

1000 F STREET, N.W.
PLANNED UNIT DEVELOPMENT

Z.C. CASE NO. 07-18

PRE-HEARING STATEMENT

JEMAL'S UP AGAINST THE WALL, LLC

October 10, 2007

ZONING COMMISSION
District of Columbia

CASE NO. D7-18
EXHIBIT NO. 13

SUBMITTED BY:

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PREFACE

This pre-hearing statement is submitted by Jemal's Up Against the Wall, LLC (the "Applicant") in support of its application for consolidated review and approval of a planned unit development ("PUD") before the District of Columbia Zoning Commission (the "Zoning Commission") in conformity with Chapter 24 of the District of Columbia Zoning Regulations (the "Zoning Regulations"). The property is located in the DD/C-4 District at the southwest corner of 10th and F Streets, N.W., and includes Lots 18, 19 and 818 – 821 in Square 347, as well as a small portion of a public alley to be closed. The property is presently improved with five buildings of varying height. The Applicant is seeking PUD approval in order to retain the façade of the building at the southwest corner of 10th and F Streets, N.W. and to construct a new eleven-story premier office building with ground floor retail.

The new development will be constructed to a floor area ratio of 8.26 and will contain approximately 91,188 square feet of gross floor area devoted to office space and approximately 6,218 square feet of gross floor area for retail uses. The new development will have a maximum building height of 120 feet.

Since the time this application was filed, the Applicant has clarified its proposal in response to comments from the Zoning Commission and the Office of Planning. This pre-hearing statement provides the additional information requested by the Zoning Commission and the Office of Planning.

Previously submitted in support of this application were completed application forms, a notice of intent to file a PUD application (with property owner list and certification of mailing), architectural drawings and a statement describing the project in full and its compliance with the PUD provisions of the Zoning Regulations.

DEVELOPMENT TEAM

Applicant/Owner: Jemal's Up Against the Wall LLC
c/o Douglas Development Corporation
702 H Street, N.W. , Suite 400
Washington, D.C. 20001

Architect: Shalom Baranes Associates
3299 K Street, NW
Suite 400
Washington, DC 20007

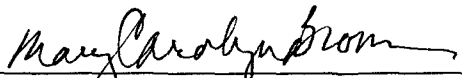
Civil Engineers: A. Morton Thomas & Associates, Inc.
12750 Twinbrook Parkway
Rockville, MD 20852-1700

Traffic Consultant: O. R. George Associates
10210 Greenbelt Road, Suite 310
Greenbelt, MD 20706

Land Use Counsel: Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

**CERTIFICATION OF COMPLIANCE
WITH SECTION 3031 OF THE ZONING REGULATIONS**

THE APPLICANT HEREBY CERTIFIES that its application filed on June 19, 2007, and this pre-hearing statement comply with the provisions of section 3013 of the Zoning Regulations as set forth below, and that the application is complete. In accordance with section 3013.8, the application shall not be modified less than twenty days prior to the hearing.

By: 
HOLLAND & KNIGHT LLP

<u>Subsection</u>	<u>Description</u>	<u>Page</u>
3013.1(a)	Information Requested by the Commission	Pre-hearing Statement
3013.1(b)	List of Witnesses	vi
3013.1(c)	Summary of Witness Testimony: ▪ Paul Millstein on behalf of the Owners ▪ Patrick Burkhart, AIA, Shalom Baranes Associates ▪ Osborne George, Traffic and Transportation Consultant O.R. George & Associates, Inc. ▪ Steven E. Sher, Director, Zoning and Land Use Services, Holland & Knight LLP	Exhibit A
3013.1(d)	Additional supporting materials	Submitted herein
3013.1(e)	Reduced Plans	Previously Submitted
3013.1(g)	Estimated Time Required for Presentation of Case	One hour
3013.2	Two Sets of Full Plans	No longer required
3013.3	List of Owners (Rulemaking)	N/A

3013.4	LSDBE Memorandum of Understanding	Exhibit B
	First Source Employment Agreement	Exhibit C
3013.6(a)	List of Names and Addresses of Each Person Having a Lease with the Owner for All or Part of Any Building Located on the Property Involved in the Application	Exhibit D

**LIST OF WITNESSES AND
ESTIMATED TIME REQUIRED TO PRESENT CASE**

Witnesses

- | | | |
|----|--|--------------------|
| 1. | Paul Millstein on behalf of Jemal's Up Against the Wall, LLC | Applicant |
| 2. | Patrick Burkhardt, AIA
Shalom Baranes Associates | Architects |
| 3. | Osborne George
O.R. George & Associates, Inc. | Traffic Consultant |
| 4. | Steven E. Sher, Director of Land Use and Zoning Services, Holland & Knight LLP | Land Use Planner |

<u>Estimated Time Required to Present Case:</u>	One Hour
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LIST OF EXHIBITS

<u>Description</u>	<u>Exhibit</u>
Outlines of Testimony	A
LSDBE Memorandum of Understanding	B
First Source Employment Agreement	C
List of Names and Addresses of Each Person Having a Lease with the Owner for All or Part of Any Building Located on the Property Involved in the Application	D
Historic Preservation Review Board Actions, dated June 22, 2006 and July 27, 2006	E
Plan Identifying the Heights of Adjacent Buildings	F
Sections and Three-dimensional Renderings of Proposed Trellis	G

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I.
SUMMARY OF THE PUD APPLICATION

Jemal's Up Against the Wall, LLC (the "Applicant") is pleased to submit this pre-hearing statement in support of its application for consolidated review and approval of a PUD before the District of Columbia Zoning Commission (the "Zoning Commission"). The subject property is located at the southwest corner of 10th and F Streets, N.W., and includes Lots 18, 19, 818 – 821 and a portion of a public alley to be closed in Square 347. The PUD site consists of 11,790 square feet of land area, including 270 square feet of the public alley to be closed. It is currently improved with a group of buildings that house an adult bookstore, two souvenir shops, a diner and office space for the Downtown DC Business Improvement District.

The Applicant seeks approval of this PUD to allow the development of an eleven-story office building, with ground floor retail, and the retention of the historically-contributing facades of the existing structures on the site. The proposed development will be constructed to a density of 8.26 FAR and a maximum building height of 120 feet. The Generalized Land Use Map of the District of Columbia Comprehensive Plan designates the property as part of the High Density Commercial Land Use Category, which includes a mix of employment, retail, office, cultural and entertainment centers.

The Applicant filed its application for a PUD, with supporting materials, architectural drawings and exhibits, with the Zoning Commission on June 19, 2007. Those materials set forth in detail the proposed development, project design, public benefits and project amenities, and the consistency of the PUD with the Comprehensive Plan. This pre-hearing statement supplements the application and its accompanying materials, which are hereby incorporated by reference as set forth fully herein.

II. ISSUES RAISED BY THE ZONING COMMISSION

A. Comments from the Zoning Commission

At its public meeting on September 10, 2007, the Zoning Commission requested additional information regarding the proposed FAR, the proposed building height, the relocation of the Waffle Shop, the development's sustainable design features, the trellis design, the façade treatment and the transferable development rights associated with the site.

B. Justification for Floor Area Ratio above 6.0

The site is zoned DD/C-4, with the underlying C-4 District permitting a density of 8.5 FAR. The Downtown Development Overlay District, however, limits the site's allowable density to 6.0 FAR. An FAR of 6.0 does not allow the Applicant to develop the property in a manner that responds to the recent large-scale development along F Street or the character of the revitalized downtown area. From an operational standpoint, the relatively small land area of the site does not provide sufficient space for an economically-viable and tenant-oriented office building. Without an FAR above 6.0, the site would remain underutilized and, as a result, would be out of character with the existing neighborhood. The Applicant, from a land planning standpoint, was encouraged to address certain uses on the site which have an adverse impact on the surrounding area. The economic realities of removing such uses require that the site be developed in a manner that is consistent with the Comprehensive Plan and economically feasible.

From the urban design perspective, the southwest corner of 10th & F Streets demands a structure that is compatible with the height and bulk of such recent projects as the former Woodward & Lothrop Department Store immediately to the north, and Carroll Square and the Atlantic Building just to the east along F Street in the Downtown Historic District. In deference to the smaller scale buildings along 10th Street in the Pennsylvania National Historic Site historic area,

the Applicant has incorporated a series of setbacks into the building design in an effort to reduce the apparent height and density of the PUD project. As a result, the increased density of the proposed development is muted. Each elevation of the project responds compatibly to the adjacent developments while allowing enough density to make the project economically viable. Accordingly, the proposed FAR is appropriate, reasonable and necessary for the project to succeed. The development proposal has received conceptual design approval from the HPRB. See Exhibit E.

Lastly, the 6.0 FAR was put in place so that undue pressure was not put on historic resources to encourage their demolition. We do not have that issue here as HPRB and the preservation community concur that the proposed site development is appropriate.

C. Building Height

The Zoning Commission expressed concern regarding the height of the proposed development. The proposed building height is 120 feet. As illustrated in the Plan Identifying the Height of Adjacent Buildings, attached as Exhibit F, the proposed building height is consistent with the building heights of adjacent buildings. The building directly to the west has a building height of 130 feet. The historic building across 10th Street, N.W., has a building height of 120 feet. And the height of the historic Woodward & Lothrop building across F Street, N.W., to the north, is approximately 120 feet. Accordingly, the building height of the PUD is compatible with the building heights to the north, east and west of the site.

D. Relocation of the Waffle Shop as a Public Amenity

The Applicant offers the relocation of the Waffle Shop as a public amenity of this PUD given its historic nature and the recommendations of the D.C. Historic Preservation Review Board ("HPRB" or "Review Board") in June and July 2006 to salvage its character-defining features. Since the time of the Review Board's recommendation, six preservation groups jointly filed an application to designate the interior and exterior of the Art Moderne-style Waffle Shop, which was constructed

in 1950, as an historic landmark. Under the provisions of the historic preservation law, the building is now treated as a landmark and afforded the full protection of law, inside and outside, unless and until the HPRB finds it does not meet the designation criteria. The Applicant immediately began negotiations with the preservation groups to find a viable solution that would allow the proposed PUD project to go forward while at the same time allow for the retention and preservation of the Waffle Shop. The Office of Planning and the Historic Preservation Office also participated in the Applicant's discussions with the preservation groups. Happily, the parties were able to reach an accord whereby the Waffle Shop will be dismantled, stored and then reassembled at a new location in Square 450 or 451 on property owned by an affiliate of the Applicant. The Applicant has agreed not to oppose landmark designation of the building and the preservation groups have agreed to support the relocation of the Waffle Shop at the required hearing before the Mayor's Agent for Historic Preservation. The parties are presently reducing their agreement to writing and anticipate consummation of the settlement within the next several weeks.

Preservation of the Waffle Shop is a significant public benefit that fosters the goals of the District's historic preservation law. It is a matter of public policy that "the protection, enhancement and perpetuation of properties of historical, cultural and esthetic merit are in the interests of the health, prosperity and welfare of the people of the District of Columbia." D.C. Code § 6-1101(a) (2001 ed). The Comprehensive Plan recognizes that preservation of buildings from the recent past, such as the Waffle Shop, are high on the preservation agenda. 10 DCMR 1000.5; Policy HP-1.1.4 (*The Recent Past*). It is also critical to protect the integrity of historic buildings, and relocate them in their entirety to different sites if preservation in situ is infeasible or will result in only partial preservation. Policy HP-2.4.5 (*Protecting Historic Building Integrity*).

Here, given the national significance of Ford's Theatre and the Peterson House, retention of the 1950 Waffle Shop diner in this mid-nineteenth century setting is historically questionable. At the

same time, preservation of this Art Moderne structure is called for under the Comprehensive Plan and the historic preservation law, and thus its relocation to a new site is a significant public benefit of the PUD project.

E. Sustainable Design Features

The Applicant will incorporate numerous sustainable design features into the building, including a green roof. The Applicant is retaining a LEED consultant to assist in the evaluation and implementation of the "green" building elements. A full list of the sustainable design features to be incorporated into the PUD will be provided to the Commission not less than 20 days in advance of the hearing.

F. Trellis Design

In response to the Zoning Commission's request for additional information regarding the design of the proposed trellis, the Applicant has attached sections and three dimensional renderings of the proposed trellis as Exhibit G.

G. Façade Treatment

At the public meeting on the Application, the Commission requested that the Applicant provide the Zoning Commission with a rendering which illustrates how the proposed façade treatment relates to the façade treatments of other buildings in the area. The Applicant is presently developing that drawing and will provide it in its supplemental submission to the Commission not less than 20 days in advance of the hearing.

H. Retention of Transferable Development Rights

A review of the land records of the District of Columbia confirms that the Applicant has not transferred any of the transferable development rights from the subject property.

III.
ISSUES RAISED BY THE OFFICE OF PLANNING

A. Comments from the Office of Planning

In its August 24, 2007, Setdown Report, the Office of Planning requested additional information concerning the relocation of the Waffle Shop, the location of the additional 4,000 square feet of rehearsal space for Ford's Theatre and the location of parking and loading garage doors and windows.

B. Relocation of the Waffle Shop

At this time, the Applicant is developing its plan for the relocation of the Waffle Shop to a vacant site owned by an affiliate to a site in either Square 450 or 451. The Applicant will retain a professional in the stabilization and salvage of historic buildings to develop and execute the plan for relocating the Waffle Shop. As part of its settlement agreement with the preservation groups, the Applicant will be consulting regularly with the Historic Preservation Office staff and must receive approval of the Mayor's Agent prior to execution of the plan.

C. Location of the Additional Space for Ford's Theatre

As part of its public benefits and amenities package, the Applicant will dedicate 4,000 square feet of rehearsal space to Ford's Theatre. The Applicant has located that space – ahead of schedule – in the Atlantic Building. An additional 4,000 square feet will be provided either in the 10th & F Street PUD or at another location in close proximity to the theater. In its letter dated March 16, 2007, which was attached to the Applicant's PUD Statement, Ford's Theatre indicated that it is pleased to be offered this additional space and believes the PUD will be an attractive and appropriate development for the historic area.

D. Location of Parking and Loading Garage Doors and Windows

Prior to the public hearing on the Application, the Applicant will submit to the Office of Planning and the Zoning Commission a rendering which identifies the location of the garage doors

and windows associated with the development's parking and loading areas which are located off the alley which abuts the site on its western frontage.

IV.

COMMENTS FROM THE DISTRICT'S DEPARTMENT OF TRANSPORTATION

The Applicant recently met with the District's Department of Transportation to discuss the loading facilities for the project and access issues at the alley. At the recommendation of DDOT, the Applicant will grant a 5-foot right-of-way easement along the alley to a height of 16 feet to ensure that emergency vehicles and delivery trucks will have adequate access. The Applicant will submit updated drawings to the Commission no later than 20 days in advance of the hearing to reflect this change. The grant of a 5-foot right-of-way easement will provide space in the area adjacent to the subject site that has a width of 20 feet and is usable for alley purposes.

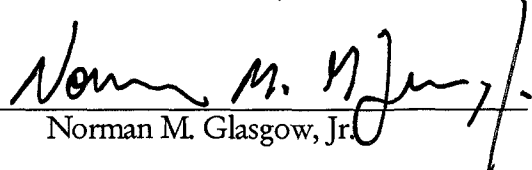
V.
CONCLUSION

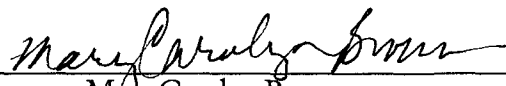
For the foregoing reasons, the Applicant submits that the PUD satisfies the standards of Chapter 24 of the Zoning Regulations and are consistent with the purposes and intent of the Zoning Regulations and Zoning Map; will enhance the health, welfare, safety and convenience of the citizens of the District of Columbia; satisfies the requirements for approval of a consolidated PUD; provides significant public benefits; and advances important goals and policies of the District of Columbia.

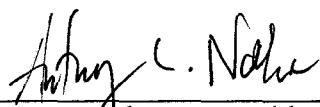
It is appropriate to grant the flexibility afforded by the PUD process in order to approve the proposed development. The scale, density and proposed uses of the proposed development are compatible with the surrounding buildings and are consistent with the Generalized Land Use Map of the Comprehensive Plan. Accordingly, the Applicant requests that the Zoning Commission approve this PUD.

Respectfully Submitted,

HOLLAND & KNIGHT, LLP


Norman M. Glasgow, Jr.


Mary Carolyn Brown


Anthony L. Noble

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