GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 05-23

As Secretary to the Commission, I herby certify that on JUN 2 0 2007 copies of this Z.C. Order No. 05-23 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

2. Paul Tummonds Jr., Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

3. Anita Bonds, Chair
ANC 5C
P.O. Box 77761
Washington, DC 20013

4. Commissioner Aaron Knights
ANC/SMD 5C05
209 Rhode Island Avenue NE
Washington, DC 20002

5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

6. Councilmember Harry Thomas, Jr.

7. Office of Planning (Harriet Tregoning)

8. Ken Laden, DDOT

9. Zoning Administrator (Bill Crews)

10. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

11. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 05-23
EXHIBIT NO. 48

ZONING COMMISSION
District of Columbia
CASE NO.05-23
EXHIBIT NO.48

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-23
Z.C. Case No. 05-23
(Consolidated Planned Unit Development and Amendment to the Zoning Map for CSX Realty Development Corp. and FF Realty, LLC)
October 16, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 13, 2006 to consider an application for CSX Realty Development Corporation and FF Realty, LLC for the consolidated review and approval of a planned unit development and a related amendment to the Zoning Map of the District of Columbia from the M to the C-3-C Zone District for Lot 815 in Square 3576, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on September 11, 2006, the Zoning Commission took proposed action by a vote of 5-0-0 to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated September 28, 2006, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission took final action to approve the application on October 16, 2006, by a vote of 5-0-0.

FINDINGS OF FACT

1. The property that is the subject of this application is Lot 815 in Square 3576 and is bounded by Eckington Place, NE and Harry Thomas Way, NE (the "Subject Property" or "Property"). The planned unit development ("PUD") is located in the Eckington neighborhood of Ward 5. The Property consists of approximately 187,958 square feet of land and is currently vacant. (Exhibit 3, p. iv.)

2. The Subject Property is owned by CSX Realty Development Corporation. FF Realty, LLC is the contract purchaser of the Property (the "Applicant"). (Exhibit 3, p. iv.)

3. The PUD site is currently located in the M Zone District, which prohibits new residential structures. The residential and commercial components of the PUD require a rezoning of the entire site to a zone classification that permits both uses together with the height and density sought. The Applicant has proposed the C-3-C Zone District. (Exhibit 3, p. 1.)

4. The Applicant filed an application for consolidated review and approval of a PUD and a related amendment to the Zoning Map of the District of Columbia on July 18, 2005.

5. The Zoning Commission voted 4-1-0 to set the case down for a public hearing at its January 9, 2006 public meeting. The Zoning Commission held a public hearing on the above-mentioned application on July 13, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022.

6. There were no requests for party status.

7. At the July 13, 2006 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted Robert Keane of WDG Architecture as an expert in architecture; Robert Good of Stephenson & Good as an expert in landscape architecture; and Lou Slade and Robert Schiesel of Gorove/Slade as experts in traffic and parking.

8. On September 20, 2006, Advisory Neighborhood Commission ("ANC") 5C, which as the affected ANC was an automatic party in this case, provided the Commission with a resolution dated September 19, 2006, indicating that at a properly noticed meeting with a quorum present, it voted unanimously in support of the PUD application.

PUD SITE

9. The Property consists of 187,958 square feet of vacant land in Ward 5 at the northeast corner of the intersection of Harry Thomas Way and Eckington Place, N.E. (Exhibit 3, p. 1.) Q Street, NE dead-ends at the PUD site. This area is commonly known as the Capital Commerce Center. (Exhibit 12, p. 3.)

10. The area to the west of the PUD site is located in the C-M-2 Zone District. An extensive area to the northwest of the site is located in the R-4 Zone District. The properties to the north, south, and east of the Property are located in the M Zone District. Immediately to the south of the PUD site is the Federal Express distribution center; to the

north of the site is the Washington Wholesale Flower Center; to the southwest is XM Radio; to the northwest are single-family row dwellings; and to the east is property owned by PEPCO, which is currently vacant. (Exhibit 3, Exhibit F, A01.)

11. The New York Avenue Metrorail Station is located one-quarter mile to the southeast of the site. (Exhibit 12, p. 3.) The site is parallel to the Metropolitan Branch Trail. (Exhibit 24, p. 2.)

12. The Generalized Land Use Map of the Comprehensive Plan includes the Subject Property in the Production and Technical Employment land use category. A draft of the Office of Planning's "Industrial Land in a Post-Industrial City: District of Columbia Industrial Land Use Study" identifies the Subject Property as "an area for land use change." (Exhibit 13, p. 8.)

PUD APPLICATION AND PROJECT

13. The Applicant seeks to construct a residential project with a ground floor retail component on the Subject Property.

14. The Applicant's first submission proposed three large residential buildings. The Office of Planning, however, requested that the Applicant extend Q Street through the property to establish the street grid in the project. The Applicant complied and created three large residential buildings and several townhouses to line the extended Q Street. (Exhibit 3, Exhibit F, A03.)

15. The PUD will be composed of approximately 739,951 square feet of residential area and 15,084 square feet of retail space. A range of 585-636 residential units will be located in the three residential buildings and will contain a mix of studio, one-bedroom, one-bedroom with den, two-bedroom, and two-bedroom with den units. The PUD will also include 27 piggyback townhouse units and 5 four-story single family townhouses. The total gross floor area of the PUD will consist of approximately 755,035 square feet; the PUD will have a floor area ratio ("FAR") of 4.01 Building heights will range from 40 feet for the townhouses to 110 feet for the larger buildings. The project will have a lot occupancy of 47.43%, including the proposed streets. (Exhibit 13, pp. 14-17, Exhibit B.)

16. The first residential building will be located at the corner of Eckington Place and Harry Thomas Way and will include the entirety of the project's ground floor retail ("Building 1"). Building 1 is designed to look like three distinct buildings. The western section relates to the XM headquarters with its oversized windows, arched embellishments, and subdued brick color. The middle and eastern portions of the building continue to reflect a "warehouse" feel with a deeper brick color and spanning windows. The building will have alternating glass bays and balconies. Façade materials will include brick with precast concrete and stone accents and trim. The duplex units on the eastern

end of Building 1 will have street entrances to enliven the streetscape along Harry Thomas Way. The street entrances will be lined with arch block and recessed archways to maintain the industrial feel of the area. The roof will include landscaped recreation spaces, a club room, and a pool for the residents of the building. (Exhibit 13, pp. 15, 17-18, Exhibit A; Exhibit 27; Transcript, p. 21.)

17. The height of Building 1 will range from 70 feet and 7 stories on its western end to 90 feet and 9 stories on the eastern end. The building will include approximately 212,435 square feet of gross floor area and 175 units. (Exhibit 13, p. 15.)

18. The building on the eastern edge of the Subject Property ("Building 2") will consist entirely of residential units. The building's frontage along Harry Thomas Way will include a series of bays and balconies with a façade consisting of masonry and metal windows. A brise soleil will shade the upper floors of the building. The duplex units will be directly accessed from the street. The duplex entry consists of painted metal and arch block with precast window sills. (Exhibit 13, pp. 16-18; Exhibit 27; Exhibit 32, Exhibit B; Transcript, pp. 21, 62.)

19. The height of Building 2 will range from 90 feet and 9 stories to 110 feet and 11 stories. Building 2 will be composed of approximately 211,842 square feet of development and contain approximately 190 units. (Exhibit 13, p. 16.)

20. The building located at the corner of Harry Thomas Way and the north side of Q Street will consist entirely of residential units ("Building 3"). The building is composed of varying layers of brick, glass, and metal. Along the glass façade of the building, there is a metal panel extending horizontally along the building. Building 3 is set back from the northern side of the extended Q Street to allow for extensive green space for the residents; private terraces for the residents also open onto the green space. (Exhibit 13, p. 16.)

21. The height of Building 3 will range from 90 feet and 9 stories to 110 feet and 11 stories. The building will consist of approximately 265,224 square feet of gross floor area and approximately 239 residential units. (Exhibit 13, p. 16.)

22. Townhouses will be located on the northwestern corner of the PUD site. The townhouses along Eckington Place will be single-family townhouses and those lining the extended Q Street will be piggybacked two-floor townhouses. The townhouse facades will consist of masonry and metal window frames. (Exhibit 13, p. 17.)

23. The height of the townhouses will be 40 feet and 4 stories. The townhouses will consist of 65,534 square feet of gross floor area and comprise 32 residential units. (Exhibit 13, p. 17.)

24. The PUD will have extensive landscape and hardscape improvements on private and public space. A large private plaza will be located on the north side of the extended Q Street; smaller private plazas are located on the north sides of Buildings 1 and 2. The large plaza will be 45 separated from the public walkway by painted metal pickets and brick piers. A privacy hedge will conceal the metal pickets from the interior of the plaza. The plazas will each have detailed landscaping, and the plazas on the north sides of Buildings 1 and 2 will provide circular drives for the residents. A stone block wall will enclose the plazas north of Buildings 1 and 2. (Exhibit 13, p. 18; Exhibit 26, L-1–7.)

25. A brick plaza lined with trees and benches along the northeast portion of the extended Q Street will be open to the general public. (Exhibit 26, L-8.)

26. Below-grade parking will be provided for Buildings 1, 2, and 3. The parking garages will provide approximately 875 spaces for residents and guests. Access to the garage for Buildings 1 and 2 will be from a new north-south access street, whereas access to the parking garage below Building 3 will be from an alley off Harry Thomas Way. (Exhibit 13, p. 19; Exhibit 26.)

27. Garages will be provided for each townhouse unit. Additional parking will be located in a surface lot north of the townhouses. The townhouses on Eckington Place will have two-car garages. (Exhibit 13, p. 19.)

28. One loading berth at 55 feet deep, 1 loading platform at 200 square feet, and 1 delivery/service space at 20 feet deep will be provided for each of the three large buildings. A private alley will be used for loading for the townhouses. The Applicant is not providing dedicated loading docks for the retail portion of the project. Given the size of the retail component of the project, deliveries to the retail uses will be made from the adjacent streets. (Exhibit 13, p. 22, Exhibit B.)

29. The Applicant will incorporate two new streets into the development: one public, the other private. It will extend Q Street east of where it currently ends, and it will establish a north-south access street between Buildings 1 and 2. The Applicant will construct Q Street to the specifications established by the District Department of Transportation ("DDOT") and will dedicate the street to the District of Columbia through the public street dedication process. The Applicant will not dedicate the access street to the District. (Exhibit 13, pp. 13, 19.)

30. The PUD will require an amendment to the Zoning Map to rezone the property from the existing M Zone District to the C-3-C Zone District. The existing zoning designation for the site does not permit residential use. It permits commercial or industrial uses up to 6.0 FAR with no lot occupancy limitation. Building heights of up to 90 feet are permitted. The C-3-C Zone District permits residential uses and development up to 6.5 FAR and a height of 90 feet as a matter-of-right. PUD guidelines for the C-3-C Zone District allow development up to 8.0 FAR for residential or commercial uses and a

building height of up to 130 feet. A 100% lot occupancy is permitted. (Exhibit 13, Exhibit B.)

31. The Office of Planning issued a draft of its industrial land-use study entitled, "Industrial Land in a Post-Industrial City: District of Columbia Industrial Land Use Study." The study concludes that "[a] very large site on Eckington Place has been proposed for rezoning for a planned residential development. This location near two major thoroughfares and a Metro, and on the northern edge of the NoMA initiative, is *the* prime development site outside of Downtown. It no longer contains a large number of PDR uses and is appropriate for a change of use to accommodate this development." This site mentioned in the Industrial Land Use Study is the Subject Property. (Exhibit 13, p. 9.)

32. The Office of Planning also issued a draft of the New York Avenue/North of Massachusetts ("NY/NoMA") study. The NY/NoMA study encourages "walkable, transit-accessible, dynamic and diverse mixed-use neighborhoods with retail services," "connections between new development, the new Metro Station, and the existing nearby residential neighborhoods," and "quality public space and pedestrian environment with community amenities." (Exhibit 13, p. 9.)

33. As will be discussed in the conclusions of law, the proposed rezoning of the site would not constitute spot-zoning.

34. The PUD complies with the underlying zoning district requirements; however, the Applicant requires relief from § 400.7 of the Zoning Regulations, which requires all roof structures to be enclosed in one structure. Due to the size of the buildings and their varying heights, providing a single roof structure would result in a needlessly large roof structure. The PUD also needs relief from the requirements of Chapter 22 of the Zoning Regulations for dedicated loading docks for the retail portion of the project. The Applicant is proposing approximately 15,000 square feet of neighborhood-serving ground floor retail; therefore, the Applicant believes that it is likely that deliveries to the retail uses can be made from the adjacent streets. Finally, the Applicant needs relief from § 773.3 of the Zoning Regulations requiring at least 10% of the gross floor area devoted to residential use to be provided as residential recreation space. The Applicant will provide several green plazas and rooftop recreation spaces, but will not fully comply with the regulations. (Exhibit 13, pp. 21-22.)

35. The Applicant's traffic and parking expert provided written documentation and testimony that the PUD is an example of transit oriented development and will have no negative impact on the surrounding road network. The close proximity and quality of access to Metrorail significantly reduces potential traffic impacts. The traffic generated by the PUD can be accommodated by the surrounding road network. The proposed project will contribute only 1% (or less) of the traffic going through the Florida Avenue and New York Avenue intersection. (Exhibit 13, Exhibit E, pp. 18, 34; Transcript, pp. 33-34.)

36. The Applicant provided an analysis of area intersections including New York Avenue and Florida Avenue, Eckington Place and Q Street, Rhode Island Avenue and 3rd Street, and R Street with Lincoln Road and North Capitol Street. The analysis concluded that the intersections operate under acceptable conditions, although DDOT and the Eckington community should work toward a solution to alleviate the existing long queues on westbound R Street. (Exhibit 32, Exhibit A, p. 12.)

37. The proposed project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods: The PUD will provide 625-675 residential units, which will help stabilize and enhance the Eckington neighborhood. The ground floor retail space will provide neighborhood-serving retail in an area that suffers from a lack of retail opportunities (Exhibit 13, p. 33);

- Respecting and improving the physical character of the District: The Applicant will extend Q Street through the center of the PUD, which will integrate the site with the Eckington neighborhood. The PUD will also replace land that is currently vacant and contaminated with a development that is environmentally clean and includes residential construction (Exhibit 13, p. 34); and

- Preserving and ensuring community input: The Applicant presented its proposal to ANC 5C on four separate occasions; it presented its proposal to the Eckington Civic Association on two occasions, as well as to the Bates Civic Association, the Edgewood Civic Association, and the Ward 5 Economic Summit. The Applicant also met on several occasions with representatives of the various community organizations. The Applicant also submitted a development and construction management plan with its June 23, 2006 submission, pursuant to feedback from the community. The plan provides guidelines for construction traffic, contact information for voicing concerns regarding construction, and provides for a resume bank to encourage employment of local residents. (Exhibit 19, Exhibit C; Transcript, p. 35.)

38. The PUD is consistent with many Major Elements of the Comprehensive Plan, including; the Transportation Element, the Housing Element, the Urban Design Element, the Land Use Element, and portions of the Ward 5 Element.

- Transportation Element: the PUD is consistent with the following goal:

  - Support land use arrangements that simplify and economize transportation services, including mixed-use zones that permit the co-development of residential and nonresidential uses to promote higher density residential development at strategic locations, particularly near appropriate Metrorail stations. (10 DCMR § 502.1.)

- Housing Element: the PUD is consistent with the following goals:

  - Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies and objectives. (10 DCMR § 302.2(a).)

  - Review and recommend suitable regulatory zoning, tax and financing incentives under appropriate controls to meet housing production goals, particularly for low-income, moderate-income and elderly households. (10 DCMR § 302.2(b).)

  - Designate, as residential development opportunity areas, sites where significant housing development can appropriately occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed moderate-income residents. (10 DCMR § 302.2(d).)

  - Encourage housing on suitably located public or private properties that are vacant, surplus, underutilized or unused... (10 DCMR § 302.2(e).)

  - Provide zoning incentives, as appropriate to developers prepared to build low- and moderate-income housing, such as permitting additional densities in exchange for incorporating low- and moderate-income housing in development projects. (10 DCMR § 303.2(d).)

The PUD provides housing on a site that is currently vacant; a portion of the residential units are reserved for moderate income housing; and the site is one-quarter mile from a new Metrorail station.

- Urban Design Element: The PUD is consistent with the following urban design goals:

  - Encourage in-fill development to be complementary to the established character of the area. In-fill development in stable areas shall not create sharp changes in physical pattern which might lead to deterioration. (10 DCMR § 711.2(a).)

- Encourage well-designed developments in areas that are vacant, underused or deteriorated. These developments should have strong physical identities. (10 DCMR § 712.2(a).)

- Utilize large-scale development or capital improvement projects as opportunities for establishing a positive image or redirection in deteriorated areas." (10 DCMR § 712.2(g).)

The PUD includes prominent residential buildings with ground floor retail and townhouse units, on a parcel that is currently vacant. This PUD will also link the Eckington neighborhood to the New York Avenue Metrorail Station.

- Land Use Element: The PUD is consistent with the following land use goals and objectives:

  - To assure the efficient use of land resources within legal, economic, fiscal, environmental, and other public policy constraints to meet neighborhood, community, and District-wide needs, and to help foster other District goals. (10 DCMR § 1101.1.)

  - To conserve and enhance the essentially satisfactory qualities of the District's many stable residential neighborhoods including those qualities that make them unique (10 DCMR § 1102.1(a).)

  - To enhance other neighborhoods and achieve stability. (10 DCMR § 1102.1(b).)

  - To encourage development of adequate neighborhood shopping and support services in all sections of the District. (10 DCMR § 1102.1(c).)

  - Promote the conservation, enhancement, and revitalization of the residential neighborhoods of the District for housing and neighborhood related uses. (10 DCMR § 1104.1(a).)

  - Encourage the retention and expansion of residential uses in mixed-use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary. (10 DCMR § 1104.1(b).)

- Generalized Land Use Map: The Generalized Land Use Map designates the site as being appropriate for production and technical employment. It

further designates the site, and the entire Capital Commerce Center, as the Northeast 1/Eckington Yards Special Treatment Area, an area targeted for high-tech and light industrial uses. However, the site is one-quarter mile from a new Metro station. The station was not under consideration when the Comprehensive Plan's Generalized Land Use Map designation was adopted. Approximately $100 million has been contributed for the new station's construction by a combination of the District and Federal government agencies and from private sources. A special taxing district was established at the behest of the local business community to collect the $25 million private share of the station's cost. The owner of the subject property and the adjacent Capital Commerce Center are part of the special taxing district. The Industrial Land Use Study issued by the Office of Planning states that the site is appropriate for rezoning, because it no longer contains a large number of production, distribution, and repair businesses. The Industrial Land Use Study concludes the area is appropriate for land use change to include residential uses.

- Ward 5 Element: The Ward 5 Element emphasizes development and rehabilitation measures that contribute to an orderly process of neighborhood revitalization, encourage the creation of new job opportunities and the effective use of inventory of commercial land, encourage and promote development around Metro Stations, ensure that neighborhoods like Eckington benefit from new and rehabilitated housing and increased retail and encourage new and rehabilitated affordable housing for area residents. (10 DCMR §§ 1600.4, 1601.1, 1605.1, 1609.1.) The PUD will be located within one-quarter mile of the New York Avenue Metrorail Station and effectively makes use of a vacant site. (Exhibit 12, p. 3.)

39. The PUD will provide several public benefits and project amenities, including the following:

- Housing and Affordable Housing: The PUD will create 625-675 new residential units on a site that is currently vacant. Additionally, eight percent of the gross floor area allocated for residential use (approximately 59,150 square feet) will be dedicated to affordable housing. Individuals with incomes at or below 80% of the Area Median Income will be eligible for the reserved units. The size, number, and location of the units will be evenly distributed throughout the three larger residential buildings, but will not be provided on the top floor of those buildings. No affordable units will be provided from the townhouses or the piggy-back townhouses. The affordable unit types (i.e., studio, one-bedroom, one-bedroom with den, two-bedroom, etc.) will be proportionate to the market rate unit types. The

affordable units shall not constitute a majority of units on any floor of any building. (Exhibit 13, p. 19; Exhibit 32, Exhibit K.)

- Urban Design and Architecture: The PUD is designed to reflect the character of the previous industrial uses that existed on the site. It will remain consistent with the neighboring residential uses. The massing and height of the PUD will create a human scale for pedestrians along the street frontages of Eckington Place and Harry Thomas Way, as well as the extended Q Street. (Exhibit 13, pp. 26-27.)

- Site Planning: The PUD will expand the established the street grid system by extending Q Street through the project. The extended Q Street improves access through the Subject Property and breaks up the massing of the project. (Exhibit 13, p. 27.)

- Effective and Safe Vehicular and Pedestrian Access: There will be several points of access into and out of the PUD. The Applicant's traffic and parking consultants submitted a report indicating that the project will generate approximately 139 morning peak trips and 214 evening peak hour trips and a total of 2,698 daily trips. There will be little or no significant change in the levels of service for those intersections included in the study. The PUD will provide 875 parking spaces for residents, guests, and the retail component. (Exhibit 13, p. 28.)

- Uses of Special Value: The Applicant will provide the following public benefits and amenities with the PUD:

  - Pedestrian/Bicycle Connection to the Metropolitan Branch Trail – The Applicant will design and construct a 10-foot-wide trail connecting the development with the Metropolitan Branch Trail. The estimated cost of the design and construction is $55,000. (Exhibit 13, p. 20; Transcript, p. 27.)

  - North Capitol Main Streets Program – The Applicant will contribute $25,000 to the general account of North Capitol Main Street, Inc. to assist with implementing work plans that will aid in the revitalization of a neighborhood business district on North Capitol Street between Rhode Island and New York Avenues, with initial emphasis being placed on the Eckington portion of North Capitol Street. (Exhibit 43, Transcript, p. 36.)

  - Regional Addiction Prevention ("RAP"), Inc. - The Applicant will contribute $5,000 to RAP, Inc. to fund a prevention and intervention outreach program for individuals who routinely congregate in the

vicinity of North Capitol Street and Florida Avenue and may have a substance abuse problem, or in the opinion of these professionals, be at high risk for the development of one.

- Community Office Space – Approximately 1,200 square feet of space will be reserved in a high-visibility location along Harry Thomas Way for community office space.

- Design and Construction of Signalized Intersection – The Applicant will contribute at least $25,000 to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street. (Exhibit - 34, Exhibit D).

- McKinley Technology High School – The Applicant will contribute $20,000 to the McKinley Tech Fund, a 501(c)(3) organization.

- Harry Thomas Recreation Center – The Applicant will contribute $10,000 to the Harry Thomas Recreation Center to be used for the purchase and installation of a new scoreboard. (Exhibit 13, p. 21; Exhibit 19, Exhibit D; Transcript, p. 36.)

- Eckington Civic Association – The Applicant will contribute $20,000 to the Eckington Civic Association to: (i) assist with organizing and conducting community meetings relating to the development of a North Capitol Street Small Area Development Plan; (ii) develop and disseminate updates for distribution within the community regarding business and economic development issues in Eckington, and along the North Capitol Street Corridor; (iii) establish a senior safety grants program in Eckington, to make small grants to help repair items that put senior citizens at risk for accidents in their home; and (iv) assist with a historical signage program. (Exhibit 13, p. 20; Exhibit 19, Exhibit D; Transcript, p. 36.)

- Emery Elementary School – The Applicant will contribute $20,000 for new books, audio-visual equipment, draperies for the school's stage, and supplies for the Emery Elementary/Harry Thomas Recreation Center community garden. This contribution will be made to the Emery Elementary School Student Account Fund. (Exhibit 19, Exhibit D; Transcript, p. 36.)

- City Year - Young Hero's Program – The Applicant will provide $5,000 to the City Year - Young Hero's Program for participation of Emery Elementary School sixth graders in the program. (Exhibit 19, Exhibit D; Transcript, p. 36.)

- Car Sharing Service – The project will include seven parking spaces for the commercial car-sharing service. (Exhibit 32, Exhibit J.)

- Green Design - The PUD will include several elements of green design, including energy efficient light fixtures in common areas; garage exhaust fans controlled by sensors to prevent continuous running; low-flow showerheads, sinks, and toilets; Low-E glass; three of the cars provided by the car-sharing service will be hybrids or low emissions; bike storage; use of local brick, gravel, concrete, asphalt, and roof ballast; use of a Baffle Filtration System under Buildings 1, 2, and 3, as well as extensive pervious ground planting to recharge ground water; low-emitting materials; a recycling program for residents; energy efficient appliances; and landscape and building design to reduce heat island effect. (Exhibit 32, Exhibit E.)

- First Source Employment Program - The Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program to promote and encourage the hiring of D.C. residents. (Exhibit 13, p. 30 and Exhibit F.)

- Local Business Opportunity Program - The Applicant will enter into a Memorandum of Understanding with the Department of Small and Local Business Development to use the resources of the Office to utilize local business enterprises in the development of the PUD. (Exhibit 13, pp. 30-31 and Exhibit F.)

40. At the public hearing, the Zoning Commission requested that the record remain open to allow the Applicant to submit additional information to address certain questions and concerns.

41. On August 11, 2006, the Applicant filed its post-hearing submission, which included the following:

- An expanded traffic study including an analysis of traffic flow and project impacts at the Florida Avenue and Eckington Place intersection, the Eckington Place and Q Street intersection, North Capitol Street, R Street and Lincoln Road and an analysis of the need for a traffic signal at 3rd Street and Rhode Island Avenue;
- Detailed plans of the brise soleil on Building 2 and a plan depicting the relationship of the metal cornice and property line for Building 2;
- Revised duplex entry plan for Building 1 blending the colors of the arch block used at the base of the building and the color of the brick to reduce the contrast between the two materials;

- Proposal for providing a financial contribution for the construction of a traffic signal at 3rd Street and Rhode Island Avenue, should one be deemed necessary by DDOT;
- Elements of "green" design included in the project;
- Draft of the NY/NoMA study;
- Draft of the New York Avenue Corridor Study;
- Summary of area retail to demonstrate that there is a viable market for retail at this site;
- Street dedication plat from the Office of the Surveyor confirming that Harry Thomas Way is a public street;
- Additional information regarding the provision of car-sharing parking spaces onsite;
- Revised summary of the affordable housing program clarifying that unit types for market rate housing and affordable housing will be proportionate; and
- Details regarding the proposed phasing of the project.

42. The record was kept open until September 28, 2006 to allow DDOT and OP to respond to the Applicant's submission and additional analyses.

43. On September 20, 2006, the Applicant submitted an additional post-hearing submission that included a document entitled, "Final Community Amenities Package and Procedure for Monitoring Use of Financial Contributions." The document stated the Applicant's revised community amenities package and procedures for monitoring the use of financial contributions made by the Applicant.

GOVERNMENT REPORTS

44. In its July 3, 2006 report, the Office of Planning ("OP") recommended that the Zoning Commission approve the project. OP concluded that the development of housing and retail on this site is a sound planning objective and that the Applicant has given the proposed site plan, design, and program considerable attention, has engaged in an extensive consultation process with OP and with the community. OP determined that the project's layout would enable it to become an extension of the Eckington neighborhood, while its scale would enable it to act as a transition between that neighborhood and the light-industrial and commercial uses to the south. OP also noted that this project will provide retail space to an underserved neighborhood. OP found the project architecture to be contemporary, yet respectful of nearby residential and warehouse structures. (Exhibit 20, pp. 17-18.)

45. OP noted that there are several factors that indicate an industrial land use designation may no longer be appropriate for this site, including many of the existing Comprehensive Plan policies, the recently completed Industrial Land Use Study, the

District's Transit Oriented Development Objectives, and the completion of the New York Avenue Metro Station. OP also noted that the new station triggered a transformation of the entire area surrounding it. OP's report listed eight large commercial, residential, industrial, and mixed-use developments that are newly completed or are planned for the area. In addition, the report stated that the stable residential neighborhood of Eckington is experiencing substantial investment in renovation and new residential construction. (Exhibit 20)

46. The July 3, 2006 OP report indicated that its recommendation was contingent on the satisfactory resolution of the following :

- Submission of comments to DDOT regarding the acceptability of the Applicant's Traffic Impact Analysis;
- A response from DDOT on the conditions for its acceptance of the new Q Street into the public road system;
- An outline of the method by which DDOT will receive funds and execute the construction of the connection of the Metropolitan Branch Trail;
- Specification of mortar colors;
- Specifications for signage and awnings;
- Identification of recipient for the contribution for Eckington historical signage; and
- Identification of a method of monitoring the implementation of the community benefits package for which the contributions are intended. (Exhibit 20, p. 17.)

47. At the hearing, OP recommended keeping the record open for additional time to include information regarding:

- The number of car-sharing vehicles that will be available on site;
- Analysis of the intersection of 3rd Street and Rhode Island Avenue;
- Further analysis of Eckington Place and Florida Avenue intersection and R Street and North Capitol Street;
- Identification of how money given to community organizations will be spent; and
- The proffered green roof.

OP indicated that, with the exception of these items, the issues it raised in its pre-hearing report had either been resolved or were no longer a priority for OP. (Transcript, pp. 82-84.)

48. OP filed a supplemental report on August 28, 2006. The supplemental report requested that the Commission leave the record open for an additional month to allow for a complete resolution of the Community Amenities Package offered by the

Applicant. The supplemental report also addressed the concerns expressed by the Commission at the hearing.

49. OP filed a second supplemental report on September 22, 2006. The second supplemental report recommended that the Commission approve the project as updated with the Applicant's Final Community Amenities Package and Procedure for Monitoring Use of Financial Contributions dated September 19, 2006, subject to the submission of a Memorandum of Understanding between the Applicant and DDOT prior to final action on the case.

50. In its July 11, 2006 report, DDOT, stated that it had no objections to the project. DDOT expressed concern that the Applicant did not study the nearby signalized intersections of Florida Avenue and Eckington Place, and North Capitol Street and R Street, NE. (Exhibit 23, p. 2; Exhibit 31, p. 2.)

51. DDOT staff met with the Applicant's traffic consultant. The Applicant agreed to investigate trip assignments/average daily trip ("ADT") numbers for the Florida Avenue and Eckington Place intersection; an analysis of the traffic stream and intersection at Eckington Place and Q Street, NE; a traffic signal study at 3rd Street and Rhode Island Avenue; and an analysis of traffic flow and project impacts at North Capitol Street, R Street, and Lincoln Road. (Exhibit 23, p. 2; Exhibit 31, p. 2.)

52. In their report to the Commission, DDOT stated that it had no objections to the project provided the Applicant continues to work with it to ensure that the extension of Q Street, NE, and the proposed connection to the Metropolitan Branch Trail are constructed to DDOT standards. DDOT also stated that, if additional analysis demonstrates that a signal installation is warranted at 3rd Street and Rhode Island Avenue, the developer should be required to participate in the cost of design and construction. (Exhibit 23, p. 2; Exhibit 31, p. 2.)

53. Chris Holben, DDOT Bicycle Specialist, submitted a report dated July 11, 2006. The report confirmed that the Applicant, as part of its PUD amenities package, agreed to design and construct a connection to the Metropolitan Branch Trail from Harry Thomas Way. DDOT and the Applicant will enter into a formal agreement through the Office of Partnerships and Grants Development to provide the District with the aforementioned connection. (Exhibit 24.)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

54. On September 20, 2006, ANC 5C provided the Commission with a resolution dated September 19, 2006 indicating that, at a properly noticed meeting with a quorum present, it voted unanimously in support of the PUD application. (Exhibit 19, p. 2; Transcript, p. 10.)

PARTIES AND PERSONS IN SUPPORT

55. The Eckington Civic Association submitted a letter in support of the PUD dated May 16, 2006. The Eckington Civic Association unanimously recommended approval of the PUD, because rezoning the site is appropriate given its proximity to the New York Avenue Metrorail Station. (Exhibit 21.)

56. R Street Self-Storage submitted a letter in support of the PUD dated July 10, 2006. R Street Self-Storage stated that the PUD will be the cornerstone of redevelopment activity north of New York and Florida Avenues, and they enthusiastically endorse the project. (Exhibit 22.)

57. Eartha Isaac, President of the Eckington Civic Association, spoke in support of the application at the hearing. She testified that the PUD would provide the community with several benefits, and the Applicant was responsive to the community's concerns. (Transcript, pp. 93-94.)

58. J.T. Englehardt of the Eckington Civic Association testified that he believed that the PUD represents good urban design. (Transcript, p. 95.)

PARTIES AND PERSONS IN OPPOSITION

59. The Edgewood Civic Association submitted a letter stating that it could not support the application, because it felt that the Applicant did not adequately address the issues it raised. (Exhibit 30.) Michael Clark, President of the Edgewood Civic Association, testified in opposition at the July 13, 2006 hearing and stated that the Applicant's traffic analysis was not comprehensive. (Transcript, p. 101.)

60. Quinta Martin testified in opposition to the PUD at the July 13, 2006 hearing. She expressed concerns with the heights of the buildings on the site. (Transcript, pp. 96-97.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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.) The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose

development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested flexibility from the roof structure, retail loading, and recreation space requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

3. The development of this PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

5. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does provide superior features that benefit the surrounding neighborhood to a greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the amount of affordable housing provided in this project is a significant amenity that will be available for "workforce" District residents. The Commission believes that the design and site planning of the project create a transit and pedestrian-oriented project that will integrate the Property with the surrounding neighborhood through the creation of an extended Q Street, provide a mix of residential unit types, and provide an appropriate amount of ground floor retail for a neighborhood that currently lacks retail opportunities.

The Commission finds that the proposed massing and heights of the buildings proposed in the project relate well to the surrounding buildings also will create a sense that the buildings were developed over a period of time, rather than through a single project. The Commission believes that the direct access from the street level to the duplex units in the larger buildings is an amenity of the project that will further animate street level activity and will be a benefit for the surrounding community.

6. The Commission concludes that approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan.

In deciding this case, the Commission had to reconcile the Comprehensive Land Use Map's designation of the site for production and technical employment with the largely residential character of the PUD.

Dramatic changes have occurred in the area surrounding this site after the Generalized Land Use Map designation was adopted and amended. Since then, the New York Avenue Metrorail Station was conceived, constructed, and opened. The completion of the new station, coupled with other factors, led to substantial new commercial and residential development in the area. As a result of these dramatically changed

circumstances, the Generalized Land Use Map designation for the area is no longer an appropriate basis upon which to determine consistency of the PUD and related map amendment with the Comprehensive Plan.

The Commission, therefore, considered the issues and circumstances particular to this site and assessed the consistency of the PUD and related map amendment with the Comprehensive Plan as a whole. Because the Commission could not rely on the guidance of the Generalized Land Use Map, the Commission also considered the guidance provided by the Office of Planning's Industrial Land Use and NY/NoMa studies in its deliberations.

The PUD is a mixed-use project with a high-density residential component on a vacant site close to a Metrorail station. A portion of the PUD's residential units are reserved for moderate-income housing. The site is one-quarter mile from a new Metrorail station. The PUD will link the stable, residential Eckington neighborhood to the New York Avenue Metrorail Station. The project will advance several major themes and elements of the Comprehensive Plan. The Transportation Element of the Comprehensive Plan encourages development of mixed-use developments with a high-density residential component near Metrorail stations. (10 DCMR § 502.1.) The Housing Element supports multi-unit housing near Metrorail stations in areas adjacent to Downtown, housing on vacant parcels, and zoning incentives for developers prepared to build low to moderate-income housing. (10 DCMR §§ 302.2(d) and (e), 303.2(d).) The Urban Design Element encourages in-fill developments that complement the existing character of the area, particularly well-designed developments on vacant parcels that establish a positive image or redirection in deteriorated areas. (10 DCMR §§ 711.2(a), 712.2(a) and (g).) Finally, the Land Use Element supports the conservation and enhancement of the satisfactory qualities of its stable residential neighborhoods, development of neighborhood shopping and support services in all areas of the District, and the expansion of residential uses in mixed-use neighborhoods to help maintain the residential character of these areas through modification of land use and regulations. (10 DCMR §§ 1102.1(a) and (c), 1104.1(b).)

OP has studied the area since the construction of the Metrorail station. It concluded in its recent Industrial Land Use Study that the area was appropriate for land use change, including change to permit residential use on the site. In its recent NY/NoMa study, OP encouraged mixed residential and retail development in the area to exploit the new Metrorail station and create a walkable, transit-oriented neighborhood.

For the foregoing reasons, the Commission concludes the PUD, and related map amendment, are not inconsistent with the Comprehensive Plan.

7. The Commission agrees with the conclusions of the Applicant's traffic and parking expert (including the Transportation Impact Analysis Addendum post-hearing submission), as well as the conclusions of DDOT, that the proposed project will not create unacceptable adverse traffic or parking impacts on the surrounding community. The

Commission also notes that this project will contribute 1% or less of the traffic that flows through the Florida Avenue and New York Avenue intersection.

8. The map amendment does not constitute spot zoning. According to the District of Columbia Court of Appeals:

> To constitute illegal spot zoning, the Commission's action (1) must pertain to a single parcel or a limited area -- ordinarily for the benefit of a particular property owner or especially interested party -- and (2) must be inconsistent with the city's comprehensive plan .... .

Citizens Assoc. of Georgetown, Inc. v. District of Columbia Zoning Comm., 402 A.2d 36, 40 (D.C. 1979). The Commission has concluded that the PUD and related map amendment are not inconsistent with the Comprehensive Plan therefore do not constitute spot zoning.

9. The Commission finds that the Development and Construction Management Plan proferred by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community.

10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

11. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

12. Notice of the public hearing was provided in accordance with the Zoning Regulations.

13. 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 consolidated review of a Planned Unit Development and Zoning Map amendment application from the M Zone District to the C-3-C Zone District for Lot 815 in Square 3576. The approval of this PUD and Zoning Map amendment is subject to the following guidelines, conditions, and standards:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 13, 26, and 32 of the record, as modified by the guidelines, conditions, and standards of this Order.

2. The Applicant shall make the following financial contributions, and obtain the written agreements described in Condition 3, prior to the issuance of a building permit for the first residential building on the Subject Property:

- McKinley Technology High School – The Applicant shall make a contribution of $20,000 to the McKinley Tech Fund.

- Harry Thomas Recreation Center – The Applicant shall make a contribution of $10,000 to the Harry Thomas Recreation Center. The contribution shall specify that the funds may only be used for the purchase and installation of a new scoreboard.

- North Capitol Main Streets Program – The Applicant shall contribute $25,000 to the general account of North Capitol Main Street, Inc. to assist with implementing work plans that will aid in the revitalization of a neighborhood business district on North Capitol Street between Rhode Island and New York Avenues, with initial emphasis being placed on the Eckington portion of North Capitol Street.

  The contribution shall specify that the funds may only be used for the following: (i) the establishment of a "Green Team," which will employ local homeless persons to clean and maintain the appearance of the North Capitol Street corridor; (ii) conducting and disseminating consumer and business surveys; (iii) recruitment and promotion of businesses along North Capitol Street; (iv) volunteer recruitment; (v) promotion of a North Capitol Street Business improvement District; and (vi) matching funds for a facade improvement program with initial emphasis on the Eckington portion of the North Capitol Street corridor.

- Eckington Civic Association - The Applicant shall contribute $20,000 to the Eckington Civic Association. The contribution shall specify that the funds may only by used for the following programs: (i) assistance with organizing and conducting community meetings relating to the development of a North Capitol Street Small Area Development Plan; (ii) developing and disseminating updates for distribution within the community regarding business and economic development issues in Eckington, and along the North Capitol Street Corridor; (iii) establishment of a senior safety grants program in Eckington, which is intended to make small grants to help repair items that put senior citizens at risk for accidents in their home; and (iv) a historical signage program.

- Regional Addiction Prevention ("RAP"), Inc. — The Applicant shall contribute $5,000 to the general account of RAP, Inc. The contribution shall specify that the funds may only be used to fund a prevention and intervention outreach program for individuals who routinely congregate in the vicinity of North Capitol Street and Florida Avenue and may have a substance abuse problem or be at high risk for the development of one.

- Emery Elementary School – The Applicant shall contribute $20,000 to the Emery Elementary School Student Account Fund. The contribution shall specify that the funds may only be used for new books, audio-visual equipment, draperies for the school's stage, and supplies for the Emery Elementary/Harry Thomas Recreation Center community garden.

- City Year - Young Hero's Program – The Applicant shall contribute $5,000 to the City Year - Young Hero's Program. The contribution shall specify that the funds may only be used for participation of Emery Elementary School sixth graders in the program.

3. The Applicant shall require those organizations receiving a monetary contribution to agree in writing that each will present evidence to the Office of Zoning's Compliance Review Manager demonstrating that the money has been applied to the designated use within six months of after receiving the contribution. The written agreement shall further specify that if the money has not been applied to the designated use within six months, the recipient must shall provide a reasonable explanation to the Office of Zoning's Compliance Review Manager as to why not and must present evidence to the Office of Zoning's Compliance Review Manager within one year indicating that the contribution has been properly allocated.

4. The Applicant shall abide by the Development and Construction Management Plan, as submitted on June 23, 2006 as Exhibit 19 of the record.

5. The project will shall include seven parking spaces for exclusive use by Zip Car or a similar car-sharing company. Four of the car-sharing spaces will be located on the street, and three of the car-sharing spaces will be located in the parking garages included in Buildings 1-3. Three of the seven cars provided in the project shall be reserved for hybrid or low emissions vehicles will be hybrid or low emissions vehicles. Two of the on-street, car-sharing parking spaces, and one of the car-sharing parking space in the commercial parking lot of Building 1 shall be provided at the time of the construction of Building 1, the extended Q Street and the townhouse structures.

6. No through-wall HVAC systems shall be permitted in any of the buildings and no EIFS shall be used on any of the buildings.

7. Retail awnings may be canvas or similar non-rubberized cloth material, glass, or metal. Vinyl or other plastic-like sheeting is not acceptable. Awning surfaces may be any color or pattern. Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Lettering and logos shall not be placed on sides, tops, or sloping surfaces of the awnings.

8. The project shall include eight percent of the residential gross floor area available for sale (approximately 59,150 square feet) as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit C of Exhibit 13 of the record of this case. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.

9. The Applicant shall design and construct a connection to the Metropolitan Branch Trail consisting of a ten (10) foot wide path, pedestrian solar scale lighting, and call box(es). The Applicant shall enter into an agreement with DDOT and the District Office of Partnerships and Grants Development (OPGD), regarding the Applicant's construction of the connection to the Metropolitan Branch Trail and DDOT's ownership and maintenance of the connection as part of the Metropolitan Branch Trail. The proposed construction of the connection to the Metropolitan Branch Trail shall occur concurrently with the construction of the first residential building. In the event the cost of the design and construction of the trail connection is less than $55,000, the Applicant shall contribute the balance to the organizations listed as receiving financial contributions in Paragraph 2 above. No Certificate of Occupancy for the first building shall be issued until DDOT provides a written statement to the Zoning Administrator indicating that the construction has been accepted by DDOT.

10. The Applicant shall make a financial contribution to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street, N.E. The amount of the financial contribution shall be commensurate with the percentage of traffic that this project contributes to that intersection, but not less than $25,000. The requirement for the Applicant to provide such a financial contribution shall be triggered by DDOT's submission of a letter to the Applicant and the Zoning Commission indicating DDOT's formal decision to construct the traffic signal and the time period in which design and construction is to be completed. The Applicant shall provide such payment within 30 days after receipt of DDOT's letter, but not earlier than the issuance of a building permit for the first residential building on the Subject Property.

11. The project shall include approximately 1,200 square feet of community office space in a high-visibility location along Harry Thomas Way.

12. The Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit F of Exhibit 13 of the record.

13. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit F of Exhibit 13 of the record.

14. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the structures;
- To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

15. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23. Within such time, an application must be filed for a building permit for the construction of the extended Q Street through the property and one of the four residential buildings. The filing of the building permit application will vest the Zoning Commission Order. If the building permit application does not include all four residential buildings, the application shall include a phasing plan for the remaining construction. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.

16. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and 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

Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

17. The change of zoning from the M Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 16, pursuant to 11 DCMR § 3028.9.

18. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and 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, familial status, family responsibilities, matriculation, political affiliation, 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 also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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

On September 25, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Gregory N. Jeffries, Carol J. Mitten , Michael G. Turnbull, Anthony J. Hood to approve; John G. Parsons to approve by absentee ballot).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on October 16, 2006 by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, John G. Parsons, Anthony J. Hood, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on JUN 22 2007.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

OFFICE OF THE SURVEYOR

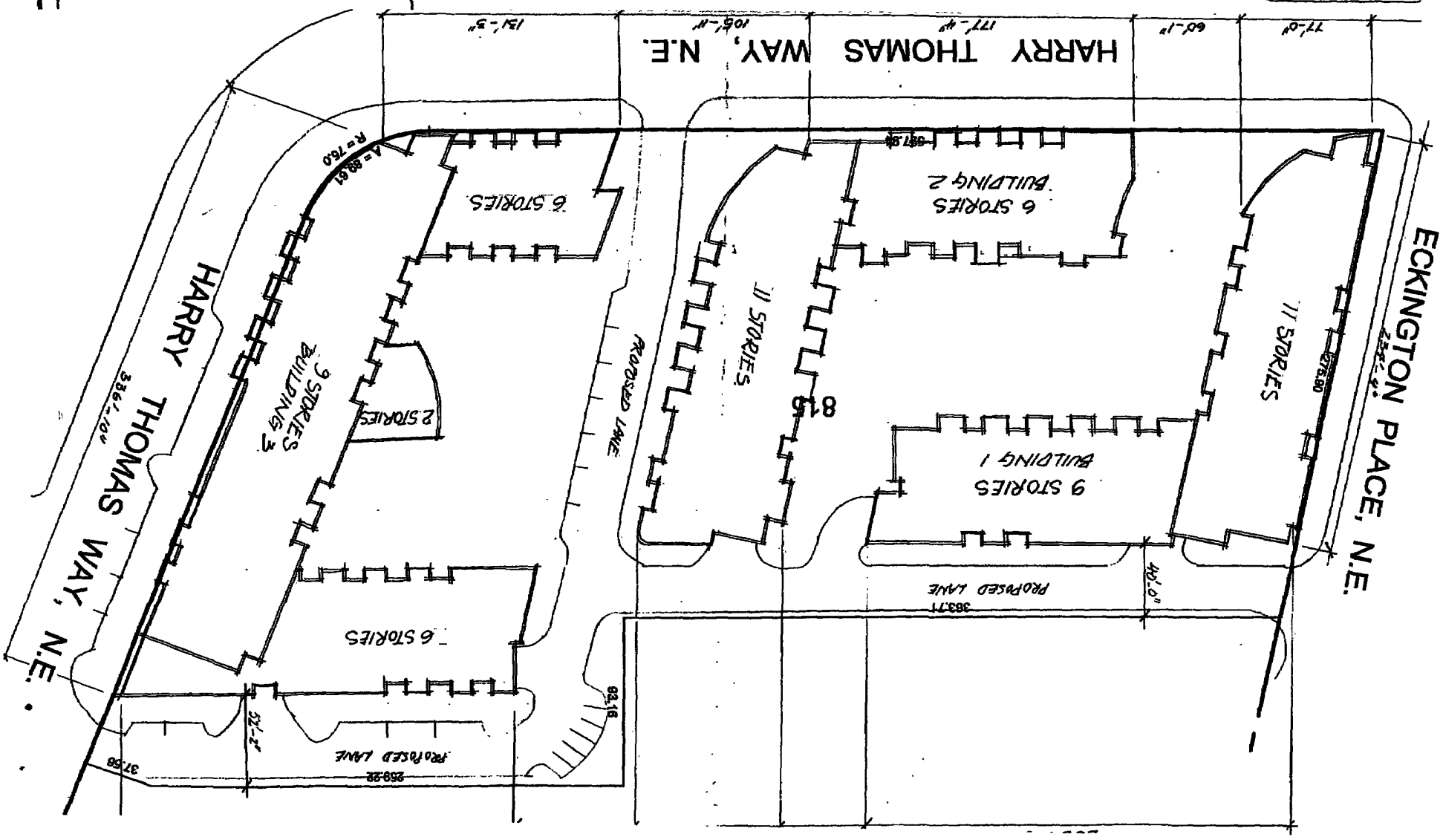
Washington, D.C., April 6, 2005

Plat for Building Permit of SQUARE 3576 LOT 815

Scale: 1 inch = 50 feet Recorded in A & T Book Page 3810-T

Receipt No. 18345

Furnished to: SHAW PITTMAN

Surveyor, D.C.

By: L.E.S.