

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-07
Z.C. Case No. 15-07
MRP Realty
(Consolidated PUD @ 313-329 H Street, N.E.
Square 777, Lots 24-28, 48, and 813-815)
December 14, 2015**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 8, 2015 to consider an application from MRP Realty (“Applicant”) for review and approval of a consolidated planned unit development (“PUD”) for Lots 24-28, 48, and 813-815 in Square 777 (“Property”). The application proposes a mixed-use development incorporating retail and residential uses (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. 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 with conditions.

FINDINGS OF FACT

Application, Parties, Hearing, and Post-Hearing submissions

1. The Property consists of Lots 24-28, 48, and 813-815 in Square 777 and is located at 313-329 H Street, N.E. (Exhibit [“Ex.”] 2, 2B.)
2. On March 19, 2015, the Applicant submitted an application to the Commission for the review and approval of a PUD in the C-2-B/HS-H Zone District. The original application included Lots 24-28 and 813-815; Lot 48 was added to the site area prior to the PUD hearing. The Applicant is the contract purchaser of the Property. (Ex. 2, 2B, 19.)
3. The PUD application did not include a PUD-related Map Amendment. (Ex. 14A.)
4. On April 10, 2015, the Office of Planning (“OP”) submitted a setback report recommending that a public hearing be held on the application. (Ex. 10.) It requested additional information on several items prior to the public hearing:
 - Additional architectural detail and perspectives of the project and its context;

- A loading management plan and/or more detailed information, necessary to evaluate proposed loading and trash collection from public alley, as vehicular conflicts could occur;
 - Clarification of the affordable housing provision;
 - Detail regarding the specific requested roof relief from the current roof structure regulations, as it appears the proposed includes residential space, not currently permitted. A roof plan conforming to current regulation should be provided;
 - Rationale regarding the residential building projection beyond the property boundary at the north/front elevation;
 - Additional analysis regarding the requested parking relief and Transportation Demand Management (“TDM”) Program;
 - A strengthened LEED rating;
 - A refined amenities package commensurate with the requested flexibility; and
 - The project’s participation in the District’s job/employment program.
5. On April 27, 2015, the Commission set the application down for a public hearing, supporting OP’s request for additional information prior to the public hearing.
 6. The Applicant filed its pre-hearing statement on June 2, 2015, including responses to OP’s comments above. (Ex.12.)
 7. The Commission set the application for a public hearing on September 10, 2015. Notice of the public hearing was published in the *D.C. Register* on July 3, 2015 and was mailed to Advisory Neighborhood Commission (“ANC”) 6C and to owners within 200 feet of the Property on July 14, 2015. (Ex. 14, 15.)
 8. On August 18, 2015, the Applicant requested a postponement of the hearing. It simultaneously amended its application to include Lot 48 in the PUD area. Lot 48 is a 1,328-square-foot lot immediately to the east of the PUD. (Ex. 19.)
 9. The Commission rescheduled the public hearing for October 8, 2015, published notice of the rescheduled hearing in the *D.C. Register* on August 28, 2015, and mailed notice of the rescheduled public hearing to ANC 6C and to all property owners with 200 feet of the Property on August 19, 2015. (Ex. 20-22.)
 10. The Applicant further updated its application with a supplemental pre-hearing statement on September 18, 2015. (Ex. 31-31F.)

11. A public hearing was conducted on October 8, 2015. The Applicant proffered, and the Commission accepted, Dan Duke as an expert in civil engineering, Erwin Andres as an expert in traffic engineering, and Brandon Robinson, as an expert in architecture. The Applicant's experts, as well as John Begert, a representative of the Applicant, presented testimony at the public hearing. (October 8, 2015 Transcript ["Tr.,"] pp. 6-7.)
12. In addition to the Applicant, ANC 6C was automatically a party to the proceeding. A full discussion of the ANC's issues and concerns appears in this Order at findings of fact numbers 65 through 66. Michael Sims and Susan Anderson submitted a request for party status in opposition to the application. They subsequently withdrew their request for party status and submitted a letter in support of the application. (Ex. 29, 35.)
13. At the hearing, the Commission heard testimony and received evidence from OP and the District Department of Transportation ("DDOT"). (Tr., pp. 114-117.)
14. The Commission also received a report and testimony in support of the application from ANC 6C with conditions. (Ex. 37A.)
15. A letter of support from the Capitol Place Homeowners Association ("CPHOA"), an immediately abutting neighbor, was also submitted into the record. (Ex. 31E.)
16. At the conclusion of the hearing, the Commission closed the record except for the Applicant's post-hearing submission and proposed order as well as responses to the Applicant's post-hearing submission from OP, DDOT, and ANC 6C. In the post-hearing submission, the Commission requested that the Applicant provide information regarding the following: additional details of the roof plan, the articulation of the northern façade, window placement on the eastern and western façades; analysis of the proposed palette of materials on the seventh and eighth stories of the southern façade; inclusion of a LEED scorecard; an updated loading management plan; and a building perspective within a broader neighborhood context. (Tr., pp. 133-135.)
17. The Commission voted to take proposed action at the close of the hearing on October 8, 2015 to approve the application. (Tr., p. 139.)
18. On October 29, 2015, the Applicant submitted its post-hearing filing with responses to each of the items requested by the Commission. (Ex. 46-46G7.)
19. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on October 13, 2015. The NCPC Executive Director, by delegated action dated October 30, 2015, found that the proposed PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 48.)

20. On November 23, 2015, the Commission requested additional information from the Applicant concerning the placement of protective bollards and other measures in the public space south of the project designed to protect adjacent properties.
21. On December 7, 2015, the Applicant submitted additional information regarding protective measures in the public space south of the project.
22. On December 14, 2015, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order.

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

23. The Property is located in the northeast quadrant of the District of Columbia and contains approximately 15,813 square feet of land area. It is located midblock and is currently vacant. It is bounded by a public alley that ranges from approximately 10 feet wide to 20 feet wide to the south, H Street to the north, a commercial rowhouse to the east, and commercial properties to the west. (Ex. 2, 2A1-2A4.)
24. The Property is located in the C-2-B Zone District and the housing subdistrict of the H Street Overlay. (Ex. 2, p. 5.)
25. The Property is located along the H Street streetcar line and less than one-half mile from Union Station. The Project is an infill development that will improve a vacant and underutilized parcel of land. The PUD site is in Single Member District 6C05 of ANC 6C in Ward 6. (Ex. 2, p. 8.)
26. The Property sits along a commercial corridor and abuts residential rowhouses to its south. Development is proposed for many nearby parcels in the near future, including a 42-unit residential building at the corner of 3rd and H Streets, 26 townhomes built atop condominiums in the 400 block of H Street, and a mixed-use residential and retail building further east at 501 H Street, which will include approximately 30 units and two floors of retail use. (Ex. 2, p. 8.)
27. The Property abuts an alley system to its south. There is a 16-foot-wide north-south alley that dead ends at an east-west alley. The east-west alley is 20 feet wide to the west of the north-south alley and 10 feet wide to the east of it. (Ex. 2A1.)
28. The interior of Square 777 includes townhomes that front the alley system and do not have street frontage. These townhomes are a part of the CPHOA. The CPHOA property shares the southern property line of the Property. (Ex. 2A1.)

29. The Future Land Use Map includes the Property in the Medium-Density Residential and Moderate-Density Commercial land use category. Such designation supports the construction of a high-quality residential project on a site that is currently underutilized. The Project, with a density of 6.0 floor area ratio (“FAR”) and a height of 90 feet, is consistent with the future land use designation for the Property. (Ex. 2, p. 20-21.)
30. The Small Area Plan follows up on the progress of the H Street Area Plan, which was the catalyst for millions of dollars of investment in the corridor. The plan breaks H Street into “thematic areas” that are determined by their geographical location. As the western end of H Street, the Property is included in the “Urban Living” subarea. The vision for the Urban Living area is “architecturally distinctive with 4-8 story buildings strengthen within a mixed income, walkable, transit-oriented community easily accessible to quality goods and services and work opportunities.” (Ex. 2, p. 26.)

The Project

31. The Applicant proposes to subdivide nine small lots on the south side of H Street to facilitate the development of a mixed-use residential building with ground-floor retail. (Ex. 12, 25A, 31A.)
32. The first floor of the building will include approximately 6,300 square feet of retail use. Floors 2 through 8 will be reserved for 105-135 residential units. (Ex. 31, 31A1-31A4.)
33. Residential access to the building will be from H Street and the alley. The southern access from the alley will provide direct access to a bicycle room on the first floor of the building that can store up to 32 bicycles; it will also provide direct access to the building lobby. (Ex. 31A1-31A4.)
34. The building will have a maximum height of 90 feet along H Street and will step down to 70 feet along the southern façade. The western portion of the building is set back approximately 27 feet, eight inches from the southern property line. As the Property narrows to the east, the garage immediately abuts the southern property line shared with the 20-foot alley. (Ex. 31, 31A1-31A4.)
35. The building incorporates terraces at the second floor, as well as the seventh and eighth floors and provides exterior balconies to the units on the third through sixth floors. (Ex. 31A1-31A4.)
36. The Project will include 30 parking spaces in a below-grade garage along with a second bicycle room that has a maximum capacity of 20 bicycles. The garage will also reserve a 100-square-foot room to be used as storage space for the ANC. (Ex. 31A1-31A4.)
37. A 24-foot loading space will be provided at grade east of the garage entrance. The loading space will be reserved for residential moving trucks no greater than 24 feet in

- size. All trucks accessing the loading area will be required to do so via 4th Street. (Ex. 31A1-31A4.)
38. The northern façade incorporates retail bays and projections of the residential space to provide articulation along H Street. The façade is a modern design utilizing brick and glass along the retail spaces, with natural stone accents. The residential levels will exhibit a mix of fiber cement panels, brick, and high-pressure laminate panels. (Ex. 31A1-31A4.)
 39. The eastern and western facades both abut a private property line. As such, any windows that may be constructed are considered “at risk”. Nevertheless, the Applicant is incorporating a series of windows amid metal panels on both facades in order to make the facades visual points of interest. (Ex. 31A1-31A4.)
 40. The southern façade is a more traditional façade with warm shades of brick on floors one through six. The seventh and eighth floors, which are both set back, relate to the other three facades with respect to the materials and color palette. (Ex. 31A1-31A4.)

PUD Flexibility Requested

41. Roof Structures: The Applicant sought relief from the penthouse requirements of § 770.6(b) in two respects: one portion of the roof structure is not set back from the exterior wall a minimum of one foot for every foot of its height. It is set back approximately 15 feet, six inches from the exterior wall and is approximately 16 feet, four inches in height. The Applicant also seeks relief from the requirement that the roof structures be of uniform height. The height of a stair is reduced from the otherwise uniform height of the penthouse in order to meet the 1:1 setback requirement. (Ex. 31, 31A1-31A4.)
42. The Applicant also sought flexibility to convert a portion of the penthouse to a residential unit pending the approval of amended penthouse regulations before the Commission in Case No. 14-13. The Commission was reluctant to grant such flexibility; accordingly, the Applicant withdrew its request. (Tr., p. 137.)
43. Loading: The Applicant requested relief from both the residential and retail loading requirements. Pursuant to § 2201.1, the Applicant is required to provide one 30-foot loading berth, one 100-foot loading platform and one 20-foot service and delivery space for its proposed retail uses. It is also required to provide one 55-foot loading berth and one 200-foot loading platform for its residential use. In lieu of these requirements, the Applicant is proposing a 24-foot surface loading space on-site, at the rear of its building. It proffered a loading management plan that will require, among other things, that all retail loading take place on 4th Street via an existing loading berth and all residential loading trucks enter and exit the alley system via 4th Street. (Ex. 31, 31A1-31A4.)

44. Parking: The proposed mix of uses triggers a requirement for 50 parking spaces pursuant to § 2101.1. The Applicant is proposing 30 spaces, which are comprised of a mix of full size and compact spaces. (Ex. 31, 31A1-31A4.)
45. Retail: Subsection 1302.4 requires that at least 50% of the ground-floor gross floor area be dedicated to retail uses. The Applicant dedicates 48.76% of its ground floor to retail uses. The reduction resulted from including an on-site loading area and was determined to be *de minimis*. (Ex. 31, 31A1-31A4.)
46. Rear yard: The Project does not provide the 15-foot rear yard required by § 774.1. Because it abuts an alley, the rear yard may be measured to the centerline of the alley; however, a ten-foot rear yard (as measured to the centerline of the alley) is provided for a portion of the southern façade. The rear balconies project into the required rear yard. (Ex. 31, 31A-31A4.)
47. Lot occupancy: Subsection 772.1 imposes a maximum lot occupancy of 80% for residential uses in the C-2-B Zone District. Because residential amenity space is provided on the ground floor of the building, this requirement applies to the ground floor, which occupies 82% of the lot. (Ex. 31, 31A-31A4.)
48. Affordable housing: The Applicant also seeks relief from the affordable housing requirements of § 2603.2. The Applicant proffered to provide eight percent of its residential square footage to affordable units: six percent would be reserved for households with an annual income no greater than 80% of the Area Median Income (“AMI”), one percent would be reserved for households with an annual income no greater than 60% AMI and one percent would be reserved for households with an annual income no greater than 50% AMI. While DHCD can administer both the 50% and 80% AMI units under the inclusionary zoning (“IZ”) program, it cannot administer the 60% AMI unit under the IZ program. It can, however, administer the 60% AMI unit under the affordable unit program. Accordingly, the Applicant seeks relief from the IZ requirements in order to dedicate seven percent of its residential gross floor area to IZ units and one percent of its residential gross floor area to an affordable unit. Both the IZ units and the affordable unit will remain affordable for so long as the project exists. The units provided at deeper affordability levels (50% and 60% AMI) will be reserved for two-bedroom units. (Ex. 46.)

Project Amenities and Public Benefits

49. As detailed in the Applicant’s testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits: (Ex. 2, pp. 28-32; Ex. 45.)
 - (a) Exemplary Urban Design, Architecture, and Open Spaces, through the use of high-quality materials and design that will enhance the unique character of the H Street corridor. It will also enliven both the streetscape and the alleyway with

pedestrian and bicycle traffic by introducing more than one building entry, which will create dynamic activity in areas that have long been dormant;

- (b) Site Planning and Efficient Land Utilization, by replacing a vacant, underutilized site with residential use. The introduction of an eight story residential building is consistent with both the H Street Overlay and the Small Area Plan. Access to the site will be via the alley system and not directly from H Street, thus preserving the fluidity of H Street and maintaining a consistent pedestrian experience. The massing of the building balances its presence along H Street and its adjacency to townhomes. It is a multi-modal site that encourages and facilitates use of bicycles through the introduction of a southern entry directly from the alley to both a bicycle storage area and the building lobby;
- (c) Housing and Affordable Housing, through the provision of up to 135 residential units and the set aside of eight percent of the residential gross floor area of the PUD as affordable housing units (seven percent of the residential gross floor area will be reserved for inclusionary units while one percent will be reserved for affordable units; the eight percent set aside is generally referred to as being for “affordable housing”). Though the affordable housing requirement sets aside the affordable units for households making a maximum of 80% of the Area Median Income (“AMI”), the Applicant is proposing that one percent of the residential gross floor area be reserved for households with a maximum income of 50% AMI (b)and one percent of the residential gross floor area be reserved for households with a maximum income of 60% AMI. The remaining six percent of the residential gross floor area will be reserved for affordable units reserved for households with a maximum income of 80% AMI. The affordability limits for two percent of the affordable units are deeper than what is otherwise required;
- (d) Street-Engaging Retail Offerings, through preservation of a minimum six-foot depth of views for at least 50% of the area between three and eight feet above grade;
- (e) Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management Measures, through reconstruction of the east-west alley abutting the Property to its south and through the provision of robust transportation demand management and loading management plans. The project will also include a bicycle storage room for 32 bicycles on the first floor of the building in order to encourage bicycle use; and
- (f) Uses of Special Value: through provision of affordable housing at deeper affordability levels, a robust transportation demand management plan and loading management plan, reservation of space for the ANC in its garage, reconstruction of the east-west alley, certifying the project at the LEED-Silver level, working with the CPHOA to mitigate effects of construction and improve landscaping on

their property; improving the street tree boxes on the east side of 3rd Street and replacing a street tree on H Street, and the provision of a planter or bollards along the northern façade of 767 3rd Street.

Compliance with PUD Standards

50. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the development incentives for the height, density, and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant’s statement and the OP report.
51. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 6C, and finds that the superior design, site planning, streetscape and alley improvements, housing and affordable housing, uses of special value, and transportation demand and loading management plans all constitute acceptable project amenities and public benefits.
52. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole. The Commission credits the testimony of OP and ANC 6C that the PUD provides significant and sufficient public benefits and project amenities.
53. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant’s architectural and transportation planning experts that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel located near Union Station and along a streetcar line.
54. The Commission credits the testimony of OP and ANC 6C that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD process. Further, the Commission credits OP and DDOT’s testimony that the impact of the PUD on the level of services will not be unacceptable.

55. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a comprehensive transportation review that concluded that the PUD would not have adverse effects due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking spaces and the proposed on-site loading space, as well as use of the 4th Street loading space for retail purposes, would not generate adverse impacts on neighboring properties. The Commission credits the Applicant's transportation expert and DDOT and finds that the traffic, parking, and other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD, particularly in light of the robust transportation demand management plan and loading management plan being proffered. The Commission also credits the testimony with DDOT with its conclusion that gating the entrance to the loading and parking areas will not be consistent with easing alley maneuvers and thus is not desirable.

Compliance with the Comprehensive Plan

56. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as appropriate for Medium-Density Residential and Moderate-Density Commercial development pursuant to the Future Land Use Map of the District of Columbia. The proposed height and density of the PUD is consistent with this designation.
57. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan:
- (a) The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Capitol Hill Area Element;
 - (b) The project implements Land Use Element policies that designate the area around the Union Station Metrorail station, as well as along the H Street Streetcar route, for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment bring growth and revitalization to an underutilized lot along a high transit corridor;
 - (c) The project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing and retail uses within walking distance of the Metrorail station and H Street streetcar line and, through its Transportation Demand Management Plan, provides effective incentives to discourage motor vehicle use;

- (d) The project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that provide deeper affordability limits;
 - (e) The project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves an underutilized parcel of land along a vital corridor in the District of Columbia; and
 - (f) The project implements the Capitol Hill Area Element policies particularly those calling for the revitalization of H Street and providing medium and high density residential development with limited ground-floor retail uses between North Capitol Street and 7th Street, N.E.
58. The Commission credits the testimony of the Applicant and OP that the PUD is consistent with and furthers the goals of the Small Area Plan and After the Small Area Plan.

Agency Reports

59. By report dated September 28, 2015 and by testimony at the public hearing, OP recommended approval of the application. OP confirmed that the Project supports the written elements of the Comprehensive Plan and the H Street Strategic Development Plan and would not be inconsistent with Future Land Use and Generalized Policy maps of the Comprehensive Plan. OP concluded that the benefits and amenities of the PUD were acceptable given the development incentives requested. (Ex. 32.)
60. OP specifically noted that the Applicant worked to address the concerns expressed by the Commission and OP at the setdown meeting as well as the ANC and the neighboring CPHOA. (Ex. 32, p. 1.)
61. OP made three recommendations: 1) to break up the potential flatness of the H Street façade; 2) to reduce the busy reading of the façade; and 3) to create a reading of unit masonry such as terra cotta panels or brick. The Applicant considered each of these recommendations and studied their aesthetic effect on the building design. The Applicant ultimately determined that its proposed design better achieved these objectives than the means proposed by OP. (Ex. 32, p. 12.)
62. By report dated September 28, 2015 and by testimony at the public hearing, DDOT concurred with the findings and conclusions of the Applicant's transportation study and raised no objection to the PUD. It conditioned its support on: 1) adhering to the commitments in the proposed transportation demand management plan; 2) providing alley refurbishment for the east-west portion of the alley at the rear of the proposed

building; and 3) providing at least nine additional short-term bicycle parking spaces. The Applicant agreed to each of these conditions. (Ex. 33, p. 2.)

63. DDOT acknowledged that the site is constrained in that it is limited to providing vehicular access to its loading and parking from the alley network; access from H Street is not be permissible. Given that the alley is only 10 feet wide, there are constraints in the size of the vehicles that can access the loading area on the property. Accordingly, DDOT agreed that retail loading was best served via the existing loading space on 4th Street. It further agreed with limiting the size of the residential trucks utilizing the on-site loading space to 24-foot trucks. (Ex. 33, p. 4.)
64. DDOT concluded that the proposed level of parking was appropriate for the number of units proposed given the building's close proximity to transit, the provision of bicycle storage, and the overall available transportation network. (Ex. 33, p. 7)
65. DDOT concluded that the proposed loading plan was appropriate. It stated that a "24-foot loading berth is proposed for trucks serving the residences at the building's rear. Additionally, if a second truck arrives, it can utilize the alley stub at the rear of the building, allowing two trucks to be utilized at one time. The proposed alley loading location is consistent with DDOT's loading requirements." (Ex. 33, p. 4)

Advisory Neighborhood Commission 6C

66. On October 7, 2015, ANC 6C submitted a letter in support of the PUD indicating that at a duly noticed and regularly scheduled monthly meeting on September 10, 2015, with a quorum present, ANC 6C unanimously voted to support the PUD. The ANC supports the mixed-use residential and retail development and noted that the proposed benefits and amenities packages sufficiently mitigated the potential impacts of the Project. (Ex. 37A.) The report noted a number of issues and concerns namely, increased motor vehicle traffic in the alley, alley security, and potential adverse impacts on the residents of Capitol Place located immediately to the south of the project site. The report listed a number of conditions that the ANC believed would adequately address these issues and concerns, and noted that the Applicant agreed to the conditions, and where appropriate, they have been incorporated into this Order. The report indicated that the ANC had delegated Single Member District Commissioner Mark Eckenwiler to represent ANC 6C at the Commission on this matter.
67. On November 16, 2015, Commissioner Eckenwiler submitted a letter responding to the Applicant's list of final proffers and draft conditions. The letter stated the Applicant's proposed loading management condition was deficient insofar as it limited 4th Street alley access to the loading dock by residential moving trucks, but did not similarly restrict movements of trash, recycling, and other trucks; that the restriction of "access" was not sufficiently specific; and in connection with the ANC storage area, that the condition was deficient because it did not require the area to be secure/lockable, did not require the

Applicant to provide a key and building access in a reasonable fashion, or require the room to be of sufficient dimensions to be useful as storage space. (Ex. 49.)

68. The Commission has incorporated the comments of Mr. Eckenwiler into the conditions of this Order.

Parties in Support or Opposition

69. The Capitol Hill Restoration Society submitted a letter in opposition to the application stating that the project would have adverse impacts on the adjacent Historic District. (Ex. 38.)

Persons and Organizations in Support or Opposition

70. CPHOA submitted a letter in support of the application dated September 10, 2015. It noted that MRP engaged in discussions with the CPHOA and offered to install certain improvements and upgrades to the CPHOA's common areas and along the east side of 3rd Street. MRP also committed to a construction management plan in order to minimize disruption to the CPHOA owners. (Ex. 31E.)
71. Michael Sims and Susan Anderson submitted a request for party status in opposition to the application on September 14, 2015 stating that it would adversely affect their loss of quiet enjoyment of their home. They subsequently withdrew their request for party status and submitted a letter of support dated October 6, 2015. The letter stated that MRP committed to implementing a construction management plan and would work with Mr. Sims and Ms. Anderson to provide safeguards, such as bollards or planters, to protect their home from vehicles utilizing the alley. (Ex. 29, 35.)

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, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the applicant as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.

3. The Property meets the minimum area requirements of §§ 1326.2 and 2401.1 of the Zoning Regulations.
4. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission. Notice of the inclusion of Lot 48 was provided to all property owners with 200 feet of the Property and was posted on the Property prior to the public hearing date.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, capitalizes on the Property's strategy and transit-oriented location and is compatible with citywide and area plans of the District of Columbia, including strategic development plans.
6. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail office uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, loading, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
10. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with

the Property's Moderate-Density Commercial and Medium-Density Residential designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.

11. The Commission concludes that the proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
12. The PUD will promote the orderly development of the 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.
13. 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 the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
14. 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 issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 6C position conditionally supporting approval of the application. The Commission was not persuaded by the ANC's request for a gate along the southern property line to control entrance to the garage and loading area. The Commission agreed with DDOT's testimony that providing such a gate would have adverse impacts on alley circulation. The Commission incorporated the conditions listed in Attachment 1 the ANC's October 7, 2015 letter into this Order. The Commission is not obliged to give "great weight" to the letter submitted by Mr. Eckenwiler on November 16, 2015 because the letter was not approved by ANC 6C at a properly noticed meeting with a quorum. The Commission nonetheless carefully considered the recommendations made in the letter and has incorporated his suggestions into the conditions of this Order.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated Planned Unit Development for the Property for a

mixed-use building consisting of 105-135 residential units and approximately 6,300 square feet of ground floor retail, subject to the following conditions:

A. **Project Development**

1. The Project shall be developed in accordance with the architectural drawings submitted into the record on October 29, 2015, as modified by the guidelines, conditions, and standards herein (collectively, the "Plans"). (Ex. 46G1-46G7.)
2. The Project shall have flexibility from the rear yard, roof structure, lot occupancy, retail, parking and loading requirements as shown on the Plans. The Applicant also shall have the flexibility to dedicate seven percent of its residential gross floor area to units subject to the Inclusionary Zoning Regulations rather than the eight percent required subject to compliance with Conditions D.7 and D.8.
3. **Prior to issuance of a building permit**, the project architect shall certify that the project utilizes a glazing that minimizes reflectivity on the south-facing windows of the building.
4. **Prior to the issuance of a certificate of occupancy**, the Applicant shall demonstrate that it has:
 - a. Designed and constructed the building to Silver certification or higher under the LEED for Homes Mid-Rise; and
 - b. Achieved a minimum green area ratio ("GAR") of 0.3.
5. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior materials within the same color palette as the color approved and the same material type as the material approved, based on availability at the time of construction;
 - c. To vary the location of the affordable units so long as the proffered levels of affordable housing remain the same and § 2605.6 is satisfied. Both the affordable units and inclusionary units provided by this Project shall

comply with the terms of § 2605.6. The two percent of the residential gross floor area that is reserved for affordable and inclusionary units for households with an Annual Median Income lower than 80% will be reserved as two-bedroom units;

- d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
- e. To vary the size, location, and design features of the retail spaces to accommodate the needs of specific retail tenants, so long as the retail spaces maintain a minimum six foot depth of view for at least 50% of the area between three and eight feet above grade; and
- f. To modify the size and location of the ANC storage room so long as it is at least 100 square feet in size with a minimum width of seven feet in any dimension, and is located on site.

B. Parking and Loading Mitigation

1. The Applicant shall implement a Loading Management Plan, the terms of which shall include:
 - a. Vendors and on-site tenants will be required to coordinate and schedule deliveries with a loading coordinator who will be on duty during delivery hours;
 - b. Trucks accessing the on-site loading space will be limited to a maximum of 24 feet in length;
 - c. All tenants will be required to schedule any loading operation conducted using a truck greater than 20 feet in length;
 - d. Deliveries will be scheduled such that the on-site loading space's (or the commercial loading zone on 4th Street) capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading space (or commercial loading zone) is full, that driver will be directed to return at a later time when the loading space will be available so as to not impede the alley that passes adjacent to the loading space;

- e. Inbound and outbound truck maneuvers will be monitored to ensure that trucks accessing the loading space do not block vehicular traffic along the alley except during those times when a truck is actively entering or exiting the loading space. Those driving the trucks will be instructed to utilize the alley from 4th Street only to access (this includes both ingress and egress) the loading facilities (except that no restriction is placed on public trash trucks). Retail tenants will also be prohibited from delivering directly from H Street and instead use the commercial loading zone available on 4th Street for any curbside deliveries;
 - f. Trucks accessing (this includes both ingress and egress) the loading facilities will utilize the 20-foot-wide, east-west alley stub to wait for those vehicles using the alley to clear before entering the loading area. Once the area surrounding the loading dock is clear, trucks will proceed with their backing maneuver into the loading dock;
 - g. Trucks using the loading space will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
 - h. The loading space operation will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading space with notification also given to tenants. The loading space will be open seven days a week from 7:00 a.m.-7:00 p.m.
2. The Applicant shall implement a Transportation Management Plan (“TMP”), which shall include the following terms:
- a. **Prior to issuance of a final certificate of occupancy**, a member of the property management group shall be made a point of contact and will be responsible for coordinating, implementing, and monitoring the TMP strategies (“TMC”). This includes the development and distribution of information and promotional brochures to residents, visitors, patrons, and employees regarding transit facilities and services, pedestrian and bicycle facilities and linkages, ridesharing (carpool and vanpool), and car sharing. In addition, the TMC will be responsible for ensuring that loading and trash activities are properly coordinated and do not impede the pedestrian, bicycle, or vehicular lanes adjacent to the development, including the existing alley located behind the proposed building. The contact

information for the TMC will be provided to DDOT/Zoning Enforcement with annual contact updates;

- b. **Prior to issuance of a final certificate of occupancy**, a TransitScreen will be installed in the residential lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. In addition, the TMC will provide a link to the TransitScreen website at move-in for new tenants;
- c. **Prior to issuance of a final certificate of occupancy**, the TMC will establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit. The marketing program will utilize and provide website links to CommuterConnections.com and goDCgo.com, which provide transportation information and options for getting around the District;
- d. To help encourage non-auto transportation uses, the Applicant will provide the first occupant of each residential unit over a two-year period with a one-time annual carsharing membership and application fee, a \$100 SmarTrip card, and a one-time annual Capitol Bikeshare membership to help alleviate the reliance on personal vehicles. These incentives will be included in a move-in transportation package that includes brochures for transit facilities as well as bicycle and car sharing services for the first occupant of each residential unit; and
- e. **Prior to issuance of a certificate of occupancy**, the Applicant will provide four short-term bicycle racks on H Street and two short-term bicycle racks on 4th Street.

C. **Construction**

1. **Prior to issuance of a building permit for the Project**, the Applicant shall enter into a Construction Management Plan (“CMP”) with the Capitol Place Homeowners Association (“CPHOA”). The CMP shall include terms requiring the Applicant to provide the contact information for the construction manager, ensure the public alley is regularly cleaned and maintained and that circulation through the alley will not be obstructed except during the period that the Applicant undertakes utility work in the alley, and confirm that construction workers will be required to park off-site. The CMP shall also require the Applicant to provide an excavation schedule and advance notice of pile driving.
2. **Prior to issuance of a building permit for the Project**, the Applicant shall replace the brick wall located along the Project’s southern property line, within

input provided by CPHOA. The Applicant shall provide fencing and/or security during the period any portion of the wall is removed.

3. The Applicant shall provide a decorative planter or bollards similar to those submitted as Exhibit 50 along the northern façade of 767 3rd Street, N.E. (Square 777, Lot 843) so as to protect the home from vehicles maneuvering in the alley. The dimensions and location of the planter and/or bollards shall be finalized during the public space process and is subject to the approval of DDOT's Public Space Committee.

D. **Benefits and Amenities**

1. **Prior to issuance of a final certificate of occupancy**, the Applicant shall reconstruct the east-west alley abutting the southern property line of the Project, as depicted in Exhibit 46G6. The east-west alley is comprised of both the 20-foot-wide and 10-foot-wide alleys that abut the Property.
2. **Prior to issuance of a final certificate of occupancy**, the Applicant shall clear the drain located in the east-west alley abutting the southern property line of the Project as well as the drain located in the north-south alley to the south of the Project.
3. **Prior to issuance of a final certificate of occupancy**, the Applicant shall improve alley lighting by increasing candles of two existing poles to a minimum of three foot-candles.
4. **Prior to issuance of a final certificate of occupancy**, the Applicant shall replace the dead street tree along H Street that is adjacent to the northeastern portion of the Property and located between 3rd and 4th Streets, N.E. This shall be in addition to the street tree improvements outlined in Condition No. D(5).
5. **Prior to issuance of a final certificate of occupancy**, the Applicant agrees to retain a landscape architect for the purpose of creating a master landscape plan for the CPHOA, to be approved by the CPHOA, whose approval is not to be unreasonably withheld.

In coordination with the landscape architect, the Applicant agrees to the following:

- a. Installation of a new irrigation system for the CPHOA (water taps and drains to be determined by CPHOA);
- b. Installation of three new trees in CPHOA;

- c. Replace CPHOA railroad ties for planting beds with decorative concrete;
- d. Installation of three new lights to replace existing lights on CPHOA property;
- e. Installation of a new street tree in front of 769 3rd Street; and
- f. Improve tree boxes on 3rd Street between H and G Streets.

It is understood that the items in paragraphs (a)-(f), along with the retention of the landscape architect, shall not exceed a combined total of \$50,000; CPHOA shall be permitted to prioritize the items in subsections (a)-(f), with the understanding that some items may not be completed due to the stated monetary cap. Paragraphs (a)-(f) shall be completed pursuant to the timeline set forth by the landscape architect in coordination with the CPHOA; these items are not required to be completed prior to issuance of a final certificate of occupancy.

- 6. **Prior to issuance of a certificate of occupancy**, the Applicant shall remove the utility pole in the alley and reroute the low voltage wires.
- 7. **For so long as the project exists:**
 - a. Six percent of the residential gross floor area shall be reserved as inclusionary units for households with an annual gross income no greater than 80% of the Area Median Income (“AMI”) pursuant to the Inclusionary Zoning Regulations;
 - b. One percent of the residential gross floor area shall be reserved as an Inclusionary unit for households with an annual income no greater than 50% of the AMI pursuant to the Inclusionary Zoning Regulations; and
 - c. One percent of the residential gross floor area shall be reserved as an affordable unit for households with an annual gross income that is no greater than 60% of the AMI. The unit shall not be subject to the Inclusionary Zoning Regulations.
- 8. Those units referred to in D.7 (b) and (c) shall be two-bedroom units.
- 9. **Prior to the issuance of a certificate of occupancy**, the Applicant shall provide a bicycle room with a minimum capacity of 32 bicycles on the first floor of the building.

10. **Prior to the issuance of a certificate of occupancy**, the Applicant shall provide a 100-square-foot space (with at least seven-foot width in any dimension) on site as a storage area for the ANC. The storage space shall be secure, and accessible to the ANC at reasonable days and hours (including weekends). The Applicant shall provide the ANC with a key or the ability to independently secure the room.

E. **Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (“DCRA”). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order as such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.
3. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-07. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Construction of the project must commence within three years of the effective date of Z.C. Order No 15-07.
4. In accordance with the DC Human Rights Act of 1977, as amended, DC 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, familial 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.

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

On October 8, 2015, upon the motion of Chairman May, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On December 14, 2015, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on January 15, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING