

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14B
Z.C. Case No. 13-14B

**JAIR LYNCH Development Partners, on behalf of Vision McMillan Partners and the
Office of the Deputy Mayor for Planning and Economic Development
(Modification to Consolidated Planned Unit Development @ Square 3128)
April 11, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on March 10, 2016, to consider an application from JAIR LYNCH Development Partners, on behalf of Vision McMillan Partners and the Office of the Deputy Mayor for Planning and Economic Development (collectively, the "Applicant") for approval of a modification to a consolidated planned unit development (the "Modified PUD," the "Application") for development of Parcel 4 of the McMillan Reservoir Slow Sand Filtration Site, as approved in Z.C. Order No. 13-14 (corrected), dated November 10, 2014, and effective April 17, 2015, under Chapter 24 of the District of Columbia Zoning Regulations, 11 DCMR (“Zoning Regulations”). The Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. Pursuant to Z.C. Order No. 13-14, the Commission granted approval of a first-stage and consolidated planned unit development (the “Approved PUD”) and zoning map amendment for development of the McMillan Reservoir Slow Sand Filtration Site (Square 3128, Lot 800) (the “Overall PUD Site”), which is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C., and which contains approximately 1,075,356 square feet (24.69 acres) of land area.
2. The Zoning Map amendment related to the Approved PUD rezoned the northern portion of the Overall PUD Site from unzoned to the C-3-C Zone District for a depth of 277 feet,

as measured from the center of the curb at Michigan Avenue, N.W., and the remainder of the Overall PUD Site from unzoned to the CR Zone District.

3. The Approved PUD divides the Overall PUD Site into seven distinct parcels. Parcel 1 encompasses the northern portion of the Overall PUD Site and consists of the land area located to the north of the Overall PUD Site element known as the North Service Court. Parcels 2 through 5 are located within the center portion of the Overall PUD Site between the North Service Court and the South Service Court. Parcel 6 encompasses the southern portion of the Overall PUD Site and consists of the land area located to the south of the South Service Court, as well as the South Service Court itself. Parcel 7 encompasses the area of North Service Court.
4. The first-stage portion of the Approved PUD includes approval of the master plan for the Overall PUD Site (the “Master Plan”), as well as Parcels 2 and 3 (the “First-Stage PUD”). Parcel 2 was approved for a mixed-use, multi-family building containing ground-floor retail, and Parcel 3 was approved for a mixed-use commercial building containing healthcare uses and ground-floor retail
5. Parcel 1 and Parcels 4 through 7 comprise the consolidated portion of the Approved PUD (the “Consolidated PUD”). Parcel 1 will be developed with a health care facility with ground-floor retail and a park above a preserved water filtration cell ("Cell 14"). Parcel 4, the subject of the Application, will be developed with a mixed-use, multi-family residential building with a ground-floor grocery store. Parcel 5 will be developed with approximately 146 individual row dwellings, Parcel 6 will be developed as a 6.2-acre park and community center and include the existing historic structures of the South Service Court which will be retained and restored. Lastly, Parcel 7 (North Service Court) will be developed as the primary retail “main street” of the Overall PUD Site and include the existing historic structures of North Service Court which will be retained and restored.
6. Collectively, the development approved for the Overall PUD Site consists of a mixed-use development made up of office, retail and service, apartment house, attached one-family dwelling, community center, and open space uses. The Approved PUD contains approximately 2,070,753 square feet of gross floor area of development, and an overall density of 1.92 floor area ratio (“FAR”) (2.36 FAR when based on the land area excluding easements and private rights-of-way). (See Z.C. Order No. 13-14, p. 54.)
7. The Approved PUD prescribes maximum building heights for Parcels 1–6. Pursuant to Z.C. Order No. 13-14, Condition A.3, the maximum building height for Parcel 4 is 77 feet. However, the Applicant is requesting to modify this condition as part of the Modified PUD to correct a technical error that was identified subsequent to the final issuance of Z.C. Order No 13-14. As described below, the need for this technical correction is solely a result of a graphic error made on the plans of the Approved PUD.

8. On October 13, 2015, the Applicant filed the Application, including architectural plans and drawings, for modifications to the approved plans for Parcel 4 of the Consolidated PUD, as approved by Z.C. Order No. 13-14. (Exhibits ["Ex."] 1-3.)
9. Parcel 4 is located on the east side of the Overall PUD Site, and is bounded by North Service Court to the north, Evarts Street to the south, North Capitol Street to the east, and Quarter Street to the west. North Service Court, Quarter Street, and Evarts Street will be constructed as part of the Master Plan.
10. Parcel 4 has an actual land area of approximately 95,984 square feet, including the area of private streets and easements. Excluding private streets and easements, Parcel 4 has an effective land area of 71,909 square feet.
11. As approved under the Consolidated PUD, the mixed-use residential/grocery building on Parcel 4 (the "Parcel 4 Building") is authorized to consist of approximately 305,847 square feet of gross floor area, or a maximum density of 3.21 FAR on its own site, including private streets and easements, of which approximately 55,567 square feet of gross floor area would be devoted to a grocery store use and approximately 258,235 square feet of gross floor area would be devoted to multi-family residential uses, equating to approximately 196 market-rate units and approximately 85 senior affordable units. (See Z.C. Order No. 13-14, Condition B.2.)
12. Pursuant to Z.C. Order No. 13-14, Condition A.3, the Parcel 4 Building has a maximum approved building height of 77 feet. As part of this Modified PUD, the Applicant is requesting to correct a technical error regarding the approved height of the Parcel 4 Building contained in the Approved PUD plans and as stated in Z.C. Order No. 13-14, Condition A.3. As described below, the need for the requested technical correction is solely a result of a graphic mislabelling on the Approved PUD plans and does not result in an actual change to the height of the Parcel 4 Building as it was initially reviewed by the Commission. The correctly stated height of the Parcel 4 Building is 78 feet, eight inches.
13. As part of the Approved PUD's public benefits and project amenities, the Parcel 4 Building is required to provide a minimum of 67,018 square feet of gross floor area of the total new housing provided, or approximately 85 residential units, as senior affordable housing (55 years of age or older) to households earning between 50% to 60% of the area median income ("AMI"). (See Z.C. Order No. 13-14, Condition C.6.)
14. At its December 14, 2015 public meeting, the Commission set the case for public hearing.
15. The Applicant filed a Prehearing Submission on December 30, 2015, including a Prehearing Statement and supporting exhibits. (Ex. 15-15I.) The Applicant then filed additional materials in its Supplemental Prehearing Submission on February 18, 2016,

- (the "Supplemental Prehearing Submission") (Ex. 27-27.) The Supplemental Prehearing Submission also included a transportation statement containing, among other things, the Applicant's proposed Loading Management Plan. (Ex. 27B.)
16. A Notice of Public Hearing was published in the *D.C. Register* on January 29, 2016. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Overall PUD Site, as well as to Advisory Neighborhood Commissions ("ANC") 5A, 5E, and 1B.
 17. The Commission held a public hearing on the Application on March 10, 2016. The parties to the case were the Applicant as well as ANC 5E, the ANC within which Parcel 4, and the Overall PUD Site, is located.
 18. The Applicant presented the following witnesses: Jair Lynch, representing the Applicant; Jim Voelzke, architect with the firm of MV+A; Rob Schiesel, traffic consultant with the firm of Gorove/Slade Associates, Inc.; and Shane L. Dettman, land use planner with Holland & Knight LLP. Messrs. Voelzke, Schiesel, and Dettman were accepted as experts in their respective fields.
 19. The Office of Planning ("OP") submitted a report dated February 25, 2016, ("OP Report"), in support of the Application. (Ex. 29.) The OP Report stated that the proposed modification is not inconsistent with the Comprehensive Plan, and is consistent with the Master Plan. OP recommended approval of the Application.
 20. In its testimony at the hearing, OP reiterated its support for the Application.
 21. The District Department of Transportation ("DDOT") submitted a report dated February 29, 2016, ("DDOT Report") stating that it objected to the Application, and specifically to the requested modification to the approved Loading Management Plan to remove the prohibition on deliveries between 7:00 a.m.-8:30 a.m., due to the expected queuing that will negatively impact traffic operations on North Capitol Street. (Ex. 30.)
 22. In response to the DDOT Report, the Applicant continued to work with DDOT prior to the public hearing to identify additional loading measures and/or restrictions that could be incorporated into the Revised Loading Management Plan that would address the concerns expressed by DDOT in its report.
 23. Prior to the public hearing, the Applicant submitted a Revised Loading Management Plan, dated March 10, 2016, which was prepared in close consultation with DDOT, containing additional loading restrictions that would be implemented on weekdays between 7:00 a.m.-8:30 a.m. (Ex. 40.) These additional restrictions were agreeable to DDOT.
 24. At the public hearing, DDOT acknowledged the Applicant's Revised Loading Management Plan, and stated that the additional loading restrictions contained in the Revised Loading Management Plan, and the Applicant's additional commitment to prohibit residential loading (move-ins, move-outs, and trash) from occurring both in the loading dock area and curbside along Evarts Street, on weekdays during the time period

between 7:00 a.m.-8:30 a.m., successfully addressed the concerns expressed in the DDOT Report. As such, DDOT testified in support of the Application.

25. ANC 5E submitted a letter dated October 20, 2015, indicating that with a quorum present, ANC 5E voted 6-0-2 to support the Application. (Ex. 31). At the public hearing, Commissioner Dianne Barnes, Single Member District (“SMD”) 5E09, testified on behalf of ANC 5E.
26. There were no requests for party status filed in the record and no parties in opposition to the Application.
27. Five individuals and local organizations submitted letters in opposition to the Application. (Ex. 32, 33, 35, 36, 37, 42, 43.)
28. A letter in support for the Application was submitted by Frank Mowitz, Director of Real Estate, Harris Teeter. (Ex. 38.)
29. A letter in support for the Application was submitted by Ward 5 Councilmember, Kenyan McDuffie. (Ex. 41.)
30. At the public hearing, one person testified in support of the Application. The person in support of the Application was Rashida Brown, representing SMD 1A10. (*See* Transcript [“Tr.”], March 10, 2016, pp. 24-25.)
31. At the public hearing, two persons testified in opposition to the Application. The persons in opposition of the Application were Chris Otten, representing DC for Reasonable Development, and Abigail DeRoberts. (*See* Tr., March 10, 2016, pp. 26-33.)
32. At the conclusion of the hearing, the Commission took proposed action to approve the Modified PUD and requested the Applicant to: (a) submit information confirming whether the Applicant is required to install transit information screens within the market-rate and senior-affordable residential lobbies pursuant to Z.C. Order No. 13-14; (b) provide confirmation that the Harris Teeter loading dock manager will be properly trained and have the authority to enforce the Revised Loading Management Plan approved by the Commission; and (c) confirm that the intersection of Evarts Street and Quarter Street will continue to be a two-way stop controlled intersection.
33. On March 11, 2016, a request to reopen the record was submitted by Bertha Holliday, as a resident of the Bloomingdale neighborhood, to allow a submission of written testimony. In her request, Ms. Holliday stated that she had intended to provide verbal testimony at the public hearing, but that the hearing had concluded before her arrival. (Ex. 46.)
34. At its March 14, 2016, public meeting, the Commission voted to grant the request to reopen the record submitted by Bertha Holliday.
35. On March 15, 2017, Ms. Holliday submitted her written testimony wherein she raises three primary concerns regarding the project as follows: (a) parking fees that may be

charged to patrons of the Harris Teeter grocery store; (b) the loading dock management strategy for the Parcel 4 Building; and (c) the proposed configuration and location of the senior affordable housing within the Parcel 4 Building (Ex. 46A, 46B.)

36. On March 17, 2016, the Applicant was informed by Office of Zoning staff that Ms. Holliday's testimony had been entered into the record and that the Applicant had seven days to provide its response.
37. On March 24, 2016, the Applicant submitted its post-hearing submission (the "Post-Hearing Submission"), as well as its response to the written testimony submitted by Ms. Holliday. (Ex. 51, 53.)
38. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by delegated action dated March 31, 2016, found that the Modified PUD would not be inconsistent with the Federal Elements of Comprehensive Plan for the National Capital. (Ex. 54.)
39. The Commission took final action to approve the Application at its public meeting held on April 11, 2016.

Summary of Modifications

40. The Applicant is requesting approval of the Modified PUD to accommodate programmatic requirements that are specific to the grocery store tenant that has been identified since the Commission's initial approval, and which could not have been anticipated during the initial review of the Approved PUD.
41. Since the initial approval, the Applicant has executed a Letter of Intent with Harris Teeter to be the operator of the grocery store located within the Parcel 4 Building. Now that a grocery store operator has been identified, the plans approved for the Parcel 4 Building pursuant to Z.C. Order No. 13-14 need to be modified to accommodate aspects of Harris Teeter's specific operation.
42. The requested modifications include: (a) the introduction of a modest-sized interior mezzanine and outdoor terrace to support an accessory café space; (b) modifications to the location and configuration of the parking garage entrance and loading facilities; (c) revisions to the previously approved loading management plan to adjust loading hours and other restrictions; (d) modification to the approved roof plan to accommodate the grocery store mechanical penthouses; and (e) other minor architectural and plan refinements.
43. The Applicant is also requesting to modify Z.C. Order No. 13-14 to correct a technical error regarding the approved height of the Parcel 4 Building as it is labeled in the previously approved plans and stated in Conditions A.3 and B.2 of the Order. The need

for this correction is solely a result of a labeling error made on the plans that were approved during the initial review of the Approved PUD. The height of the Parcel 4 Building as it was initially reviewed by the Commission has not changed.

Interior Mezzanine and Outdoor Terrace

44. The proposed interior mezzanine will be located in the northeast corner of the grocery store and will accommodate a small accessory café use. The mezzanine will consist of approximately 3,300 gross square feet. The new outdoor terrace will be located adjacent to the mezzanine and consists of approximately 1,000 square feet. The mezzanine and outdoor terrace will be available to café/grocery store patrons.
45. To accommodate the outdoor terrace, one of the previously approved residential terraces located on the north side of the Parcel 4 Building has been eliminated. In addition, modifications to the design of the east and north façades of the Parcel 4 Building plinth have been made to allow light and air into the new café terrace, and provide views from the terrace out toward North Service Court, the Olmstead Walk and Cell 14, and along North Capitol Street. The modifications to the plinth wall include additional glazing at the street-level to provide light and views into the ground-floor café space, and two new openings into the north and east façades at the mezzanine level.

Parking Garage Entrance and Loading Facilities

46. To accommodate the loading and unloading operations that are specific to Harris Teeter, and to avoid potential conflicts between the loading facilities and motorists accessing the parking garage, the Applicant is requesting to modify the size and configuration of the parking garage entrance and loading facilities located along Evarts Street.
47. Under the Approved PUD, the entrance to the parking garage is located west of the loading facilities, adjacent to the senior affordable residential lobby and is 24 feet wide. To the east of the parking garage entrance are the loading facilities for the residential and grocery store uses. According to Z.C. Order No. 13-14, the Parcel 4 Building will provide two large loading berths, for use by the grocery store, and one smaller loading berth to be shared between the residential and grocery store uses, and one service delivery space.
48. As shown in the modified plans submitted by the Applicant, the parking garage entrance is relocated to the east of the loading facilities. (Ex. 27A1-27A2) In addition, the size and configuration of the loading berths have been modified. Rather than providing two larger loading berths for the grocery store and one smaller loading berth shared between the residential and grocery store uses, the Applicant proposes to provide four loading berths, each with a depth of 40 feet. Three of the loading berths would be devoted to the grocery store, with the fourth berth shared between the residential and grocery store uses. There will also continue to be a shared 20-foot service delivery space.

Loading Management Plan

49. Pursuant to Z.C. Order No. 13-14, Condition D.1(b), the Applicant is required to implement a loading and curbside management plan (*See* Z.C. Case No. 13-14, Ex. 832F3.)
50. The loading and curbside management plan includes, among other things, a restriction on large truck deliveries, defined in Z.C. Order No 13-14 as those that require backing maneuvers into the loading dock from Evarts Street, on weekday mornings between 7:00 a.m.-8:30 a.m. to avoid conflicts with high-volume commuter traffic.
51. At the time the loading and curbside management plan was developed during the initial PUD, a grocery store tenant had not been identified. Therefore, the loading and curbside management plan was based upon several conservative assumptions drawn from the Applicant's transportation consultant's experience working on similar grocery store projects.
52. Now that a grocery store tenant has been identified, Harris Teeter, the Applicant is requesting to revise the loading and curbside management to remove the loading restriction on weekday mornings between 7:00 a.m.-8:30 a.m., and allow loading to occur on weekdays between 6:00 a.m.-10:00 p.m.

Penthouses

53. The Applicant is requesting to modify the approved roof plan for the Parcel 4 Building to add three new mechanical penthouses to serve the grocery store. The main grocery mechanical penthouse will be located on the north-south portion of the building along Quarter Street, with two other smaller mechanical penthouses located toward the east ends of the northern and central bars of the building. (Ex. 27A2, Sheet 23.) As shown on the modified roof plan, the main grocery mechanical penthouse will have a height of 14 feet, and the two other proposed penthouses will both have a height of 11 feet. All three of the new grocery store mechanical penthouses will meet or exceed the 1:1 setback requirements. The Applicant has requested flexibility to allow penthouse mechanical space with unequal heights.
54. In addition to the three new grocery store mechanical penthouses, modifications have been made to the height and footprints of the previously approved market-rate and senior-affordable residential penthouses. Regarding height, both residential penthouses have been reduced from 16 feet to 14 feet. In addition, minor changes have been made to the footprints of both residential penthouses. Notwithstanding these changes, the residential penthouses, continue to meet or exceed the 1:1 setback requirements, with the exception of a portion of the east façade of the market-rate penthouse for which the Commission has previously granted flexibility to provide a noncompliant setback of 5 feet, six inches. As shown on the modified roof plan, the previously approved noncompliant setback is not proposed to be reduced or extended in any way as a result of the Modified PUD.

55. The grocery and residential penthouses proposed on the Parcel 4 Building will be clad in a charcoal metal panel material.

Building Height Technical Correction

56. As the design of the Parcel 4 Building progressed, the Applicant identified a technical error regarding the approved building height as it is shown in the Approved PUD plans and stated in Z.C. Order No. 13-14, Conditions A.3 and B.2, which state that the Parcel 4 Building has an approved height of 77 feet, as measured from North Capitol Street.
57. The need for the requested technical correction is a result of a graphic mislabeling on the Approved PUD plans.
58. As shown in the plans submitted for the Modified PUD, the Approved PUD plans incorrectly labeled the building height on the zoning diagram and on the sections and elevations. On the zoning diagram, the building height was shown as being 77 feet from the measuring point located at the midpoint of the building along North Capitol Street. On the sections and elevations, the Approved PUD plans showed the Parcel 4 Building height as being 75 feet, eight inches, which reflects the height of the building measured from the finished floor of the grocery store rather than from the elevation of the measuring point along North Capitol Street. The height of the Parcel 4 Building when correctly measured from the elevation of the measuring point along North Capitol Street is 78 feet, eight inches.

Architectural Design and Plan Refinements

59. The following architectural design and plan refinements have been made to the Parcel 4 Building as a result of the Applicant's requested modifications, and the normal course of design development.

Grocery Store Entrance and Signage

60. As a result of discussions with Harris Teeter, the main grocery store entrance, entry sign, and canopy have been shifted east to a more central location along the Parcel 4 Building's north façade. In addition, to accommodate the new outdoor terrace, the main grocery store signage previously shown on the northeast corner of the building has been relocated to the northwest corner near the intersection of North Service Court and Quarter Street. The Commission finds the relocation of the main grocery store signage to be consistent with the previously granted flexibility to vary the final design of retail frontages and signage. (See Order No. 13-14, Conditions B.6(l) and B.6(m).)

Plinth Wall and Base Treatment

61. To accommodate the outdoor terrace, the Applicant has made design refinements to the massing, geometry, and articulation of the plinth wall along North Service Court. In addition, the Applicant has slightly modified the base of the metal fin cladding system along Quarter Street. While previously the fins were shown touching the ground, they are now proposed to terminate at a dark granite base. The Commission finds these design

refinements to be aesthetically appropriate, more durable, and consistent with the exterior design flexibility granted by the Commission under Z.C. Order No. 13-14.

Residential Lobbies and Entrance Treatment

62. As the design of the Parcel 4 Building has been further developed since the Commission's initial approval, and as a result of modifications to the parking and loading configuration and treatment of the plinth wall, the Applicant has made adjustments to the residential lobbies along Quarter Street.
63. Due to the relocation of the parking entrance and reconfiguration of the loading facilities, both residential lobbies have grown in size. The market-rate residential lobby has been expanded from the previously approved 4,130 square feet to approximately 5,265 square feet; while the senior residential lobby increased from 3,281 square feet to 4,746 square feet. In addition, the amount of senior residential lobby street frontage increased along Evarts Street. This increase in active street frontage combined with the six-foot recess of the parking entry and loading doors helps deemphasize the utilitarian function of the Evarts Street elevation.
64. Refinements to the market-rate residential entrance are also proposed in order to increase its presence. The size of the entry canopy has been increased, and the width of the dark stone element surrounding the entrance has been increased, providing a solid surface for signage. The Commission finds these changes to be acceptable, and consistent with the exterior design flexibility granted by the Commission under Z.C. Order No. 13-14.

Parking Garage Configuration

65. The Applicant had to make several adjustments to the configuration of the below-grade parking garage in response to the modifications to the location of the parking garage entrance and grocery store entrance. These adjustments include shifting the garage access ramps to the east side of the garage to connect to the revised parking garage entrance, relocation of the retail and residential bike storage locations to remain in proximity to the access ramps, and adjustments to the residential and retail parking spaces. The adjustments to the parking spaces resulted in slight increases in the number of parking spaces for both the residential and retail uses. (Ex 27A1, Sheet 2.)

Compliance with PUD Standards

66. The Application complies with the standards for a PUD modification set forth in Chapter 24 of the Zoning Regulations.
67. The overall development of the Approved PUD, including Parcel 4, provides important public benefits and project amenities which are set forth in detail in Z.C. Order No. 13-14. These public benefits and project amenities have not changed with this Application. Accordingly, the Commission's finding in the original PUD approval that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the Approved PUD, including the Parcel 4 Building, does not change.

68. The modifications to the Parcel 4 Building have been evaluated under the PUD guidelines for the CR Zone District. The density proposed on Parcel 4 remains well below what is permitted under a PUD in the CR Zone District, and is consistent with what was approved in Z.C. Order No. 13-14. Notwithstanding the requested technical correction to Z.C. Order No. 13-14 to remedy the erroneously stated approved height of the Parcel 4 Building, the actual height of the Parcel 4 Building has not changed as a result of the proposed modifications. Furthermore, the maximum height is within that permitted as a matter of right and for a PUD in the CR Zone District.
69. The Application has been evaluated by the relevant District agencies and has been found to have no unacceptable adverse impacts. The Commission finds that the modifications to the Parcel 4 Building will have a positive impact on the city and will have no unacceptable adverse impacts. The Approved PUD includes conditions which adequately mitigate any potential adverse effects of the project.

Compliance with the Comprehensive Plan

70. The Commission finds that the proposed modifications to the Parcel 4 Building, continue to: (a) be consistent with the District of Columbia Comprehensive Plan Future Land Use Map and the Generalized Policy Map; (b) help implement many of the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities; and (c) further the objectives and policies of the Comprehensive Plan's major elements, as set forth in the OP Report (Ex. 29) and as previously found by the Commission in Findings of Fact Nos. 159-173 of Z.C. Order No. 13-14. (Ex. 2C.)

Office of Planning

71. By report dated February 25, 2016, and through testimony presented at the public hearing, OP recommended approval of the Application, contingent upon the condition that all entrances to the supermarket should be open to the public whenever the supermarket is open. (Ex. 29). The Applicant has agreed to this condition.
72. In its report and testimony at the public hearing, OP concluded that the proposed modification is not inconsistent with the Comprehensive Plan, and is consistent with the Master Plan. OP recommended approval of the Application.

District Department of Transportation

73. By report dated February 29, 2016, DDOT summarized its assessment of the Modified PUD, including the Applicant's proposed Loading Management Plan, on the District's transportation network and stated that it objected to the Applicant's request to remove the prohibition on deliveries between 7:00 a.m.-8:30 a.m. due to the expected vehicle queuing that would negatively impact traffic operations on North Capitol Street. DDOT stated that it did not object to any of the other proposed Loading Management Plan changes proposed by the Applicant. (Ex. 30.)

74. As testified to by the Applicant and DDOT at the public hearing, in response to the DDOT report, the Applicant and DDOT worked closely to identify additional loading measures and/or restrictions that could be incorporated into the Applicant's Loading Management Plan that would address the concerns expressed by DDOT in its report.
75. Prior to the public hearing, the Applicant submitted a Revised Loading Management Plan, dated March 10, 2016, which was prepared in close consultation with DDOT. The Amended Loading Management included additional loading restrictions that would be implemented on weekdays between 7:00 a.m.-8:30 a.m. (Ex. 40.) These additional restrictions were agreeable to DDOT.
76. At the public hearing, DDOT acknowledged the Applicant's Amended Loading Management Plan, and stated that the additional loading restrictions contained in the Amended Loading Management Plan, and the Applicant's additional commitment to prohibit residential loading (move-ins, move-outs, and trash) from occurring both in the loading dock area and curbside along Evarts Street, on weekdays during the time period between 7:00 a.m.-8:30 a.m., successfully addressed the concerns expressed in the DDOT Report. As such, DDOT testified in support of the Application.

ANC 2C Report

77. By letter dated October 20, 2015, ANC 5E indicated it voted to support the Application by a vote of 6-0-2. (Ex. 31.)
78. The Commission afforded the views of ANC 5E the "great weight" to which they are entitled.

Contested Issues

79. The testimony provided at the public hearing by the persons appearing in opposition raised issues related to the process by which the developer of the Overall PUD Site was selected and was approved; impacts of the Approved PUD and Modified PUD to the historic character and features of the Overall PUD Site and on views of the surrounding neighborhood and from Lincoln's Cottage; consistency with the historic preservation covenant on the Overall PUD Site; impacts of the Approved PUD and Modified PUD on traffic and loading; and the status of the appeals related to the Commission's initial approval of the PUD that are currently before the District of Columbia Court of Appeals.
80. The Commission finds that the testimony relating to the process by which the developer of the Overall PUD Site was selected is outside of the Commission jurisdiction, and not relevant to the scope of review that the Commission must carry out as part of the requested PUD modification. The Commission finds that the process carried out for the Approved PUD, and for the requested PUD modification, is consistent with the requirements of Chapters 24 and 30 of the Zoning Regulations
81. The Commission finds that the testimony relating to the appeals that are currently before the District of Columbia Court of Appeals are not germane to consideration of the subject

Application. The Court has not yet taken any action on these appeals, and has not stayed the effect of the previous approval. Therefore, Z.C. Order No. 13-14 remains in full force and effect.

82. With respect to the issues raised regarding general impacts on traffic, historic resources, and views, the Commission finds that these issues were thoroughly addressed during the Approved PUD process, and that the proposed Modified PUD does not change any of the Commission's prior findings relating to these issues.
83. With respect to the testimony relating to the potential impacts of the proposed modifications to the Parcel 4 Building loading facilities, and to the approved loading and curbside management plan, the Commission finds the modified design of the loading facilities and parking garage entrance along Evarts Street to be an acceptable solution that results in aesthetic and safety improvements to the streetscape, operational improvements to the loading facilities, and improvements to the design of the residential lobbies. Further, based on the transportation analysis submitted by the Applicant, and the testimony provided at the public hearing by DDOT and the Applicant's transportation expert, the Commission finds that the Applicant's Revised Loading Management Plan will effectively mitigate potential impacts to vehicular circulation along Evarts Street and North Capitol Street. (Ex. 40.)
84. Regarding the written testimony submitted by Bertha Holliday following the March 10, 2016, public hearing, the Commission finds that it is best left to Harris Teeter, based on its experience, to devise a parking fee and enforcement strategy that is the most effective at providing convenient parking for grocery store patrons while discouraging non-patron usage of the grocery store parking spaces. Further, with respect to the concerns raised by Ms. Holliday regarding the configuration and location of affordable senior housing within the Parcel 4 Building, the Commission finds that this question was previously addressed during the Approved PUD process, and is related to federal Fair Housing Act requirements that are required in order to set aside dwelling units for the exclusive use by seniors. The proposed Modified PUD does not change any of Commission's prior findings relating to this issue.

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 and approve this Application for a modification to the approved 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, density, lot occupancy, parking, loading, yards, or courts. The Commission may also

approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of Parcel 4, as modified, 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 Consolidated PUD as modified by the Application continues to meet the minimum area requirements of § 2401.1 of the Zoning Regulations. The Modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The Parcel 4 Building, as modified, will deliver a full service grocery store to a neighborhood that is underserved with regard to this type of neighborhood-serving retail. In addition, the Parcel 4 Building will contain both market-rate and affordable senior dwelling units, which will help address the continued growing demand for housing in the District, and in particular, the demand for affordable housing. The Commission finds that the impacts of the project are not unacceptable.
5. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
6. Approval of the Application is not inconsistent with the Comprehensive Plan, and is consistent with the Approved PUD, as set forth in Z.C. Order No. 13-14.
7. The flexibility requested by the Applicant to allow mechanical penthouses of unequal heights is a reasonable tradeoff compared to the public benefits and project amenities that will be provided as part of the Approved PUD, including those that are specific to Parcel 4.
8. The number and quality of the project benefits and amenities offered, as evaluated and approved by the Commission as part of the Approved PUD, as set forth Z.C Order No. 13-14, are a more than sufficient trade-off for the flexibility and development incentives requested.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 5E's support for the project and has given that support great weight.
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. The Commission has carefully considered

OP's support for the project and has given that support great weight. The Commission agrees with OP's requested condition that the proposed grocery store should be open to the public whenever the grocery store is open.

11. The approval of the Application will promote the orderly development of Parcel 4 and the Overall PUD Site in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
12. Notice was provided in accordance with the Zoning Regulations and applicable case law.
13. The Application is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the Application for modifications to a Consolidated PUD for Parcel 4 of the McMillan Reservoir Sand Filtration Site. The Commission hereby approves the following modifications to Z.C. Order No. 13-14, all other provisions of the order, including the public benefits and amenities listed in Conditions C-1 to C-12, remain in effect:

1. **Condition B.2 "Consolidated PUD Parameters" for "Parcel 4" is deleted in its entirety and replaced with the following:**
2. Parcel 4:
 - a. The Parcel 4 Building shall be developed substantially in accordance with the plans dated October 12, 2015 (Ex. 2D1 & 2D2), as updated by the plans dated February 18, 2016, submitted with the Applicant's supplemental pre-hearing statement (Ex. 27A1, 27A2) (collectively, the "Parcel 4 Building Modification Plans"), all as modified by the guidelines, conditions, and standards herein;
 - b. The Parcel 4 Building shall have an approximate total gross floor area of 310,283 square feet, or an approximate density of 3.23 FAR based on the land area of Parcel 4 (4.31 FAR not including private streets or easements), with approximately 251,578 square feet of gross floor area devoted to residential use, including the residential loading area, and approximately 58,705 square feet of gross floor area devoted to retail use (grocery store), including the grocery store loading area;
 - c. The maximum height of the Parcel 4 Building shall be 78 feet, eight inches, measured from the level of the curb opposite the middle of the front of the building along North Capitol Street, as shown on the Parcel 4 Building Modification Plans;

- d. The Parcel 4 Building shall contain approximately 329 off-street parking spaces, with approximately 154 spaces devoted to the grocery store, approximately 175 space devoted to the residential uses, and a minimum of 101 secure bicycle parking or storage spaces provided in the below-grade garage; and
- e. Loading shall be provided as shown on the “proposed design” on Sheet 19 of the Parcel 4 Building Modification Plans, and shall contain a total of four, 30-foot loading berths and one, 20-foot service delivery space. Three of the 30-foot loading berths shall be devoted to the grocery store, with the fourth loading berth being shared between the market-rate and affordable senior residential and grocery store components of the Parcel 4 Building.

2. Condition 6 of Z.C. Order No. 13-14, which lists the areas of flexibility of design permitted for the PUD, is modified by adding the following paragraph (q) to the end of the listed paragraphs (a) through (p):

- q. The Applicant shall have flexibility with the design of the Parcel 4 Building from the uniform height requirement for penthouse mechanical space, consistent with the proposed roof plan included in Ex. 27A2 of Z.C. Case No. 13-14B.

3. Condition D.1 “Transportation Mitigation Measures” paragraph (b) is deleted in its entirety and replaced with the following:

- b. **For the life of the Project**, the Applicant shall implement the following loading and curbside management plan:
 - i. The Applicant shall implement the Amended Loading Management Plan, as set forth in Exhibit 40 of the record for Z.C. Case No. 13-14B, notwithstanding the statement in Exhibit 40 that coordination with the property manager for the senior and multi-family residential buildings for scheduling use of the shared dock for resident move-in and move-out was removed from the Amended Loading Plan;
 - ii. The Amended Loading Management Plan shall include “Coordination with the Property Manager for the senior and multi-family residential buildings for scheduling use of the shared dock for resident move-in and move-out”;
 - iii. The Applicant shall prohibit residential loading (move-ins, move-outs, and trash) from occurring both in the loading dock area and curbside along Evarts Street, on weekdays during the time period between 7:00 a.m.-8:30 a.m.; and
 - iv. The Applicant shall require all entrances to the supermarket to be open to the public whenever the supermarket is open.

The Zoning Commission's approval of this Application is subject to the following conditions:

1. No building permit shall be issued for the Modified PUD until the Applicant has recorded a Notice of Modification in the land records of the District of Columbia.
2. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the 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 March 10, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at the conclusion of the public hearing by a vote of **4-0-1** (Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Anthony J. Hood, not present, not voting).

On April 11, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Anthony J. Hood, 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 17, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BORDIN
DIRECTOR
OFFICE OF ZONING