GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 06-04

As Secretary to the Commission, I herby certify that on JUN 1 1 2007 copies of this Z.C. Order No. 06-04 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia
CASE NO. 06-04
EXHIBIT NO. 56

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04
Z.C. CASE NO. 06-04
Consolidated Planned Unit Development and Related Zoning Map Amendment for Florida & Q Street, LLC (Square 3100, Lot 48)
January 8, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 27, 2006, to consider an application from Florida & Q Street, LLC for consolidated review and approval of a planned unit development and a related zoning map amendment from C-2-A to the C-2-B District for Square 3100, Lot 48 (the "Site"). The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On February 2, 2006, Florida & Q Street, LLC (the "Applicant") filed an application with the Zoning Commission for consolidated review and approval of a planned unit development ("PUD") for Square 3100, Lot 48 and a related amendment to the Zoning Map from the C-2-A to the C-2-B District for the Site.

2. At its public meeting held on April 20, 2006, the Commission voted to schedule a public hearing on the application.

3. On May 22, 2006, the Applicant submitted a Pre-Hearing Statement, along with revised Architectural Plans and Elevations, marked as Exhibit 21 of the record in this case (the "May 2006 Plans").

4. On July 7, 2006, the Applicant submitted a Supplemental Pre-Hearing Submission, along with further revised Architectural Plans and Elevations (the "July 2006 Plans") and the final Traffic Impact Analysis, marked as Exhibit 32 and Exhibit 33, respectively. The July 6, 2006 Plans, which superseded the May 2006 Plans, incorporated refinements to the massing of the building, enhanced detail to the facades and brickwork, as well as modifications to the detailing of the corner element of the building.

5. After proper notice, the Commission held a public hearing on the application on July 27, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 5C, the ANC within which the property is located.

6. The Applicant presented three witnesses at the hearing: Joe Mamo, on behalf of the applicant; Bill Bonstra, of the architectural firm of Bonstra Haresign Associates; and Osborne George, with the firm of O.R. George & Associates, Inc., as the traffic consultant. Also present to testify in support of the application were Fred L. Greene, with the firm of FLGA LLC, as a land planner and Eric Smart, with the firm Bolan Smart Associates, as a land economics consultant. Messrs. Bonstra, George, Greene, and Smart were all accepted as experts in their respective fields.

7. ANC 5C submitted a resolution, dated July 6, 2006, indicating its support for approval of the application. (Exhibit 29) ANC 5C also submitted a resolution adopted on September 19, 2006 in further support of the application. (Exhibit 51)

8. Ten persons testified in support of the project, including Steve Reineke of the Eckington Civic Association; Kellee Baker; Commissioner Tom Fulton, the ANC single-member district representative for the area in which the property is located; Commissioner Debbie Smith of ANC 5C; Nicole Cober, owner of the Soul Day Spa and Salon; Eartha Isaac, President of the Eckington Civic Association; Michael Clark, President of the Edgewood Civic Association; Commissioner James Berry of ANC 5C; Commissioner Marshall Phillips, Vice Chairman of ANC 5C; and Arthur Slater, Chair of the Fifth District Citizens' Advisory Council. The record contains letters of support of the project, including letters from Councilmember Vincent B. Orange. Some persons in support of the project raised concerns regarding traffic and parking in the neighborhood, community involvement in the project, and public safety.

9. There were no parties in opposition.

10. Milton Dorsey testified as a person in opposition. Mr. Dorsey also filed a written version of his testimony (Exhibit 50).

11. The Applicant submitted a Post-Hearing Submission on August 24, 2006 (Exhibit 49), which included information requested by the Zoning Commission at the close of the public hearing.

12. At its public meeting held on September 25, 2006, the Commission requested that the Applicant submit further refinements to the design of the building's façade.

13. On October 25, 2006, the Applicant submitted three alternative elevations as well as a narrative describing the proposed alternatives, marked as Exhibit 52, for the Commission to review and consider.

14. At its public meeting on November 13, 2006, the Commission took proposed action by a to approve with conditions the application and plans that were submitted to the record.

15. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated December 1, 2006, found the proposed PUD and related map amendment 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.

16. The Zoning Commission took final action to approve the application on January 8, 2007.

The PUD Project

17. The proposed PUD (or "Project") contemplates the construction of a mixed-use development having a combined gross floor area of approximately 85,428 square feet and two levels of underground parking. Approximately 81,428 square feet will be devoted to residential use, providing between 65 and 85 dwelling units, and approximately 4,970 square feet of floor area will be provided for retail use in the cellar. The Project will have a maximum density of 4.5 FAR and a maximum building height of 86 feet at the corner of North Capitol Street and Florida Avenue, with substantial setbacks at the 65-foot level on all street fronts. The required parking under the Zoning Regulations is 26 parking spaces. The Project will provide 84 parking spaces. Access to the parking garage and the loading dock area will be from Florida Avenue.

18. The Site, which contains a land area of 18,984 square feet, is currently vacant and unimproved. The Site is currently zoned C-2-A. The Site is prominently located at a major intersection along the eastern edge of the Florida Avenue commercial corridor and North Capitol Street. Moreover, the Site is located approximately 2,200 feet from the entrance to the New York Avenue Metrorail Station. North Capitol Street, which has a width of 130 feet, and Florida Avenue, which has a width of 80 feet, are major through streets and are serviced by six Metrobus routes. The existing buildings that occupy the same square are composed of two-story single- and multi-family townhouse dwellings and a five-story multi-family apartment building fronting Florida Avenue at the west end of the square. Existing structures on the surrounding squares are composed of mixed-use, moderate density commercial buildings and moderate-density single-family and multi-family dwellings.

19. The Generalized Land Use Map of the Comprehensive Plan designates the Site as low-density commercial, and the Policies Map designates it as a local neighborhood commercial center. According to the Policies Map, the Site is located diagonally across the intersection from the Northeast No. 1 / Eckington Yards Special Treatment Area.

20. The proposed project is consistent with the surrounding zoning and land uses. The general area reflects a mix of moderate-density residential and relatively low-density commercial uses. The square to the southeast of the Site is located in the North Capitol Receiving Zone for transferable development rights ("TDRs") and thus could be developed to a maximum height of 130 feet and a density of 10.0 FAR, assuming the acquisition of TDRs. Directly to the north and south of the Site along North Capitol Street is a commercial area zoned C-2-A. To the northwest and northeast off of North Capitol Street are residential neighborhoods zoned R-4. East of the Site, along the north side of Florida Avenue, the C-2-A District becomes C-M-2 with warehouse facilities, the XM Satellite Radio building and the Federal Express Distribution Center. The south side of Florida Avenue in this area is zoned C-3-C, and there is an existing high-rise office building at 64 New York Avenue, N.E. This area east of the Site is also within the Northeast No. 1 / Eckington Yards Special Treatment Area.

21. To the south of the Site, the east side of North Capitol Street is zoned C-3-C, which area includes the parking lot for the large office building. The west side of North Capitol Street continues as a commercial area zoned C-2-A. The area west of the Site along Florida Avenue is also zoned C-2-A. There are mainly two-story row structures interspersed with a gas station on the south side of Florida Avenue and a five-story multi-family building at the corner of Florida Avenue and Quincy Street. A small park is also located along this section of Florida Avenue. Several gas stations are located on Florida Avenue both east and west of the Site.

Matter-of-Right Development under Existing Zoning

22. The C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses. (11 DCMR § 720.2) The C-2-A District permits development to medium proportions, a maximum height of 50 feet (with no limit on the number of stories), and a maximum density of 2.5 FAR. (11 DCMR §§ 770.1, 771.2) A mixed-use commercial/residential building in the C-2-A District is permitted as a matter of right. Parking is required at a rate of one space for each 600 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; one space for each 300 square feet of gross floor area and cellar floor area in excess of 3,000 square feet for retail use; and one space for every two dwelling units. (11 DCMR § 2101.1) A total density of 47,460 square feet is permitted as a matter-of-right with commercial density of 28,476 square feet permitted with additional residential density of 18,984 square feet also permitted. A PUD in the C-2-A District may have a maximum height of 65 feet (with no limit on the number of stories) and a maximum density of 3.0 FAR (or 56,954 square feet at the Site). (11 DCMR §§ 2405.1, 2405.2)

Matter-of-Right Development Under Proposed Zoning

23. Under the proposed PUD, the zoning of the entire Site will be C-2-B. The C-2-B District is designated to serve commercial and residential functions similar to the C-2-A District. (11 DCMR § 720.6) The zone permits a maximum height of 65 feet (with no limit on the number of stories) and a maximum density of 3.5 FAR. (11 DCMR §§ 770.1, 770.2) Under the PUD guidelines for the C-2-B District, the maximum height is 90 feet and the maximum density is 6.0 FAR. (11 DCMR §§ 2405.1, 2405.2) Parking is required in the C-2-B District at a rate of one space for each 1,800 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; one space for each 750 square feet of gross floor area in excess of 3,000 square feet for retail use; and one space for every three dwelling units. (11 DCMR § 2101.1)

24. Commercial development of 28,476 square feet is permitted on the Site as a matter of right under C-2-B. Additional residential development of 37,968 square feet is also permitted as a matter of right. If the Site were developed entirely with residential development, 66,444 square feet would be permitted as a matter of right on the Site under the proposed C-2-B zoning.

Development Flexibility and Incentives

25. The Applicant requested flexibility from the following requirements:

    a. *Court Width.* The Applicant requested relief from the court regulations. The width of the planned closed court along the northern property line will be 15.2 feet. Pursuant to the Zoning Regulations, the width of the court must be 4 inches for every foot of building height. The height of the building will be 64 feet and, therefore, the required width of the court would be 21 feet. The Applicant planned to provide more open space at the rear of the property to allow for additional buffer to the nearby residences and, therefore, would like to provide the court space. However, the Applicant could not increase the width of the court by the additional six feet to meet the requirement. The Applicant set back the planned court as much as possible, but the 58-foot-wide proposed building will be much less than what is generally designed for a double-loaded residential building, which is typically between 70 and 75 feet. Thus, in order to meet the required court width, the width of the building would have to be further reduced from 58 feet, which would render the proposed wing unusable for a residential layout. The reduced court area will not be visible from the street.

    b. *Residential Recreation Space.* The Applicant requested relief from the residential recreation space requirement. Section 773.3 requires that an area equal to 15 percent of the residential gross floor area be dedicated to recreation space. The Project proposed to provide an area equal to approximately 8.22 percent of the

residential gross floor area for recreation space, totaling approximately 6,204 square feet. Additional space of approximately 4,392 square feet, equal to approximately 5.82 percent of residential gross floor area, will be devoted to private outdoor terraces.

c. *Loading*. The Applicant requested relief from the loading requirements. The Zoning Regulations require loading for the residential component of one berth at 55 feet, one platform at 200 square feet, and one delivery area at 20 feet. The retail component will be less than 5,000 square feet and, therefore, has no loading requirement. Due to the configuration of the entryway off Florida Avenue, the Applicant proposed to provide a loading berth and a delivery area at a minimum of 30 feet deep and a conforming platform.

26. The following benefits and amenities will be created as a result of the PUD project:

a. *Urban Design, Architecture, Landscaping, and Open Space.* The Applicant has presented an appropriate architectural design for the Project, providing a number of features that will benefit both the North Capitol Street Corridor and the surrounding residential neighborhoods. Currently, the Site is vacant, which creates a void at this major intersection. The Project will provide a strong building form that will anchor this important intersection and improve its appearance. Other benefits include an architectural design that complements the existing contextual setting in both form and materials. Particular attention has been paid to the building massing to create both a strong overall form for this important intersection and smaller secondary form with more intricate detail, which will complement the residential scale of the neighborhood.

b. *Site Planning and Efficient Land Utilization.* The Project was designed such that its primary bulk will be at the corner of North Capitol Street and Florida Avenue, away from the nearby residential community. The building design will provide relief to the adjacent neighborhood by having the building transition from a maximum of 86 feet down to approximately 65 feet for the majority of the building, then to 55 feet on the north and west exposures. This reduction in height will minimize any potential adverse impacts resulting from the height on the adjacent residential community. The Applicant also proposed significant improvements to the streetscape.

c. *Transportation Features.* The proposed development will be proximate to the employment core and will be immediately accessible via two principal arterial roadways, i.e., North Capitol Street and Florida Avenue. Several Metrobus routes are located along those roadways, and the site is within 2,200 feet of the New York Avenue Metrorail Station. A significant proportion of the site trips could, therefore, occur via transit, walking, and other alternative modes to passenger

cars. The proposed development will include 84 parking spaces, which will be adequate, considering the requirements of the Zoning Regulations and the projected parking demand. Based on these factors, the proposed development will not be objectionable to the adjacent properties or have any appreciable adverse impacts due to traffic and parking.

d. *Special Value to the Neighborhood.* This Project will add special value to the surrounding neighborhood by bringing a mixed-use development to the community. The Site is currently vacant and underutilized. The Project will provide additional housing stock and appropriate commercial development that will serve the community.

e. *Employment and Training Opportunities.* The Applicant executed a First Source Employment Agreement in order to achieve the goal of utilizing District residents for at least 51 percent of the jobs created by the Project. The Applicant also committed to make a bona fide effort to utilize Local, Small, or Disadvantaged Business Enterprises ("LSDBE") certified by the D.C. Small and Local Business Opportunity Commission ("SLBOC") in order to achieve, at a minimum, the goal of 35 percent participation in the contracted development costs in connection with design, development, construction, maintenance, and security of the Project. The Applicant submitted a Memorandum of Understanding to SLBOC.

f. *Housing.* This Project will create additional housing stock. Approximately 29 percent of the units will be one-bedroom units, approximately 44 percent of the units will be one-bedroom-and-den units, approximately 26 percent of the units will be two-bedroom units, and approximately one percent of the units will be three-bedroom units. The Project will provide 15 percent of the increase in gross floor area as housing units affordable to households making no more than 80 percent of the Area Median Income.

g. *Other Public Benefits and Project Amenities.* The Project will provide new development in an area that, according to the Comprehensive Plan, is recognized by the Office of Planning as a Priority Economic Development area. (10 DCMR § 1666.1(c)(2)) The proposed mixed-use development will give a much needed boost to the economic development of the area, as shown by the Economic Impact Analysis submitted by the Applicant. Moreover, the Applicant proffered a Construction Management Plan with ANC 5C in an effort to minimize any potential adverse impacts resulting from the construction of the Project. The Construction Management Plan addresses issues such as pre-construction surveys, construction site management, construction site cleanliness, work hours, traffic and parking, and complaint procedures and communication. In addition, the Applicant committed to make financial contributions to various schools and

community groups, consistent with the amenities package approved by ANC 5C (Exhibit 51) as outlined below:

i. $1,000 to Shaed Elementary School for the purchase of hardware and software for computer classes and the purchase of supplemental classroom reading materials.

ii. $6,600 to J.F. Cook Elementary School for the purchase of student school supplies.

iii. $6,600 to Dunbar Senior High School for the purchase of band and cheerleader uniforms and band instruments.

iv. $6,600 to McKinley Technology High School for the purchase of books, classroom materials, and computer equipment for the school's Biotechnology, Broadcast Technology, and Information Technology instructional programs.

v. $6,600 to William E. Doar, Jr. Public Charter School for the Performing Arts for the purchase of musical instruments.

vi. $6,600 to D.C. Preparatory Academy PCS for the purchase of supplies and materials to support the school's academic tutoring, sports, and arts enrichment programs.

vii. $1,000 to a contractor selected by ANC 5C for the installation of an entrance gate at the Florida Avenue park located at the intersection of First Street and Florida Avenue.

viii. $6,600 to the North Capitol Main Street, Inc. for community improvement projects, such as the purchase of materials for the planting of trees.

ix. $35,000 for the North Capitol Street BID Incubation Fund for the creation of a business improvement district along the North Capitol Street corridor from R Street to O Street.

x. $6,600 to the Bloomingdale Civic Association for the purchase of equipment and uniforms for youth sports activities and a contribution to the association's student scholarship fund.

xi. $6,600 to the Eckington Civic Association for the purchase of equipment and materials necessary to develop a neighborhood website and

community newsletter, as well as for the creation of a fund to assist seniors with quality-of-life issues.

xii. $6,600 to the Stronghold Civic Association for the purchase of equipment and materials for youth sports activities and a contribution to the association's student scholarship fund.

xiii. $6,600 to the Bates Street Civic Association for the installation of gates for a pocket park and wrought iron borders for tree boxes and for other community beautification projects.

xiv. $6,600 to the 5th District Citizens Advisory Committee for the sponsorship of and purchase of materials for local youth-related events and programs.

27. The proposed PUD advances the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and furthers and complies with the major themes and elements for the District and Ward 5 in the Comprehensive Plan. The project advances these purposes by promoting the social, physical, and economic development of the District through the provision of quality development.

28. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:

a. *Stabilizing and Improving the District's Neighborhood.* The proposed PUD will stabilize and improve the character of the neighborhood.

b. *Respecting and Improving the Physical Character of the District.* The proposed PUD will respect and improve the physical character of the District through the construction of a well-planned and carefully designed development. The PUD's design will enhance the prominence of the intersection and will complement the neighboring residential area.

c. *Reaffirming and Strengthening District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. The Project will provide additional jobs to strengthen the economic health of this area. The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. (10 DCMR § 109.1(b)) The Project will take advantage of its location along major Metrobus routes and its proximity to the Metrorail system.

In addition, as indicated in the Economic Impact Analysis prepared by Bolan Smart Associates, Inc., the principal direct tax revenues to the District resulting

from the completion of this project, calculated in 2006 dollars, will total approximately $1.36 million per year. Also, in accordance with the District's goal of creating more housing opportunities in the District, the planned construction of 65 to 85 residential units will result in accommodations for approximately 130 residents. By creating a supply of new units at this location, not only will new residents currently living outside of the District be attracted to relocate, but existing DC residents who choose to relocate will free up needed inventory for other prospective DC residents.

d. *Preserving and Ensuring Community Input.* The Comprehensive Plan also encourages the active involvement and input of local communities. The Applicant met a number of times with the ANC and local community groups to review the project plans and develop an amenities package.

29. The Project will also further the specific objectives and policies of many of the Comprehensive Plan's major elements as follows:

a. *Economic Development Element.* According to the Economic Development Element of the Comprehensive Plan, the objective of economic development outside of the Central Employment Area is to create and expand economic activity and employment centers. (10 DCMR § 206.1) This Project will bring appropriate economic development to the area. A major policy of this element is "the generation of sufficient tax revenues to fund the District's budget is a top government priority. Economic development programs that contribute to this goal should be promoted." (10 DCMR § 200.13)

An additional policy of this element is to enhance environmental quality through guidelines related to access and egress, setbacks, landscaping, lighting, façades, and structural relationship to adjacent buildings. (10 DCMR § 204.2(c)) The Project will continue a sense of place in the area and will be sensitive to the nearby residential communities, acknowledging their low-rise nature by a decrease in height of the proposed building. The Project proposes improvements to the surrounding streetscapes and will enhance the overall environmental quality of the area. The Project also adheres to the policy to "strengthen public safety in and around economic activity areas as well as in residential neighborhoods" by developing a vacant parcel and providing additional eyes and ears of new residents to the area. (10 DCMR § 204.2(b))

b. *Environmental Protection Element.* It is the goal of the District to "protect the environment, to resist threats to its overall quality, and to act to maintain and enhance its positive features in the interest of residents, workers and visitors...." (10 DCMR § 401.1)

The Applicant will comply with all applicable rules and regulations of the District to promote energy conservation, improve air quality, and protect the natural environment. The Project will employ sustainable features where feasible. The Project will have a green roof over the first floor courtyard and the roof deck areas and will utilize exterior façade materials that are energy efficient. Another significant sustainable component will be an integrated heat exchange system that will link the retail and residential HVAC systems. By linking the two systems, excess heat captured from the mechanical systems servicing the retail tenants can be recycled through the mechanical systems for the residents, providing a source for both heating and hot water. Additional benefits of this system are the reduced load on the retail cooling towers, reduced electrical consumption, and reduced heat exchange into the ambient external air.

c. *Housing Element*. The general objectives for housing are to stimulate production of new and rehabilitated housing to meet all levels of need and demand and to provide incentives for the types of housing needed at desired locations. (10 DCMR § 302.1)

Policies in support of these objectives are:

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

- to designate, as residential development opportunity areas, sites where significant housing development can occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed employment centers and office areas; (10 DCMR § 302.2(d))

- encourage housing on suitably located public or private properties that are vacant, surplus, underutilized, or unused, and encourage adaptive reuse of surplus schools and other available public buildings as housing, with particular emphasis upon the needs of low- and moderate-income residents. (10 DCMR § 302.2(e))

The Project is consistent with the objectives and policies of this element since it will provide approximately 65 to 85 new housing units. Fifteen percent of the increased floor area will be affordable housing units. In addition, the project is located approximately 2,200 feet from the New York Avenue Metrorail Station. In summary, the Project will provide new housing to meet the need of present and

future District residents at a location consistent with the District's land use policies and objectives.

d. *Transportation Element.* It is the goal of the District to "[p]romote the increased use of mass transit, in the District and the region." (10 DCMR § 503.2(c)) The policies and objectives of the Transportation Element will be supported by the PUD. First, the PUD, as a multi-unit development, will be appropriately located within 2,200 feet of the New York Avenue Metrorail Station and will provide potential new riders for the Metrorail system at this location. Second, the proximity of the Project to Metrorail, Downtown, and the Central Employment Area will help to reduce dependence on private passenger automobiles. Third, with immediate access to Metrorail, and North Capitol Street, Florida Avenue, and other regional roadways, residents of the PUD will have the opportunity for reverse-commute options, in terms of level-of-service and travel time. This situation presents a more balanced use of the transportation system, consistent with the goals and objectives of the City.

e. *Urban Design Element.* "The policy...in support of the urban design objective is to enhance the physical image and symbolic qualities of the District that establish its character as an urban center and the nation's Capital." (10 DCMR § 702.2) It is the goal of the District to "encourage new development within areas of strong architectural character to contribute to the physical identity and character of the area." (10 DCMR § 710.2(d))

The proposed PUD will enhance the quality of the area through superior design elements that respect the special character of this prominent commercial corridor. The Project's proposed design will provide texture to this prominent gateway and enhance the vibrancy of this commercial corridor.

The Urban Design Element states that it is the District's goal to "promote the protection, enhancement and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient." (10 DCMR § 701.1)

The Project has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the moderate-density commercial area along Florida Avenue and North Capitol Street and the moderate-density residential community to the west and north. (10 DCMR § 708.2) High-density development with 130-foot heights is permitted in close proximity to the Site, and the architectural design of the Project will provide an appropriate transition. As previously stated, the Project's height steps down significantly – from 86 feet to approximately 65 feet and then to 55 feet - to better fit with the nearby residential community. In this regard, the Project's massing

and scale are sensitive to the established patterns of development in the area. (10 DCMR § 710.2(e))

The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. (10 DCMR § 709.1) The Project proposes significant enhancements to the surrounding streetscape.

f. *Land Use Element.* It is the goal of the District to "promote appropriate commercial development, including centers for retail and office uses, to serve the needs of the economy of the District and its neighborhoods...." (10 DCMR § 1108.1(a)) The Project will respond to this goal by providing mixed-use development within a local neighborhood commercial center that will foster the continued growth of the District's economy and employment base while providing additional residential stock for its citizens. Moreover, the land use designation of the Site as low-density commercial does not preclude the development of residential uses at higher densities as specifically encouraged by the District's policy of transit-oriented development.

30. The Comprehensive Plan Generalized Land Use Map depicts the Site as low-density commercial. The Generalized Land Use Policies Map depicts the Site as located in a local neighborhood commercial center. The proposed PUD is consistent with the Generalized Land Use Maps. This Site, which is only 2,200 feet from the New York Avenue Metro Station, is an example of where maximizing residential use on a commercially-designated site should occur. The commercial density is less than 1.0 FAR while the residential density is proposed to be increased.

31. The Project also fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 5:

a. *Ward 5 Economic Development.* An objective of the Comprehensive Plan is to enhance and expand the ward's economic activity and employment centers, particularly in the underused industrial and commercial area. (10 DCMR § 1605.1(a)) The Ward 5 Element recognizes that retail and service facilities in the area are inadequate to respond to the needs and demands of the resident population and other potential patrons and clients. The eastern sector, along North Capitol Street, Florida Avenue, N.E., and First Street, N.E., can accommodate major large tract development activity. In addition, North Capitol Street, New York Avenue and First Street, N.E., are recognized by the Office of Planning as "priority economic development areas." (10 DCMR § 1606.1(c)(2)) The Project complies with this element by bringing appropriate economic development to the area.

b. *Ward 5 Housing.* An objective of this element is to stimulate the production of new housing and to rehabilitate and improve housing to meet the needs of all the ward's residents. (10 DCMR § 1608.1(b)) A policy in support of the housing objective is to provide new or rehabilitated housing for low- and moderate-income residents. (10 DCMR § 1609.1(c)) The Project will bring additional housing stock to the city and approximately 15 percent of the increased floor area will be devoted to affordable housing units.

c. *Ward 5 Transportation.* An objective of this element is to increase the use of mass transit while minimizing problems associated with parking around Metrorail stations and commercial areas. (10 DCMR § 164.1(a)) This mixed-use development will be proximate to Metrorail and Metrobus routes, thereby encouraging the use of mass transit.

d. *Ward 5 Urban Design Element.* Objectives for urban design are:

- Promote a physical environment that upgrades the ward's aesthetic qualities, enhances neighborhood stability, emphasizes neighborhood identity and function, and physically enhances the gateways into the city; (10 DCMR § 1620.1(a))

- Give special design attention to those areas within the ward that have a poor physical image and where new development can improve the neighborhood's visual qualities while providing needed services; (10 DCMR § 1620.1(b))

- Strengthen the design and visual character of commercial nodes and corridors that serve ward neighborhoods; and (10 DCMR § 1620.1(d))

- Through the design of new structures, decrease the potential for illegal activity by eliminating sites or locations that could attract and harbor the criminal element. (10 DCMR § 1620.1(e))

The Project will improve the aesthetic quality of the area with a strong visual character and will utilize otherwise vacant property.

e. *Ward 5 Land Use Element.* The goal is to encourage and support an appropriate mix of uses in all economic development, where appropriate, including uses such as housing, parks, and open space. (10 DCMR § 1629.1(c)) The Project will be an appropriate mixed-use development with superior design elements.

f. *Ward 5 Environmental Element.* The Project and proposed streetscape improvements are consistent with the Ward 5 environmental objectives, because the Applicant will plant and maintain street trees. (10 DCMR § 1611.1(e))

Office of Planning Report

32. By report dated July 17, 2006, the Office of Planning ("OP") recommended approval of the PUD application. OP found that the proposed PUD was consistent with the intent of the Zoning Regulations, the specific PUD criteria outlined in the Zoning Regulations, and the Comprehensive Plan. OP also found that the benefits and amenities associated with this PUD proposal exceeded the degree of zoning relief required and that the proposed development would be an asset to the community. OP recommended approval of the application and included the following conditions: 1) adoption of DDOT's recommendation that transit demand strategies be incorporated, allowing shared parking for retail customers and visitors during the day; 2) encouraging transit use by residents; and 3) incorporating language into the owner agreement that deliveries be made during off-peak hours during the weekday and weekends.

District Department of Transportation Report

33. By report dated July 7, 2006, the District Department of Transportation ("DDOT") indicated its support for the Project from a transportation perspective. DDOT recommended that the Applicant limit residential and commercial deliveries to non-peak hours on weekdays and weekends. DDOT also encouraged the Applicant to consider encouraging residents of the development to use public transit and to incorporate shared parking strategies whereby parking spaces available to residents at night would be available to retail customers and other visitors during the day.

Contested Issues

34. Some persons who testified in support of the PUD at the public hearing raised concerns regarding traffic and parking in the neighborhood, community involvement in the project, and public safety. One person, testifying in opposition to the Project, stated that the Applicant would have to acquire additional land and relocate homeowners in order to proceed with the development; that abutting business owners and organizations would have to move since the cost of their leases would increase and become unaffordable; and that the Project would have an adverse impact on public safety.

35. The Commission has carefully reviewed and considered each of the points made both in writing and orally at the public hearing, and makes the following findings:

    a. *Traffic, Parking, and Public Safety*: There was testimony that the project will have an adverse impact on traffic, parking, and public safety. However, DDOT stated in its report that it supports the project from a transportation perspective. Moreover, the Applicant's traffic expert submitted detailed reports (Exhibit 33 and Exhibit 49, Tab C) concluding that the proposed development was favorably

situated relative to public transportation facilities, and thus a number of residents and patrons will utilize pubic transportation to and from the Project; the vehicle trips generated by the Project will be minimal due to the availability of public transportation in the neighborhood and the trips will be well distributed directionally and result in minimal impacts on the surrounding intersections; the area's roadway network will continue to operate at acceptable levels of service once the Project is built; the proposed parking supply will exceed the number of required spaces and will adequately satisfy the needs of the prospective users; and the proposed development will not have an adverse impact on the availability of local, on-street parking. Moreover, the Applicant agreed to DDOT's recommendation that deliveries be limited to non-peak hours on weekdays and weekends. The Commission accepts these expert conclusions and, therefore, finds that the proposed development will not have an adverse impact on traffic and parking. Moreover, due to the adequacy of parking, the Commission does not find a basis for requiring that the Project provide shared parking for retail and visitors during the day.

With respect to public safety, there is no evidence in the record demonstrating that the Project will adversely impact on public safety in the neighborhood. The Applicant committed to make contributions for community improvement projects, such as the purchase of materials for the planting of trees, and to make a contribution to the North Capitol Street BID Incubation Fund for the creation of a business improvement district, and to make a contribution to for the installation of gates for a pocket park and for other community beautification projects, all of which the Commission finds will have a positive impact on liveliness of the neighborhood and public safety.

b *Community Involvement*: The Applicant met with ANC 5C and other community groups a number of times to review the project plans and develop an amenities package. The amenities package includes contributions to various schools and community groups and was approved by ANC 5C. A number of individuals from the community and various community groups testified in support of the Project. The Commission, therefore, finds that the Applicant engaged in efforts to solicit community input and included the community in development of this proposal.

c. *Effect of the Project on Property Owners in Square*: The Commission finds that the architectural plans and elevations submitted with this application demonstrate that the Project will be developed entirely on Square 3100, Lot 48. The record does not include any evidence that establishes that business owners or residents will be displaced due to increased rents as a direct result of this Project being approved. Therefore, the Commission finds that there is no basis for concluding that the Project will result in current homeowners and businesses being displaced.

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 Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. 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 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 residential and neighborhood-serving retail uses for the Project are appropriate for the Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects from the development on the surrounding area will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

8. Approval of this 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 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.

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

10. 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 the Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD") for Square 3100, Lot 48 and a related amendment to the Zoning Map from the C-2-A to the C-2-B District for the Site, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the Scheme C plans prepared by Bonstra Haresign Associates, filed on October 25, 2006 and marked as Exhibit No. 52 of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.

2. The PUD shall be a mixed-use building having a combined gross floor area of approximately 85,428 square feet and two levels of underground parking. Approximately 81,428 square feet will be devoted to residential use, providing between 65 and 85 dwelling units, and approximately 4,970 square feet of floor area will be provided for retail use in the cellar. The Project will have a maximum density of 4.5 FAR.

3. The Project shall have a maximum building height of 86 feet. The building may include a roof structure in excess of that height, with a height not to exceed 18.5 feet above the roof upon which it is located, as shown on the Plans.

4. The Project shall provide a minimum of 84 parking spaces. Access to the parking garage and the loading dock area will be from Florida Avenue.

5. The Project shall include one 30-foot deep loading berth and one 20-foot deep loading berth, as shown on the Plans. Residential and commercial deliveries shall be limited to non-peak hours on weekdays and weekends.

6. Affordable housing shall be provided as specified in the Affordable Housing Commitment standards identified as Exhibit No. 42 of the record.

7. The Applicant shall include landscaping, streetscape, and open space treatment for the Project as shown on the Plans. The Applicant or its successors shall maintain all landscaping, streetscape, and open space treatments in good growing condition.

8. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all such landscaping in the public space in good growing condition.

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

   a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;

   b. 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;

   c. 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 construction codes or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and

   d. 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.

10. The PUD-related map amendment shall not become effective and 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 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 on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

11. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

12. No Certificate of Occupancy shall be issued for this PUD until the Applicant has submitted to DCRA evidence demonstrating that the Applicant has provided the funding for the items identified in the community amenities package included at Tab D of the Applicant's Post-Hearing Submission, filed on August 24, 2006 and marked as Exhibit No. 49 of the record.

13. The PUD approved by the Zoning Commission 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.

14. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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 13, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory Jeffries, and Michael Turnbull, and John G. Parsons (by absentee ballot) to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on January 8, 2007 by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory Jeffries, Michael Turnbull, and John G. Parsons to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on JUN 15 2007.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

DISTRICT OF COLUMBIA G[illegible]RNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., November 10, 2005

Plat for Building Permit of SQUARE 3100 LOT 48

Scale: 1 inch = 30 feet Recorded in Book 171 Page 36

Receipt No. 24050

Furnished to: HOLLAND & KNIGHT / FREDA HOBAR

Surveyor, D.C.

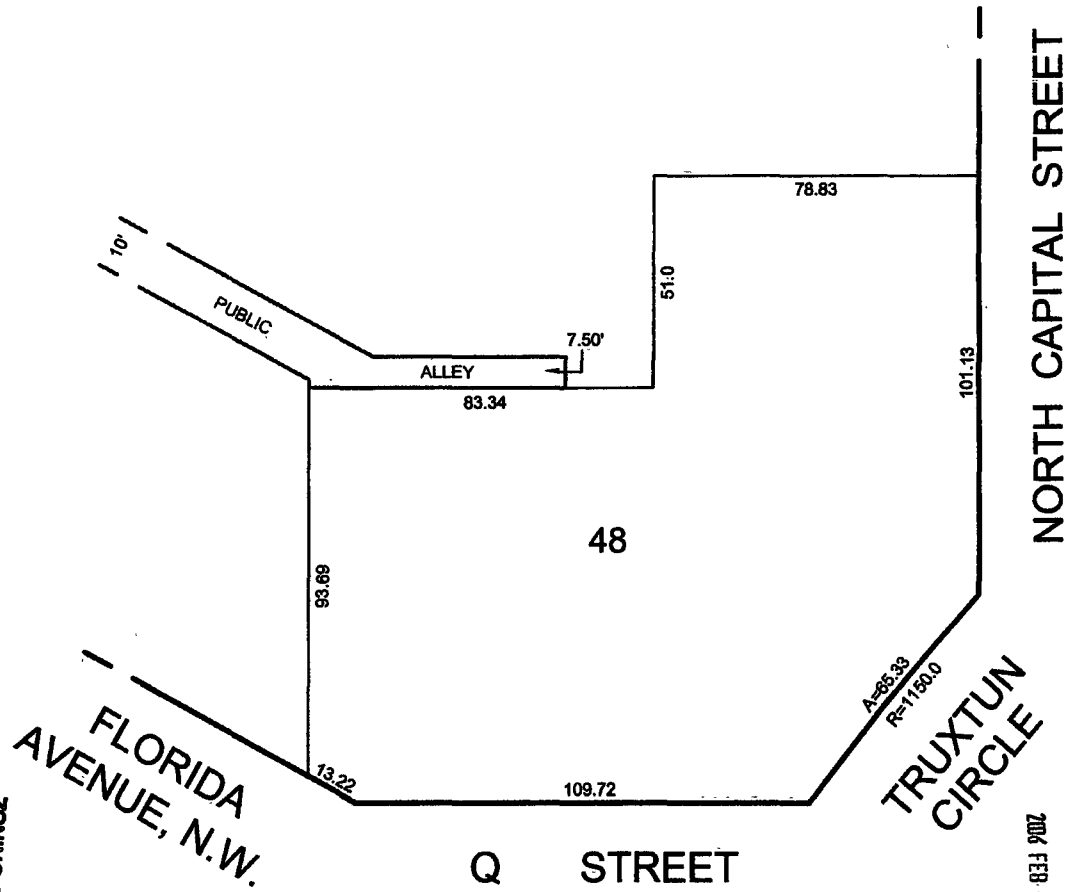
By: L.E.S.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon 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 ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. 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 along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% 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.



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CASE No. 06-04
EXHIBIT No. 10

SO-24050(2005)