation of the Subject Property. The Subject Property is also located along a transportation corridor and is in close proximity to a Metrorail station. Given the District's stated policy of channeling new residential and retail growth into areas near transit stations and along bus routes, the Commission finds that the proposed project and map amendment are consistent with the Comprehensive Plan's designation of the Subject Property. In addition, the Commission further finds that the proposed project and rezoning application are consistent with the Generalized Policy Map's designation of the Subject Property since the project includes both residential and retail uses that will help to further economic and housing opportunities and serve neighborhood needs.

43. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:
- a. *Managing Growth and Change.* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§§ 2.3, 217.4.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors are important parts of reinvigorating and enhancing neighborhoods. (§§ 2.3, 217.6.) The proposed PUD is fully consistent with each of these goals. Redeveloping the Subject Property into a vibrant mixed-use development will further the revitalization of the neighborhood;
 - b. *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the Plan's elements. (§§ 2.3, 218.8.) The proposed PUD furthers this goal since, as part of the PUD process, the Applicant worked with ANC 1A and other groups to ensure that the development will provide a positive impact to the immediate neighborhood; and
 - c. *Building Green and Healthy Communities.* One of the guiding principles for building green and healthy communities is that building construction and

renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§§ 2.3, 221.3.) As discussed in more detail above, the building will include a number of sustainable design features.

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

Office of Planning Report

45. By a report dated November 27, 2013, OP stated that it supports the application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Ex. 11.)
46. On February 21, 2014, OP submitted a report recommending approval of the application, subject to the conditions that: 1) the landscape plan is revised to accurately reflect the number of existing and proposed street trees; and 2) the Applicant request additional flexibility from § 411 of the Zoning Regulations to permit roof structures of more than one height. (Ex. 26.) At the public hearing and in the Applicant's PowerPoint presentation submitted on March 13, 2014, the Applicant updated the landscape plan to accurately reflect the number of existing and proposed trees and requested additional flexibility from § 411 to permit roof structures of more than one height. (Ex. 37.) Therefore, the Commission finds that the Applicant has addressed the comments outlined in OP's report.
47. In its report, OP stated that it supports the proposal for the new mixed-use building that will provide space for residential and commercial uses. OP also reported that the proposed PUD includes a number of public benefits and project amenities as described in this Order. OP found that the proposal is not inconsistent with the Comprehensive Plan Future Land Use and Generalized Policy maps, and that the project furthers many important policies included in the Comprehensive Plan, the Georgia Avenue – Petworth Metro Station Area and Corridor Plan, and the Great Streets Framework Plan - 7th Street - Georgia Avenue.
48. OP noted that it received comments from DC Water and FEMS, indicating that they had no objection to the application, and from DHCD and MPD indicating that they had no comments. (Ex. 44.) OP also noted that the Urban Forestry Administration requested the Applicant to coordinate with them concerning the preservation and the planting of new street trees. Finally, OP noted a comment from DDOT recommending that the Applicant consider vertical bike parking to increase capacity.

DDOT Report

49. DDOT submitted a report, dated February 21, 2014, indicating that DDOT conditionally supports the project. (Ex. 25.) DDOT indicated that in order to achieve the proposed high non-auto mode split, the TDM plan should be strengthened to include offering an annual Capital Bikeshare or car share membership to each condominium or apartment unit for a period of five years, and to provide more long-term bicycle spaces. At the public hearing, the Applicant agreed to offer, for a period of five years, membership to Capital Bikeshare or a car share program to each condominium or apartment unit, and a total of 45 bicycle parking spaces, with 35 spaces in a secure bicycle room on the ground floor and 10 secure spaces in the garage. (Ex. 37.) Therefore, the Commission finds that the Applicant has addressed the comments outlined in DDOT's report.

Contested Issues/Party in Opposition

50. The Party in Opposition raised concerns at the public hearing and in his post-hearing submission. The Party in Opposition also submitted a statement to the Commission (Ex. 40.) The Party in Opposition indicated that he was primarily concerned with two matters: 1) the Applicant's proposal to construct the proposed building to the Subject Property's southern property line, which would create fire and public safety hazards, and 2) the existence of an alleged unrecorded easement over the southern portion of the Subject Property by virtue of the Party in Opposition using the alleged easement for approximately 80 years.
51. The Commission has carefully reviewed the arguments raised by the Party in Opposition, made both in writing and orally at the public hearing, and made in his post-hearing letter dated March 31, 2014 (Ex. 44), and makes the following findings.
52. **Fire and Public Safety Concerns.** At the public hearing and in its post-hearing submission, the Party in Opposition asserted that the Applicant's proposal to construct the proposed building up to the Subject Property's southern property line will create fire hazards, public safety concerns, and may violate fire safety regulations. The Party in Opposition indicated that the proposed building would block rear egress from his properties at 3200 Georgia Avenue, N.W. and 707 Kenyon Street, N.W.² Specifically, without providing any building code citations, the Party in Opposition stated: 1) in other jurisdictions, the proposed building would have to be set back from its southern property line to ensure minimal rear entry access to adjacent properties; 2) the Applicant failed to comply with fire safety rules and regulations, which affect the development's design and structure, and 3) the project as proposed does not have unqualified approval from the D.C. FEMS Fire Prevention Division. (Ex. 44.)

² The Commission notes that the D.C. Office of Tax and Revenue's records indicate that Mr. Guy E. Streat is the owner of 707 Kenyon Street, N.W.

53. The Commission finds that the District does not require setbacks from side lot lines (side yards) for buildings in commercial districts, and that the Applicant may build to the Subject Property's southern property line as a matter-of-right (see theoretical plat, Ex. 35C). The Commission also finds that, as indicated on the plats in Exhibit 35D and Exhibit 46E, there are many instances in the District of Columbia where side lot lines abut rear lot lines and where buildings were built in the condition about which the Party in Opposition complains.
54. The Commission finds that the issues raised by Mr. Morgan are governed by the International Building Code ("IBC") and the D.C. Construction Code Supplement (12 DCMR).³ The Commission has stated in a number of cases that construction issues are beyond the Commission's jurisdiction (*see, e.g.* Zoning Commission Order No. 12-02, October 21, 2013). Final determination of code compliance is determined during the permitting process by the Department of Consumer and Regulatory Affairs ("DCRA") and the D.C. Code Official, not by the Commission.
55. The Commission finds that the letter dated February 26, 2014, from D.C. FEMS was submitted to the D.C. Surveyor's Office in response to an alley closing application submitted by the Applicant for a small, unimproved portion of an existing public alley in Square 2892. (Ex. 44.) The Commission finds that the letter clearly states that the D.C. FEMS had "no objection" to the alley closing so long as the project complies with § 503 of the fire code. The Commission finds that the project has been designed to comply with all code requirements, including the requirements of § 503. Further, the Commission finds that evidence of record submitted by the Applicant indicates that the project has been designed to comply with all applicable standards.
56. **Existence of an Easement Across the Subject Property.** At the public hearing and in its post-hearing submission, the Party in Opposition asserted that his use of the southern portion of the Subject Property for approximately 80 years constituted either an easement by prescription and/or necessity or a public easement.
57. The Commission finds that it is not the proper forum to adjudicate the Party in Opposition's claim to an easement across the Subject Property. The Commission's jurisdiction is defined by statute and regulation. *See* D.C. Code § 6-641.01; 11 DCMR §§ 3000 *et seq.* Regarding the scope of authority for regulatory agencies like the Commission, the Court of Appeals has stated repeatedly that it is "reluctant to read into a statute powers for a regulatory agency which are not fairly implied from the statutory language, since the agency is statutorily created." *See Spring Valley Wesley Heights Citizen Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 434, 436 (D.C. 1994) (*citing Chesapeake & Potomac Tel. Co. v. Public Service Comm'n of District of Columbia*, 378 A.2d 1085, 1089 (D.C. 1977)). The Commission's authority is thus

³ The D.C. Construction Codes Supplement includes, among others, the D.C. Building Code (12 DCMR-A), and the D.C. Fire Code (12 DCMR-H).

limited to and controlled by its statute and governing regulations, and neither of those documents permits the Commission to resolve a dispute as to title to real property in the District. Moreover, this Commission has ruled in a number of cases that it does not have jurisdiction over issues governed by other forums or standards beyond the Zoning Regulations. *See, generally* D.C. Code § 6-641.01; *see also, e.g.* Z.C. Order No. 05-42, Jan. 14, 2008 (no jurisdiction over a request for regulatory reviews, permits, and applications from Applicant); Z.C. Order No. 638, November 13, 1989 (no jurisdiction over temporary closing of alleys or damage to neighboring properties); Z.C. Order No. 01-09C, February 11, 2002 (no authority to appoint, establish, or monitor an arbitration board); Z.C. Order No. 02-43, February 24, 2003 (no authority to require DDOT's compliance). In these cases, the Commission has acknowledged the limits of its authority and has not acted on issues outside of its jurisdiction.

58. The Commission finds that because easements are not governed by the Zoning Regulations, the Commission does not have authority to decide the issue of whether an easement exists over the Subject Property.

Post-Hearing Submission

59. On March 31, 2014, the Applicant submitted a post-hearing submission. (Ex.43.) The post-hearing submission included: 1) revised Approved Plans addressing the Commission's comment to provide two roof structures instead of four as originally proposed; 2) a statement addressing the impact on development of the Subject Property if a five foot easement was established on the southern-most edge of the Subject Property; 3) a memo describing why an implied easement does not exist on the Subject Property; and 4) a summary of the outcomes from the Applicant's post-hearing meeting with the Party Opponent.
60. The Commission finds that the redesign of the roof structures achieved the simplification sought by the Commission. The Commission also finds that if the Applicant sets the proposed building back five feet from the southern property line, the Applicant would encounter practical difficulties with respect to the construction and layout of the building. The Commission further finds that it does not have the authority to resolve the dispute regarding the existence of an easement on the Subject Property. Finally, the Commission finds that the Applicant has made good faith efforts to respond effectively to the concerns expressed by the Party in Opposition.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives,

provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment, and as part of this Order, the Commission is hereby approving the construction of any new building on a lot consisting of 12,000 square feet or more in the GA Overlay District.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's benefits and amenities are reasonable tradeoffs for 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 Subject Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1021; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC's recommendation. In this

case, ANC 1A voted 8-1-1 to support the project and recommended that the Commission approve the applications. (Ex. 16.)

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's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for the consolidated review and approval of a planned unit development ("PUD") for Lots 102, 103, 104, 105, 879, and 910 in Square 2892 and a zoning map amendment to rezone Lots 102, 103, 104, 105, 879, and 910 in Square 2892 from the GA/C-2-A Zone District to the GA/C-2-B Zone District subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The project shall be developed in accordance with the Architectural Plans & Elevations, dated February 7, 2014 (Exhibit 23B), as modified by the Roof Plans, dated March 20, 2014 (Exhibit 43A), and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the PUD shall be a mixed-used project consisting of approximately 99,816 square feet of gross floor area, with 96,000 square feet of gross floor area devoted to residential use and 3,816 square feet of gross floor area devoted to retail use.
3. The maximum height of the building shall be 87 feet.
4. The project shall include a minimum of 36 off-street parking spaces.
5. The Applicant is granted flexibility from the rear yard requirements (§ 774.1), loading requirements (§ 2201.1), compact parking space location requirements (§ 2115.4), roof structure requirements (§§ 411 and 770), and the Georgia Avenue Overlay requirements (§ 1328.2) consistent with the Approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.

6. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range in the number of residential units of plus or minus 10% from the 105 depicted on the plans;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;
 - c. To vary the number, location, and arrangement of parking spaces, and the number of parking garage levels, provided that the total number of parking spaces is not reduced below the minimum level required by the Zoning Regulations;
 - d. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 60 points (LEED-Gold equivalent) under the LEED 2009 for New Construction and Major Renovations rating standards;
 - e. 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, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and
 - f. If the retail area is leased by a restaurant user, flexibility to vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use.

B. PUBLIC BENEFITS

1. LEED Qualification: The mixed-use building shall be designed to include no fewer than the minimum number of points necessary to be the equivalent of a Gold designation, as shown on the theoretical LEED score sheet submitted with the Plans dated February 7, 2014. The Applicant shall put forth its best efforts to

design the PUD so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council.

2. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall submit to DCRA a fully executed First Source Employment Agreement with the Department of Employment Services.
3. **During the life of the project**, and as required by Chapter 26 of Title 11, a minimum of eight percent of total residential gross floor area shall be set aside as Inclusionary Zoning Units and shall be subject to all requirements pertaining to such units as set forth in that Chapter, the Inclusionary Zoning Implementation Amendment Act of 2006, and 14 DCMR Chapter 22. Based upon the expected size and mix of the units in the project, eight percent will result in approximately 7,680 square feet and nine IZ units. Notwithstanding 11 DCMR § 2603.4, at least 2,625 square feet of the Inclusionary Zoning Units shall be set aside for “low-income households” and the remaining required square footage shall be set aside for “moderate income households” as those terms are defined at 11 DCMR § 2601.1 and repeated in finding of fact number 21.
4. **Prior to the issuance of a certificate of occupancy** for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs evidence that the Applicant has: (1) paid the Capitol Hill BID or a similar organization that processes the same services, for the performance of neighborhood cleaning and beautification services along Georgia Avenue and within SMD 1A09, which will include trash removal, graffiti and posted bill removal, weeding and mulching of public space tree boxes, and street cleaning and sweeping, among others; (2) paid Cultural Tourism DC for the development and installation of eight plaques entirely located within ANC1A at various points along the African American Heritage Trail to highlight the significance of African Americans in Washington, D.C. throughout the city's history; and (3) a letter or other form of confirmation from the Capitol Hill Business Improvement District/Ready, Willing & Working indicating that the neighborhood beautification services have been done or are in the process of being done; and (4) a letter or other form of confirmation from Cultural Tourism D.C. indicating that the plaques have been installed or in are the process of being installed.

C. TRANSPORTATION MEASURES

1. **During the life of the project**, the Applicant shall implement the following Transportation Demand Management ("TDM") measures:

- a. Identify a TDM Leader (for planning, construction, and operations) and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates;
 - b. Provide an adequate amount of short- and long-term bicycle parking spaces, including a secure bike room within the building that can house up to 35 bicycles and 10 additional secure spaces in the garage;
 - c. Unbundle parking costs from the cost of lease or purchase;
 - d. Post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - e. Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites; and
 - f. Install a TransitScreen in the lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. In addition, the Applicant shall require the TDM Leader to make printed materials related to local transportation alternatives available to residents and employees upon request and at move-in for new tenants.
2. For the first five years of the project, the Applicant shall offer to pay the membership fee in a car sharing or Capital Bikeshare program for each residential unit. The offer of payment shall be made at the lease or sale of each unit.

D. MISCELLANEOUS

1. No building permit shall be issued for this project and the PUD-related map amendment shall not become effective until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to the construction and use of the Subject Property in accordance with this Order or any amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.
2. The PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

3. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* (act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On April 15, 2014, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the applications at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen, not having participated, not voting).

On June 9, 2014, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting, by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull to adopt; Marcie I. Cohen, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D. C. Register*; that is on June 27, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING