

Norman M. Glasgow, Jr.
202-419-2460
norman.glasgowjr@hklaw.com

Leila M. Jackson Batties
202-419-2583
leila.batties@hklaw.com

April 9, 2009

HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

Re: **Request for Extension of Time, Zoning Commission Order No. 06-144**
(Consolidated Planned Unit Development – Florida and New York Avenues, N.E.
MRP Realty, LLC)

Dear Members of the Zoning Commission:

On behalf of the Applicant for the above-referenced planned unit development ("PUD"), this letter serves as a request for a two (2) year extension of Zoning Commission Order No. 06-14 (the "Order") such that the deadline for filing an application for a building permit is extended to June 29, 2011, and the deadline for starting construction is extended to June 29, 2012.

This request is filed pursuant to §2408.10 of the Zoning Regulations for good cause shown herein. A copy of the Order is attached as Exhibit A. A check in the amount of \$400.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning regulations is also enclosed.

I. INTRODUCTION

A. Factual Background

By Order No. 06-14, the Zoning Commission approved a PUD for the property located on Lots 23, 811, 812, and 813 in Square 3584 ("the Subject Property"). The Subject Property consists of approximately 134,665 square feet of land area and is located east of the intersection of Florida and New York Avenues, N.E. The Subject Property is zoned C-3-C, and the Applicant did not seek a zoning map amendment in connection with the PUD.

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ZONING COMMISSION
District of Columbia

ZONING COMMISSION
District of Columbia

CASE NO. 06-144

EXHIBIT NO. 1

The PUD is a mixed-use development consisting of residential, hotel, office, and retail uses. It is located on a triangular parcel of land east of the intersection of Florida and New York Avenues, N.E., adjacent to the WMATA and railroad rights-of-way (the "Property"). Two buildings are proposed for the project. One is a residential/hotel building located on the southwest portion of the Property. It will have approximately 229,690 square feet of gross floor area devoted to residential use and approximately 120,442 square feet of gross floor area devoted to hotel use in order to accommodate 230 to 270 dwelling units and 140-195 hotel rooms. Eight percent of the residential floor area will be reserved for persons whose income does not exceed 80% of the area median income. The second building will have approximately 601,896 square feet of gross floor area devoted to office use. The PUD will have approximately 7,000 square feet of retail primarily fronting Florida Avenue. In total, the PUD will consist of approximately 951,120 square feet of gross floor area with a floor area ratio of approximately 7.06.

The Order became final and effective on June 29, 2007. Therefore, under the terms of the PUD regulations, the PUD approval is valid until June 29, 2009, and an application for a building permit for the PUD must be filed no later than June 29, 2010. As discussed in more detail below, the Applicant is requesting this time extension based upon unexpected delays beyond the Applicant's control.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file for a building permit) and Section 2408.9 (three year requirement to begin construction), provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the materials facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and
- (c) The applicant demonstrates, with substantial evidence, that there is good cause for such extension, as provided in §2408.11.

The criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;

(b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

II. THE EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The Applicant has served this request for an extension of time on Advisory Neighborhood Commission ("ANC") 5C, the only other party to the initial PUD application, allowing them the required time period to respond, as evidenced by the Certificate of Service attached hereto.

III. THE APPLICANT DEMONSTRATES GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(a) supports the grant of an extension of PUD approval for projects confronting difficulties with financing, based upon changes in economic and market conditions beyond an applicant's control.

In this case, the Subject Property has been cleared and is ready for development. However, due to the dire economic climate, the Applicant has been unable to obtain sufficient financing for the construction of the approved project. The financial crisis has frozen the credit markets, making construction loans for real estate development projects impossible to obtain. The difficulties in the credit markets is further aggravated by the oversupply of multifamily units and office space – two of the three uses proposed for the PUD. According to data the Applicant obtained from the market research firm, Delta Associates, the supply of Class A apartment units in the District is expected to increase by 41% during 2009 and 2010. This will result in higher vacancy, lower rental rates, and increased concessions. Delta Associates also forecasts that, over the next 24 months, office space deliveries is expected to outpace demand for office space by approximately 7 million square feet. Similar to the apartment market, the imbalance of supply versus demand will result in lower office rental rates and higher vacancies. Lastly, due to the interconnected nature of this approved mixed-use development, the inability to secure financing for any component of the PUD severely compromises the ability to develop the other components of the project. The apartment and hotel components must be constructed simultaneously, and these two uses must be developed prior to or concurrent with the office component.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §2408.10 of the Zoning Regulations requires the following:

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD.

The project has not changed in any form, and the extension is requested in order to enable the Applicant to continue its diligent efforts to secure favorable financing for the project. Moreover, there has not been any change in any of the material facts upon which the Zoning Commission based its original approval of the PUD, and the Applicant remains committed to moving forward with the Project and fully complying with the conditions and obligations imposed as part of the PUD approval.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A hearing is not necessary for this request because there are not any material factual conflicts generated concerning any of the criteria set forth in §2408.11. The only other party to the application was ANC 5C, and the Applicant has served a copy of this request on ANC 5C. There is no dispute to the facts that: (1) the Applicant has been unable to secure financing for the project, or (2) that there are significant impediments in the market place to proceeding with the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria set by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two (2) year extension of the approved PUD, such that an application for a building permit must be filed no later than June 29, 2011, and construction must start no later than June 29, 2012. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Leila M. Jackson Batties
for Norman M. Glasgow, Jr.

Leila M. Jackson Batties
Leila M. Jackson Batties

Attachments

CERTIFICATE OF SERVICE

I hereby certify that on **April 9, 2009**, a copy of the Applicant's Request for Extension of Time, Zoning Commission Order No. 06-14 (Consolidated Planned Unit Development – Florida and New York Avenues, N.E. – MRP Realty, LLC) was served via hand delivery on the following:

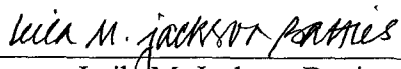
Advisory Neighborhood Commission 5C
202 Bates Street, N.W.
Washington, D.C. 20001
Attention: Anita Bonds, Chair

Denise Wright
ANC 5C-05 Single Member
District Representative
219 R Street, N.E. #2
Washington, D.C. 20002

Jennifer Steingasser
D.C. Office of Planning
2000 14th Street, N.W.
4th Floor
Washington, D.C. 20009

And by first class mail to:

Advisory Neighborhood Commission 5C
P.O. Box 77761
Washington, D.C. 20013



Leila M. Jackson Batties

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION ORDER NO. 06-14
Z.C. Case No. 06-14
Consolidated Approval for a Planned Unit Development at Florida and
New York Avenues, N.E. – MRP Realty, LLC
(Square 3584, Lots 23, 811, 812 and 813)
February 12, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 30, 2006 to consider an application from MRP Realty, LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD"). The application was filed on behalf of and with the consent of Sun Oil Company of Pennsylvania, GMK Title Holder, Inc.; D&H Title Holder III, Inc.; the Washington Metropolitan Transit Authority (WMATA); and the District of Columbia, the owners of the property covered included in the application. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On March 3, 2006, the Applicant filed an application with the Commission for consolidated review and approval of a PUD for the property located at Square 3584, Lots 23, 811, 812, and 813, located east of the intersection of Florida and New York Avenues, N.E., in Washington, D.C. (the "Property"). The Property consists of 134,665 square feet of land and is located in the C-3-C District.
2. At its public meeting on June 12, 2006, the Commission voted to schedule a public hearing on the application. At the meeting, the Commission requested that the Applicant provide additional information relating to the building facades and the design and operation of the plaza and proposed staircase. The Commission also requested clarification of the traffic impact study.

3. On July 21, 2006, the Applicant filed a prehearing statement that included the aforementioned information requested by the Commission and additional information requested by the Office of Planning ("OP") pertaining to the location of the entrances to the loading areas, traffic mitigation measures, lot configuration, building height, and residential recreation space. The prehearing statement also included additional information by the Applicant regarding the project benefits and amenities.
4. On November 9, 2006, the Applicant submitted supplemental information in support of the PUD application to the Office of Zoning, which included revised architectural drawings and an updated discussion on the project design and PUD benefits and amenities.
5. At its duly noticed meeting held November 21, 2006, Advisory Neighborhood Commission ("ANC") 5C voted unanimously to adopt a resolution in support of the PUD application.
6. After proper notice, the Zoning Commission held a hearing on the application on November 30, 2006. The parties to the case were the Applicant and ANC 5C, the ANC within which the PUD site is located.
7. At the hearing, the Applicant filed the following documents with the Commission:
 - a. the resolution of support from the ANC;
 - b. a revised list of PUD benefits and amenities;
 - c. a letter from the District of Columbia Commission on the Arts and Humanities regarding a \$50,000 contribution from the Applicant for an arts-related project for the Florida Avenue underpass;
 - d. a letter from City Year regarding a \$25,000 contribution from the Applicant for the Young Heroes program;
 - e. a letter from Emery Elementary School regarding a \$10,000 contribution from the Applicant to the Student Activity Fund;
 - f. a letter from the Harry Thomas Community Service Center regarding a \$10,000 contribution from the Applicant for the purchase and installation of a scoreboard;
 - g. a letter from North Capitol Main Street, Inc. regarding a \$5,000 contribution from the Applicant for the development of database of the commercial/retail properties in the organization's service area;

- h. a copy of a fully executed First Source Employment Agreement; and
 - i. the inclusionary housing commitment standards for the PUD.
- 8. There were no parties or persons in opposition to the application.
- 9. At the hearing, the Commission requested the Applicant to provide the following:
 - a. a list of the community organizations with whom the Applicant met and the concerns raised regarding the project;
 - b. an explanation of the adequacy of the project benefits and amenities;
 - c. a discussion of the amount of affordable housing provided by the project, including the potential to increase the PUD density in order to achieve more affordable housing;
 - d. revised drawings to address the Commission's concerns regarding the design columns on the residential/hotel building near Florida Avenue, the height of the wall along New York Avenue, and the sign on the hotel building; and
 - e. an additional request for relief to allow for a six-foot setback on the penthouse for the residential/hotel building.
- 10. The information requested by the Commission was submitted by the Applicant on December 4, 2006 and is marked as Exhibit No. 38 of the record. In the filing, the Applicant proposed the following changes for the development of the PUD:
 - a. an increase in affordable housing from six to eight percent of the residential gross floor area;
 - b. an increase in the office space from 579,468 square feet to 601,896 square feet;
 - c. an increase in the overall density for the PUD from 929,601 square feet at a floor area ratio ("FAR") of 6.9 to 951,120 square feet and 7.06 FAR;
 - d. an increase in the range of residential units from a maximum of 250 to a maximum of 270;
 - e. a reduction in the size of the hotel sign from 13 feet, nine inches by 52 feet, 10 inches to nine feet, two inches by 35 feet, 2-11/16 inches; and

- f. a reduction in the height of the wall along New York Avenue from a range of four to eight feet to a height of three feet, six inches for the entire length of the wall.
11. At its meeting on December 11, 2006, the Commission took proposed action by a vote of 5-0-0 to approve the application.
12. 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 January 4, 2007, found the proposed PUD would adversely affect federal interests in the National Capital.
13. By letter dated January 25, 2007, the Applicant requested the Commission to reopen the record to accept its response to the NCPC report. The Commission granted the request as a preliminary matter to its consideration of the application. A full discussion of the NCPC comments, the Applicant's response, and the Commission's resolution of the issue may be found at the conclusion of these Findings of Fact.
14. The Zoning Commission took final action to approve the application on February 12, 2007 by a vote of 5-0-0.

The PUD Project

Overview

15. The PUD will be a mixed-use development consisting of residential, hotel, office, and retail uses. Two buildings are proposed for the project. One will be a residential/hotel building located on the southwest portion of the Property. It will contain approximately 229,690 square feet of gross floor area devoted to residential use and approximately 120,442 square feet of gross floor area devoted to hotel use that will accommodate 230 to 270 dwelling units and 140-195 hotel rooms. Eight percent of the residential floor area will be reserved for persons whose income does not exceed 80 percent of the area median income. The second building will have approximately 601,896 square feet of gross floor area devoted to office use. The PUD will have approximately 7,000 square feet of retail space, primarily fronting on Florida Avenue. In total, the PUD will consist of approximately 951,120 square feet of gross floor area with a density of approximately 7.06 FAR. Under the PUD guidelines, the Property can be developed with a maximum density of 8.0 FAR.

Site Description

16. The Property is a triangular parcel of land located east of the intersection of Florida and New York Avenues, N.E., adjacent to the WMATA and railroad rights-of-way in the Eckington Yards section of Ward 5. It consists of approximately 134,665 square feet of

land area and is more particularly described as Square 3584, Lots 23, 811, 812, and 813. A portion of the Property is currently improved with a gas station, but the majority of the site is unimproved. Two jumbo billboards also occupy the site.. The Property sits on the northeastern edge of the Central Employment Area and within the boundaries of the NoMA planning area. The Property is designated in the medium-high density commercial land use category on the District's Generalized Land Use Map.

17. The areas surrounding the Property to the south and west are designated in the medium-high density commercial land use category. The areas to the north and east are designated in the production and technical employment land use category. The New York Avenue-Florida Avenue-Gallaudet University Metrorail Station (the "Metrorail Station") is located within one block of the Property, between M and N Streets, N.E.

Project Design and Components

18. Mixed-Use Development. Under the existing C-3-C zoning, the Property can be developed as a matter of right as an office project with a maximum density of 6.5 FAR. In lieu of an office development, the Applicant proposed a mixed-use development that will include residential, hotel, office, and retail uses, consistent with the live-work environment encouraged in the NoMA Vision Plan.
19. Public Space Infrastructure. As a result of the open space achieved through the PUD process, the project was designed with a significant public plaza. The master plan for the PUD evolved as an extension of 2nd Street, N.E., which, once constructed, will become the primary visual and pedestrian access into the site from the south. In addition to the plaza, other public infrastructure improvements will include substantial upgrades to the sidewalks along Florida and New York Avenues; a monumental stair connecting New York Avenue to the plaza; significant upgrades to the Metropolitan Branch Trail (the "Trail"); connectivity between the Trail, the project, and the Metrorail Station; and a new Metropolitan Branch Trail Atrium (the "MBT Atrium").
20. The Plaza. The plaza was designed to be similar to a European plaza where the space itself becomes a "figure" or "object" defined by the walls of the buildings around it. In the case of the PUD, the west façade of the office building will create a clear spatial backdrop for the plaza while the angled east facade of the residential/hotel building will create depth and proportion to the plaza, distinguishing it from the street leading into it. The primary entrance to the plaza will be from Florida Avenue. The main roadway surface will be pavers, such as tumbled precast pavers, in a patterned field. The sidewalks on either side of the entry roadway, in front of the office building and the residential/hotel building, will be upgraded pavers similar to London pavers. The large bands running east-west across the plaza will be stone pavers, with an inset oval shape of a different texture to define roadway lines. Precast pavers and stone pavers will be laid in the bands as shown in the architectural drawings. The center of the plaza will contain a

fountain that will be illuminated at night and that will be a visual focal point for the public, the residents, retail customers, and office tenants in the PUD. It will be visible from the overlook along New York Avenue and from the MBT Atrium along the Trail. The seating area in the garden court in front of the entry to the north section of the office building will be separated from the plaza traffic by a serpentine wall and landscape elements and will be open to the public as well as to occupants of the office building. Above the seating area adjacent to the north section of the office building will be a mezzanine-level garden terrace with benches, paving, and landscaping that will serve as an outdoor recreation area for the hotel. It will be visible from New York Avenue, providing a visual amenity, and the trees and landscaping in the garden will provide relief from the overall change in grade from the plaza to New York Avenue.

21. Residential/Hotel Building. The residential/hotel building will be situated on the southwest portion of the Property and will consist of approximately 350,133 square feet of gross floor area. Of that, approximately 229,690 square feet will be for residential use and approximately 120,443 square feet will be for hotel use. A tower element and triangular glass volume will identify the residential/hotel building for the PUD and mark its prominent location at the intersection of Florida and New York Avenues, N.E. The configuration of the tower element will open up to dramatic views toward downtown, create an architectural landmark for the project, and signify the emergence of NoMA as a dynamic and vibrant location. The height of the building will be 130 feet on the New York Avenue side of the building, stepping down along the Florida Avenue side of the building, which will create an urban edge and buffer from traffic on New York Avenue. This design element will also help to minimize the scale of the New York Avenue/Florida Avenue intersection and the plaza on the interior of the PUD. The double-height retail podium, or the lower mass of the building, will face Florida Avenue, while other taller elements of the building will be set back. This will create a more pedestrian-friendly environment, because the apparent scale of the building will be reduced.
22. Office Building. The office building will be situated on the easternmost portion of the Property. It will consist of approximately 601,896 square feet of gross floor area, and extend 130 feet from the measuring point on New York Avenue, stepping down along the Florida Avenue side of the building. The MBT Atrium will be located within the office building. The north section of the office building will have a prominent position as a gateway on New York Avenue for those coming into the city from the east. A glassy tower emphasizing the narrow point of the site will create a dramatic icon for the site at its northeast corner. A floating visual plane composed of a pattern of vertical and horizontal lines will create an element with strong visual interest, while making the first step down in scale toward the neighboring residential/hotel building. This same patterned façade element will occur on the east façade of the building. The south section of the office building will integrate into the fabric and scale of existing and proposed neighboring buildings. A roof terrace was designed at the southeast corner of the

building to activate it and create a greater sense of appropriate scale. The south façade of the building will have retail frontage along Florida Avenue that will wrap around into the plaza.

Matter of Right Development Under Existing Zoning

23. The Property is located in the C-3-C District, which is intended for medium-high density development, including office, retail, housing, and mixed-use development in a compact area.
24. The maximum building height permitted in the C-3-C District is 90 feet. The maximum permitted density is 6.5 FAR, all of which may be used for residential, office, retail, hotel, or other permitted uses.

Development Incentives and Flexibility

25. The Applicant requested the following areas of flexibility from the Zoning Regulations:
 - a. Roof Structure Requirements: The Regulations require that the penthouse structure on the roof of the residential/hotel building be set back from all exterior walls a distance of 18 feet, 6 inches. The Applicant proposed a reduced setback of six feet on the southeastern portion of the residential/hotel penthouse and 12 feet on the hotel section/courtyard side.
 - b. Residential Recreation Space: The proposed residential/hotel building will have 14,344 square feet of residential recreation space (6.2 percent); 22,969 square feet (10 percent) are required.
 - c. Additional Areas of Flexibility: The Applicant also requested flexibility for the following:
 - to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations will not change the exterior configuration of the building;
 - to vary the location and arrangement of parking spaces, provided that the total will not be reduced below the minimum levels specified in the Plans marked as Exhibit No. 29 of the record and, to the extent that the PUD exceeds the minimum parking specified above, the excess parking will be allocated to the respective uses and/or buildings according to need;

- to eliminate the interior drive to the south section of the office building should operational and/or security needs require;
- to vary the final selection of the exterior materials within the color ranges and material types as proposed, without reducing the quality of the materials; and
- to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit.

Public Benefits and Amenities

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

- a. Mixed-Use Development. Under the existing C-3-C zoning, the Property can be developed as an office project with a maximum density of 6.5 FAR. In lieu of an office development, the Applicant proposed a mixed-use development that will include residential, hotel, office, and retail uses in the type of live-work environment encouraged in the NoMA Vision Plan.
- b. Housing and Affordable Housing. The single greatest benefit to the area and the District as a whole will be the creation of new housing and home ownership opportunities consistent with the goals of the Comprehensive Plan and the Mayor's housing initiative. The Applicant proposed to devote an area equal to eight percent of the residential gross floor area for persons whose incomes do not exceed 80 percent of the Area Median Income. The construction and distribution of the affordable units, the affordability control period, and the method of selecting the occupants/purchasers of the units will be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, submitted by the Applicant, and marked as part of Exhibit No. 38.
- c. New York Avenue Sidewalk. The entire length of the sidewalk on New York Avenue along the Property, approximately 680 linear feet, will be widened from approximately four feet to 23 feet. Beyond the standard improvements, the sidewalk will have upgraded paving, additional landscaping, and a garden overlook between the hotel and north office section that will provide pleasing views into the plaza below.

- d. New York Avenue Connecting Stair. The PUD includes a monumental stair connecting New York Avenue to the plaza below and to the surrounding streets. The stair will land in a courtyard space in front of the north section of the office building, which will be an attractive space framed by a sinuous masonry wall and a garden with landscape elements, upgraded paving, and benches.
- e. Florida Avenue Sidewalk. Although the property line for the PUD is six feet north of the curb along Florida Avenue, the buildings will be set back at least nine feet behind the property line to create a sidewalk along Florida Avenue that is at least 15 feet wide. In addition to the standard improvements, the sidewalk, which extends 450 linear feet along the property line, will include upgraded paving and an enhanced landscape area in front of the residential/hotel building.
- f. Florida Avenue Outdoor Seating Area and Retail. Along the majority of the southern face of the residential/hotel building, the sidewalk on Florida Avenue will be further widened to a maximum of 35 feet (29 feet behind the property line), to create an outdoor seating area for the public. The outdoor seating area will be anchored by a two-story building base with retail amenities. The widened sidewalk will also draw people to the plaza by creating a larger and more attractive visual corridor into the site.
- g. Retail on Florida Avenue at the Office Building. The southern base of the office building along Florida Avenue will contain retail uses. The base of the building will be notched to allow the public to flow into the plaza, and the first two stories of the building will be pulled back along the western edge to provide a covered walkway to the plaza, the Trail, and New York Avenue.
- h. Metropolitan Branch Trail – Bicycle Path Upgrades. The existing Trail is a recently paved asphalt surface in good condition, but it runs through an abandoned field with rocks and dirt on one side and a chain link fence separating the Trail from the railroad tracks. The Applicant proposed to upgrade the entire portion of the Trail adjacent to the Property and, in addition, to provide a continuous concrete wall base with decorative metal fence along a significant portion of the Trail adjacent to the PUD. The Trail upgrades will facilitate the pedestrian and cyclist connection to the PUD and the streets. Other upgrades will include the planting of trees and other landscaping that will wind through a new gentle curve created in the Trail. The north section of the office building base will have smaller scale bay window expressions to make riders' experience more interesting.
- i. Metropolitan Branch Trail – Pedestrian Connection to the Metrorail Station. In order to encourage a separation of bicycle and pedestrian traffic, special paving will be installed along the Trail, from the south property line to the MBT Atrium.

The path will be designated specifically for people walking from the Metrorail Station to the PUD or through the PUD to the streets beyond.

- j. Metropolitan Branch Trail Atrium – Connection from Trail to City. A significant feature of the PUD is a three-story atrium that will function as a connector between the Trail and the plaza, and will serve as a special place dedicated to pedestrians and urban cyclists. The MBT Atrium will have space designated for information about the trail and surrounding neighborhoods, station maps, an automatic bike tire pump, drinking fountain, plants, and bicycle racks. An oversized elevator and stair with a bike channel will allow cyclists and pedestrians to conveniently move from the Trail to the plaza and to the streets beyond.
- k. The Plaza – Destination and Connection. The stair from New York Avenue, the generous sidewalks, retail space along Florida Avenue, and the MBT Atrium connection from the Trail will all lead to the plaza. The plaza will have benches throughout so pedestrians and occupants of the project can enjoy the plaza space. Public access to the plaza from the New York Avenue stair will be permitted daily from 7:00 a.m. to 7:00 p.m., and from the Trail from 6:00 a.m. to 9:00 p.m.
- l. Sustainable Design. The project will include a number of sustainable design features concentrated on elements that will reduce or eliminate storm water discharge into the District's combined sewer system, including a planted green roof on the residential/hotel building; high reflectivity, low "heat island effect" sustainable roof material design on the office building; rain-water harvesting from the office building roof, which will capture rain water in cisterns for re-use in irrigation, window washing, and other uses, in lieu of potable water; Filterra stormwater bioretention filtration system at catch basins around the perimeter of the site; and the use of native plant species. Also, the PUD will further environmental objectives by (1) providing reserved parking for a car-share plan (e.g., ZipCar or FlexCar); (2) creating a significant connection to the Metrorail Station and the Metropolitan Branch Trail, thus promoting bicycle and pedestrian activity and reducing the number of vehicular trips; and (3) clearing the Property of the gas station, underground tanks, and contaminated soil within the excavation area.
- m. Employment and Training Opportunities. In order to further the District of Columbia's policies relating to the creation of employment opportunities, the Applicant entered into a First Source Agreement with the Department of Employment Services ensuring cooperation with the Department for employee recruitment for jobs created by the PUD with the objective that at least 51 percent of the employees hired in connection with the development of the project will be District of Columbia residents.

- n. Monetary Contributions. As part of the amenities and benefits package offered in connection with the application, the Applicant committed \$100,000 to assist the following neighborhood programs and initiatives:
- (i) \$50,000 contribution to the District of Columbia Commission on the Arts and Humanities for the arts-related project for the Florida Avenue underpass.
 - (ii) \$25,000 contribution to City Year to cover the five-year operating costs for the Young Heroes Program.
 - (iii) \$10,000 contribution to Emery Elementary School Student Activity Fund for field trips, educational celebrations, audio/visual upgrades, and technology upgrades.
 - (iv) \$10,000 contribution to the Harry Thomas Community Service Center for the purchase and installation of a scoreboard.
 - (v) \$5,000 contribution to North Capitol Main Street, Inc. for the development of a database of the commercial/retail properties in the organization's service area.

Compliance with the Comprehensive Plan

27. The project is consistent with major themes of the Comprehensive Plan, as follows:
- a. Stabilize and improve the District's neighborhoods. The PUD will add office, residential, hotel, and retail uses as well as significant open space at the southeastern end of the New York Avenue Development Opportunity Area identified in the Comprehensive Plan.
 - b. Increase quantity and quality of employment opportunities. The Applicant estimated that 2,390 permanent office and hotel jobs will be created by the PUD.
 - c. Respect and improve the physical character of the area. The PUD will include active retail, residential, hotel, and office uses that will enhance the streetscape.
 - d. Ensure community input. The project was reviewed by and supported by ANC 5C. Additionally, the Applicant met with the Bloomingdale Civic Association, the Bates Area Civic Association, North Capitol Main Street, Inc., the Eckington Civic Association, and the Edgewood Civic Association to inform the community about the project.

- e. Reaffirm and strengthen District's role as an economic hub. The Applicant estimated that approximately 2,400 jobs, 370 residents, and \$10 million in taxes will be generated each year as a result of the project.
 - f. Enhance public safety. The development of the PUD site and the improvements to the Trail will enhance the safety of the Trail and the walk to the Metrorail Station, and increase the "eyes on street" at the currently vacant site.
 - g. Provide for diversity and overall social responsibility. Eight percent of the residential gross floor area will be devoted to affordable housing.
28. The PUD is not inconsistent with the elements and policies of the Comprehensive Plan, as follows:
- a. Chapter 2, the Economic Development Element, supports job development in targeted areas outside of downtown. Section 206.1 states: *The economic development outside the Central Employment Area objective is to create and expand economic activity and employment centers in target areas outside the Central Employment Area.* The Applicant estimated that the \$290 million project will bring 2,390 jobs and 370 residents and will generate approximately \$10 million a year in taxes. The project is located within the New York Avenue Corridor Development Opportunity Area.
 - b. Chapter 3, the Housing Element, includes policies in support of construction of housing on the Property, which is near the Metrorail Station and will provide eight percent of its residential development to moderate-income residents. The relevant sections read as follows:
 - §302.2(d): *Designate, as residential development opportunity areas, sites where significant housing development can appropriately occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed employment centers and office areas;*
 - §302.2(e): *Encourage housing on suitably located public or private properties that are vacant, surplus, underutilized or unused... with particular emphasis upon the needs of low- and moderate-income residents; and*
 - §303.3(d): *Provide zoning incentives, as appropriate, to developers prepared to build low- and moderate-income housing, such as permitting additional densities in exchange for incorporating low- and moderate-income housing in development projects; tie provision of housing into large-scale commercial developments where zoning benefits are sought;*

and give zoning preferences to mixed-use sites that include housing near appropriate Metrorail.

- c. Chapter 5, the Transportation Element, includes the following objective in support of denser housing and mixed-use development:

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

The PUD will promote higher density mixed-use development at a strategic location near a major entrance to the District, two blocks from Metrorail, and adjacent to major cross-town bus lines.

- d. Chapter 11, the Land Use Element, encourages a substantial amount of new housing, primarily near Metrorail Stations. Section 1134 states: *The objectives for Metrorail station area development are to concentrate planning and development attention on Metrorail station areas which offer opportunities for redevelopment and new growth, particularly in those station areas that have large amounts of vacant or poorly utilized land, and to maximize development where possible, thus promoting increased ridership for the transit system, assisting the District to perform its critical role as the urban center for the region, providing substantially increased amount of housing and jobs, and generally enhancing the District's economic development efforts.*
- e. Chapter 16, the Ward 5 Element, contains many policies, objectives, and action statements that support the proposed project. For example, § 1605.1(a) of the Ward 5 Objectives for Economic Development reads: *Enhance and expand the ward's economic activity and employment centers, particularly in the underused industrial and commercial areas.* The Property is underused, was industrially zoned at the time of the Comprehensive Plan's adoption, and has since been rezoned to a commercial category.

Also, § 1608.1(c) of the Ward 5 Objectives for Housing states: *Provide incentives for housing at desired locations such as the Fort Totten Metrorail Station Special Treatment Area and the Rhode Island Avenue Metrorail area.* The PUD will provide housing within one block of the New York Avenue Metrorail Station. Although the station did not exist when the Comprehensive Plan was adopted, the project's proximity to the station will further the objective of the Comprehensive Plan.

Finally, § 1620.1(a) reads: *Promote a physical environment that upgrades the ward's aesthetic qualities, enhances neighborhood stability, emphasizes neighborhood identity and function, and physically enhances the gateways and entrances into the City.* The proposed project will develop a major architectural composition at the northeastern entrance to central Washington. Its sleek horizontal lines and semi-transparent oblique angles on New York Avenue will address the relatively high-speed context of the transportation corridor. Its red-brick elements will add color and will tie in with both the nearby industrial and residential uses. The plaza will add a significant publicly accessible space for a newly developing part of the city, and will be an attractive destination for users of the Metropolitan Branch Trail.

Office of Planning Reports

29. By report dated November 20, 2006, as supplemented by the report dated December 11, 2006, OP recommended approval of the PUD application. This recommendation was based on its findings that the project would enhance revitalization efforts at the edge of the central business district; strengthen and expand the central area's office uses; provide both permanent housing and transient accommodations; generate more tax revenue for the District than do the current uses of the PUD site; help overall traffic flow in NoMA by providing a new traffic signal at Florida Avenue and 2nd Street; improve the environment for pedestrian and bicyclists on the site's perimeter and interior; provide employment opportunities and a First Source Employment Agreement with the objective that at least 51 percent of new employees hired in connection with the development will be District residents; create affordable housing without the expenditure of public funds; and that the project would be consistent with the Comprehensive Plan and with the final draft NoMA plan.

Other Government Agency Reports

30. By report dated November 28, 2006, the District Department of Transportation ("DDOT") concluded that it had no objections to the PUD, and the close proximity of the Metrorail station and the Metropolitan Branch Trail would help reduce the demand for private automobile use. DDOT's findings were based on the implementation of the following provisions listed in its report:
 - a. The single loading dock originally proposed was revised to incorporate two loading docks that will provide additional access points, with right-in and right-out egress movements exclusively. This revision mitigated safety concerns and issues regarding left turns onto Florida Avenue at 2nd Street, N.E. The Applicant should meet DDOT standards regarding the distance for the placement of driveways in relation to an intersection; the current standards stipulate that no

driveway should be closer than 60 feet to a street intersection, as measured from the intersection of the curb lines extended.

- b. The Metropolitan Branch Trail will run along the eastern edge of the Property, with direct access to and from the proposed project. The Applicant should provide upgrades to the Trail and create a connection for pedestrians and bicyclists to Florida Avenue and the New York Avenue Metrorail Station.
 - c. The upgrades to the trail included, but were not limited to, an enclosed atrium/rest area with a stair and elevator, seating, bike parking, drinking fountains, restroom access, signage, an information kiosk, and landscape screening. DDOT staff worked closely with the Applicant to devise a design that would optimize the use of the area for trail users and for tenants of the development.
 - d. Several Transportation Demand Management measures were described in detail on pages 46-50 of the Transportation Impact Study. DDOT strongly urged that the Commission make the recommendations requirements of any Order approving the project. In addition, DDOT recommended that the Applicant be required to prepare a comprehensive report on the effectiveness of the Transportation Demand Management measures and that the report be reviewed by DDOT annually to evaluate their effectiveness.
 - e. The Applicant agreed to pay for the design and installation of a traffic signal at the intersection of Florida Avenue and 2nd Street, N.E.
31. The Commission finds that the plans submitted by the Applicant meet the findings and recommendations of DDOT set forth above. As to DDOT's recommendation that the Applicant submit annual evaluations of the Transportation Demand Management measures, the Commission finds that DDOT has not presented standards against which an annual report would be measured, and the requirement for an annual report would in and of itself not be useful. Therefore, a report will not be required.

Response to Post-hearing Information Requested by the Commission

32. As set forth in Findings No. 9 and 10, the Applicant submitted information in response to requests made by the Commission at the hearing. The Commission finds that the information contained in that response adequately addressed to the Commission's concerns, in that more affordable housing will be provided without reducing any other benefit or amenity previously proffered, the size of the planned hotel sign was reduced to make the sign less noticeable, and the proposed height of the wall along New York Avenue was lowered so persons can view the plaza below.

NCPC Comments

33. As indicated at the outset of this Order, NCPC expressed concern about several aspects of this project. NCPC questioned the use of the elevated approach to the New York Avenue Viaduct as the measuring point of height, concluding that this allowed the project's actual height to exceed that allowed under the Height Act. In addition, NCPC indicated the height of the residential building raises concerns for the security of the Bureau of Alcohol, Tobacco, Firearms, and Explosives Headquarters Building. Finally, NCPC expressed the belief that locating the entrances to the parking garage and loading docks immediately adjacent to the intersection of New York and Florida Avenues will adversely affect that gateway and diminish the opportunities for locating significant commemorative works in the area.
34. By letter dated January 25, 2007, the Applicant submitted a letter and drawings that the Commission believes adequately address the concerns expressed by NCPC.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that exceed or are less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of the PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, including its approval pursuant to § 2405.3, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of residential, hotel, office, and retail uses is appropriate for the

Property. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project benefits and amenities are reasonable for the development proposed on the PUD Site.
8. Approval of the PUD is appropriate, because the proposed development is consistent with the present character of the area.
9. Approval of the PUD is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the issues and concerns of the affected ANC. The Commission has carefully considered ANC 5C's recommendation for approval and concurs in its recommendation.
11. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a planned unit development for the site located at the northeast corner of the intersection of Florida and New York Avenues, N.E., that is, Lots 23, 811, 812, and 813 in Square 3584. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Gensler and SK&I Architects, entitled "MRP Realty Washington Gateway," dated November 9, 2006, marked as Exhibit No. 29; as modified by the plans dated November 30, 2006, marked as Exhibit No. 33; the plans dated December 4, 2006, marked as Exhibit No. 38; and the plans dated January 25, 2007, marked as Exhibit No. 44 (collectively, the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The project shall be a mixed-use development constructed to a maximum height of 130 feet and a density of 7.06 FAR. Approximately 229,690 square feet of gross floor area shall be devoted to residential use, approximately 120,443 square feet of gross floor area

shall be devoted to hotel use, and approximately 601,896 square feet shall be devoted to office use. The project shall have approximately 7,000 square feet of retail space.

3. Of the residential gross floor area for the project, a minimum of approximately 18,375 square feet, or eight percent of the residential gross floor area, shall be devoted to affordable housing for residents with incomes no greater than 80 percent of the Area Median Income. The construction and distribution of the affordable units, the affordability control period, and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, marked as Exhibit No. 38.
4. The PUD shall include a minimum parking ratio of 0.6 space per dwelling unit for the residential use; 0.25 space per guest room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space, whichever is greater; and one parking space for each 1,800 square feet of gross floor area of office use. At least two of the parking spaces shall be reserved for use by a car-sharing service.
5. The Applicant shall design and implement a Transportation Management Plan that includes the strategies set forth on pages 46 through 50 of the Transportation Impact Study by Wells & Associates, LLC, dated November 9, 2006, marked as Exhibit No. 29.
6. The Applicant, at its sole expense, shall cause the design and installation of a traffic signal at the intersection of Florida Avenue and 2nd Street, N.E., in accordance with DDOT standards and guidelines. The traffic signal shall be installed prior to the issuance of the first certificate of occupancy for the PUD.
7. The Applicant shall enter into an agreement with DDOT for the installation and maintenance of the improvements to the Metropolitan Branch Trail, along the eastern boundary of the PUD site. The improvements shall include, but not be limited to, the enclosed atrium/rest area with a stair, elevator, seating, bike parking, drinking fountains, restroom access, signage, an information kiosk, and landscaping.
8. Public access to the project to and from New York Avenue and the Metropolitan Branch Trail shall be permitted in accordance with the following daily schedule:
 - a. The New York Avenue staircase shall be open from 7:00 a.m. to 7:00 p.m.
 - b. The Metropolitan Branch Trail Atrium and the stairs and elevators to the plaza shall be open from 6:00 a.m. to 9:00 p.m.

Additionally, the PUD shall include at least one public restroom for use during normal retail hours.

9. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$50,000 to the D.C. Commission on the Arts and Humanities to support the Florida Avenue Underpass Project.
10. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$25,000 to City Year for the five-year operating costs for the Young Heroes Program.
11. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$10,000 to the Student Activity Fund for Emery Elementary School to fund student field trips, educational celebrations, audio/visual upgrades, and technology upgrades.
12. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$10,000 to the Harry Thomas Community Service Center for the purchase and installation of a scoreboard.
13. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$5,000 to North Capitol Main Street, Inc. ("NCMS") for the development of a database of the commercial/retail properties located within the NCMS service area.
14. The Applicant shall have flexibility with the design of the PUD as follows:
 - 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 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;
 - 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 specified in Condition No. 4; and

- e. To eliminate the interior drive to the south section of the office building should operational and/or security needs require.
- 15. The Applicant shall abide by the terms of the First Source Employment Agreement entered into with the Department of Employment in order to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the jobs created by the PUD.
- 16. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). The covenant shall bind the Applicant and all successors in title to construct on and use the PUD Site in accordance with this Order or amendment thereof by the Zoning Commission.
- 17. 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.
- 18. 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.
- 19. 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 prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On December 11, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on JUN 29 2007.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning 