

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Zoning Commission Order No. 08-25

Z.C. Case No. 08-25

**Consolidated Planned Unit Development and Related Map Amendment
Matthews Memorial Terrace LP and Matthews Memorial Baptist Church
(Square 5868, Lots 172, 1000, 1001, 1002, 1047, and 1050)**

April 13, 2009

Pursuant to proper notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 5, 2009, to consider an application by Matthews Memorial Terrace LP and Matthews Memorial Baptist Church (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map from the R-5-A Zone District to the R-5-B or the C-2-A Zone District, with the C-2-A Zone District as the preferred alternative, for the property known as Square 5868, Lots 172, 1000, 1001, 1002, 1047, and 1050 (the "Application"). The Commission considered the Application pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of Lots 172, 1000, 1001, 1002, 1047, and 1050 in Square 5868 and is bounded by Martin Luther King Jr. Avenue S.E. to the west, Dunbar Street S.E. to the east, Matthews Memorial Baptist Church to the north, and a residential apartment building to the south (the "Property") and consists of approximately 1.82 acres or 79,311 square feet. The Property is located in the R-5-A Zone District.
2. The Application for consolidated review and approval of a PUD and related amendment to the Zoning Map was submitted on September 26, 2008, by the Applicant. Memorial Terrace LP is a partnership between The Community Builders, a nonprofit affordable housing developer, and Creative Opportunities Ventures, Inc. (a subsidiary of Matthews Memorial Baptist Church). Matthews Memorial Terrace LP will own and operate the residential component of the PUD.
3. The Commission voted to set the case down for a public hearing at its November 10, 2008 public meeting. Notice of the public hearing, including a description of the subject property and the proposed development, was published in the *D.C. Register* ("DCR") on January 2, 2009, at 56 DCR 58, and was mailed to all

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property owners within 200 feet of the subject property and to Advisory Neighborhood Commission ("ANC") 8C. The Application was updated by a pre-hearing submission filed on December 5, 2008, a supplemental pre-hearing submission filed on February 13, 2009, and the Applicant's presentation at the public hearing.

4. The Commission opened and closed the public hearing on the above-mentioned Application on March 5, 2009, which was conducted in accordance with the provisions of 11 DCMR § 3022. Parties to the proceeding were the Applicant and ANC 8C. During the public hearing, the Commission heard testimony and received evidence from the parties and the Office of Planning ("OP") and District Department of Transportation ("DDOT").
5. At the March 5, 2009 public hearing, Allison Prince of Pillsbury Winthrop Shaw Pittman, LLP, presented the case on behalf of the Applicant. The Commission recognized Jeffrey Goins of PGN Architects as an expert in architecture and Nicole White of Symmetra Design as an expert in traffic engineering and transportation planning (March 5, 2009 Transcript, pp. 11-12.)
6. The Applicant further refined plans, drawings, and other components of the Application in response to the Commission's comments and concerns, and submitted the revisions with other information requested by the Commission in a post-hearing submission filed on March 26, 2009. The post-hearing submission also addressed issues raised by DDOT during the course of the public hearing.
7. At a public meeting on April, 13, 2009, the Commission took proposed action to approve the Application with conditions.
8. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC, by action dated April 30, 2009, found that the proposed PUD and amendment to the Zoning Map would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.
9. The Commission took final action to approve the Application on May 11, 2009.

PUD SITE AND SURROUNDING AREA

10. The Property consists of a rectangular parcel and is bounded by Martin Luther King Jr. Avenue S.E. to the west, Dunbar Street S.E. to the east, Matthews Memorial Baptist Church to the north, and a residential apartment building to the south. The Property consists of approximately 1.82 acres or 79,311 square feet of

land area, and is located in the Barry Farm neighborhood in Ward 8. (Exhibit 3, Exhibit A; Exhibit 3, Exhibit B, pp. A6-A7.)

11. The Property includes multiple lots (to be combined into one record lot) all owned by Matthews Memorial Baptist Church. (Exhibit 3, Exhibit A.)
12. The Property has significant grade changes, with the southwestern part of the site being at the highest point. The Property slopes downward from Martin Luther King Jr. Avenue S.E. to Dunbar Road S.E. Presently, the property is mostly improved with surface parking and single family dwellings. The site is bordered primarily by medium-density residential development to the south and to the west. (Exhibit 3, Exhibit A; Exhibit 3, Exhibit B, p. A6.)
13. The Property is located in the Moderate-Density Residential Land Use category on the District of Columbia Future Land Use Map.

DESCRIPTION OF THE PUD PROJECT

14. The proposed project consists of a new residential building containing approximately 99 units of affordable housing ("Residential Building") and a community building with a community meeting room, a dining room/restaurant, a social services center, a bookstore/cafe, and a medical clinic ("Community Building") (together, the "Project"). The Project will replace some surface parking and several single-family dwellings. (Exhibit 3, Exhibit B, pp. A5-A6; Exhibit 14, Exhibit A.)
15. The Residential Building will contain approximately 99 units that will be distributed among one-bedroom, one-bedroom plus den, two-bedroom, and three-bedroom configurations. The residential units will be distributed as follows: 32 units for senior citizens (only one-bedroom, one-bedroom plus den, and two-bedroom units); 34 units for public housing-eligible individuals and families, many of whom will be displaced from the Barry Farm redevelopment project; and 33 units for individuals and families earning less than 60% of the Area Median Income. Senior units will be on the lowest floors, and the remaining unit types will be distributed on the upper floors. (Exhibit 14, pp. 6-8.)
16. The Community Building will allow Matthews Memorial Baptist Church to expand its community service offerings. The building's community meeting room on the first floor will be available to all community-related organizations. The second floor dining room will operate as a restaurant open to the public during limited hours. Offering both table service and take-out/cafeteria service, the restaurant will be open for lunch and dinner. The dining room will be closed to the public during all other times and will be available for church-related

functions. The bookstore/café on the first floor will be open to the public during limited hours and will sell mostly liturgical material and will offer limited refreshments. The third floor social services center will house the Community Development Corporation and the Urban Families House of Hope ("UFHH"). UFHH will provide marriage/relationship counseling, job-searching resources, housing references, parenting skills training, crisis intervention, budgeting classes, a fatherhood initiative program, and other related services. The third floor medical clinic will be leased to a doctor and will provide enough space for the doctor, one nurse, one licensed therapist, and one receptionist. (Exhibit 14, pp. 8-10.)

17. The Project will provide open space in the form of a large terrace along the northern part of the Residential Building and adjacent to the Community Building. Providing seating and sidewalks, the terrace will provide an outdoor space for residents to gather. Also, because of the grade change, the terrace will be protected from Martin Luther King Jr. Avenue S.E. In addition, the Community Building will have a small terrace at the rear that will connect to the larger terrace. The areas in front of both buildings along Martin Luther King Jr. Avenue S.E. will also be landscaped open space. (Exhibit 14, Exhibit A, p. L1.10.)
18. The front and side elevations of the buildings will feature a design and various materials that will integrate the buildings into the neighborhood. The exterior materials will include fiber cement siding, metallic silver paneling, sandstone blocks, and various types of hammered and smooth cast stone. The Community Building will also feature a green roof. (Exhibit 14, p.7; Exhibit 14, Exhibit A, p. A50.)
19. The PUD will include approximately 50 parking spaces below the Residential Building and an additional 12 surface parking spaces that will serve the Community Building. (Exhibit 16, pp. 5-6; Exhibit 14, Exhibit A, pp. A5 & A25.)
20. In conjunction with the PUD, the Applicant requests an amendment to the Zoning Map from the R-5-A Zone District to the C-2-A Zone District, in order to accommodate the proposed uses, height, and density of the Project, including the restaurant and bookstore/café uses. (Exhibit 14, pp. 8-10.)
21. The total gross floor area of the proposed PUD is approximately 120,602 square feet, for a total density of approximately 1.52 FAR. The proposed Residential Building will have a height of approximately 41.5 feet, and the proposed Community Building will have a height of approximately 30 feet. The Project will have a lot occupancy of approximately 31%. The proposed density, height, and

lot occupancy of the Project are all lower than the matter-of-right limitations in the C-2-A District. (Exhibit 14, pp. 10-11.)

SATISFACTION OF PUD EVALUATION STANDARDS

22. Pursuant to 11 DCMR Chapter 24, the Applicant requested a PUD-related rezoning to the C-2-A Zone District. The proposed PUD's density, height, and lot occupancy are all within the matter-of-right limitations for the C-2-A Zone District, and are therefore well within the PUD standards set forth in 11 DCMR § 2405. In addition, the Applicant requested relief from the requirement to build only one building on one record lot (§ 2516), from the off-street parking requirements (§ 2101.1), and from the loading requirements (§ 2201.1). This requested flexibility from the C-2-A Zone District will have no impact on the surrounding properties. (Exhibit 14, p.12.)
23. At the public hearing, the Applicant's representative, Bishop C. Matthew Hudson, described his extensive contact with the community, including the ANC, regarding the Project, and cited support from various community organizations as well as from Councilmembers Marion Barry and Kwame Brown as evidence of the Applicant's successful outreach activities. (March 5, 2009 Transcript, pp. 26-29.)
24. The Project will not cause adverse traffic or parking impacts, as demonstrated by the Applicant's traffic study and by testimony presented by the Applicant's traffic consultant, Nicole White, who was recognized by the Commission as an expert in the field of traffic engineering. The Applicant's traffic consultant testified that the proposed development will not have a significant impact on traffic or parking in the neighborhood. According to the traffic expert, the Applicant will implement and maintain a Transportation Demand Management plan, including such features as bicycle storage and para-transit service. She noted that access to the Property from Martin Luther King Jr. Avenue is preferable and can be accommodated without significant adverse effects on traffic conditions in the area, and that primary access to the Property from Dunbar Road would be difficult and inadequate. She also noted the existence of nearby traffic signals along Martin Luther King Jr. Avenue. She also addressed concerns regarding pedestrian safety with recommendations such as enhanced crosswalks. Ms. White also testified that the pedestrian safety concerns should be considered in the broader context of other developments planned for the area. (March 5, 2009 Transcript, pp 46-57.)
25. As detailed in the Applicant's written submissions and testimony to the Commission, the proposed PUD will provide the following Project amenities and public benefits:

- Housing and Affordable Housing: The proposed residential building will include 99 units. The residential units will be distributed as follows: 32 units for senior citizens (only one-bedroom, one-bedroom plus den, and two-bedroom units); 34 units for public housing-eligible individuals and families, many of whom will be displaced from the Barry Farm redevelopment project; and 33 units for individuals and families earning less than 60% of the Area Median Income. Senior units will be on the lowest floors, and the remaining unit types will be distributed on the upper floors. (Exhibit 14, pp. 6-8; Exhibit 15, p. 15; March 5, 2008 Transcript, p. 35.)
- Urban Design, Architecture, and Open Spaces: The Applicant's architectural expert, Jeff Goins, who was admitted as an expert in architecture, testified that the Project's design showed a strong sense of neighborhood compatibility by taking into account the topography, the existing retaining wall at the rear of the site, the nearby buildings, the neighborhood houses, and the varying architectural styles. He cited the limited scale, the open space, and the landscaping as important aspects of the Project. (March 5, 2009 Transcript, pp. 29-44.) The Project's design allows parking to be provided at grade, which allows for the creation of significant open space between the community building and the residential building. This space will be an intimate and secure setting with extensive landscaping, seating, and sidewalks. (Exhibit 14, p.15; March 5, 2009 Transcript, p. 41.)
- Site Planning, and Efficient and Economical Land Uses: The proposed Project has been designed to provide the community and residents and their guests with spaces for entertainment, gathering, relaxation, and necessary services, including the terrace, a community room, and the community services center. (Exhibit 14, pp.15-16.)
- Environmental Benefits: The Project will meet or exceed the Green Communities Initiative standard. Features will include numerous environmentally sensitive elements, including the following: a green roof on both the community services building and the underground parking structure; green exterior materials on both buildings. In addition, as part of the Green Communities Initiative, the Applicant held a series of charrettes. Finally, the site is located on major transit routes with bus stops at the site, and it is within walking distance of the Anacostia Metro station, which meets the Smart Growth aspects of green development. (Exhibit 14, p. 16; Exhibit 33.)
- Social Services: The community building will provide a significant benefit to the community. This building will allow the Matthews Memorial Baptist Church to expand its myriad social service offerings. The community building

will provide significant upgrades to the current facilities and will facilitate expansion of these community programs and the addition of new programs. A community meeting space will be incorporated into the community building for neighborhood and community organizations. In addition, the community services building will contain a dining room/restaurant and bookstore/café, run by the Matthews Memorial Baptist Church, for the public to visit during limited times of the day. The building will also house a medical clinic that will offer a full panoply of medical services for members of Matthews Memorial Baptist Church and the community. (Exhibit 14, pp. 16-17.)

- Effective and Safe Vehicular and Pedestrian Access: As described in Finding of Fact 24, the Applicant's traffic and parking expert testified regarding the Project's effective and safe vehicular and pedestrian access, as well as the proposed TDM program. (Exhibit 14, Exhibit B; March 5, 2009 Transcript, pp. 46-56.) In consultation with DDOT, the Applicant recommended a series of site improvements including a contribution of \$10,000 to DDOT for the enhancement of pedestrian crosswalks at Eaton Road, and hosting of a pedestrian educational campaign at Matthews Memorial Baptist Church. The Applicant agreed to provide these improvements as a benefit of the PUD, and all of the proposed improvements are described in Exhibit 39 of the record. (Exhibit 39, pp. 1-2; Exhibit 39, Exhibit C.)
- Comprehensive Plan: The PUD is not inconsistent with the Property's Moderate Density Residential Land Use designation on the Future Land Use Map. While the Future Land Use Map typically is helpful in determining appropriate uses and density in areas of the city, it is not intended to serve as a "general" zoning map, nor does it mandate a parcel-by-parcel limitation on permitted development. The proposed Project and C-2-A Zone District are consistent with the flexibility that the Moderate Density Residential Land Use category provides for the Property. (Exhibit 14, p. 23.) In addition, the PUD is not inconsistent with the District Elements of the Comprehensive Plan, including the Land Use Element, the Housing Element, the Community Services and Facilities Element, and the Far Southeast/Southwest Area Element.
- Housing Element: The proposed development is consistent with the housing provisions of the Comprehensive Plan since it creates 99 new affordable rental units. The Housing Element of the Plan seeks to ensure housing affordability; foster housing production, and limit displacement. The Property is located in a residential neighborhood. A new development of apartments in this neighborhood will not be disruptive, and in fact provides additional residential opportunity for existing residents of the neighborhood. No displacement of

residents will occur as a result of this application, and many neighborhood residents will be able to remain in the area because of this Project. The proposed high quality residential community will serve as an anchor that strengthens and enhances the surrounding residential neighborhood. (Exhibit 14, pp. 19-20.)

- Land Use Element: This Project has been carefully designed to incorporate the style and improve the aesthetics of the surrounding neighborhood. This new Project is a visually pleasing architectural style that will help stabilize and revitalize the neighborhood by improving the streetscape of Martin Luther King Jr. Avenue. This Project will also provide an anchor for the community that will allow Matthews Memorial Baptist Church to improve upon the many services that it offers to its members and to the community. (Exhibit 14, pp. 20-21.)
- Community Services and Facilities Element: An important component of this Element is the provision of quality and affordable health care where it is needed. With limited options for primary health care services, the neighborhood will significantly benefit from this new Project's expanded health clinic. The community building will allow Matthews Memorial Baptist Church's health clinic to offer additional services in upgraded facilities to meet the needs of the community. (Exhibit 14, pp. 21-22.)
- Far Southeast/Southwest Area Element: The Project is consistent with the area element calling for housing development, restaurants, health care services, family services, and infill development. The Project advances each of these goals. The development adds affordable housing, and it expands and improves upon necessary community services. The Project achieves two goals of the Comprehensive Plan by providing a restaurant and a health care clinic. In addition, the thoughtful design of the Project's buildings incorporates the neighborhood's aesthetics and topography to create a Project well-aligned with the policies of this area element. (Exhibit 14, pp. 22-23.)

GOVERNMENT REPORTS

26. In its February 23, 2009 report, and by testimony at the public hearing, OP recommended that the Commission approve the Project. OP determined that the Project is consistent with the goals and objectives of the Comprehensive Plan by providing public benefits. OP noted that, although the Property is designated as Moderate-Density Residential on the Generalized Land Use Map, this Project would not be inconsistent with this designation and recommended that the entire site be rezoned to the C-2-A Zone District. (Exhibit 24, pp. 1 & 4.)

27. In its February 27, 2009 report and by testimony at the public hearing, DDOT recommended approval of the Project. (Exhibit 25, p. 2.)
28. At the March 5, 2009 hearing, DDOT's representative, Richard Rybeck, raised concerns about safety along Martin Luther King Jr. Avenue because of the high rate of speed at which vehicles travel and suggested the use of Dunbar Road as an alternate location for site ingress and egress. (March 5, 2009 Transcript, pp. 154-161.) In a supplemental report, DDOT repeated the concerns, yet also acknowledged and agreed to the safety improvements recommended by the Applicant, as noted in Findings of Fact 24 and 25 (bulleted item "Effective and Safe Vehicular and Pedestrian Access), above, which would mitigate safety concerns. (Exhibit 37.)

ANC REPORT

29. Mary Cuthbert, Chair, ANC 8C, testified in support of the Project. She noted that the Applicants presented the Project to the ANC and that the ANC approved the Project in November 2008 (March 5, 2009 Transcript, pp. 101-103.) ANC 8C did not submit a written report articulating its issues and concerns.

PARTIES AND PERSONS IN SUPPORT

30. Anthony Muhammad, Chair of ANC 8A, testified in support of the Project. He noted that the Project is a welcome addition to the neighborhood as a means to eliminate blight. He also noted that he submitted a letter of support in November 2008 (March 5, 2009 Transcript, pp. 106-108); however, the official record maintained by the Office of Zoning does not contain any evidence that such a report was submitted.

COMPLIANCE WITH PUD STANDARDS

31. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of Project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8.) The Commission finds that the related rezoning, development incentives and requested flexibility from the Zoning Regulations are appropriate and are justified by the benefits and amenities offered by this Project.
32. The Commission credits the testimony of the Applicant, OP, ANC 8C, and ANC 8A and finds that the Project is acceptable in all proffered categories of public benefits and Project amenities, including the proposed housing and affordable housing, community uses, social services, environmental benefits, and architectural planning and design all constitute Project amenities and public

benefits. The Commission agrees with the written submissions and testimony of the Applicant's representatives that the Project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right Project on the Subject Property would provide.

33. The Commission finds that the Property is a suitable site for the proposed PUD and that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits.
34. The Commission credits the testimony of OP that the Project provides benefits and amenities of substantial value to the community and the District that are commensurate with the rezoning and other flexibility sought through the PUD. The Commission also credits the testimony of OP that the proposed rezoning to the C-2-A Zone District is appropriate. Finally, the Commission credits the testimony of OP that the proposed PUD is not inconsistent with the Future Land Use Map, District Elements, and applicable Area Element of the Comprehensive Plan.
35. The Commission credits the testimony of the Applicant's traffic consultant and finds that the traffic, parking, and other impacts of the Project on the surrounding area are negligible. The Commission finds that the Applicant's proposed traffic safety improvements, as acknowledged and approved by DDOT in its supplemental report, are adequate to address safety concerns.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested relief from the parking and loading requirements and to allow more than one principal structure on a single lot can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

3. The development of this PUD Project executes the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. Notice of the public hearing was provided in accordance with the Zoning Regulations.
5. The Application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
6. The Application meets the contiguity requirements of § 2401.3.
7. The PUD is within the applicable height and density standards of the Zoning Regulations. The proposed height and density will not cause significant adverse effects on any nearby properties. The proposed mix of residential and community service uses, including the proposed commercial uses, is appropriate for this site.
8. The impact of the Project on the surrounding area and the operation of city services and facilities is not unacceptable. As demonstrated in the traffic study submitted by the Applicant, the Project will not cause adverse traffic impacts. Overall the impact of the Project on the surrounding area and operation of city services and facilities is favorable.
9. The Applicant can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.
10. The Commission concludes that the benefits and amenities provided by the Project are reasonable for the development proposed in this application.
11. The Applicant seeks a PUD-related zoning map amendment to the C-2-A Zone District. The Applicant also seeks relief from the parking and loading requirements and permission to locate multiple buildings on a single record lot through a PUD. The Commission has judged, balanced, and reconciled the value of the project benefits and amenities, the degree of development incentives requested, and any potential adverse effects, and concluded that the benefits and amenities provided by the Project are a reasonable trade-offs for the requested development flexibility, and the requested flexibility can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
12. Approval of the PUD and related rezoning is not inconsistent with the Comprehensive Plan, including the designation of the Property as part of the

Moderate-Density Residential Land Use Category on the Future Land Use Map, because of other policies and goals regarding the production of housing, neighborhood stabilization and revitalization, and provision of family-based community and service facilities. The PUD is not inconsistent with and promotes numerous elements and policies of the Comprehensive Plan. Specifically, the Commission concludes that the Project furthers the Housing Element, Land Use Element, and Community Services and Facilities Element. The Commission also concludes that the proposed PUD is also consistent with policies from the Far Southeast/Southwest Area Element.

13. In accordance with D.C. Official Code §1-309.10(d), the Commission must give great weight to the issues and concerns raised in the written report of the affected ANC. As reflected in the Findings of Fact, ANC 8C voted to support the Project and testified in support of the Project at the public hearing. Because ANC 8C did not submit a written report articulating its issues and concerns, the Commission cannot give them the “great weight” to which they are entitled. Likewise, the Commission cannot accord the comments of ANC 8A great weight because it did not submit a written report articulating its issues and concerns.
14. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
15. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendation for approval. For the reasons stated above, the Commission concurs with OP’s recommendation and has given it the great weight to which it is entitled.
16. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD Project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9) and as provided for in Condition 1 herein, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. The Commission might grant PUD-related Zoning Map amendments in circumstances where it would otherwise reject permanent rezoning. In this case, the Commission believes that the proposed PUD-related map amendment of the

Property to the C-2-A Zone District is appropriate given the superior features of the PUD Project and Comprehensive Plan policies and goals supporting the change in zoning, and is permitting a maximum density of 1.52 FAR in the C-2-A Zone District on this Property.

17. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Finding 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 and related Zoning Map amendment application from the R-5-A Zone District to the C-2-A Zone District for Square 5868, Lots 172, 1000, 1001, 1002, 1047, and 1050 as shown in Exhibit 1. The approval of this PUD and Zoning Map amendment is subject to the following guidelines, conditions, and standards of this Order:

1. The PUD Project shall be developed in accordance with the plans and materials submitted by the Applicant and marked as Exhibits 14, 22, and 39 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. Prior to the issuance of a Certificate of Occupancy for the Project, the Applicant shall contribute \$10,000 to DDOT, host a pedestrian educational campaign, and make the site improvements as specified in Exhibits 37 and 39 of the record, namely for restriping the sidewalks at Eaton Road, and for installing a roadway pedestrian sign.
3. The PUD Project shall include approximately 99 units that will be distributed among one-bedroom, one-bedroom plus den, two-bedroom, and three-bedroom configurations. The residential units will be distributed as follows: 32 units for senior citizens (only one-bedroom, one-bedroom plus den, and two-bedroom units); 34 units for public housing-eligible individuals and families, many of whom will be displaced from the Barry Farm redevelopment project; and 33 units for individuals and families earning less than 60% of the Area Median Income. Senior units will be on the lowest floors, and the remaining unit types will be distributed on the upper floors.
4. The Applicant shall limit the restaurant's public hours of operation to the following times: Tuesday through Saturday, 12:00 p.m. to 9:30 p.m. and Sunday, 2:00 p.m. to 7:00 p.m. The bookstore/café shall be open to the public only during the following times: Monday through Friday, 7:00 a.m. to 11:00 a.m. and Saturday and Sunday, 8:00 a.m. to 4:00 p.m.

5. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - 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;
 - To change the southern driveway to a two way ingress/egress in the event that DDOT installs a traffic signal at Eaton Road;
 - To vary the residential unit allocations among the eligible groups;
 - To vary the total number of residential units between 96 and 102; and
 - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.
6. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 08-25. Within such time, an application must be filed for a building permit, and construction of the Project must begin within three (3) years of the effective date of this Order. The filing of the building permit application will vest the Order.
7. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to constrict and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
8. The change in zoning from the R-5-A Zone District to the C-2-A Zone District shall be effective upon the recordation of the covenant specified in Condition 6 above.

9. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender expression or identity, 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, which 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

For these reasons above, the Commission concludes that the Applicant has met the burden; it is thereby **ORDERED** that the Application is **GRANTED**.

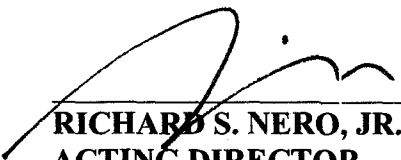
On April 13, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Keating, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of 5-0-1 (Anthony J. Hood, Gregory N. Jeffries, William W. Keating, III, Peter G. May, and Michael G. Turnbull) to approve.

On May 11, 2009, on a motion made by Chairman Hood, as seconded by Commissioner Keating, the Zoning Commission **ADOPTED** the ORDER at its public meeting by a vote of 4-0-1 (Anthony J. Hood, William W. Keating, III, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on August 7, 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 7, 2008

Plat for Building Permit of: SQUARE 5868 LOTS 1000 - 1002, 1047,
1050 & 172

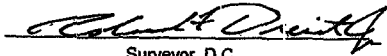
Scale: 1 inch = 50 feet Recorded on Microfilm (LOTS 1000 - 1002)
Book A & T Page 3646 (LOT 1047)
Book A & T Page 2411 (LOT 1050)
Book 187 Page 186 (LOT 172)

Receipt No. 06789

Furnished to: DESMOUND M. GRIMBALL

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: _____

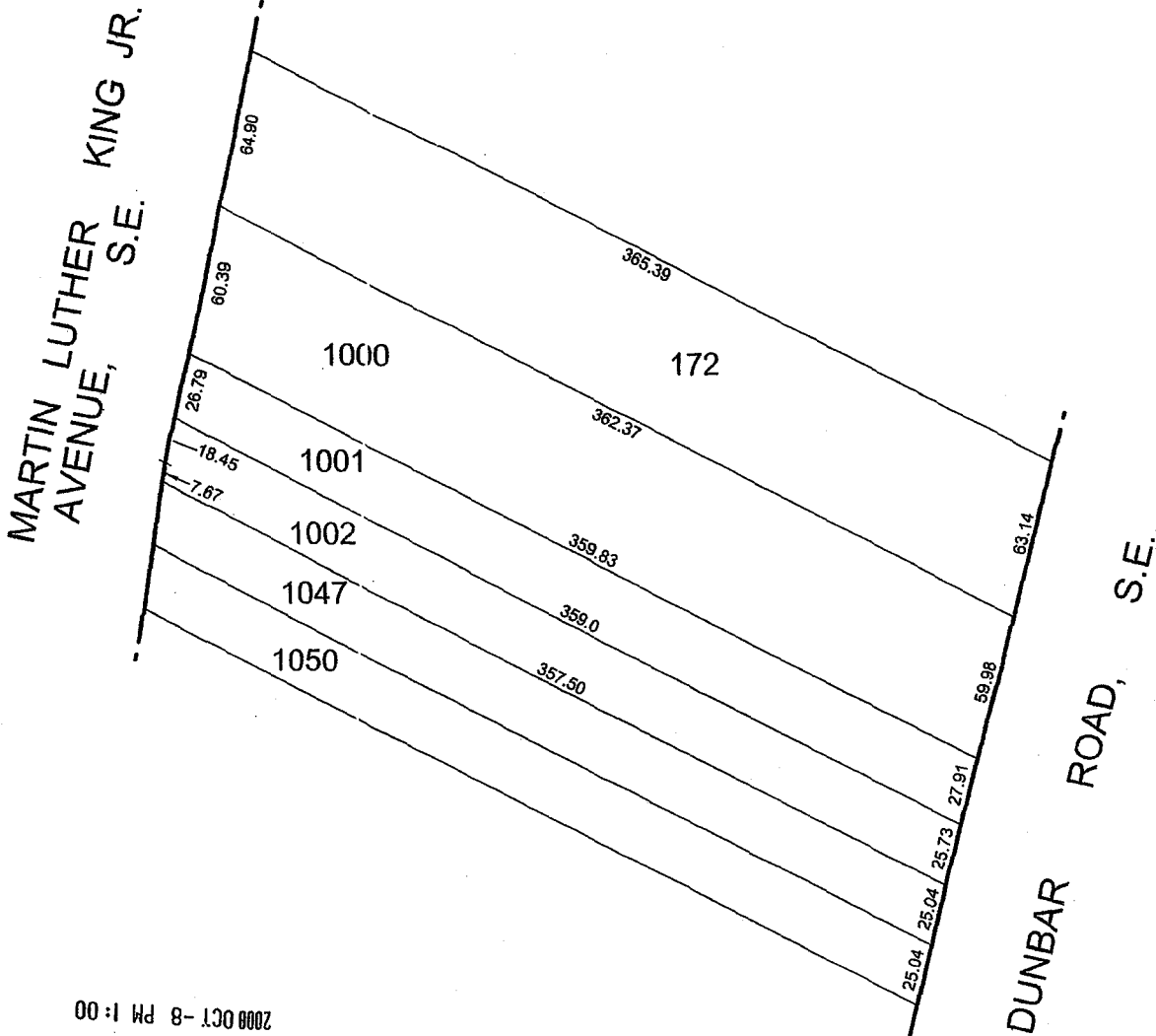

Surveyor, D.C.

By: A.S. 

(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.

RECEIVED
D.C. OFFICE OF ZONING
2008 OCT -8 PM 1:00



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D.C. OFFICE OF ZONING
2008 OCT -8 PM 1:00

Z.C. Case 08-25

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-25

As Secretary to the Commission, I hereby certify that on AUG - 4 2009 copies of this Z.C. Order No. 08-25 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 8. Commissioner Gregg J. Justice, III
ANC/SMD 8A06
P.O. Box 76802
Washington, D.C. 20013 |
| 2. Allison Prince, Esq.
Carey R. Kadlecsek, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128 | 9. Gottlieb Simon
ANC
1350 Pennsylvania Ave., N.W.
Washington, D.C. 20004 |
| 3. Mary Cuthbert, Chair
ANC 8C
3125 MLK Jr. Ave., S.E.
Washington, DC 20032 | 10. Councilmember Marion Barry |
| 4. Commissioner William Ellis
ANC/SMD 8C01
2636 Bowen Road, S.E.
Washington, DC 20020 | 11. Office of Planning (Harriet Tregoning) |
| 5. Commissioner Dion Jordan
ANC/SMD 8C02
2820 2 nd Street, S.E.
Washington, D.C. 20032 | 12. DDOT (Karina Ricks) |
| 6. Commissioner Mary Cuthbert
ANC/SMD 8C03
3325 MLK Jr. Ave., S.E.
Washington, D.C. 20032 | 13. General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 7. Anthony Muhammad, Chair
ANC 8A
2100-D MLK Jr. Ave., S.E.
Washington, D.C. 20020 | 14. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:



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