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200128	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 02-38B (Waterfront Associates, LLC & the District of Columbia)	3/19/2010 Vol 57/12	3/15/2010 14:51:21
200031	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 06-02A (Petworth Holdings, LLC)	3/19/2010 Vol 57/12	3/15/2010 14:50:25

ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

ZONING COMMISSION
District of Columbia
CASE NO.06-01A
EXHIBIT NO.8

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-01A/06-01B
Z.C. Case Nos. 06-01A and 06-01B
(Steuart-H Street, LLC – Time Extension and Modification
to the Approved Planned Unit Development at Square 776)
January 11, 2010

This Order concerns two requests. The first is a request to extend the deadline for filing an application for a building permit and for starting construction of a planned unit development (“PUD”) at Square 776. The request was filed on July 7, 2009, prior to the expiration of the PUD on approval, and was assigned Zoning Commission Case No. 06-01A.

The second request was filed on August 31, 2009, and sought to modify the PUD and its approved plans to reduce the height, bulk, and number of parking spaces for the project. As proposed, the modified PUD would have a maximum height of 75 feet, a maximum gross floor area of 250,160, a maximum density of 4.11 floor area ratio (“FAR”), and parking reduced to 270 spaces. This matter was assigned Case No. 06-01B.

Pursuant to 11 DCMR § 2408.10, Steuart-H Street, LLC (the “Applicant”) served a copy of the time extension request on Advisory Neighborhood Commission (“ANC”) 6C, the only party to the original application. The ANC did not respond to the extension application during the 30-day review period provided for in that rule.

The time extension request came before the Zoning Commission for the District of Columbia (the “Commission”) at its public meeting on September 14, 2009. A hearing on a time extension request is required, “only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD proceedings concerning any of the criteria” for approval. (11 DCMR § 2408.12.) Since no conflict was raised, no hearing was scheduled. Instead, the Commission voted to defer acting on the request until after it took proposed action on the modification, which it also set down for a hearing at that same meeting.

The hearing on the proposed modification was held on November 30, 2009. The parties were the Applicant and ANC 6C, the ANC within which the property is located. At the conclusion of the public hearing, the Commission took proposed action to approve the modification application and plans that were submitted to the record.

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 report dated December 30, 2009, found that the proposed PUD would not be inconsistent with the Comprehensive Plan for the National Capitol nor would it adversely affect any other identified federal interests.

In response to the Commission vote on proposed action, the Applicant, by letter dated January 6, 2010, withdrew the time extension request. The Applicant advised the Commission that the filing of the time extension request was only, “intended to preserve the rights under the approved PUD in the event the Commission did not approve the modification.” The Commission’s vote

on proposed action now made "further consideration of [the time extension request] unnecessary".

Had the Commission honored the Applicant's request, it would have been required to deny the modification. The Applicant apparently believes that the Commission's grant of a PUD modification automatically restarts the time by which a building permit must be requested. Thus, any vote by the Commission to change or delete a condition or to modify a PUD's design in any respect would automatically restart the two-year period to obtain a building permit; even if none of the criteria for granting a time extension were met.

The Commission disagrees. This is not an instance where the Applicant has submitted an application that so changed the PUD that it could not properly be considered a modification. If such a replacement PUD had been sought and granted, the time for obtaining a building permit would indeed have been automatically reset. In this instance, the Applicant characterized these revisions as a modification to, rather than a replacement of, an existing PUD.

As such, the time periods for obtaining a building permit and commencing construction under the modified plans are unaffected, unless the Commission votes "to extend the time periods upon the filing of a written request by the applicant before the expiration of the approval". (11 DCMR § 2408.10.) A withdrawal of a time extension request has the same effect as its denial. The PUD will expire, leaving nothing to modify.

At its regularly scheduled public meeting held January 11, 2010, the Commission chose not to give effect to the withdrawal requested, but instead, for the reasons explained below, granted the time extension and took final action to approve the modification application.

FINDINGS OF FACT

The Approved PUD

1. By Order No. 06-01, dated December 11, 2006, effective October 12, 2007, the Commission approved the consolidated PUD and related map amendment from C-2-A to C-2-B for Square 776, Lots 9, 25-31, 51-53, 800, and 821 and the closed portions of the public alley in the square. The property has since been subdivided into a new single record lot and is now known as Lot 54 in Square 776 (the "Property").
2. The Property consists of approximately 60,870 square feet of land area and is located in the block bounded by 3rd, 4th, H, and I Streets, N.E. The Property fronts on 3rd, 4th, and H Streets.
3. The approved development contained 210 to 250 apartment units and approximately 46,479 square feet of gross floor area devoted to retail and service uses, including a grocery store of approximately 43,972 square feet plus additional loading and support space. The building was approved with a maximum height of 90 feet. The total gross

floor area of the project was approved at approximately 287,930 square feet and the overall density of the project was 4.8 FAR. The project was approved with approximately 400 parking spaces.

Extension Request

4. The District of Columbia and the United States are in the most significant economic downturn in decades. Despite the Applicant's diligent good faith efforts, there is simply no financing for the original or modified proposed project ("Project") at this time.
5. The Applicant has, over the past two years, sought financing from a number of different sources and has been unable to obtain the necessary commitments to allow the project to proceed. Thus, there is not sufficient project financing for the project to move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.
6. The Applicant has also encountered particular difficulties in securing a tenant for the required grocery store space. The Applicant intends to move forward with the approved project as soon as sufficient financing is obtained and no later than two years after the effective date of this Order.
7. There have been no substantial changes in the material facts upon which the Commission relied in approving the original application. The Future Land Use Map of the 2006 Comprehensive Plan designates the subject property for mixed-use development including medium-density residential uses and moderate-density commercial uses, which is fully consistent with the approved PUD and C-2-B zoning.

Modified PUD Project

8. The PUD project, as modified, will continue to be a mixed-use development. The building will consist of a ground-floor grocery store and other retail with residential use on the floors above. Underground parking will provide 270 parking spaces, sufficient to supply the commercial tenants, customers, and residents without creating overflow parking in the nearby residential neighborhoods.
9. The main entrance to the residential building will continue to be located at the center of the block on H Street. The main entrance to the grocery store, consistent with the approved plan, will be at the corner of 3rd and H Streets. There will continue to be a separate entrance to the other retail use on the east end of the block on H Street. The entrance to the parking garage and loading facilities for the grocery store in the modified design will be located off 3rd Street in the same location as originally approved. Loading for the other retail use and residential use will be located off of 4th Street in the same location as originally approved.

10. The design of the proposed alternative scheme reflects the same architectural vocabulary and massing of the approved PUD. The façade details have been adjusted to reflect the removal of two residential floors and the reduction in the maximum building height from 90 feet to 75 feet. The mezzanine level in the grocery store has been eliminated. Additionally, minor adjustments have been made to the interior courtyard configuration, with two skylights removed. A pergola has been added to the courtyard, and the size of the roof terrace has been reduced from approximately 10,000 square feet to approximately 7,500 square feet. Finally, the façade treatment above the parking entrance on H Street has been refined to be consistent with the architectural vocabulary of the recently restored Landmark Lofts condominium project located directly across 3rd Street.

Development Flexibility and Incentives

11. The Applicant requested flexibility from the following requirements:
 - a. *Roof Structures.* The Applicant requested flexibility from the provisions of §§ 411 and 770.6 that require the roof structures to be in a single enclosure and set back from all exterior walls at a 1:1 ratio and that the enclosure be of uniform height. Separate mechanical penthouses were proposed to provide more efficient distribution of mechanical systems and to reduce the mass of the structures on the roof. Due to the narrowness of the building wings and the requirements of the mechanical systems, some of the penthouses will not meet the required setback and will be located in multiple structures. Also, to reduce their visibility, some of the roof structures will not have walls of equal heights. As indicated in Z.C. Order No. 06-01, the Commission granted the same flexibility for the approved project.
 - b. *H Street Overlay.* The Applicant requests flexibility from certain provisions of the H Street NE Neighborhood Commercial Overlay. First, § 1324.2 of the Zoning Regulations provides that buildings must be designed and built such that not less than 75% of the streetwall(s) to a height of not less than 25 feet must be constructed to the property line abutting the street right-of way, and that buildings on corner lots must be constructed to both property lines abutting public streets. However, in order to provide a four-foot setback from the H Street right-of-way, the Applicant seeks relief from the provisions of § 1325.1. Second, the Applicant requests flexibility from § 1324.11, which requires commercial entrances every 40 feet. However, instead of providing the eight entrances required, the Applicant proposes to provide four entrances due to the size and location of the proposed grocery store's footprint. As indicated in Z.C. Order No. 06-01, the Commission granted the same flexibility for the approved project.

- c. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
- i. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet 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, based on availability at the time of construction, without reducing the quality of the materials;
 - iii. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - iv. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified;
 - v. To be able to provide a range in the number and mix of residential units between 192 and 232 residential units; and
 - vi. To vary the distribution and amount of the retail square footage of the project, provided the total retail square footage does not exceed 46,455 square feet and the grocery store has a minimum square footage of 40,000 square feet.

Public Benefits and Amenities

12. The Commission finds that the following benefits and amenities will be created as a result of the modified PUD Project:
- a. *Urban Design, Architecture, Landscaping, and Open Space.* The Applicant has presented an appropriate architectural design for the project that includes a number of features that will benefit both the H Street corridor and the surrounding residential neighborhoods. These benefits include an architectural design that is fresh, while seeking to complement the existing contextual setting in both form and materials. Particular attention has been paid to creating an active, urban retail streetscape, celebratory architectural forms for the corner at 3rd and H Streets and the residential entrance on H Street, and an overall sculpting of the building's massing in accordance with the surrounding neighborhood. For the entire length

of H Street frontage, the building will be set back from the property a distance of approximately four feet in order to increase the width of the sidewalk. This additional width will enhance the pedestrian experience by allowing more sidewalk space.

The building façades were designed in a style that complements and respects the adjacent buildings, particularly those with a distinct historic character. The façades on the principal street fronts of 3rd and H Streets will employ a framing armature of brick complemented with substantial glazed openings. The style of the fenestration will differentiate between the retail and residential floors, allowing for a unique expression of those two uses. The design includes an architectural embellishment at the corner of 3rd and H Streets to accentuate that location as a gateway to the commercial opportunities along H Street and beyond. The design proposal also includes improvements to the streetscape and adjacent alleys. These improvements will include paving for the sidewalks, street lighting fixtures, tree boxes, bike racks, and trash receptacles.

- b. *Site Planning and Efficient and Economical Land Utilization.* The Project was designed such that its primary bulk will be on H Street, away from the nearby residential community. The building design will provide relief to the adjacent neighborhood by having the building transition down from the maximum height of 75 feet to lower levels as it approaches neighboring properties at different locations, as shown on the approved plans. The Applicant also proposes improvements to the remaining alley system in Square 776. In particular, the PUD building will be set back from the property line along the alley, so that the alley effectively will be widened and, in most areas, the available passageway will be more than doubled. The Applicant will pave this additional area in the alley to allow more efficient ingress and egress. In addition, the building will be set back four feet from H Street to allow for a wider sidewalk and easier pedestrian passage. The Applicant will also provide significant open space for residents at the second story terrace and a roof deck.
- c. *Transportation Features.* The project offers several transportation management measures and provides increased density at a site well-served by bus routes and a future streetcar line. First, 3rd and H Street is located along three bus routes and is approximately one-third of a mile from the Union Station Metrorail Station. 3rd and H Street's location next to Union Station provides significant opportunities for public transportation use with Metrorail, Metrobus, and local and regional trains, all serving Union Station. This proximity will result in a significant proportion of site trips being made by mass transit or other non-passenger car modes. Moreover, as a part of the Great Streets Initiative, streetcar tracks are currently being constructed on H Street, and the proposed development will help to increase residential density and shopping opportunities along the streetcar lines.

Second, the project will include a parking garage that will accommodate approximately 270 cars. Third, the eastern branch of the Metropolitan Branch Trail, which connects Union Station and Takoma Park and provides access to Capitol Hill, is only two blocks to the west. Fourth, as discussed in more detail below, the Applicant has agreed to implement a number of transportation demand management measures. Thus, as the Commission previously found, the project will not adversely impact the traffic situation for the area.

- d. *Employment and Training Opportunities.* The 3rd and H Street revised project will promote residential, retail, and commercial development at an appropriate location that will add to the economy of the District as well as provide expanded employment opportunities for District residents. The Applicant has committed to work with the Department of Employment Services ("DOES") to execute a First Source Employment Agreement and with the D.C. Department of Small and Local Business Development ("DSLBD") to execute an agreement.
- e. *Housing.* The project will create additional housing stock as encouraged by the City. Approximately seventy percent of the units will be one bedroom units, approximately six percent of the units will be one bedroom and den units, approximately 18% of the units will be two bedroom units and approximately six percent of the units will be studio units. The project will include approximately eight percent of the gross floor area devoted to residential use as affordable units to households making no more than 80% of the area median income. The Commission notes that although the gross floor area of the project is decreasing from that approved pursuant to Z.C. Case No. 06-01, the amount of gross floor area dedicated to affordable units is increasing under the revised design.
- f. *Special Value to the Neighborhood.* The revised project will add special value to the surrounding neighborhood by bringing a grocery store and new retail development that will serve the community. Moreover, the H Street Overlay specifically encourages a grocery store in Square 776.
- g. *Environmental Benefits.* The proposed development will help to ensure the environmental, economic, and social sustainability of the residents and building users through the implementation of sustainable design features. The Applicant's goal is to provide a high-quality development that will promote a healthy living environment, reduce life cycle costs for long term property management, promote efficient utility costs for residents, and create a synergy that will enhance interest in practical green building in the community. Thus, the Applicant has committed to provide sustainable building design features such that the building meets the standards for certification as a LEED-Certified building.

13. By report dated September 4, 2009, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the modification application. (Exhibit 12.)
14. By report dated November 20, 2009, OP recommended final approval of the modification application. (Exhibit 22.) OP indicated that the proposal would further a number of the guiding principles of the Comprehensive Plan, and that the application is consistent with major policies from various elements of the Comprehensive Plan, including the Land Use Element, the Transportation Element, and the Capitol Hill Area Element. OP also indicated that the proposed development as modified is not inconsistent with the Comprehensive Plan's land use designations for the Property. OP also found that the proposed modification is not inconsistent with the H Street, NE Strategic Development Plan, particularly since redevelopment of the 3rd and H Street intersection is listed as a key issue in the H Street Plan, and infill development on the 300 block is vital to the success of the overall plan. The Commission concurs with the findings and recommendations of OP.
15. OP testified in support of the modification application at the public hearing.

DDOT Report and Testimony

16. By report dated November 20, 2009, the District Department of Transportation ("DDOT") indicated that it conditionally supports the modification application. DDOT requested that the Commission require the Applicant to: further reduce the amount of proposed parking; follow DDOT's policy for a transportation demand management program; prohibit queuing into the site; require the Applicant to conduct an evaluation of the surrounding sidewalks within a two-block radius to determine their adequacy; provide more bicycle parking spaces; and provide 30-foot loading berths instead of 55-foot loading berths. (Exhibit 24.)
17. Consistent with this report, DDOT also testified in conditional support of the modification application at the public hearing.
18. The Commission notes that by report dated June 28, 2006, and marked as Exhibit 37 of the record in Case No. 06-01, DDOT stated it had no objections to the original project, which was much larger and included 130 more parking spaces than proposed in the revised design.
19. Based upon the testimony of the Applicant's expert in transportation analysis and planning, DDOT's June 28, 2006 report, DDOT's responses to questions from the Commission at the public hearing, and the materials and information presented by the Applicant at the hearing, the Commission finds that the Applicant has already reduced the amount of parking for the project from 400 to 270 spaces. The Commission further finds that the amount of proposed parking, which amounts to a ratio of 0.69 spaces per

dwelling unit and 3.00 spaces per 1,000 square feet of retail, is consistent with both the amount of parking approved by this Commission in recent cases, and is less than the parking ratios currently recommended as part of the Zoning Regulations revision process. The Commission also finds that due to the location of the garage ramp and access point, the majority of any queuing will occur within the building.

20. The Applicant has agreed to provide a number of transportation demand management measures, including an on-site transportation coordinator; an on-site freight manager; SmarTrip cards for the initial residential tenants for the initial lease; bicycle parking; telecommuting incentives; and the dissemination of information regarding public transportation options. The Applicant has also agreed to provide between 80-90 bicycle spaces within the building, and exterior bike racks adjacent to the site on 4th Street. The Applicant has also agreed to reduce the size of the loading berth to 30 feet for the residential portion of the building. However, based upon the testimony presented at the hearing, the Commission finds that commercial 55-foot loading berths are necessary to accommodate the proposed grocery store use. Finally, the Commission concludes that the Applicant is not required to conduct an evaluation of the surrounding sidewalks to determine their adequacy since DDOT is responsible for the paving and maintenance of public sidewalks.

ANC REPORT

21. ANC 6C submitted a letter dated October 19, 2009, indicating that at the duly noticed and regularly scheduled public meeting on October 14, 2009, at which a quorum was present, ANC 6C voted unanimously 9-0-0 to support the application and the requested modifications. (Exhibit 25.)

CONCLUSIONS OF LAW

Time Extension

1. The Applicant is requesting that its time for filing for a building permit pursuant to plans approved by the Commission be extended by two years, with construction under the approved plans to begin a year thereafter.

Procedural rulings.

2. As a preliminary matter, the Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving ANC 6C, the only party in the original PUD proceeding, with a copy of the request.
3. The Commission did not take action on the request until after the party had the requisite 30 days to respond. As noted, no response was received.

4. In addition, § 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
5. The Commission concludes that a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

The merits of the request.

6. Pursuant to § 2408.8 of the Zoning Regulation, the final PUD approved by the Commission is valid for a period of two (2) years, within which time an application shall be filed for a building permit.
7. Construction shall start within three (3) years of the date of final approval. 11 DCMR § 2408.9.
8. Failure of an applicant to complete a proposed development within the time limits set by the Zoning Regulations results in the termination of the benefits granted under the application, and reversion of the zoning controls to the pre-existing regulations and map. (11 DCMR § 2400.7.)
9. The Commission may extend these time periods for good cause shown upon the filing of a written request by the applicant before the expiration of the approval. (11 DCMR § 2408.10.)
10. There must, however, be no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original. (*Id*).
11. Of the three criteria that can be used to show good cause is, the Applicant is relying upon its, "inability to obtain sufficient project financing for the PUD, following ... diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant' s reasonable control." (11 DCMR § 2408.11.)
12. The Commission finds there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
13. As to good cause, the Applicant met its burden of proof by presenting substantial evidence of its inability to obtain sufficient project financing for the PUD, following

the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

14. The Commission therefore grants the time extension request, with the two-year period to file an application for a building permit under approved plans beginning upon the effective date of this Order.

PUD Modification

15. Having determined that the Applicant's request for a time extension may be granted, the Commission can now consider whether the PUD should be modified in the manner requested.
16. 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.)
17. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a modification to a previously-approved consolidated PUD and related Zoning Map Amendment. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in § 3030. (11 DCMR § 2409.9.) The Commission treated this modification request as a second-stage PUD application.
18. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
19. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
20. The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations. The modified PUD, as approved by the Commission, complies with the

applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.

21. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
22. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development 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 Map of the District of Columbia.
23. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 6C voted unanimously to support the modification application and recommended that the Commission approve the application. (Exhibit 25.) The Commission has given ANC 6C's recommendation great weight in approving the modification application. ANC 6C did not respond to the extension application.
24. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
25. The application for the modified 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 (1) the application for an extension of the time to file for a building permit and begin construction of this PUD pursuant to plans approved by the Commission; and (2) the application for modifications to the approved planned unit development located at Lot 54 in Square 776, and the continuation of the PUD-related map amendment from the C-2-A to C-2-B approved in Zoning Commission Order

06-01. The approval of the modified PUD and the continuation of the related map amendment is subject to the following conditions, which supersede the conditions stated in Order No. 06-01:

1. The project shall be developed in accordance with the plans prepared by Torti Gallas and Partners, Inc. last dated August 31, 2009, marked as Exhibit No 5 of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The project shall contain approximately 250,160 square feet of gross floor area, including approximately 203,705 square feet devoted to residential use and approximately 46,455 square feet devoted to retail use, including a grocery store. The total project shall have a maximum overall density of 4.11 FAR.
3. The maximum height of the building shall be 75 feet, as shown on the Plans. The building may include roof structures in excess of that height, with a height not to exceed 18.5 feet above the roof upon which they are located, as shown on the Plans.
4. The project shall include approximately 270 parking spaces, with 146 spaces allocated for the residential use and 124 spaces allocated for the retail uses.
5. The project shall include two 55-foot loading berths for the grocery store, one 30-foot loading berth for the residential use, and two 20-foot service/delivery/loading spaces, as shown on the Plans. Trucks using the residential loading berth shall not exceed 30 feet in length. Residential loading shall not occur before 9:00 a.m.
6. The Applicant shall implement the Transportation Management Plan outlined on pages 12-13 of the Transportation Impact Analysis included as Exhibit H of the Applicant's Prehearing Statement, marked as Exhibit 14 of the record in Case No. 06-01B.
7. The Applicant shall include landscaping for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping for the duration of the Project. Any landscaping installed by the Applicant in the public space adjacent to the Property shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping in the public space for the duration of the project.
8. The Applicant shall provide sustainable building design features such that the building meets the standards for certification as a LEED-Certified building.
9. The project shall include 16,296 square feet of residential gross floor area devoted to affordable housing. The affordable units shall be affordable to households earning no more than 80% of the area median income. The affordable units shall be distributed vertically and horizontally throughout the residential portion of the building and shall not

be overly concentrated on any floor of a project. However, the Applicant shall have the right to reserve the top two floors of the building exclusively for market-rate units.

10. The Applicant is granted flexibility from the roof structure (§§ 411 and 770.6) and H Street Overlay provisions regarding streetwalls (§1324.2) and the location of building entrances (§1324.11), consistent with the PUD Tabulations of the Plans.
11. A minimum of 40,000 square feet of gross floor area shall be devoted to a grocery store.
12. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - i. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet 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, based on availability at the time of construction, without reducing the quality of the materials;
 - iii. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia building code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - iv. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified;
 - v. To be able to provide a range in the number and mix of residential units between 192 and 232 residential units; and
 - vi. To vary the distribution and amount of the retail square footage of the project, provided the total retail square footage does not exceed 46,455 square feet and the grocery store has a minimum square footage of 40,000 square feet.
13. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.

14. No building permit shall be issued for this PUD until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") evidence that the Applicant submitted a signed agreement to the D.C. Department of Small and Local Business Development ("DSLBD") and a signed agreement to the Department of Employment Services ("DOES") both in the form submitted in Case No. 06-01 and also included as Exhibit A of the Applicant's Prehearing Statement, marked as Exhibit 14 of the record in Case No. 06-01B.
15. The extension of the approved PUD shall be for a period of two years from the effective date of this Order. The PUD approved by the Commission, as modified pursuant to this Order, shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
16. 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, 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 also 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 the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On November 30, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the Application at the conclusion of its public hearing by a vote of 4-0-1 (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III, not present, not voting).

On January 11, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **APPROVED** the time extension of Z.C. Order No. 06-01 at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III, not present, not voting).

On January 11, 2010, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-0-1 (Anthony

J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William, W. Keating, III, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on March 19, 2010.