GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

Memorandum

TO: Board of Zoning Adjustment

FROM: Ellen McCarthy, Interim Director
Office of Planning

DATE: May 17, 2005

SUBJECT: BZA Application #17324 (CHR, LLC)
Alabama Avenue, SE. (Camp Simms – Square 5912, Lot 804)

APPLICATION

The original application submitted by the applicant, CHR LLC, requested a special exception, pursuant to Section 2514, to extend a building across the zone district and a variance relief from Section 2514.2(a) that limits the extension to thirty-five feet. The applicant requested an extension of approximately fifty-five feet. Following discussions with the Office of Planning (OP) the application was amended to limit the extension to 33.95 feet and therefore the variance is not required.

Secondly, the applicant has requested that the Board of Zoning Adjustment (BZA) (Board) determine if the commercial development is permitted to develop as a single lot in accordance with Section 3202.3. If the Board determines that the section is not applicable then the applicant requests variance relief from the requirement of Section 2516 and in particular Section 2516.4 in order to allow the construction of two principal building or structure on a single subdivided lot that is located within twenty-five feet of a residence district.

SUMMARY RECOMMENDATION

The development of the subject property will provide many benefits to the surrounding community as it will provide needed retail and services that are not currently provided. The community fully supports the development as it is in conformance with the specific recommendations of the Comprehensive Plan for development of this site.

The Office of Planning recommends **approval** of the special exception to allow a portion of the supermarket building to extend approximately thirty-four feet into the R-5-A district; special exception to allow Exceptions to the Building Lot Control (Section 2416); and variance from the side and rear yard requirements of Section 2516.4.

BZA
Case No. 17324
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO. 17324
EXHIBIT NO. 26

BACKGROUND

Square 521, Lot 804 is a 25-acre site that is the former location of the Camp Simms Military Reservation and fronts on Alabama Avenue, 15th Street, and Mississippi Avenue, S.E. A 14.50-acre portion fronts on 15th Street and Mississippi Avenue and is in the R-5-A and R-3 Districts. A second 10.58-acre portion (the subject of this application) fronts on Alabama Avenue and is in the C-2-B Zone (Attachments 1and 2). The property is currently undeveloped. A Large Tract Review application (LTR # 03-01) was approved by OP for development of the site with seventy-five single-family detached units (Ashford Court) on the residentially zoned portion of the site accessed from Mississippi Avenue and 15th Street and an approximately 100,000 square foot shopping center (Shops at Park Village) on the commercially zoned portion accessed from Alabama Avenue.

Savannah Street is shown on the Highway Plan as traversing the subject property in an east to west direction. However, the portion that crosses the property was never built. The applicant has submitted an application, SO #04-8736, to eliminate the portion of Savannah Street that crosses the property as shown on the Highway Plan. As part of the development, a pedestrian walkway along 15th Street, Savannah Street, through the wooded open space area to the supermarket, and the overall shopping center is to be provided.

The commercial portion of the property will house a neighborhood commercial center in three buildings. On the northeastern portion of the site will be a one-story building for small retail businesses to be attached and combined with an existing strip center on the adjacent property for a total of approximately 40,000 square feet.

The second building will be 65,762 square feet to accommodate a *Giant Food* supermarket. The supermarket will be located on the southern portion of the site with the parking in front. The location of the parking lot in front of the building does not contribute to the vitality of Alabama Avenue as much as a different site design might, but this was a stipulation of *Giant Food.*

The third development site on the western portion of the site is intended to be a 5,000 square foot restaurant. To date, a tenant for the space has not been identified.

PROPOSAL

The proposed development of this site is will include a supermarket, retail shops and a site for a future restaurant (Attachment 3).

The area of the lot dedicated to the commercial use is split zoned, C-2-B and R-5 A, and the applicant is requesting that a portion of the building slated for the supermarket be allowed to extend approximately thirty-four feet into the R-5-A district. Section 2514.2 of the Zoning Regulations allows for the least restrictive portion of a lot to be extended into a more restrictive portion for up to 35 feet in split-zoned lots.

ANALYSIS

The overall property has steep slopes that divide the site into a residential portion to the south and a commercial portion to the north. The design of the development takes advantage of the topography to separate the two uses.

The commercial portion of the proposed development is important to the community, as it will bring additional retail services to the area. Over the last few years, a number of residential developments have been constructed or upgraded but the needed retail uses have not followed. Therefore, the proposed retail center is of great importance since it will bring a full service supermarket and a "sit-down" restaurant to the area, uses that are presently lacking in this community.

The main entrances into the retail center will be from two points along Alabama Avenue. The development is easily accessible with the main entrance off Alabama Avenue and secondary access off Savannah Street. The center will be enhanced by landscaping and pedestrian walkways between the retail shops and the supermarket.

SPECIAL EXCEPTION

The following demonstrates how the applicant meets the requirements of Section 2514.2:

2514.2 ***If approved by the Board of Zoning Adjustment as a special exception under § 3104, the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive use zone district; provided:***

(a) The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet (35 ft.);

The requested 33.95-foot extension will be from the lesser restrictive C-2-B district to the more restrictive R-5-A district.

(b) In authorizing an extension, the Board shall require compliance with §2514.1(d);

Section 2514.1(d) is not applicable because the subject property is not within any of the identified residential districts.

(c) The extension shall have no adverse effect upon the present character and future development of the neighborhood; and

The applicant proposes to provide a two-tiered landscaped buffer between the single family detached houses to the southwest of the supermarket. There is a grade difference of over thirty feet between the supermarket and the houses with the supermarket at the higher elevation. A fence and a thirty-six foot setback further separate the supermarket from the homes. Therefore, the supermarket will not be entirely visible from the residences. The buffer is also important to minimize any noise from driveway to the loading dock and the loading dock itself.

> ***(d) The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.***

Along with the buffering provided adjacent to the single-family homes, the applicant has submitted that lighting and signage facing these homes will be minimized. OP believes that with the enlargement of the supermarket the building will be setback six-feet from the eastern property boundary. The side yard will have fencing, lighting, and landscaping as a buffer and security between the apartments and the supermarket.

BUILDING LOT CONTROL

The applicant has requested that the Board make a determination if Section 3202.3 is relevant to the proposal and if the development can be treated as a single building and therefore a separate lot does not have to be created for each building. Section 3202.3 states:

> *Except as provided in § 2516 and § 5 of An Act To amend an Act of Congress approved March 2, 1893, entitled "An Act To provide a permanent system of highways in that part of the District of Columbia lying outside of cities, and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Official Code § 9-101.05(2001)(formerly codified at D.C. Code § 7-1 14 (1995 Rep].))), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia.* ***Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.*** (emphasis added)

OP consulted with the Zoning Administrator and the Office of the Attorney General (OAG) and both advised that Section 3201.3 does not apply to the proposed development as this section was written specifically to facilitate the construction and operation of strip malls (See the Preliminary Matters of Zoning Commission Order 03-05C - Attachment 4) and recommended that the applicant summit an application for a special exception under Section 2516, Exception to Building Lot Control.

If the Board determines Section 3202.3 is not applicable the applicant requests a variance from Section 2516 and in particular Section 2516.4. The applicant submits that all the requirements of Section 2516 are met except Section 2516.4.

The following addresses how the applicant meets the special exception requirements of Section 2516 and the requested variance from Section 2516.4:

2516.2 This section applies to construction on a lot that is located in, or within twenty-five feet (25 ft.) of a Residence District.

The subject property is split zoned R-5-A and C-2.

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the new application, four (4) site plans for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with approximate building footprints; provided:

(a) The applicant shall also submit, either with the original application or at a later time, final landscaping and grading plans and two (2) sets of typical floor plans and elevations; and

(b) If the applicant elects to submit the plans referenced in paragraph (a) of this subsection at a later date, the Board's original approval shall be conditional, subject to a later public hearing and final decision on the project as a whole.

The applicant has provided a site plan showing the layout of the development and the location of each of the proposed buildings, rights-of-way, landscaping, and the dimensions for the supermarket. Floor plans for the other buildings are unknown at this time for the restaurant and the other retail uses.

2516.4 The number of principal buildings permitted by this section shall not be limited; provided, that the applicant for a permit to build submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to § 2507), and §§ 3202.2 and 3202.3 are met.

The applicant has requested a variance from this requirement because a building on the pad site will not meet all the 6-foot side yard and 15-foot rear yard requirements.

Exceptional Situation or Condition

The property has an extraordinary situation and condition because it is split zoned that allows residential and commercial development, there are significant slopes that restricts development, and it is irregularly shaped.

Practical Difficulty

The odd shape of the property combined with the requirements of the supermarket present a practical difficulty for the building on the pad site to meet the side and rear yard requirements. The southwestern portion of the site has a triangular shape and it is difficult to place a rectangular building with the required setbacks and not affect the parking area. No rear yard is provided where the building will meet the property line and a similar situation exists along the side yard.

The supermarket which will be the major user of the site requires many more parking spaces than is required by the Zoning Regulations and the management has specifications as to how the parking lot is laid out. With these requirements, the restaurant pad was could only be accommodated in the southwestern corner on the edges of the property.

Substantial Detriment

The requested relief should not result in substantial detriment to the public good as the areas where relief is required are adjacent to a property developed with a utility station and is separated by an alley. The proposed restaurant and supermarket is of great importance to the Ward 8 community that does not

currently have a full service supermarket and a sit down restaurant. The general configuration of the restaurant pads and shopping centers is not uncommon.

The proposed development is not inconsistent with the Generalized Land Use Map, which designates the area for moderate density commercial use. The Comprehensive Plan, Section 1903.6, Current Development Activity, described the subject site as followers:

> ***"(g) The twenty-five (25) acre Camp Simms mixed-use development site is in the Alabama Avenue Development Zone and is designated as a Development Opportunity Area in the Comprehensive Plan. It lies east of 15th Street S.E. between Alabama and Mississippi Avenues S.E. The District purchased this former D.C. National Guard site from the federal government in 1984 for mixed-use redevelopment. A ridge divides the site into a raised plateau along Alabama Avenue S.E. (zoned C-2-B) and a lower, almost-flat area along Mississippi Avenue S.E. (zoned R-3 and R-5-B). The master plan developed by the Department of Housing and Community Development for the site calls for the development of a community shopping center on the C-2-B zoned land, an elderly housing complex on the R-5-B zoned portion of the site and up to one hundred sixty-eight (168) townhouse units on the R-3 zoned land;"***

> ***"1906.1(d) Expand and improve supermarket food services in Ward 8 so that residents may have adequate, convenient and affordable grocery shopping opportunities in the Ward:***
>
> ***(1) The city has estimated that Ward 8 could support additional supermarkets in or near the following neighborhoods: . . . Congress Heights, Shipley Terrace and Douglas (all to be served by a single additional store at Camp Simms . . .:***
> ***(2) Recommended actions:***
> ***(A) Promote and encourage supermarket food chains to expand or locate full-service, modern supermarket outlets in Ward 8 neighborhoods;"***

> ***"1906.1(e) Develop additional commercial services in Ward 8 to help meet residents' needs:***
>
> ***(1) . . . The ward contains no general merchandise or apparel outlets and only one (1) family-style restaurant. . . .***
> ***(2) Recommended actions:***
> ***(D) Encourage developers of new or renovated commercial development to include full-service family-style restaurants in their building plans, where feasible:"***

The proposed development is a fulfillment of the all the above recommendations.

> ***2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply***
>
> ***(a) The front of the building shall be the side upon which the principal entrance is located;***
> ***(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the zone district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the***

District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;

(c) A rear yard shall be required; and

(d) If any part of the boundary of a theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

This section is not applicable because all the buildings will be on a single lot as requested by the variance in Section 2516.4 and have street frontage on Alabama Avenue.

2516.6 In providing for net density pursuant to § 2516.11, the Board shall require at least the following:

(a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title

The proposed development has a FAR of 0.2, which is below that allowed in the C-2-B district and does not include the driveways on the site.

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five feet (25 ft.) in width, but need not be paved for its entire width;

The property has three means of ingress, two of which has widths greater than 25 feet and one at 24-feet.

(c) If there are not at least two (2) entrances or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.); and

The property has three means of ingress.

(d) The requirements of paragraphs (b) and (c) of this subsection may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided, that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking

The one of the ingress points off Alabama Avenue is 24-feet but will be a secondary access point and the reduced driveway will not have any effect on the character or development of the neighborhood.

2516.7 Where not in conflict with the Act to Regulate the Height of Buildings in the District of Columbia approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (2001) (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), the height of a building governed by the provisions of this section, in all zone districts shall be measured from the finished grade at the middle of the front of the building.

The height limit in the C-2-B district is 65-feet. The supermarket will be 30-feet high.

2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of § 410, relating to a group of one-family dwellings, flats, or apartment houses, or a combination of such buildings.

This section is not applicable as § 410 applies to developments in the R-4 and R-5 districts.

2516.9 The proposed development shall comply with the substantive provisions of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood.

The applicant complies substantially with the provisions of this title and will not adversely affect the neighborhood. In fact, it will be an asset that will provide services that are currently lacking in this community and they community anxiously awaits its construction.

2516.10 Before taking final action on an application under this section, the Board shall refer the application to the D.C. Office of Planning for coordination, review, and report, including

(a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:

OP believes that the application generally meets the purpose and intent of the Zoning Regulations and the side and rear yard relief requested will not adversely affect the neighborhood.

(1) Public safety relating to police and fire concerns.

Both the police and fire departments support the development of the site.

(2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;

Water, sewer, and stormwater lines that run along Alabama Avenue, Stanton Road, and Savannah Street and has the capacity to accommodate the proposed development. The soil erosion will be addressed at the time of building permit.

(3) Public education
(4) Recreation;

N/A

(5) Parking, loading, and traffic;

Sufficient parking is provided on site to serve the supermarket and other retail uses. The loading for the supermarket is provided to the rear of the building and is setback and buffered from the adjacent properties. Traffic to and from the site will not overburden adjacent street. The District Department of Transportation (DDOT) will provide a traffic analysis under separate cover.

(6) Urban design; and

Due to specifications by the operators of the supermarket, the development has a more "suburban" design. OP would have preferred to have the supermarket located closer to Alabama Avenue with the parking to the rear or to the side of the building. However, to minimize the effect of the large parking lot it will be landscaped.

(7) As appropriate, historic preservation and visual impacts on adjacent parkland;

N/A

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design, and screening of structures;
(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;
(d) The impact of the proposed development on neighboring properties; and
(e) The findings, considerations, and recommendations of other District government agencies.

The proposed neighborhood center will provide retail uses that are lacking in the community. The supermarket will be the main focus of the center with the other uses to the sides. The center is easily accessed by vehicular and pedestrian traffic. The applicant was reviewed by the DDOT who submits that there will be not be any negative traffic impacts on the neighborhood and sufficient on-site parking is provided. DDOT's report will be submitted under separate cover.

The applicant is providing vegetation and fencing adjacent to the single-family homes and the apartments. In addition, to minimize noise from the trucks the loading dock is located in the central portion of the rear of the building away from the residences. Lighting along the sides of the building will be such that it does not project onto adjacent properties.

2516.11 The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

OP does not recommend any conditions of approval.

With regards to the Special Exception test of §3104:

Will the special exception be in harmony with the general purpose and intent of the Zoning regulations and Maps?

As demonstrated above, the applications generally meets the requirements of the special exception and it has been demonstrated that the development will meet the specific recommendation of the Zoning Regulations and the Comprehensive Plan to have a supermarket, restaurant and other retail uses on the site.

Will the special exception adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps?

The proposed development will be buffered and setback from adjacent residences and it is not anticipated that there will be any adverse effect on the use of neighboring properties.

COMMUNITY COMMENTS

On April 19, 2005, ANC-8B voted to support the development.

RECOMMENDATION

The Office of Planning recommends **approval** of the special exception to allow a portion of the supermarket building to extend approximately thirty-four feet into the R-5-A district; special exception to allow Exceptions to the Building Lot Control (Section 2416); and variance from the side and rear yard requirements of Section 2516.4.

ATTACHMENT

1. Site and Surrounding Area
2. Site Plan
3. Landscape Plan
4. Zoning Commission Order No. 03-05C – Preliminary Matters

AA/mbr



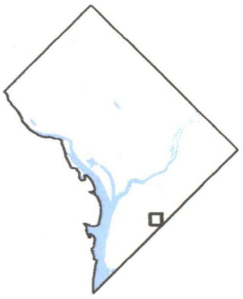
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Feet

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Camp Simms Redevelopment
BZA 17324
Site Location /Zoning



★ ★ ★ Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ Decenber 16, 2004

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Attachement 1

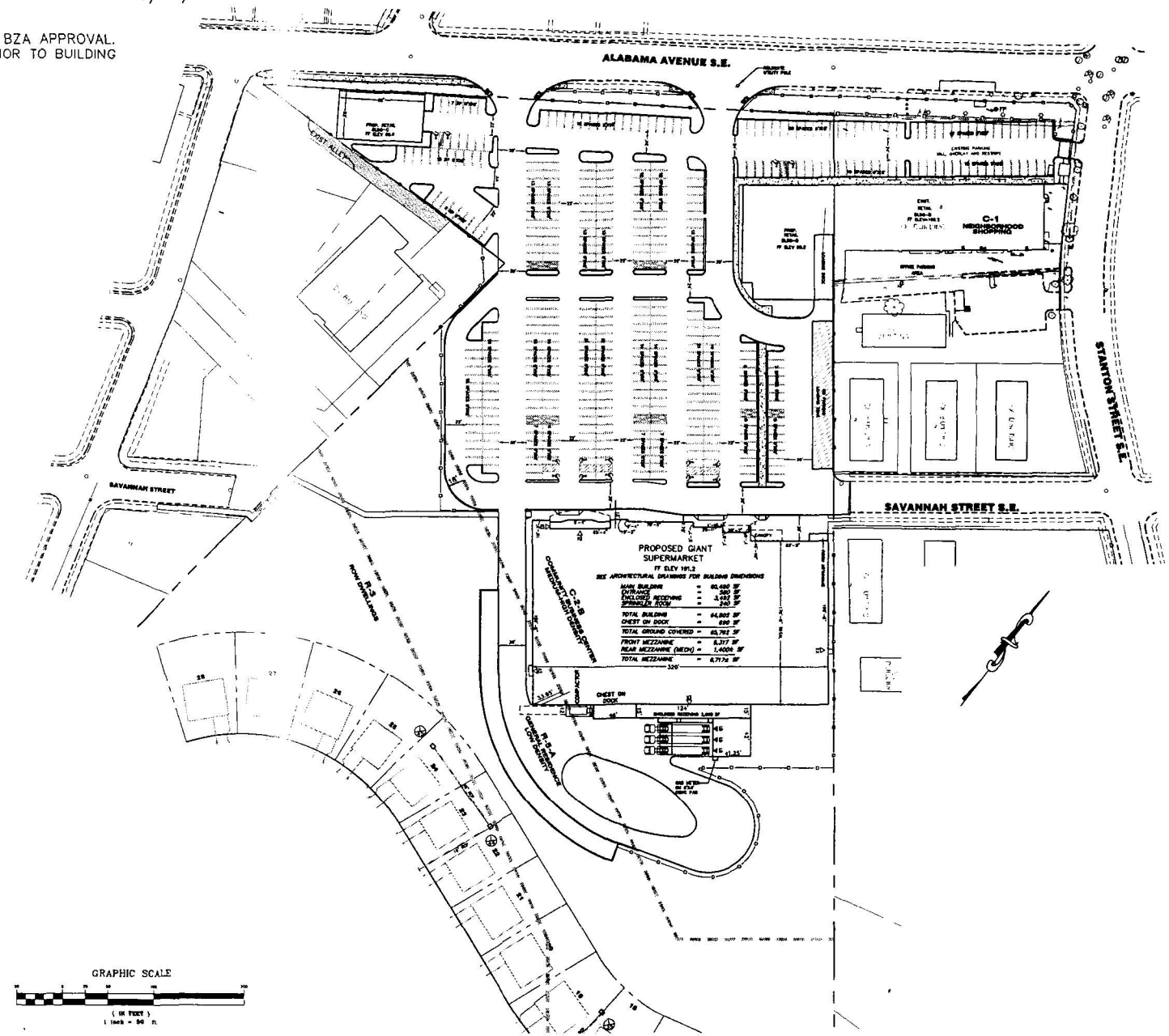


THE SHOPS AT PARK VILLAGE

LANDSCAPE PLAN

CONCEPT DRAWING NOT FOR CONSTRUCTION 05/09/05

NOTE:
PARKING LAYOUT DOES NOT REQUIRE BZA APPROVAL.
FINAL LAYOUT TO BE DETERMINED PRIOR TO BUILDING PERMIT APPLICATION.



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Drawn by: RA
Designed by: RA
Checked by: CPO
Date: MAY 2005
Scale: AS SHOWN
Zoned: N/A

DISTRICT OF COLUMBIA
CONSUMER & REGULATORY AFFAIRS
LICENSED
REGISTERED
AND CERTIFIED EMPLOYEE

OWNER
CHR, LLC
c/o WILLIAM C. SMITH & CO.
1100 NEW JERSEY AVE, S.E.
WASHINGTON, D.C. 20003
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SHOPS AT PARK VILLAGE
CONCEPT PLAN
LOT 804 SQUARE 5911
ALABAMA AVENUE, S.E.
WASHINGTON, DISTRICT OF COLUMBIA

Sheet 1 . 1
File number

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-05C
Case No. 03-05C
Consolidated Planned Unit Development and Zoning Map Amendment for the Department of Transportation ("DOT") Headquarters in the Southeast Federal Center

January 12, 2004

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on September 25, 2003, to consider applications from JBG/SEFC Venture, L.L.C. ("Applicant"), on behalf of the General Services Administration ("GSA"), for consolidated review and one-step approval of a Planned Unit Development and a Zoning Map Amendment (collectively, the "Applications"). The Zoning Commission considered the Applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). A further public hearing to consider limited issues was held on November 24, 2003. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Applications.

PRELIMINARY MATTERS

As a preliminary matter, the Zoning Commission must determine whether the project constitutes one or two buildings.[1] The project visually presents itself as two buildings that share no above

[1] The Applicant requested that the Zoning Commission release the legal advice memorandum provided by the Office of the Corporation Counsel ("OCC") on this issue. The Commission refused this request, believing that it was inappropriate to share the written legal advice it receives. Apparently, the Applicant believes that memoranda of this kind have a status independent of the Commission's resolution of this issue, as it is set forth in this Order. This is simply not the case. The Zoning Commission relies upon the Land Use and Public Works Section of OCC for legal advice. In furnishing such advice, the attorneys of that Section act as members of the Commission's staff. As with any other advice provided by staff, the Commission is free to accept or reject the advice given. The written legal advice received is not a formal Opinion by the Corporation Counsel and therefore has no official status. The Zoning Administrator receives legal advice through the General Counsel of the Department of Consumer and Regulatory Affairs. Neither the Zoning Administrator nor DCRA's General Counsel must adhere to the legal interpretations of the Land Use and Public Works Section. Rather, it is the legal interpretations included the written orders of this Commission that establish zoning precedent. Thus, apart from general concerns about maintaining attorney-client confidentiality, the release of such written memoranda would serve no purpose and could create confusion to the extent that there may be differences between the analysis in an OCC memorandum and the analysis of the same issue in a Zoning Commission Order.

ground connection. The Applicant contends that, notwithstanding this appearance, there is but one building. To reach this conclusion, the Applicant relies on § 3202.3 of the Zoning Regulations, which states in part that:

> [A] building permit shall not be issued for the proposed erection, construction, or conversion of any principal *structure* ...unless the land for the proposed erection, construction, or conversion has been divided so that each *structure* will be on a separate lot of record .... . . Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) *structure.*

Emphasis added.

This provision does nothing more than require, subject to certain exceptions, that a record lot may include no more than a single structure. The provision also provides a narrow circumstance where occupancies, separated in their entirety, may be nevertheless be considered a single structure. It does not, however, provide that those single structures are also single buildings. That issue is resolved with the definition of "building" which provides that a building is:

> *[A] structure* having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one building.

11 DCMR § 199.1 (emphasis added). Thus, a single structure can include more than one building. But, if the portions of that single structure have no above ground "communication", the structure cannot be a single building. Thus, even if under § 3202.3 this project were considered a single structure, it could not be considered a single building.

However, the Commission does not believe that this project can even be viewed as constituting a single structure to the extent permitted under § 3202.3.

First, the DOT project is not a "combination of commercial occupancies." It is a single commercial occupancy -- that of the USDOT. Second, reading § 3202.3 as permitting two structures separated from the ground up to be considered one building would be inconsistent with the plain language of § 2517 of the Zoning Regulations. Section 2517 permits two or more principal buildings, as a matter-of-right, to occupy a single lot of record on any property that is not in, or within twenty-five (25) feet of, a residence district. Each building, however, must conform to the applicable requirements for height, bulk, and open space. If § 3202.3 were read to allow multiple non-conforming structures on a single lot of record simply by virtue of their common ownership, § 2517 would be rendered virtually meaningless.

Finally, a review of the history of § 3202.3 shows that its current language was adopted in 1964, and was changed from earlier language in order to permit strip malls to locate on single lots of record. Arguably, the earlier language would have prevented this. It stated: "any combination of commercial structures having division walls from the ground up or from the lowest floor up operated as a single establishment, shall be on a separate and distinct lot of record." (*See,* § 8103.3 of the original 1958 zoning regulations.) A strip mall is a combination of individual commercial occupancies, *i.e.,* stores, each separated by a common division wall. Under the earlier text, each of these commercial occupancies would have been considered a separate building, because they were not "operated as a single establishment." The earlier text would therefore have required each store in a strip mall to have been located on its own separate and distinct lot of record. To avoid this anomalous result, the last sentence of § 3202.3 was changed to read as it does today. It seems apparent that the last sentence of § 3202.3 was intended to facilitate the construction and operation of strip malls, not to subvert the lot control provisions of the Zoning Regulations.

For all of these reasons, the Zoning Commission finds that the PUD project consists of two structures that are two separate and distinct buildings for purposes of the Zoning Regulations.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On January 23, 2003, JBG/SEFC Venture, L.L.C., the contract purchaser of the property, on behalf of the General Services Administration, the owner of the property, (collectively the "Applicant") filed Applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment. The subject property is located within the Southeast Federal Center on the south side of M Street, S.E., bounded by the proposed extensions of New Jersey Avenue, S.E., and Fourth Street, S.E., on the west and the east respectively, and the proposed dedication of Tingey Street, S.E., to the south. (the "Site").[2] The Site consists of a portion of U.S. Reservation 17-E, a portion of Lot 800 in Square 770, and a portion of Lot 800 in Square 801. Currently, the Site is owned by the United States Government.

2. The Zoning Commission held a public hearing on September 25, 2003. The case was originally scheduled for public hearing on September 18, 2003; however, due to inclement weather, the hearing was postponed. The Zoning Commission was not able to publicly announce the postponement of the public hearing in accordance with § 3005.9 of the Zoning Regulations. Accordingly, the Zoning Commission waived the requirements of that section at the public hearing on September 25, 2003. All other notice was found to be in accordance with the Zoning Regulations.

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[2]Unless otherwise indicated, all references in this Order to Third Street, Fourth Street, Tingey Street, M Street, or New Jersey Avenue signify Third Street, S.E., Fourth Street, S.E., Tingey Street, S.E., M Street, S.E., and New Jersey Avenue, S.E.