

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-23A

As Secretary to the Commission, I hereby certify that on JAN 23 2008 copies of this Z.C. Order No. 05-23A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. <i>D.C. Register</i>	6. Councilmember Harry Thomas, Jr.
2. Leila Batties Holland & Knight, LLP 2099 Pennsylvania Ave., N.W. Washington, D.C. 20006	7. DDOT (Ken Laden)
3. Anita Bonds, Chair ANC 5C P.O. Box 77761 Washington, DC 20013	8. Zoning Administrator (Matt LeGrant)
	9. Jill Stern, Esq. General Counsel - DCRA 941 North Capitol Street, N.E. Suite 9400 Washington, D.C. 20002
4. Commissioner Denise Wright ANC/SMD 5C05 219 R Street, N.E. - #2 Washington, DC 20002	10. Office of the Attorney General (Alan Bergstein)
5. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004	

ATTESTED BY:


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO. 05-23A
EXHIBIT NO. 38

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District of Columbia

CASE NO.05-23A
EXHIBIT NO.38

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Z.C. Order No. 05-23A

Z.C. Case No. 05-23A

**Modification to PUD at Eckington Place, N.E. and Harry Thomas Way, N.E.
Square 3576, Lot 815
November 19, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 18, 2007, to consider an application from NoMa West Residential I, LLC (the "Applicant"), for a modification of a planned unit development (the "Modified PUD") and a related amendment to the Zoning Map of the District of Columbia from the M District to the C-3-A District for Square 3576, Lot 815. The application was filed on behalf of, and with the consent of, CSX Realty Development, Inc., the owner of the property covered under the application. 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 June 7, 2007, the Applicant filed an application with the Commission for a modification to the PUD approved for the property located on Lot 815, Square 3576 at Eckington Place, N.E. and Harry Thomas Way, N.E. (the "Property"), pursuant to Z.C. Order No. 05-23 (the "Approved PUD"). The Property consists of 187,958 square feet of land.
2. At a public meeting held July 30, 2007, the Commission voted to schedule a public hearing on the application. At the meeting, the Commission requested that the Applicant provide additional information relating to the range in the number of dwelling units, the building material on the north face of the building, and the lot occupancy for the Modified PUD versus that for the Approved PUD. The Commission also proposed rezoning the Property to the C-3-A District as an alternative to the C-3-C District approved for the Property pursuant to Z.C. Order No. 05-23.
3. In its Preliminary Report to the Commission, dated July 20, 2007, the Office of Planning ("OP") requested that the Applicant address issues relating to the proposed Q Street

extension, the connection to the Metropolitan Branch Trail, the building design, sustainable design elements for the project, and the project's relationship to the development to the north.

4. On August 7, 2007, the Applicant filed a Prehearing Statement with the Commission, which included the information requested by the Commission and OP in Paragraphs 2 and 3 above (Exhibit 12, pp. 8-12) and revisions to the north elevations for Buildings 100 and 200 (Exhibit 13, Sheets 120 and 121).
5. On September 28, 2007, the Applicant submitted a Supplemental Filing in support of its application, which included an updated discussion on the proposed modification to the Approved PUD and the project design, a discussion on the Applicant's community outreach efforts, and a revised set of plans, titled "TCR – Eckington One," dated September 28, 2007, and marked as Exhibits 19A and 20 of the record. The Applicant also provided updated versions of the Development and Construction Management Plan, the Memorandum of Understanding, and the First Source Employment Agreement.
6. The Supplemental Filing also requested modifications to Condition Nos. 2, 5, 9, 10, and 15 of Z.C Order No. 05-23A as follows:

Condition No. 2

FRCM:

"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."

TO:

"Harry Thomas Recreation Center – The Applicant shall make a contribution of \$10000 to the Harry Thomas Recreation Center. The contribution shall specify that the funds may only be used for the purchase of new materials and supplies for the center."

Condition No. 5

FROM:

"5. The project will shall [sic] include seven parking spaces for exclusive use by ZipCar 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. [sic] 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."

TO:

"5. The project shall include five on-street parking spaces for exclusive use by Zip Car or a similar car-sharing company. Two of the five cars provided in the project shall be reserved for hybrid or low emissions vehicles. Two of the car-sharing parking spaces shall be provided at the time of the construction of Building 100 and the Q Street extension."

Condition No. 9

FROM:

"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. 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."

TO:

"9. The Applicant shall make a contribution of \$55,000 to DDOT for the design and construction of a connection to the Metropolitan Branch Trail consisting of a 10-foot wide path, solar scale lighting, and call box(es). No building permit shall be issued for the project until DDOT provides a written statement to the Zoning Administrator acknowledging such payment."

Condition No. 10

FROM:

"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. "

TO:

"10. The Applicant shall make a financial contribution of \$25,000 to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street, N.E. No building permit shall be issued for the project until DDOT provides a written statement to the Zoning Administrator acknowledging such payment."

Condition No. 15

FROM:

"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."

TO:

"15. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23A. 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 three residential buildings. The filing of the building permit application will vest the Zoning Commission Order. If the building permit application does not include all three 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."

7. At its duly noticed meeting held October 16, 2007, Advisory Neighborhood Commission ("ANC") 5C voted unanimously to support the Modified PUD application.
8. After proper notice, the Commission held a hearing on the application on October 18, 2007 (the "Hearing"). The parties to the case were the Applicant and ANC 5C, the ANC within which the Property is located.
9. At the Hearing, the Applicant filed the following documents with the Commission:
 - a. A revised version of Sheet 201 of the plans, titled "Overall Landscape Plan," dated October 18, 2007, and a revised version of Sheet 206, titled "Detailed Landscape Plan," dated October 18, 2007, which is marked as Exhibit 26 of the record;
 - b. A letter from the ANC in support of the application, which is marked as Exhibit 23 of the record;
 - c. A statement providing an additional condition of the Modified PUD approval, providing for a \$20,000 contribution to the Edgewood Civic Association approval to cover (i) the cost of printing and distributing the Association's quarterly newsletter, (ii) donations of equipment to the Harry Thomas Recreation Center and the Edgewood Recreation Center, (iii) donations to the PTSA for the Emery and Shad Elementary Schools for student and parent enrichment programs, (iv) grants to senior citizens for snow removal and safety maintenance of their homes, (v) a summer festival for youth in the community, and (vi) community beautification projects, which is marked as Exhibit 26 of the record;
 - d. A letter from the Edgewood Civic Association, dated October 18, 2007, in support of the Modified PUD application, which is marked as Exhibit 26 of the record;
 - e. A facsimile from Harry Thomas Recreation Center detailing the type of equipment and supplies that would be purchased with contribution from the Applicant, which is marked as Exhibit 26 of the record; and

- f. A revised Development and Construction Management Plan dated October 2, 2007, which is marked as Exhibit 26 of the record.
10. At the Hearing, the Applicant requested flexibility to enlarge the courts for Building 200 and Building 300; but in no case would the courts be smaller than depicted in the plans for the Modified PUD.
11. There were no parties or persons in opposition to the PUD modification.
12. At the Hearing, the Commission voted to approve the application by a vote of 4-0-1, subject to the Applicant providing a signed copy of the Development and Construction Management Plan, dated October 2, 2007.
13. On November 1, 2007, the Applicant submitted a signed copy of the Development and Construction Management Plan to the Zoning Commission, which is marked as Exhibit 32 of the record.
14. On November 19, 2007, the Applicant submitted a letter, which is marked as Exhibit 34 clarifying the arrangement between the Applicant and DDOT for the Metropolitan Branch Trail connection proposed under the PUD. The letter attached a statement from DDOT confirming that the agency desires the Applicant to make a monetary contribution of \$55,000 to fund the construction of the Metropolitan Branch Trail connection, in lieu of constructing the improvement as was required in the original PUD.
15. The Commission took final action to approve the application on November 19, 2007.
16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated November 29, 2007, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

Project Overview

The Approved PUD

17. The Approved PUD consists of approximately 739,951 square feet of residential gross floor area and 15,084 square feet of retail. The residential uses are comprised of approximately 585-636 apartment units located in three large residential buildings, with a mix of studio, one-bedroom, one-bedroom with den, two-bedroom, and two-bedroom with den units; approximately 27 piggyback townhouse units; and five four-story single family townhouses. Approximately 875 below-grade parking spaces are provided for residents and guests of the multifamily buildings. Garages are provided for each

21. Building 200. Building 200 will be situated at the northeast corner of the project. The building will have a glass entry for the lobby entrance at the corner of Q Street and Harry Thomas Way where a clubhouse of approximately 1,000 to 5,000 square feet will anchor the corner of the building opposite the proposed park. This building uses similar materials and expansive windows to relate to Building 100, but adds a layering to the different surface materials on the facade to create patterns that add a dimension of modernism. This interjection of contrast with Building 100 adds interest to Q Street by enhancing the feel of a neighborhood created over time. The height of Building 200 will be approximately 65 feet - 6 inches.
22. Building 300. Building 300, situated along the southern edge of the property, will have two main resident lobbies, one with approximately 3,000 to 6,000 square feet of clubhouse space. The two lobbies reflect the division of the overall mass into two smaller "buildings" similar to Building 100. The "building" closest to Eckington Place is anchored by a round corner that eases one from the surrounding neighborhood into the new community. The style of this mass is reminiscent of older apartment buildings of the 1930s. The "building" closest to Harry Thomas Way is designed in a style that uses the same materials in a more modern way to relate to Building 200 directly across the Q Street extension. Private terraces will be provided on the ground floor units of Building 300, which will have a height of approximately 61 feet.
23. Ground Floor Retail. In response to concerns about the lack of local retail services in proximity to the Property, the Modified PUD will include approximately 1,000 square feet of ground floor retail in Building 300, at the intersection of Eckington Place and Harry Thomas Way.
24. Q Street Extension. The heart of the project will be the Q Street extension, from Eckington Place, N.E. to Harry Thomas Way, N.E., which is envisioned as a tree-lined, animated street with pedestrian friendly buildings, intimate gardens and on-street parking. The cross-section for the Q Street extension is depicted on Sheet 138 of the drawings filed with the Commission on September 28, 2007, and marked as Exhibit 20 of the record. The proposed Q Street extension is not wide enough to be dedicated as a public street under the current DDOT regulations. Therefore, the Q Street extension shall remain private until such time as the regulations permit the dedication of the roadway. Notwithstanding, the Applicant agrees that the construction and maintenance of the Q Street extension shall be in accordance with the current DDOT standards and subject to regular DDOT inspections.
25. "Pocket" Park. The Modified PUD includes a small park, consisting of approximately 4,123 square feet at the southeast corner of the project, which will be accessible to the public for active and passive recreation.

Matter-of-Right Development in C-3-C and C-3-A Districts

26. The Property was rezoned from the M Zone District to the C-3-C Zone District pursuant to Z.C. Order No. 05-23. The C-3-C District is intended for medium-high density development, including office, retail, housing, and mixed-use development in a compact area. As a matter-of-right, property in the C-3-C District can be developed with a maximum building height of 90 feet, and a maximum density of 6.5 FAR, all of which may be used for residential, office, retail, hotel, or other permitted uses. The permitted maximum lot occupancy is 100%. For a PUD in the C-3-C District, the permitted maximum building height is 130 feet and the permitted maximum density of 8.0 FAR, all of which may be used for residential, office, retail, hotel or other permitted uses.
27. The alternative C-3-A Zone District is intended to be compact in area and located on arterial streets, in uptown centers, and at rapid transit stops. As a matter-of-right, property in the C-3-A Zone District may be developed with a maximum building height of 65 feet and a maximum density of 4.0 FAR, of which 2.5 FAR may be used for a permitted non-residential use. The maximum lot occupancy permitted in the C-3-A Zone District is 75%. For a PUD in the C-3-A District, the permitted maximum building height is 90 feet, and the permitted maximum density is 4.5 FAR, of which up to 3.0 FAR may be for a commercial use, including hotels and motels.

Development Incentives and Flexibility

28. The Applicant requested flexibility from the Zoning Regulations in the following areas:
 - a. Side Yard for Buildings 100 and 200. The Zoning Regulations do not require a side yard for any building in the C-3-C or C-3-A Zone Districts. However, where one is provided, the Regulations require the side yard to have a minimum dimension of two inches per foot of building height. The Applicant requested flexibility to have a side yard of 5'-1", where a minimum of 10'-10" is required for Buildings 100 and 200.
 - b. Courts for Buildings 200 and 300. The Applicant requested flexibility to enlarge the courts for Buildings 200 and 300, but in no case shall the courts be smaller than depicted in the architectural drawings for the Modified PUD.
 - c. Additional Areas of Flexibility. The Applicant also requested flexibility for the following:
 - (i) to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

- (ii) to vary the final selection of the exterior materials within the color ranges and material types as proposed, without reducing the quality of the materials; and
- (iii) to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Community Benefits and Amenities Package

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

- a. Housing and Affordable Housing. The Modified PUD will create approximately 600 new residential units on a site that is currently vacant. Additionally, eight percent (8%) of the gross floor area allocated for residential use (approximately 47,409 square feet) shall be reserved for households whose income does not exceed 80% of the area median income. The affordable housing shall be implemented in accordance with Inclusionary Housing Commitment standards attached as Exhibit F of the Application Statement filed on June 7, 2007, and marked as Exhibit No. 2 of the record.
- b. Pedestrian/Bicycle Connection to the Metropolitan Branch Trail. In connection with the Modified PUD, the Applicant shall enter into an agreement with DDOT and the District Office of Partnership and Grants Development (OPGD) to fund construction of a pedestrian and bicycle connection to the Metropolitan Branch Trail.
- c. Community Office Space. Approximately 1,200 square feet of space in the Modified PUD shall be reserved in a high visibility location along Harry Thomas Way for community office space.
- d. Neighborhood Retail. The Modified PUD shall include approximately 1,000 square feet of ground floor retail at the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E.
- e. Design and Construction of Signalized Intersection. The Applicant shall contribute at least \$25,000 to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street.

- f. McKinley Technology High School. The Applicant shall make a contribution of \$20,000 to the McKinley Tech Fund.
- g. Harry Thomas Recreation Center. The Applicant shall make a contribution of \$10,000 to the Harry Thomas Recreation Center for the purchase of equipment and supplies similar to those provided in the facsimile filed with the Commission on October 18, 2007, and marked as Exhibit 26 of the record.
- h. 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 business surveys; (iii) recruitment and promotion of business along North Capitol Street; (iv) volunteer recruitment; (v) promotion of a North Capitol Street Business Improvement District; and (vi) matching funds for a façade improvement program with initial emphasis on the Eckington portion of the North Capitol Street corridor.
- i. Eckington Civic Association. The Applicant shall contribute \$20,000 to the Eckington Civic Association. The contribution shall specify that the funds may only be 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.
- j. 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.
- k. 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.

1. 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.
- m. Edgewood Civic Association. The Applicant shall contribute \$20,000 to the Edgewood Civic Association, which will be used to cover (i) the cost of printing and distributing the Association's quarterly newsletter; (ii) donations of equipment to the Harry Thomas Recreation Center and the Edgewood Recreation Center; (iii) donations to the PTSA for the Emery and Shad Elementary Schools for student and parent enrichment programs; (iv) grants to senior citizens for snow removal and safety maintenance of their homes; (v) summer festival for youth in the community; and (vi) community beautification projects.

Compliance with the Comprehensive Plan

30. The Modified PUD is not inconsistent with the Comprehensive Plan:
 - a. Future Land Use Map. The Property is designated in the PDR/Medium-Density Residential category on the Comprehensive Plan Future Land Use Map.
 - b. 2.3 Managing Growth and Change. In order to manage growth and change, the Comprehensive Plan encourages achieving diversity by maintaining and enhancing the District's mix of housing types. Housing should be developed for households of difference sizes, including growing families as well as singles and couples. (§ 217.3) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods; development of such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. (§ 217.6)
 - c. 2.3 Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is the production of new affordable housing. Affordable renter - and owner-occupied housing production and preservation is central to the idea of growing more inclusively. (§ 218.3) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to every facet of its implementation. (§ 218.8)

- d. 2.3 Connecting the City. The Comprehensive Plan states that increased mobility can no longer be achieved simply by building more roads. The priority must be on investment in other forms of transportation, particularly transit. Mobility can be enhanced further by improving the connections between different transportation modes, improving traveler safety and security, and increasing system efficiency. (§ 220.1) Also, the Comprehensive Plan states that investments in the transportation network must be balanced to serve local access needs for pedestrians, bicyclists, transit users, autos and delivery trucks as well as the needs of residents and others to move around through the city. (§ 220.2)
- e. 2.3 Building Green Healthy Communities. One of the guiding principles for building green and healthy communities is that planning decisions should improve the health of District residences by reducing exposure to hazardous materials, improving the quality of surface and groundwater, and encouraging land use patterns and land uses that reduce air pollution and facilitate pedestrian and bicycle travel. (§ 221.4)

Land Use Element

- f. 1.3 Transit-Oriented and Corridor Development. The proposal is responsive to § 306.11, which emphasizes the development of vacant/underutilized land near Metro stations, and §306.12, which stresses the need for affordable and "starter" housing in areas where transit makes car ownership less necessary.
- g. 1.4 Neighborhood Infill Development. Section 307.4 encourages the filling-in of "gaps" with buildings that are of a scale and nature to be compatible with the existing physical development pattern. The Modified PUD, with its lower height and scale than the Approved PUD, is consistent with this policy.

Transportation Element

- h. 1.1.4 Transit-Oriented Development. Section 403.10 encourages pedestrian-oriented developments around transit stations.
- i. 1.1-B Transportation Improvements. Section 403.14 implicitly encourages the incorporation of transportation demand management measures such as bicycle facilities into PUDs, which the Modified PUD would do.
- j. 2.3.2 Bicycle Network. Section 409.8 promotes the provision of a comprehensive bicycle network and the filling-in of gaps, which the Modified PUD would do by funding a connection to the Metropolitan Branch Trail.

Housing Element

- k. 1.1.4 Mixed-Use Development. Section 503.5 encourages the construction of housing on commercially zoned land around appropriate Metrorail stations. The Modified PUD would accomplish this on land zoned C-3-C or C-3-A.
- l. 1.1.5 Housing Quality. Section 503.6 states that affordable housing should be of the same high-quality design as market-rate housing. The Modified PUD would seamlessly incorporate 8% of its units as affordable housing for 20 years for households earning up to 80% of the area median income.

Mid-City Area Element

- m. 2.7.2 Eckington/Bloomingdale. Section 2017.5 encourages the protection of the neighborhood's architectural and row-house character. The proposed height of the Modified PUD would be congruent with nearby row house areas, as would be the front stoops and landings.

Office of Planning Report

- 31. In its Final Report, dated October 9, 2007, OP recommended approval of the Modified PUD application, with an associated C-3-A zoning, and subject to additional information concerning the equipment and supplies that the Harry Thomas Recreation Center would purchase with the Applicant's \$10,000 contribution, and the design and management of the "pocket" park proposed at the southeast corner of the project.

Other Government Agency Reports

- 32. By report dated October 15, 2007, the District Department of Transportation ("DDOT") concluded that it has no objections to the PUD, provided that the Applicant continues to coordinate with DDOT and OP on the design of the Q Street extension and enter into a partnership agreement with DDOT to construct a connection to the Metropolitan Branch Trail consistent with Z.C. Order 05-23, dated October 16, 2006. In addition, DDOT requested that the Commission maintain Condition No. 10 of Z.C. Order 05-23, which requires the Applicant to make a financial contribution to DDOT for the design and construction of a signalized intersection at 3rd Street, N.E. and Rhode Island Avenue, N.E., the amount based on the percentage of traffic the Modified PUD contributes to the intersection, but not less than \$25,000.
- 33. As indicated in its report, DDOT did not accept the Applicant's proposed modifications to Condition Nos. 9 and 10 of Z.C. Order 05-23. However, DDOT later modified its position with respect to construction of the connection to the Metropolitan Branch Trail, and agreed to accept a monetary contribution from the Applicant, in lieu of requiring the

Applicant to construct the improvements. The Applicant accepts DDOT's recommendations on the application.

Response to Post-hearing Information Requested by OP and the Commission

34. The Commission finds that the landscape plans and the facsimile provided by the Harry Thomas Recreation Center, submitted by the Applicant on October 18, 2007, address the concerns raised in the Office of Planning report dated October 9, 2007.
35. As set forth in Findings of Fact No. 12, the Applicant submitted a signed copy of the Development and Construction Management Plan, dated October 2, 2007, and marked as Exhibit 32 of the record. The Commission finds that the document adequately responds to the request made by the Commission at the Hearing.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that 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 PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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 PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of residential, hotel, office, and retail uses is appropriate for the Property. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project benefits and amenities are reasonable for the development proposed on the PUD Site.
8. Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area.
9. Approval of the PUD is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) 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. 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 Office of Planning recommendations (as reflected above in ¶ 31). For the reasons stated above, the Commission concludes that the Applicant adequately addressed the concerns raised by the Office of Planning, notes the Office of Planning's underlying recommendation of approval, and concurs in its recommendation.
12. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
13. The application for a PUD 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 a modification to the PUD approved at Eckington Place, N.E. and Harry Thomas Way, N.E., in Square 3576, Lot 815, pursuant to Z.C. Order No. 05-23, and the related amendment to the Zoning Map of the District of Columbia from the M to the C-3-A Zone District for the Property. This approval is subject to the following guidelines, conditions, and standards:

1. The Modified PUD project shall be developed in accordance with the plans titled "TCR – Eckington One," dated September 28, 2007, marked as Exhibit 20 of the record; as modified by revised Sheet 201 and Sheet 206, dated October 18, 2007, and marked as Exhibit 26 of the record (collectively, the "Plans"); except as modified by the guidelines, conditions, and standards of this Zoning Commission Order.

2. The Modified PUD shall have a maximum building height of 64 feet – 6 inches, a maximum density of 3.3 FAR, approximately 600 dwelling units (plus or minus 7%), a minimum of .8 parking space per unit, and loading for the project as shown on the Plans.
3. 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 building on the Property:
 - a. McKinley Technology High School. The Applicant shall make a contribution of \$20,000 to the McKinley Tech Fund.
 - b. 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 of new equipment and supplies substantially similar to those described in the facsimile filed with the Zoning Commission on October 18, 2007, and marked as Exhibit 26 of the record.
 - c. 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 façade improvement program with initial emphasis on the Eckington portion of the North Capitol Street corridor.
 - d. Eckington Civic Association. The Applicant shall contribute \$20,000 to the Eckington Civic Association. The contribution shall specify that the funds may only be 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.

- e. 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.
- f. 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.
- g. 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.
- h. Edgewood Civic Association. The Applicant shall contribute \$20,000 to the Edgewood Civic Association, which will be used to cover the cost of printing and distributing the Association's quarterly newsletter, donations of equipment to the Harry Thomas Recreation Center and the Edgewood Recreation Center, donations to the PTSA for the Emery and Shad Elementary Schools for student and parent enrichment programs, grants to senior citizens for snow removal and safety maintenance of their homes, summer festival for youth in the community, and community beautification projects.

4. 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 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 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.
5. The Applicant shall abide by the Development and Construction Management Plan, dated October 2, 2007, and filed with the Zoning Commission on November 2, 2007, and marked as Exhibit 32 of the record.
6. The project shall include five on-street parking spaces for exclusive use by Zip Car or a similar car-sharing company. Two of the five cars provided in the project shall be

reserved for hybrid or low emissions vehicles. Two of the car-sharing parking spaces shall be provided at the time of the construction of Building 100 and the Q Street extension.

7. No through-wall HVAC systems shall be permitted in any of the buildings and no EIFS shall be used on any of the buildings.
8. 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.
9. The project shall include eight percent (8%) of the residential gross floor area available for sale (approximately 47,409 square feet) as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit F of the Application Statement filed June 7, 2007, and marked as Exhibit 2 of the record. 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.
10. The Applicant shall enter into an agreement with DDOT and OPGD for a monetary contribution by the Applicant in the amount of \$55,000 for the construction of a connection to the Metropolitan Branch Trail, consisting of a ten (10) foot wide path, pedestrian solar scale lighting, and call box(es). No building permit for the project shall be issued until DDOT provides a written statement to the Zoning Administrator acknowledging receipt of said contribution.
11. 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 Property.
12. The project shall include approximately 1,200 square feet of community office space in a high-visibility location along Harry Thomas Way.

13. The Modified PUD shall have approximately 1,000 square feet of ground floor retail at Eckington Place, N.E. and Harry Thomas Way, N.E.
14. Prior to the issuance of a building permit for the modified PUD, 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 D of the Supplemental Filing filed by the Applicant on September 28, 2007, and marked as Exhibit 19 of the record, subject to the agency's acceptance of said instrument.
15. Prior to the issuance of a building permit for 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 E of the Supplemental Filing filed by the Applicant on September 28, 2007, and marked as Exhibit 19 of the record.
16. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To have a side yard of 5'-1" for Buildings 100 and 200, where a minimum of 10'-10" is required;
 - b. To have the flexibility to enlarge the courts for Buildings 200 and 300, but in no case shall the courts be smaller than depicted in the architectural drawings for the Modified PUD;
 - c. 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;
 - d. 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
 - e. 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.
17. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23A. 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 three residential buildings. The filing of the building permit application shall vest

the Zoning Commission Order. If the building permit application does not include all three 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 Modified PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.

18. 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.
19. The change of zoning from the M Zone District to the C-3-A 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.
20. The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (the "Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the 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 that is prohibited by the Act. In addition, harassment based on any of the above protected categories 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. 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 Zoning Commission Order.

On October 18, 2007, the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Anthony J. Hood, Gregory Jeffries, Curtis Etherly, and Michael Turnbull to approve; John G. Parsons not present, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on November 19, 2007, by a vote of 4-0-1 (Anthony J. Hood, Gregory Jeffries, Curtis Etherly, and Michael Turnbull to adopt; John G. Parsons having not participated, not voting).

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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 JAN 25 2008.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., May 7, 2007

Plot for Building Permit of SQUARE 3578 LOT 815

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

Receipt No. 07669

Furnished to: HOLLAND & KNIGHT

George M. Dinsdale
Surveyor, D.C.

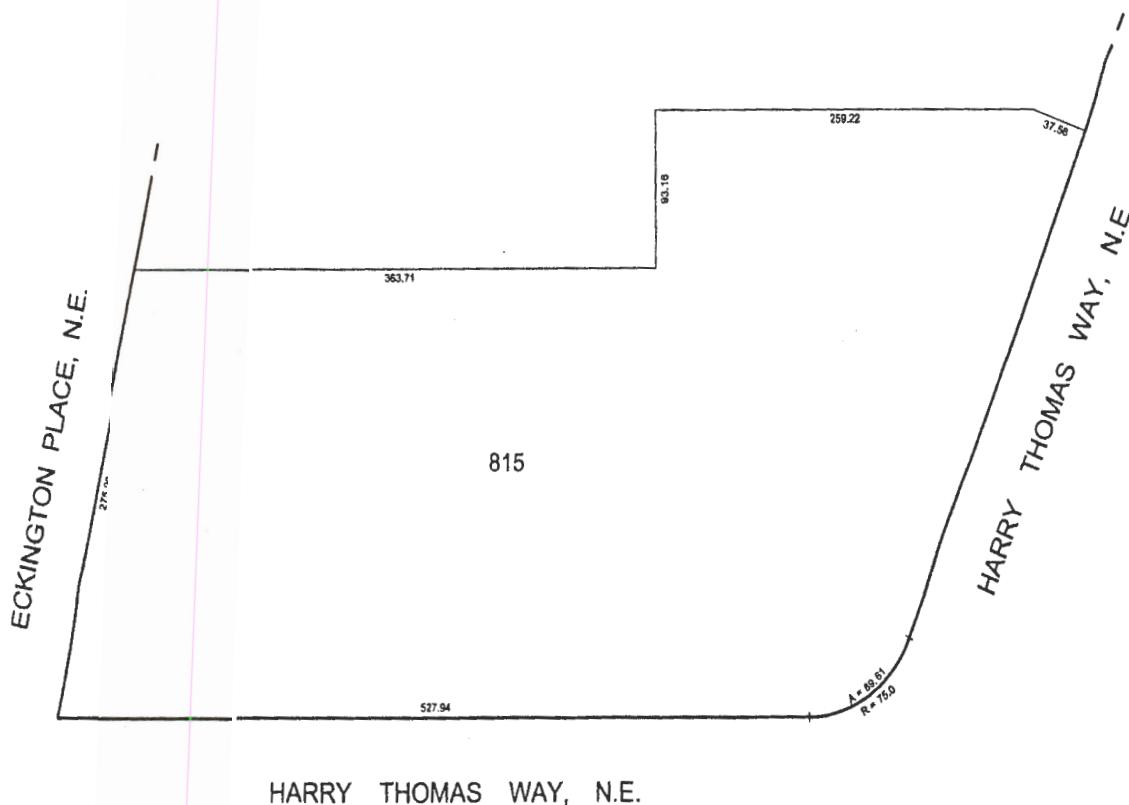
By: D.M. *[Signature]*

I hereby certify that all existing improvements shown herein, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted; that with plans accompanying the application for the Building Permit, the surveyor has plotted the same in dimensions and accordance to the same scale as the property lines shown on this plot; and that by reason of the proposed improvements to be erected as shown herein the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and vending, and it is further certified and agreed that accessible parking area, where required by Zoning Regulations, will be provided in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned herein. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade steeper than one of 10% at any point on private property in excess of 20% for single family dwellings or 10% or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 10% across the public parking and the private restricted property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



HARRY THOMAS WAY, N.E.

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