Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 01-35

As Secretary to the Zoning Commission, I herby certify that on OCT 31 2002 copies of this Z.C. Notice of Final Rulemaking and Z.C. Order No. 967 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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   Washington, D.C. 20004

4. City Councilmembers (see attached list)

5. Office of Planning (Ellen McCarthy)

6. Zoning Administrator (Michael Johnson)

7. Corporation Counsel (Alan Bergstein)

ATTESTED BY: _____
Alberto P. Bastida, AICP
Secretary to the Zoning Commission

ZONING COMMISSION
District of Columbia
Case 01-35
Exhibit

ZONING COMMISSION
District of Columbia
CASE NO.01-35
EXHIBIT NO.37

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Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ZONING COMMISSION ORDER NO. 967
Case No. 01-35P
(Text Amendment – Redevelopment of Waterside Mall - 11 DCMR § 2521.1)

September 9, 2002

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code 2001 Ed. § 6-641.01); having held a public hearing as required by § 3 of the Zoning Act (D.C. Code, 2001 Ed. § 6-641.03); and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3038.1, hereby gives notice of the adoption of an amendment to chapter 25 of the Zoning Regulations (11 DCMR), § 2521, SOUTHWEST URBAN RENEWAL AREA, providing that the Waterside Mall will continue to be considered a single building for zoning purposes in the event the public right-of-way is restored through the center of the mall on 4th street to create two (2) separate buildings. No changes were made to the text of the proposed rules, as published in the *D.C. Register* on June 21, 2002, at 49 DCR 5818. The Commission took final action to adopt the amendments at a public meeting held on September 9, 2002. This final rule will be effective upon publication of this notice in the *D.C. Register*.

This rulemaking was initiated in response to a petition by Kaempfer Company Inc. and Forest City Enterprises, Inc., developers of the affected property, and a subsequent petition filed on April 16, 2002, by the Office of Planning.

The applicants plan to demolish a portion of the Waterside Mall, which was constructed over a former portion of 4th Street, S.W., right-of-way between M and Eye Street, S.W. The demolition will create two (2) buildings, separated by a public right-of-way.

The existing building on the subject property is considered to conform to the Zoning Regulations by virtue of a 1998 amendment to the Zoning Regulations, which added paragraph 2521.1(e)[1]. Because the demolition will create two (2) buildings, the petitioners suggested the proposed

[1] 11 DCMR 2521.1(e) provides:

> A building or structure that was built prior to November 20, 1998, that conformed to the height, area, and bulk provisions of the Urban Renewal Plan shall be considered a conforming structure under this title and in the event of fire, collapse, explosion, or act of God, may be built to its size as of November 20, 1998.

amendment to ensure that both buildings would be treated as conforming in the same manner that the single building from which the buildings will be created is considered conforming. This will ensure that the existing development flexibility on the site is preserved. As stated by the Office of Planning, the developers feel that the flexibility to reallocate the floor area ratio (FAR), parking, and loading spaces, as if the complex were still one building, is essential to long-term development planning for the site.

The Commission held a public hearing on this case on May 2, 2002, at which representatives for the developers, the Office of Planning, and representatives from the community were heard.

At its regularly scheduled meeting on June 10, 2002, the Commission took proposed action with respect to the proposed amendment. A Notice of Proposed rulemaking was published in the *D.C. Register* on June 21, 2002, at 49 DCR 5818.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated July 22, 2002, found that the proposed text amendment would neither adversely affect the federal interest, nor be inconsistent with the Federal Element of the Comprehensive Plan for the National Capital.

In addition, a letter was received by the Office of Zoning on July 29, 2002, from ANC 2D stating that the ANC had reversed its earlier decision to support the application, based upon potential parking, loading, and traffic problems. The Commission, however, believes that such concerns, to the extent they are relevant to this rulemaking, have been adequately addressed by the developers for the Waterside Mall project.

The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

Comments on the Proposed Rulemaking were also received from Gene Solon, Robert Mittendorff, and other community residents, stating a general objection to the rulemaking in that it forwarded the objectives of the Waterside Mall redevelopment project as proposed. These comments reiterated earlier community statements in the record in support of a pedestrian only right-of-way to be constructed through the center of the mall. Included in Mr. Solon's comments were signatures to a petition opposing that a roadway be established that bisects the Waterside Mall, as is currently proposed by the developer. The Zoning Commission, however, is not authorizing the establishment of the roadway, but instead is allowing that if a right-of-way is restored, whether that right-of-way be designed for vehicles or pedestrians or both, the resulting two (2) buildings will be treated as one building for zoning purposes.

The Commission took final action to adopt the proposed rule at its regularly scheduled public meeting on September 9, 2002. No changes were made to the amendment as proposed.

Based upon the above, the Commission finds that the proposed amendment is in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to chapter 25, § 2521.1 of the zoning regulations, title 11, DCMR.

Title 11, Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, § 2521, SOUTHWEST URBAN RENEWAL AREA, § 2521.1 is amended by adding a new paragraph (h) to read as follows:

(h) If part of the Waterside Mall property, comprising Lot 88 in Square 542 and Lot 60 in Square 499, is demolished so as to create a public right-of-way generally along the former right-of-way of 4th Street, S.W., so that the parts of the building to the east and west of right-of-way are no longer physically connected above grade, for zoning purposes all such improvements shall be deemed to be a single building.

Vote of the Zoning Commission taken at its public meeting on May 13, 2002, to approve the proposed rulemaking: **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Peter G. May, and James H. Hannaham to approve).

This order was adopted by the Zoning Commission at its public meeting on September 9, 2002, by a vote of **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Peter G. May, and James H. Hannaham to adopt).

In accordance with the provisions of § 3028.9, this order shall become effective upon publication in the *D.C. Register*, that is, on OCT - 4 2002.

Carol J. Mitten
Carol J. Mitten
Chairman
Zoning Commission

Jerrily R. Kress
Jerrily R. Kress, FAIA
Director
Office of Zoning