

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38D
Z.C. Case No. 02-38D
Waterfront 1001 4th Street, LLC
(Second-Stage Planned Unit Development for the Northwest Building)
September 30, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 6, 2013, to consider an application from Waterfront 1001 4th Street, LLC (the "Applicant") for approval of a second-stage planned unit development ("Second-Stage PUD") for development of the Northwest Building (the "Application") in accordance with the Commission's approval in Z.C. Case No. 02-38A ("Z.C. Order No. 02-38A") under Chapter 24 of the District of Columbia Zoning Regulations, 11 DCMR ("Zoning Regulations"). The project site is located in Lot 828, Square 542, being part of record Lot 89 in Square 542 (the "Site"). 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. On December 10, 2012, the Applicant filed the Application, including architectural plans and drawings, for approval of the Second-Stage PUD for the Site in accordance with Z.C. Order No. 02-38A (the "PUD Submission"). (Exhibits ["Ex."] 2, 3.)
2. By report dated February 1, 2013, the Office of Planning ("OP") recommended that the Application be set down for hearing. At its public meeting on February 11, 2013, the Commission set the case down for hearing.
3. The Applicant filed a Prehearing Submission on March 27, 2013, including a Prehearing Statement and updated architectural plans and drawings. (Ex. 14, 15.) The Applicant then filed additional materials in its Supplemental Prehearing Submission, including fully re-issued architectural plans and drawings, on May 17, 2013, (the "Supplemental Prehearing Submission"). (Ex. 19, 20.)

4. A Notice of Public Hearing was published in the *D.C. Register* on April 19, 2013. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Site as well as to Advisory Neighborhood Commission ("ANC") 6D.
5. The Commission held a public hearing on the Application on June 6, 2013.
6. Westminster Presbyterian Church (the "Church") is a property owner to the north of the Site. The Church filed a request for party status in opposition to the Application. (Ex. 21.) The Commission granted the request for party status at the public hearing.
7. The Applicant presented the following witnesses: David Smith, representing the Applicant; Gary Steiner, architect with the firm of Perkins Eastman; Dan VanPelt, traffic engineer from Gorove Slade Associates; and Steven Sher, land planner with Holland & Knight. Messrs. Steiner, Van Pelt, and Sher were accepted as experts in their respective fields.
8. OP submitted a report dated May 28, 2013, in support of the Application. (Ex. 23.) The report stated that the Application is not inconsistent with the First-Stage PUD approval in Z.C. Order No. 02-38A or the Comprehensive Plan. In its testimony at the hearing, OP reiterated its support for the Application.
9. The District Department of Transportation ("DDOT") submitted a report dated May 28, 2013. (Ex. 22.) DDOT testified in support of the project at the hearing.
10. ANC 6D submitted a letter dated May 29, 2013, indicating that with a quorum present, ANC 6D voted unanimously to support the Application with conditions. The ANC 6D letter is in the record at Exhibit 24 and the conditions are discussed herein.
11. The Church presented testimony in opposition to the Application, including the following witnesses: Reverend Brian Hamilton, co-pastor of the Church; George Kerr, Building Manager for the Church; and Reverend Ruth Hamilton, co-pastor of the Church.
12. Ron McBee testified in support of the Application and identified his concerns.
13. Multiple letters of support were filed in the record. (Ex. 26, 29, 34, 35.)
14. At the conclusion of the hearing, the Commission requested that the Applicant provide additional information and review and respond to certain issues and questions. On July 1, 2013, the Applicant submitted its Post-Hearing Submission (the "Post-Hearing Submission") with this information. (Ex. 40.)
15. ANC 6D submitted a letter dated July 9, 2013 in response to the Post-Hearing Submission. (Ex. 42.)

16. The Church submitted a letter dated July 9, 2013 in response to the Post-Hearing Submission. (Ex. 43.)
17. The Commission approved the Application for proposed action at its public meeting on July 29, 2013. The Commission requested that the Applicant provide additional information regarding the rooftop community space, provide shadow studies, and to provide an update of their work with the ANC on its outstanding issues, and left the record open for the Church and the ANC to respond.
18. 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's Executive Director, by delegated action dated September 17, 2013, found that the Application would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 53.)
19. The Applicant provided its list of proffers and proposed draft conditions on July 31, 2013, and its revised proffers and draft conditions on August 19, 2013. (Ex. 45, 48.) The Applicant also submitted a complete set of conforming plans on August 19, 2013. (Ex. 47.)
20. On September 5, 2013, the Applicant submitted the shadow study, further information about the rooftop community space, and an update regarding its work with the ANC and the Church. (Ex. 49, 49A.)
21. On September 11, 2013, ANC 6D submitted a letter stating that at a properly noticed meeting with a quorum present, the ANC voted to support the Application. (Ex. 50.)
22. On September 16, 2013, the Church submitted a letter stating that it had an agreement in principle with the Applicant. The Church stated that in furtherance of that agreement, it was requesting that the Commission modify the terms of one of the proposed conditions of this Order. (Ex. 52.)
23. The Commission took final action to approve the Application at its public meeting held on September 30, 2013.

Waterfront Station and the Site

24. The Waterfront Station development was approved by Z.C. Order No. 02-38A as a modification to a first-stage PUD ("First-Stage PUD"), a second-stage PUD, and a PUD-related zoning map amendment for the overall PUD site. The First-Stage PUD provides

for the development of eight buildings including residential, office, and ground-floor retail uses, including a grocery store, and includes significant open spaces as well as the re-opening of the 4th Street right-of-way (the "Overall Project"). Z.C. Order No. 02-38A approved a second-stage PUD for the four buildings through the center of the overall PUD site and their adjacent open spaces, including the re-opening of 4th Street.

25. The Site is known as the Northwest Building in the First-Stage PUD. The First-Stage PUD approved the Northwest Building to have a height of 114 feet and an approximate gross floor area of 406,900 square feet for either residential or office uses, with ground-floor retail. The Application requests approval for the Second-Stage PUD for the Northwest Building (the "Northwest Building").
26. The Site consists of the land located in Lot 828 in Square 542, which is part of Record Lot 89 in Square 542. The Site includes approximately 56,619 square feet of land area.
27. The Site is zoned C-3-C by virtue of Z.C. Order No. 02-38A.
28. The Site is not within a historic district.

Design of Northwest Building

29. The Applicant proposes an 11-story residential building with ground-floor retail. The maximum height of the building will be 114 feet. The overall gross floor area of the building will be approximately 388,259 square feet.
30. The design of the Northwest Building is consistent with the form and massing approved in the First-Stage PUD. The façades of the building are compatible with the designs of the other buildings within the Waterfront Station development. Primary exterior materials will be masonry on the base of the building and terra cotta panels on the upper floors of the building, with punched windows and glass window walls.
31. The main pedestrian entry will be located at the northeast corner of the building and will be marked by a canopy. The entrance is set back from the property line approximately four feet.
32. Ground-floor retail lines the southern portion of the 4th Street frontage. In the PUD Submission, the ground-floor retail comprised approximately 4,414 square feet of gross floor area and included up to two retail spaces. In its Prehearing Submission, the Applicant slightly increased the ground-floor retail, such that it could be divided into up to three retail spaces. As is further discussed below, the ground-floor plan was further revised in the Applicant's Post-Hearing Submission to increase the retail to 5,304 square feet and to be divided into up to four retail spaces.

33. A new private drive along the north side of the Site will provide a connection between Makemie Place and 4th Street for pedestrians, vehicles, and emergency response vehicles. The private drive is designed to be very pedestrian-friendly and abuts a large east-west sidewalk and park on its north side. The private drive will be paved with eco-pavers and include a water-filtration strip through the center to collect stormwater. The private drive will be well-lit and lined with two-story townhouses, with front door entries from the private drive. These entries are located within patio areas that are surrounded by low walls that are constructed of masonry, with wood fence accents.
34. The Northwest Building includes a below-grade parking facility that includes 224 parking spaces and two 30-foot loading berths on the west side of the building. Both the parking and loading facilities are accessed from the existing north-south private drive which extends from the terminus of Makemie Place.
35. At grade, a large south-facing courtyard of approximately 10,000 square feet will serve as an outdoor amenity for the occupants of the Northwest Building.
36. The roof includes outdoor and indoor community amenity space and green roofs. The indoor community amenity space represents less than 20% of the total rooftop community amenity space.
37. The streetscape design for the Northwest Building along 4th Street was designed, approved, and constructed as part of the dedication and construction of 4th Street.
38. As required in the First-Stage PUD, the Applicant continues to commit to a variety of sustainable design features, which include, among other items, storm water managements, green roofs, and erosion and sediment control.

Development Flexibility and Incentives

39. In this Application, the Applicant requested flexibility from the roof structure requirements of § 411.5, which requires walls to rise vertically to equal heights, and of § 770.6(b), which requires the penthouse to be set back 1:1 from the face of exterior walls. In response to the Commission's comments at setdown, the configuration of the roof structure was revised in the Prehearing Submission to reduce the areas in which the roof structure did not comply with the 1:1 setback.
40. At the public hearing, the Commission expressed further concern regarding the configuration of the roof structure. In the Post-Hearing Submission, the Applicant reduced the number of wall heights from four different heights to three different heights. The multiple heights result from the elevator override at a height of 18 feet, six inches; the accessory community room and pool support spaces and interior mechanical room at a height of 16 feet above the roof; and the remainder of the mechanical equipment and

screen walls at a height of 12 feet above the roof. With these heights, the roof structure complies with the 1:1 setback from all exterior walls, except for two small sections at the northern-most corners of the courtyard where the exit stairs are located.

41. The Commission finds that the roof structure has been designed to harmonize with the overall design intent of the Northwest Building, including the revised cladding material proposed which reduces the visibility of the roof structure. The Commission finds that the development flexibility requested is acceptable.

Compliance with PUD Standards

42. The Application complies with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.
43. The Commission finds that the Northwest Building is consistent with the First-Stage PUD approval in Z.C. Order No. 02-38A.
44. The Waterfront Station development, including the Northwest Building, provides important public benefits and project amenities which are described in detail in Z.C. Order No. 02-38. These public benefits and project amenities have not changed with this Application. Accordingly, the Commission's finding in that order 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 overall project, including the Northwest Building, does not change. Adverse effects that have been raised in this Application, but which were not specifically addressed for the overall project, have been mitigated as set forth in Finding No. 58.
45. The Northwest Building has been evaluated under the PUD guidelines for the C-3-C Zone District. The density of the Northwest Building is below the density permitted for a PUD within the C-3-C Zone District and is less than that approved in Z.C. Order No. 02-38A. The maximum height of the Northwest Building is within that permitted for a PUD in the C-3-C Zone District and is consistent with the First-Stage PUD approval in Z.C. Order No. 02-38A.
46. The Application has been evaluated by the relevant District agencies and has been found to have no unacceptable adverse impact. The Commission finds that the Northwest Building will have a positive impact on the city and will have no unacceptable adverse impacts not capable of being mitigated.
47. As set forth in Z.C. Order No. 02-38A, the Commission finds that the Northwest Building advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a

number of the major elements of the Comprehensive Plan. The Commission finds that the Northwest Building is not inconsistent with the Comprehensive Plan of 2006.

Office of Planning

48. By report dated May 28, 2013 ("OP Report"), and through testimony presented at the public hearing, OP recommended approval of the Application, subject to three conditions. (Ex. 23.)
49. The Applicant responded to the three conditions as follows:
 - a) The Applicant agreed to reduce the width of the private drive to 20 feet to promote the intended pedestrian nature of the private drive;
 - b) Although not required by the First-Stage PUD, the Applicant committed to design the Northwest Building to meet LEED ND 2.2 Silver standards; and
 - c) The Applicant provided additional drawings to better demonstrate the relationship of the south façade and the roof structure above.(Ex. 32.)
50. In the OP Report and its testimony at the hearing, OP concluded that the proposal is not inconsistent with the First-Stage PUD or the Comprehensive Plan. OP recommended approval of the Application.

District Department of Transportation

51. DDOT filed a report dated May 28, 2013, indicating that after an extensive, multi-administration review, DDOT believes that the Applicant's proposed development program will have minimal and/or manageable impacts on the transportation network. (Ex. 22.)
52. In its report, DDOT made five recommendations to the Commission relating to the Northwest Building. The Applicant responded in writing to each of the five recommendations and indicated the following:
 - a) The Applicant agreed not to sublease spaces in the parking garage to non-Waterfront Station users;
 - b) The Applicant agreed to provide a monitor or screen that will include real time transportation information in one of the residential common facilities;

- c) The Applicant indicated that it has designed pedestrian facilities to provide safe pedestrian movements, including the pedestrian features of the east-west private drive and the enhanced pedestrian safety measures along the north-south private drive at the western edge of the Northwest Building;
- d) The Applicant agreed to host a transportation mobility fair six months after the residential building has opened to new residents; and
- e) The Applicant agreed to design the building with the option to include a 240-volt electric car-charging station located in the underground parking garage if the demand for such charging station exists.

(Ex. 28.)

53. At the public hearing, DDOT testified in support of the project and concluded that the project was consistent with the First-Stage PUD.

ANC 6D Report

54. By letter dated May 29, 2013, ANC 6D indicated that it voted to conditionally support the Application by a vote of 7-0-0. (Ex. 24.) ANC 6D raised the following issues and concerns:

- a) Amount of ground-floor retail;
- b) Location of lobby and leasing center;
- c) Construction management, including impacts on Southwest Duck Pond;
- d) Traffic impact analysis;
- e) Re-imaging in the western façade; and
- f) Formalization of the Applicant's agreements regarding tree mitigation.

55. The Applicant responded at the public hearing and in its Post-Hearing Submission to each of ANC 6D's concerns. (Ex. 40.) Each concern was addressed as follows:

- a) *Amount of ground-floor retail:* The Applicant increased the amount of retail gross floor area from 4,414 square feet to 5,304 square feet and increased the percentage of the retail frontage along 4th Street from 40% to 60%. The additional retail space provides the opportunity for up to four tenants to occupy the space, depending upon individual retailer space and configuration requirements.

The overall project currently includes more than 86,000 square feet of retail space constructed. With the addition of approximately 5,000 square feet of retail in the Northwest Building, the amount of overall retail space in the Waterfront Station development will increase to approximately 91,000 square feet. With the ultimate development of the East and West M Street Buildings, the Applicant will exceed the minimum requirement of 110,000 square feet exclusively on the privately owned property. Retail is also required for the Northeast Parcel, which is owned by the District of Columbia, and which will further add to the retail provided. The retail space in the Northwest Building will be targeted to neighborhood-serving retail and service uses;

- b) *Location of lobby and leasing center:* The location of a residential lobby at the corner of 4th Street and the private drive was shown in the plans approved by First-Stage PUD. The location of the residential entry at that corner results from efficient and appropriate site planning and allows the retail spaces to be located closer to the existing retail to the south and the Metro Station entrance. In addition, the reconfiguration of the ground floor reduces the prominence of the leasing center along 4th Street;
- c) *Construction management, including impacts on Southwest Duck Pond:* The Applicant provided a more detailed and enhanced Construction Management Plan that addresses issues raised by ANC 6D. (Ex. 40E.) The Construction Management Plan includes identified steps to ensure the preservation and protection of the Southwest Duck Pond. In addition, the Applicant has agreed to deposit \$15,000 into an escrow account to be created at the commencement of construction. The Neighbors of the Southwest Duck Pond, the organization that is comprised of volunteers who maintain the park, can use these funds during construction to address any issues at the park that are not already being addressed through the Construction Management Plan. At the completion of construction, as evidenced by the issuance of a certificate of occupancy for the Northwest Building, all remaining funds will be released to the Neighbors of the Southwest Duck Pond to be used for any improvements to or future maintenance of the Southwest Duck Pond;
- d) *Traffic impact analysis:* The Applicant's traffic consultant and DDOT both concluded that the Northwest Building will have no adverse impact on the transportation system based on current information. DDOT specifically found that after an extensive, multi-administration review, DDOT believes that the Applicant's proposed development program will have minimal and/or manageable impacts on the transportation network;
- e) *Re-imaging in the western façade:* In its Supplemental Prehearing Submission, the Applicant presented a refined and further articulated western façade. Two

bays of balconies were added, and the fenestration was reconfigured so that the two terra cotta fields on the west elevation are more organized, giving it a look more similar to the south elevation of the building, or the southern portion of the east elevation of the building; and

- f) *Formalization of the Applicant's agreements regarding tree mitigation:* The Applicant committed to a detailed tree mitigation plan including committing that mitigation for potential future tree loss resulting from the construction of the Northwest Building and in accordance with the tree mitigation plan which will be done through re-planting of trees in total caliper inches in Southwest as opposed to payment to the tree fund.
56. At the public hearing, Andy Litsky, Chairman of ANC 6D, testified on behalf of ANC 6D. In his testimony to the Commission, he summarized and further articulated the issues raised in the report. Chairman Litsky also requested that the Applicant agreed to prohibit residential tenants within the Northwest Building from participating in the Residential Parking Program (“RPP”), if applicable to the Northwest Building. The Applicant agreed to this restriction at the public hearing and in its Post-Hearing Submission.
57. By letter dated July 9, 2013, ANC 6D Chairman Litsky submitted a response to the Applicant’s Post-Hearing Submission on behalf of ANC 6D. (Ex. 42). The response updated the ANC’s comments in light of the changes contained in the Post Hearing Submission, namely:
- a) *Amount of ground-floor retail:* Mr. Litsky commented favorably on the increase in, and reconfiguration of, the retail space in the revised plans. He stated reservations regarding the retail space in other portions of the PUD site that are not the subject of this Application;
 - b) *Location of the lobby:* Mr. Litsky repeated the ANC’s concern about the placement of the residential lobby at the corner of 4th Street and the private drive;
 - c) *Construction management, including impacts on Southwest Duck Pond:* Mr. Litsky commented favorably on the revised construction management plan;
 - d) *Traffic impact analysis:* Mr. Litsky commented that ANC 6D believed that a new traffic study of the area was warranted given changes which have occurred since the study was conducted;
 - e) *Re-imaging in the western façade:* Mr. Litsky commented favorably on the changes to the western façade of the building;

- f) *Formalization of the Applicant's agreements regarding tree mitigation:* Mr. Litsky commented favorably on the Applicant's tree mitigation plan; and
 - g) In addition, Mr. Litsky stated that the ANC appreciated the Applicant's willingness to prohibit the future residents from obtaining an RPP, and suggested that the Applicant should be required to include an RPP prohibition in rental agreements with tenants and should not be permitted to apply for an RPP on the behalf of future tenants.
58. The Commission finds that the issues and concerns raised by ANC 6D have been fully addressed or resolved as follows:
- a) *Amount of ground-floor retail:* The Commission finds that the amount of retail gross floor area is consistent with Condition No. 13 of Z.C. Order No. 02-38A, which requires the overall project to include a minimum of 110,000 square feet of gross floor area for retail uses. In addition, the Commission finds that the extent of retail along 4th Street is consistent with the approval in the First-Stage PUD. Condition No. 13 also requires that the Applicant target this retail use for neighborhood-serving retail and service uses. This order continues to require compliance with that condition by requiring the retail space in the Northwest Building to be targeted to neighborhood-serving retail and service uses;
 - b) *Location of lobby and leasing center:* The Commission finds that that location of the lobby at the corner of 4th Street and the private drive and the reconfigured leasing center is consistent with the First-Stage PUD;
 - c) *Construction management, including impacts on Southwest Duck Pond:* The Commission finds that the Construction Management Plan addresses the concerns raised by ANC 6D in its testimony and report to the Commission. In addition, the escrowed funds will mitigate for additional damage, if any, to the Southwest Duck Pond, and, if there is none, will serve to benefit the park following construction of the Northwest Building;
 - d) *Traffic impact analysis:* Based on the analysis of both the Applicant's traffic consultant and DDOT, the Commission finds that the Northwest Building will have no adverse impact on the transportation system based on current information and that a suitable traffic evaluation has been completed;
 - e) *Re-imaging in the western façade:* The Commission finds that the western façade presented at the public hearing is sufficiently articulated and designed as to be appropriate for that façade and to be integrated with the overall design of the Northwest Building;

- f) *Formalization of the Applicant's agreements regarding tree mitigation:* The Commission finds that the Applicant's commitment to the detailed tree mitigation plan, including committing that mitigation for potential future tree loss resulting from the construction of the Northwest Building will be done through re-planting of trees in total caliper inches in Southwest as opposed to payment to the tree fund, resolves ANC 6D's concern; and
 - g) *Residential Parking Program:* The Commission finds that the Applicant's commitment to prohibit residential tenants within the Northwest Building from participating in the Residential Parking Program, if applicable to the Northwest Building, resolves ANC 6D's concern.
59. ANC 6D submitted a letter dated September 11, 2013 stating that it supported the Application.
60. The Commission afforded the views of ANC 6D the "great weight" to which they are entitled.

Church as Party in Opposition

61. The Church appeared as a party in opposition to the Application. Through its counsel and its witnesses, the Church testified as to how it believes the Northwest Building will adversely impact the Church.
62. The Church's south property line is approximately 45 feet from the Site's north property line, with a public park that has many trees buffering between the two properties. The Church building ("Church Building") is almost 100 feet from the north façade of the proposed Northwest Building.
63. Counsel for the Church summarized the alleged adverse impacts at the conclusion of the Church's testimony as follows:
- a) View from main window of Church;
 - b) Impact of noise from balconies and rooftop;
 - c) Adverse impact of private drive;
 - d) Height of Northwest Building, and the shadow it will cast on the property owned by the Church;
 - e) Adverse impact from construction;
 - f) Failure to follow through on maintenance of 4th Street Parks; and

- g) Lack of participation in process.
64. The Applicant responded to and addressed each of the Church's identified concerns both at the public hearing and in its Post-Hearing Submission as follows:
- a) *View from main window of Church:* The sanctuary window is clear glass and faces generally southeast. Views from the window will continue to include 4th Street, 1100 4th Street, and 1150 4th Street to the southeast. Following construction, a portion of the Northwest Building will be visible from this window. In an effort to mitigate perceived impact to the Church, the Applicant committed to place \$25,000 in escrow to fund design and installation of additional landscaping or other improvements in the general area of the sanctuary window to create a more spiritual or tranquil environment for the benefit of its members or guests;
 - b) *Impact of noise from balconies and rooftop:* The Church expressed concern that noise from the Northwest Building would adversely impact the use of the Church property. The Applicant submitted a report from Cerami & Associates, the acoustical engineer for the project, which indicated that according to their review, any potential noise generated by the Northwest Building would likely be in the same range as the overall neighborhood ambient sound level and would be in all likelihood inaudible within the Church Building. In addition, the Applicant indicated that the Northwest Building would have an on-site property manager in the event that any noise issues arise from the operation of the building;
 - c) *Adverse impact of private drive:* While the Church expressed concern regarding the safety of the private drive for its users, the Church provided no specificity as to what this impact would be. The private drive does not abut the Church property. The private drive does not impact access to the Church because the Church's parking lot is located near the corner of Makemie and I Streets, to the north of the private drive, and there is no pedestrian or vehicular entrance on the south side of the Church Building. In addition, to the extent that Church patrons or visitors are traversing the park property from east to west, they will have the opportunity to use the existing public sidewalk through the park in the same manner that exists today. Both the Applicant's traffic consultant and DDOT found that the private drive will provide a safe intersection with 4th Street, S.W. for pedestrians walking north or south on the west side of 4th Street;
 - d) *Height of Northwest Building:* The height of the Northwest Building in this Application is fully compliant with the First-Stage PUD approval in Z.C. Order No. 02-38A. In addition, the height of the Northwest Building is consistent with the Future Land Use Map designation in the Comprehensive Plan, which

designates the Site for mixed-use high density commercial and high-density residential;

- e) *Adverse impacts from construction:* In response to the Church's concern regarding adverse impacts from construction, the Applicant submitted the detailed and enhanced Construction Management Plan which addressed impacts of construction on the Church; (Ex. 40E.)
- f) *Failure to follow through on maintenance of 4th Street parks:* The Church expressed concern relating to the maintenance of the 4th Street parks in accordance with Condition No. 23 of Z.C. Order No. 02-38A. In its Post-Hearing Submission, the Applicant summarized the steps it has taken to comply with that condition; and
- g) *Lack of participation in process:* The Church expressed concern regarding its lack of participation in the PUD process. In its Post-Hearing Submission, the Applicant provided detailed information regarding the actions it took to involve and engage the Church in the PUD process, both in the proceedings subsequent to the approval of Z.C. Order No. 02-38A as well as since the filing of the Application.

(Ex. 40.)

- 65. When the Commission considered proposed action, it noted that the Applicant did not directly address the issue of shadows created by the building in its Post-Hearing Submission, and that the shadow study prepared by the Applicant that was discussed at the hearing was not in the record. The Commission requested that the Applicant provide the shadow study. (Ex 49, Tab A.)
- 66. The Commission finds that the each of the Church's identified concerns and issues have been addressed as follows:
 - a) *View from main window of Church:* The Zoning Regulations do not protect views of one property owner across the property of another owner. The Church also did not provide evidence of a restrictive covenant which would protect its view from the sanctuary window. Accordingly, the Church has no legal right to a view from the sanctuary window. The Commission finds that the Northwest Building is a well-designed residential building which will be only partially visible through the sanctuary window and will not adversely impact the view from the Church's sanctuary window which will remain largely as is. In addition, the Commission finds that the Applicant's proffer of funding for landscaping or other improvements in the general area of the sanctuary window will give the Church the opportunity to mitigate any impact it discovers in the future;

- b) *Impact of noise from balconies and rooftop:* The Commission finds that noise will not adversely impact the Church property given the distance between the Church Building and the Northwest Building, the compatibility of church and residential uses, and the location of the Church in an urban area. The Commission notes favorably the report from the Applicant's acoustical engineer;
 - c) *Adverse impact of private drive:* The Commission finds that the private drive will not adversely impact the Church as it does not abut the Church property, it does not impact access to the Church, and it will not create an unsafe pedestrian experience along 4th Street;
 - d) *Height of Northwest Building, and the shadow it will cast on the property owned by the Church:* The Commission finds the Northwest Building as proposed complies with the First-Stage PUD approval in Z.C. Order No. 02-38A and reiterates its finding from that order that the PUD is not inconsistent with the Comprehensive Plan. The Commission considered whether the building's height would create potential adverse effects when it approved the height of the building through the First Stage PUD, and the concluded that there were no adverse effects of the building's height. The Commission also specifically considered the potential adverse effects created by the shadow of the building as a part of its second-stage PUD review in this case, and finds there are no potential adverse effects caused by the shadow because of the distance between the Northwest Building and the Church, and the angle of the Church building;
 - e) *Adverse impacts from construction:* The Commission finds the Construction Management Plan is sufficiently detailed to protect the Church from the adverse impacts of construction;
 - f) *Failure to follow through on maintenance of 4th Street parks:* The Commission finds that Condition No. 23 of Z.C. Order No. 02-38A is a continuing obligation for the Applicant with which compliance is required; and
 - g) *Lack of participation in process:* The Commission finds that all required legal notice was provided to the Church and the Church was provided an opportunity to participate in the public hearing as a party to the Application. The Commission also finds that the Applicant engaged the Church in the PUD process, both in the proceedings subsequent to the approval of Z.C. Order No. 02-38A as well as since the filing of the Application. In addition, the Commission provided additional opportunity for the Church and Applicant to work together to address the identified concerns prior to a decision on the Application.
67. On September 16, 2013, the Church submitted a letter requesting that the Commission amend one of the proposed conditions of this Order. (Ex. 52.) The request related to the

proposed condition requiring the Applicant to contribute \$25,000 to an escrow fund to benefit the Church. As proposed by the Applicant, the escrow fund would require the funds to be spent, “in connection with design and installation of landscape improvements in the general area of the sanctuary window to create a more spiritual and/or tranquil environment for the benefit of its members.” The Church requested that the Commission revise the condition to permit the Church to use the funds for any “necessary alterations at its discretion.” The revised condition proposed by the Church does not require the funds to be spent in a manner that is sufficiently connected to the potential adverse affect of the Project that the condition is intended to address, namely, the affect of the project on the views from the Church’s sanctuary window. The Commission therefore declines to adopt the proposed language suggested by the Church. The Commission instead adopted condition B.8 below, which requires the escrow funds to be used in connection with ameliorating the identified potential adverse affect.

68. The Commission finds that the identified adverse impacts are mitigated by the conditions set forth in this Order.

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 the Second-Stage 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 the Northwest Building 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 Application is consistent with the First-Stage PUD approval in Z.C. Order No. 02-38A.

5. The Northwest Building is within the applicable height, bulk, and density standards of the Zoning Regulations for a PUD within the C-3-C Zone District. The residential project with ground-floor retail serves to further the creation of a town center in this location and is appropriate for the Site. The impacts of the Northwest Building are not unacceptable.
6. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested.
8. Approval of the Application is not inconsistent with the Comprehensive Plan.
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 6D's issues and concerns, which are fully addressed in Finding No. 55, and has given the ANC's conditional 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.
11. The approval of the Application 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.
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 for the District of Columbia **ORDERS APPROVAL** of the application for a Second-Stage PUD for the Northwest Building. This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. The Northwest Building shall be developed in accordance with the plans prepared by Perkins Eastman Architects, dated August 19, 2013, in the record as Exhibits 47-47A7 (the "Northwest Building Second-Stage PUD Plans"), all as modified by the guidelines, conditions, and standards herein.
2. The Northwest Building shall have an approximate gross floor area of 388,259 square feet, of which a minimum of 5,304 square feet of gross floor area shall be devoted to retail use.
3. The maximum height of the Northwest Building shall be 114 feet, as shown on the Northwest Building Second-Stage PUD Plans.
4. The Northwest Building shall include a below-grade parking garage with approximately 224 parking spaces. The Applicant shall install a painted pedestrian crosswalk and speed hump at the exit to the parking garage.
5. The Northwest Building shall include two 30-foot loading berths accessed from the north-south private drive on west side of the Site.
6. 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 partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b) To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total minimum number of parking spaces is provided as set forth in Z.C. Order No. 02-38A;
 - c) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
 - d) To vary the location, attributes and general design of the public spaces and streetscapes within public space to comply with the requirements of and the approval by the District Department of Transportation Public Space Division;

- e) To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades as necessary; and
- f) To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals.

B. PUBLIC BENEFITS AND MITIGATION MEASURES

- 7. **The Applicant shall submit with its building permit application** a checklist evidencing that the Northwest Building has been designed to meet LEED ND 2.2 Silver standards for a residential building. The sustainable design elements shall include storm water management, a green roof, and erosion and sediment control.
- 8. **Prior to issuance of the building permit**, the Applicant shall place \$25,000 into an escrow fund for the benefit of the Church to be used in connection with design and installation of landscape or other improvements in the general area of the sanctuary window to create a more spiritual or tranquil environment for the benefit of its church members and guests.
- 9. **Prior to issuance of the building permit**, the Applicant shall deposit \$15,000 into an escrow account for the benefit of the Neighbors of the Southwest Duck Pond to be used for maintenance or corrective action for the Southwest Duck Pond during construction of the Northwest Building. Prior to the issuance of a certificate of occupancy for the Northwest Building, all remaining funds will be released to the Neighbors of the Southwest Duck Pond to be used for any improvements to or future maintenance of the Southwest Duck Pond.
- 10. **During construction of the Northwest Building**, the Applicant shall abide by the Construction Management Plan. (Ex. 40E.)
- 11. **During construction of the Northwest Building**, the Applicant shall abide by the Tree Mitigation Plan set forth in the Northwest Building Second-Stage Plans. Prior to the issuance of a certificate of occupancy for the Northwest Building, the Applicant shall plant trees of an equivalent total number of caliper inches lost as a result of construction of the Northwest Building. All new trees will be planted in the Southwest quadrant of the District. If any tree replacement is required within a six month period prior to the issuance of the certificate of occupancy, and the planting cannot be completed in the time period approved by DDOT for tree

planting, the Applicant shall complete the planting within six months of issuance of the Certificate of Occupancy.

12. **During construction of the Northwest Building**, the Applicant shall abide by the Certified Business Enterprise Utilization and Participation Agreement entered into in accordance with Condition No. 24 of Z.C. Order No. 02-38A. (Ex. 2E.)
13. **During construction of the Northwest Building**, the Applicant shall abide by the First Source Employment Agreement entered into in accordance with Condition No. 24 of Z.C. Order No. 02-38A. (Ex. 2F.)
14. **During the operation of the Northwest Building**, the Applicant shall provide a Transportation Management Plan including the following elements:
 - a) Designate a member of the property management team as a Property Transportation Coordinator;
 - b) Provide a transit incentive of a SmartTrip card preloaded with \$10 to the initial occupant of the initial occupancy of each residential unit and to initial full-time employees of the initial occupancy of the retail units;
 - c) Distribute new tenant packages to the initial occupants of the residential units with materials from DDOT including site-specific transit related information;
 - d) Reference the Waterfront Station Metro in promotional materials and advertising;
 - e) Participate in Ozone Action Days and other regionally sponsored clean air and traffic mitigation promotions by posting notice of such promotion in a location within the Northwest Building acceptable to the Applicant;
 - f) Unbundle parking spaces from the lease of a unit;
 - g) Provide bicycle parking as shown on the Northwest Building Second-Stage Plans;
 - h) Prohibit subleasing of parking spaces in the Northwest Building parking garage to non-Waterfront Station users;

- i) Provide a monitor or screen that will include real time transportation information in one of the residential common facilities of the Northwest Building;
 - j) Host a transportation mobility fair six months after the Northwest Building has opened to new residents;
 - k) Install the base conduit infrastructure and additional electrical capacity for the future provision of a 240-volt electric car-charging station in the parking garage, such that the charging station can be installed if the demand for such charging station exists; and
 - l) Prohibit residential tenants within the Northwest Building from participating in the Residential Parking Permit (“RPP”) Program by including a clause in all leases for residential units prohibiting any resident for applying for or obtaining a RPP and by requesting that DDOT remove the Northwest Building from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for the RPP, if applicable to the Northwest Building.
15. **During the operation of the Northwest Building**, the Applicant shall use the retail space for neighborhood-serving retail and service uses, including, but not limited to, uses such as restaurants, coffee shops, flower shops, video stores, drug stores, banks, electronic stores, bakeries, dry cleaners, and other similar types of uses in accordance with Condition No. 13 of Z.C. Order No. 02-38A.
16. **During the operation of the Northwest Building**, the Applicant shall use best commercially reasonable efforts to provide opportunities for local and small businesses to occupy the retail space.

C. MISCELLANEOUS

17. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the Site and the District of Columbia, that is satisfactory to the Office of the Attorney General and Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
18. The Second-Stage PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of Z.C. Order No. 02-38D. Within such time, an application must be filed for a building permit for the construction

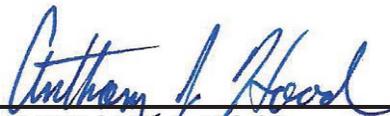
of the Northwest Building as specified in 11 DCMR § 2409.1. Construction of the Northwest Building must commence within three years of the effective date of Z.C. Order No. 02-38D.

19. 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 July 29, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner May, the Zoning Commission **APPROVED** the Application at the public hearing by a vote of **4-1-0** (Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Anthony J Hood to oppose).

On September 30, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order 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 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 6, 2013, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING