Applicant's Draft

ZONING COMMISSION ORDER NO. 02-38
Case No. 02-38
(First-Stage PUD – Waterfront)
June [ ], 2003

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on February 13 and March 31, 2003, to consider an application from Waterfront Associates LLC, a partnership of Forest City Washington, the Kaempfer Company and Bresler & Reiner, Inc. The Application is for review and approval of the first-stage of a two-stage planned unit development ("PUD") and a related zoning map amendment, pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The proposed project is a redevelopment and adaptive re-use of the existing Waterside Mall property into a medium-high density mixed-use complex of offices, apartments and retail establishments, together with a new roadway through the site. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022. For the reasons stated below the Zoning Commission hereby approves the Application subject to the specified conditions.

FINDINGS OF FACT

The Application, Parties and Hearing

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1. On September 30, 2002 the Applicant, Waterfront Associates LLC submitted an application to the Zoning Commission for the first-stage of a two-stage PUD and a related zoning map amendment from C-3-B to C-3-C for the corners of the site in order to construct a large mixed-use complex and neighborhood commercial center. On October 28, 2002 the Zoning Commission decided to schedule a public hearing on the application.

2. The subject property is a large site of some 13.42 acres at 401 M Street, S.W., comprising Lot 60 in Square 499 and Lot 88 in Square 542 and bound generally by M, Eye, 3rd and 6th Streets, S.W. (the "PUD Site").

3. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on [ ], 2002. The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject property, as well as to Advisory Neighborhood Commission ("ANC") 6D.

4. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a PUD. The two-stage PUD process is appropriate in this case involving a large site with multiple building types and complex site planning, transportation and urban design issues. This first-stage order governs site planning, land use planning, traffic, general density and similar broad issues. The second-stages PUD process will consist of reviews of more detailed plans and a determination of consistency with the intent and standards of this first-stage PUD order.

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EXHIBIT NO.107

5. The parties in the case were the Applicant and Advisory Neighborhood Commission 6D.

6. The Zoning Commission opened the public hearing on February 13, 2003 and completed the hearing on March 31, 2003.

7. At its public meeting of May 12, 2003 the Zoning Commission took proposed action to approve the application by a vote of [ ].

8. The Zoning Commission took final action to approve the application on June [ ], 2003.

The Site

9. The property that is the subject of this application is located in the Southwest neighborhood, within the former Southwest Urban Renewal Area. The existing Waterside Mall was built in phases primarily in the 1970s. It is situated on the major part of a large "superblock" bounded by M, Eye, 3rd and 6th Streets, S.W. Fourth Street between M and Eye Streets, SW, was closed to create this very large development site and to facilitate the new construction.

10. The central mall structure is three stories and 45 feet in height, plus a basement level. Because of problems maintaining viable retail and personal service uses in the Mall, the upper floors are devoted to office uses, and on the ground floor some spaces are vacant or are occupied by office uses. An Urban Land Institute ("ULI") study conducted in 1998 (*Southwest Washington, D.C.: A Strategy for Revitalizing Waterside Mall and the Waterfront*) found a very high vacancy rate in the retail spaces in the mall. The structure also includes two 130-foot-high office towers, which were leased to the General Services Administration ("GSA") and occupied by the Environmental Protection Agency ("EPA"), with 5,500 employees, for many years up to 2002.

11. With a land area of 584,655 square feet and an existing gross floor area of approximately 1,316,871 square feet, existing improvements constitute approximately a 2.25 FAR. In addition to 285 surface parking spaces, there are approximately 967 underground spaces for a total of 1,252 parking spaces.

12. With the office space and the majority of the retail space vacant, the Application states that the time is ripe for the complex to be renovated and restructured, noting two critically important reasons to expeditiously rebuild and reoccupy the space. The first is to avoid the numerous negative effects on the surrounding neighborhood and the local economy of a large building complex remaining vacant for a period of years. The second is to provide a large number of employees in the building who will patronize the ground floor retail and services so that the retail establishments will prosper and serve the surrounding neighborhoods as well as the employees. The Commission concurs in this assessment.

The Surrounding Area

13. Other uses on the superblock with the Waterside Mall include four large, high-rise apartment buildings – two of them to the east and two to the west of the mall. To the north, fronting on the south side of Eye Street, are two churches, federal parkland and a District of Columbia library (Southwest Branch). On the southern, M Street side of the mall is the entrance to the Waterfront/Southeastern University Metrorail station.

14. The PUD Site is predominantly surrounded by residential areas having a planned mixture of building types, constructed pursuant to design review under the Southwest Urban Renewal Plan, which was legally in effect from 1952 to 1996. The various residential developments are typified by modern design, with building types including high-rise apartments, garden apartments, townhouses and two-unit townhouses, or flats. The buildings are surrounded by ample open spaces, trees and landscaped areas. Such residential areas are seen to the north and south of the PUD site. The Amidon Elementary School and the Southeastern University are also located along the north frontage of Eye Street.

15. Across 3rd Street to the east is the low-rise Greenleaf Gardens public housing complex, situated on three city blocks bounded by M, Eye and 3rd Streets and Delaware Avenue, S.W. Greenleaf Gardens is an example of pre-existing residential development that was not demolished and redeveloped under the urban renewal plan.

16. Across 6th Street to the west is the Arena Stage, which serves a city- and region-wide clientele. South of Arena Stage and across Maine Avenue is St. Augustine's Church. From St. Augustine's the Southwest Waterfront on the Washington Channel extends to the west and northwest for approximately one-half mile. Waterfront buildings and uses include cruise ship lines, a police pier, several marinas, large restaurants, a fish market, and a hotel. The buildings accommodating these uses are of moderate height and bulk, approximately 20 to 40 feet in height. They are served by parking lots situated between Water Street and Maine Avenue. Between the commercial buildings and the waterfront is a continuous two-level pedestrian promenade, as well as small public open spaces.

Existing and Proposed Zoning

17. The PUD site is zoned C-3-B (Major Business and Employment Centers), the purpose clause of which states, "The C-3-B districts shall permit medium density development, including office-retail, housing and mixed uses. It is intended for uptown locations, where the largest component of development will be office-retail and other non-residential uses." (§ 740.6) Subsection 740.7 goes on to state that C-3-B districts "shall be compact in area and shall be located in or near the Central Employment Area, on arterial streets, in uptown centers, and at rapid transit stops." Matter-of-right uses include a wide variety of office, retail, housing, hotel and mixed uses to a maximum height of seventy feet/six stories, a

maximum floor area ratio of 5.0 for residential and mixed uses, with a maximum density of 4.0 FAR for commercial and other nonresidential uses.

18. The existing improvements, which are entirely nonresidential, constitute approximately a 2.25 FAR. This is well within the permitted maximum of 4.0 FAR for commercial uses. The height of the existing office towers of 130 feet would normally have rendered the building a nonconforming structure based on height. However, one of the special provisions adopted in Order No. 807 (Southwest Area Rezoning) provides:

> *2521.1 (c) A building or structure that was built prior to [November 20, 1998] which conformed to the height, area and bulk provisions of the Urban Renewal Plans shall be considered a conforming structure under these Regulations and in the event of fire, collapse, explosion or act of God may be built to its size as of the date specified above.*

Accordingly, the 130-foot office towers are conforming structures and may be renovated and reoccupied under existing C-3-B zoning.

19. Several phases of the redevelopment plan are within the height and bulk limits of the C-3-B zone and will be carried out as a matter of right. However, the Application requests that the four corners of the site be rezoned C-3-C in order to accommodate additional height and bulk and to off-set the loss of land area for the new public right-of-way through the site. The C-3-C zone is a medium-high density commercial zone that allows a maximum density of 6.5 FAR and a maximum building height of 90 feet. With a PUD, the maximum bulk is 8.0 FAR and the maximum height is 130 feet. Permitted uses include a wide variety of office, retail, residential, hotel and mixed uses.

20. The zoning classifications of areas surrounding the PUD site include R-5-D for the immediately adjacent apartment towers, R-5-C for less dense high-rise apartments, R-5-B for areas generally developed with garden apartments, and R-4 for areas improved with townhouses or flats. The land fronting on the Southwest Waterfront is zoned W-1.

The PUD Project

21. The Applicant proposes to reconstruct the subject property into a new development to be known as "Waterfront," consisting of a mixture of office, retail and residential uses at medium-high density. The general development pattern will be retail uses on the ground floor of new or renovated office buildings, two apartment buildings, a public plaza surrounding the Metrorail station entrance and a new north-south roadway through the center of the site. The parking and loading facilities will continue to be those now in existence in the underground garage, supplemented by existing and new parking and loading at and above grade.

22. The central part of the existing mall will be demolished in order to build the new public right-of-way along the axis of 4th Street and connecting with 4th Street to the north and south of the PUD Site. The public right-of-way is intended to improve area circulation; open up the site visually, allowing more light and air to reach the interior of the site; and support new retail uses along 4th Street. The proposed 55-foot-wide roadway which is subject to City funding approval will provide two lanes of moving traffic, a turning lane and curbside parking lanes on both sides of the street, as well as wide sidewalks within the 90-foot-wide public right-of-way. The wide sidewalks and curbside parking are designed to enhance the retail and pedestrian environment along 4th Street. The two moving lanes match the two-lane configuration of 4th Street to the north of the site. The construction and funding of the roadway are pursuant to a Memorandum of Understanding between the Applicant and the District of Columbia, dated [ ].

23. The Applicant will construct a large, landscaped public plaza surrounding the entrance to the Metrorail station in the south-center part of the site. This plaza will constitute a major public amenity visually as well as for persons sitting, walking and congregating in the space.

24. The PUD proposes total development by component uses as follows. Commercial development will total 2,126,500 square feet of gross floor area ("g.f.a."), constituting a floor area ratio ("FAR") of 3.64.. This will include a minimum of 75,000 g.f.a. of retail uses with the remainder being office space. The two apartment buildings will total 400,000 g.f.a., or 0.69 FAR, for a total built density of 4.33 FAR. This is less than the 5.0 FAR for mixed residential and commercial uses allowed in the existing C-3-B zone as a matter of right. The total number of parking spaces will be 1,335.

25. The height of buildings will range from renovations with additions at 56 feet; new construction at 79 and 112 feet; and renovation of the two existing office towers at 130 feet. The new residential buildings are proposed to be 112 feet high, as are the two office buildings on M Street. The reason for the height of 112 feet is to allow for extra height (12 feet) at the ground floor level to make the space suitable for retail establishments.

26. The project will be developed in several phases, with the timing of the phases dictated primarily by leasing agreements and construction of the roadway. The great bulk of leasing and construction is projected to be completed within the coming seven years. These phases are summarized as follows:

    a. Matter-of-right construction of an addition to the Northeast Midrise building, renovation of the existing East and West (office) Towers and the Southeast Midrise;

    b. Second-stage PUD for the East and West Fourth Street;

    c. Second-stage PUD for Northwest residential and Southwest Tower;

d. Second-stage PUD for the Southeast Tower and Northeast Tower, occurring after the Safeway lease expires in 2020.

27. The Applicant's urban design objectives for the project are as follows:

a. Reconnect the site to the neighborhood by breaking it into two smaller city blocks, with the interior of the site opened up to light and air and public access by re-establishing 4th Street through the site.

b. Line 4th Street and the M Street frontage with ground floor retail uses visible from the outside and accessible to the neighborhood.

c. In place of a single, monolithic low-rise structure, create eight identifiable buildings with their own recognizable entrances.

d. Create a more urban development pattern by constructing buildings to the 4th and M Street frontages, thereby visually defining the adjacent streets and public spaces.

e. The overall goal is to create a mixed-use town center, with office workers providing a significant daytime population, the apartments bringing full-time residents and evening activity to the site, and both of these serving as customers of the retail uses, which will also serve the surrounding neighborhood. The public plaza surrounding the entrance to the rapid transit station completes the town center concept.

28. The project's pedestrian circulation plan will enable pedestrians to walk through the site on wide sidewalks along 4th Street and will remove the surface parking that impedes convenient and safe pedestrian passage. Along 4th and M Streets, the retail display windows, landscaping and sidewalk surface will create a pleasing pedestrian environment. Each office building component will have a specific vehicular access plan for employees, taking them from the parking garage to elevators in order to access their floor levels. Some vehicular access to parking and loading will occur from 4th Street, as well as from the north-south service drives through the site at its eastern and western edges. The Applicant's preliminary transportation analysis and the D.C. Department of Transportation study both found that the anticipated traffic impacts under the PUD would be less than under a matter-of-right scenario, that traffic mitigation measures should be utilized in the detailed plans to be submitted, and that the proposed parking and loading are acceptable and functional.

Public Benefits of the PUD

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

a. *Major Local Development Initiative.* The Waterfront development is a major revitalization effort being undertaken by close cooperation between

the applicants and the District of Columbia to achieve paramount public objectives for the city and the Southwest neighborhood. The agreed-upon actions by the District and the Applicant aim not only to achieve a first-class revitalization of the property into a new Town Center, but also to avoid a potential extended vacancy of the property after EPA's exodus. Such vacancy could mean the presence of a deteriorating mega-structure blighting and diminishing the quality of the surrounding neighborhoods and the near-absence of retail uses on the site.

b. *4th Street Roadway.* The District of Columbia's and the Applicant's plan to demolish the central part of the Mall structure and create a north-south public right-of-way through the site will improve the situation in several ways. It will create a safer, quicker and more appealing passageway through the site for pedestrians and on vehicular traffic; provide the opportunity for retail uses to be located along the 4th Street frontage rather than being primarily in interior spaces removed from streets and sidewalks; create curbside parking opportunities to serve the retail establishments conveniently; and open up the center of the site to more light and air and improved architectural design.

c. *Urban Design.* The PUD project is designed to accomplish several major urban design objectives, including: creating superior streetscape design and pedestrian amenities, including wide sidewalks and the public plaza; reducing the extreme horizontality of the existing structure and introducing more distinctive, vertical buildings that provide more interest and variety along street frontages and relate better to surrounding development patterns; constructing new buildings to the edges of public space so as to define edges and public spaces; and creating better connections visually and in terms of accessibility to the surrounding neighborhood.

d. *Town Center.* The project will create a new public plaza surrounding the Metrorail station entrance of substantial size, approximately 25,000 square feet in area. It will be suitably paved and landscaped for public use and enjoyment. Together with the active mixture of office, residential and retail uses on the site, the Metrorail station, the new urban design image, and improved accessibility to the site, the result will be a new Town Center as called for in public planning goals. The large apartment building(s) to be constructed at the northwest corner of the site will add a substantial residential population to the site. These residents will add "eyes on the street," extra pedestrian movement and improved public safety.

e. *Retail and Service Establishments.* The applicant is committed to establishing and maintaining at least 75,000 square feet of retail and service uses at the ground floor level of the buildings. These establishments will occupy the ground floor area of buildings facing 4th

and M Streets to a depth of 68 feet and will be highly visible and accessible.

f. *No Adverse Effect on Neighborhood or Public Facilities.* The proposed redevelopment will prevent the numerous negative effects that could impair the neighborhood if the large existing complex remained vacant for some period of time. The adverse effects on neighborhoods from long-vacant buildings are normally visual blight, lack of retail services (in this case), and an increase in crime. The Department of Transportation's traffic analysis indicates that the number of parking spaces is ample to serve the proposed development plan and that the street and highway network and public transportation – especially the Waterfront/SEU Metrorail station on site – will adequately function to serve the development and other traffic. The new design will give the property a more distinctive, and elegant profile suitable to this neighborhood landmark site. The proposed public right-of-way through the site will open it up in terms of light and air and create a more convenient passageway for pedestrians and potentially vehicles as well. The site is currently served by all major utilities, and the increased use of water and sanitary services will have a very minor effect on the city's delivery systems. The reports of government agencies did not identify any problems with capacity of local facilities such as schools to accommodate the proposed PUD project.

g. *Comprehensive Plan Policies.* The proposed PUD is consistent with or will help implement a number of policies in the *Comprehensive Plan for the National Capital* (the "Comprehensive Plan"). These include Major Themes from § 101 of the Plan such as:

"Stabilizing and improving the District's neighborhoods;"

"Increasing the quantity and quality of employment opportunities in the District;"

"Respecting and improving the physical character of the District;" and

"Reaffirming and strengthening the District's role as the economic hub of the National Capital Region.

h. The Generalized Land Use Map of the Land Use Element designates the subject site for Medium Density Commercial development. The existing C-3-B zoning was adopted recently (1998) for the site in conformance with the Medium Density Commercial designation. The proposed PUD stays within the matter-of-right density limits of the C-3-B zone.

i. The PUD project also helps implement various policies in the Economic Development, Housing, Transportation and Ward Two Elements of the Comprehensive Plan, as set forth in the Applicant's Statement.

Report of the Office of Planning

30. By report dated February 6, 2003 and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application. The report states, "OP concludes that the application meets the requirements of the Zoning Regulations, is consistent with the Comprehensive Plan, and furthers the City's objectives for the Southwest and the Anacostia Waterfront Initiative." The report also states that the PUD project would utilize only 87 percent of the 5.0 FAR allowed under the existing C-3-B zoning and that the PUD is needed only for height relief. OP also notes that both the Applicant's preliminary transportation analysis and the D.C. Department of Transportation report "conclude[d] that the anticipated traffic impacts under the PUD would be less than under a matter-of-right scenario." OP recommended that traffic mitigation measures be included in second-stage applications. The report favorably noted the public benefits and amenities of the retail and residential uses, the reopened public right-of-way, the maintenance by the Applicant of adjacent federal parkland, the public plaza and improved urban design. The creation of a Town Center, the proposed retail establishments and the housing component were emphasized as important public benefits. The report included specific recommended conditions for inclusion in the Zoning Commission order if approval is granted.

Report of the D.C. Department of Transportation

31. By report dated March __, 2003, by testimony at the public hearing, the Department of Transportation (DDOT) provided its support for the PUD. DDOT recommended that 4th Street be reconstructed as a roadway rather than a pedestrian-only facility. However, their report recommends several mechanisms to maintain a heavy pedestrian emphasis within the right of way of the proposed new roadway. These include parallel parking, only two travel lanes and another, central lane for left turns into the project, and raised pedestrian crosswalks at some locations. Other transportation improvements were recommended to help mitigate future traffic impacts. DDOT indicated that it intended to continue to work with the Applicant and the surrounding community to formulate more detailed recommendations as the PUD undergoes further clarification and design.

Reports of Other Agencies

32. The Department of Housing and Community Development ("DHCD"), by report dated March 18, 2003, recommended approval of the Application. DHCD stated that the re-opening of 4th Street "is one of the most important aspects of the Redevelopment," because it will facilitate traffic flow, create better access to the retail uses along 4th Street, and help alleviate existing traffic congestion on 3rd and 6th Streets, S.W. The report favored the Applicant's proposal to retain the existing pharmacy, grocery store and bank during the construction period. DHCD also strongly supported the level of parking to be provided, the partial rezoning to C-3-C, the inclusion of a substantial residential component, the landscaped plaza and the urban design plan.

Report of Advisory Neighborhood Commission 6D

33. By letter dated March 31, 2003 and by testimony at the public hearing, ANC 6D recommended denial of the application, citing a number of areas of concern. In summary, these include:

    a. *Project Height.* The proposed 110-foot-high buildings would "dwarf neighboring structures, significantly blocking light, vistas and open space, and creating a "canyon effect."

    b. Size and Density. The doubling of the quantity of office space on the site will not support necessary neighborhood-serving retail uses but only uses serving office workers; will eliminate the existing, convenient surface parking on the site; and will not create sufficiently wide sidewalks for pedestrians except in the public plaza.

    c. The proposed towers at the southeast and southwest corners of the PUD site should be set back farther from M Street so as to allow more green space and protect vistas from the Metrorail station entrance to the Southwest waterfront.

    d. The proposed reopening of 4th Street to vehicular traffic will not create sufficient benefits to offset the conflicts between vehicles and pedestrians. The City must commit to carry out the traffic mitigation measures from the DDOT traffic study.

    e. The redeveloped Mall could be accomplished under matter-of-right zoning. The only significant public amenity is the public plaza.

    f. The retail and residential uses will be delayed too much by the need to lease office space first, and the project will take too long to be built. The residential component should be larger.

    g. The PUD should also include hiring and job training for neighborhood residents; a citizen panel to help select retailers; and a community meeting room.

Testimony in Support

34. Numerous residents in the vicinity of the PUD project sent letters and testified in support of the project complaining about existing blighted and unsafe conditions at the mall, as well as inadequate retail and community services. They expressed support for a wholesale redevelopment of the site. Many also expressed support for the reestablishment of 4th Street through the site, the project design, proposed housing, and planned retail component.

Testimony in Opposition

35. Several residents in the vicinity expressed opposition to various aspects of the proposed PUD, including the new 4th Street cut-through and the height and setbacks

along M Street. Some suggested that the proposed retail and housing components be increased.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The height and density will not cause an adverse effect on nearby properties and will, in fact, include less density on the PUD Site than is permitted as a matter of right. The proposed mixed-use development is appropriate on this site, which is well served by a major arterial street, bus lines and an on-site Metrorail station.

6. First-stage approval of this PUD and the existing C-3-B and proposed C-3-C zoning is not inconsistent with the Comprehensive Plan, including the designation of the site for Medium-Density Commercial development in the Generalized Land Use Map of the Land Use Element.

7. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission acknowledges and responds to the issues stated by ANC 6D in its formal submission dated March 31, 2003 as follows:

    a. As to the statement that the proposed 110-foot-high buildings will create a canyon effect, dwarf neighboring structures and block light, air and open

spaces, the Commission is persuaded by Applicant's and OP's testimony. That testimony argued that the nearest residential buildings are located to the south of the PUD Site and therefore will experience no blockage of sunlight; that the ample width of M Street and the existence of some 90-foot-high buildings on the south side of this street mitigates any extreme difference in height or any canyon effect. The Commission is also persuaded by the testimony and graphic illustrations by the Applicant's architect that the relationship of the project's scale to its surroundings is sound, and that there are no adverse effects on views from the Metrorail station entrance to the waterfront.

b. The Commission finds that the quantity of office space is not excessive, given the costs of redeveloping and readapting an obsolete building and the existence of rapid transit service and major arterial streets and bus service to accommodate commuter traffic.

c. The ANC would prefer more retail space and is concerned that the presence of numerous office workers will result in retail uses more suitable for office workers than the surrounding neighborhood. The Commission notes that the Safeway lease is valid until 2020 and that the Applicant must provide at least 75,000 square feet of retail uses. The Applicant has stated in the record of this case that retail establishments will be typical community Center tenants: restaurants, coffee shops, flower shops, video store, grocery store, drug store, bank, electronic store, bakery, repair shop, dry cleaners and the like.

d. The Commission disagrees with the ANC's statement that amenities and public benefits are inadequate. The public benefits and amenities as set forth under Findings of Fact in this Order are substantial and meritorious of approval.

e. The report supported the residential component of the PUD and OP's recommendation for assuring the timing of residential development. The Zoning Commission concurs.

f. The ANC also recommended that the City commit itself to the traffic mitigation measures recommended in the DDOT report. The Commission concurs.

8. First-stage approval of the PUD Application will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

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

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission orders **APPROVAL** of the Applications for first-stage review of a Planned Unit Development and for a Zoning Map amendment from C-3-B to C-3-C for indicated parts of the property located at 401 M Street, S.W., specifically Lot 60 in Square 499 and Lot 88 in Square 542. This approval is subject to the following guidelines, conditions and standards:

1. The final design of PUD shall be developed in accordance with the site plan and preliminary architectural and landscape plans submitted as Exhibits ____ in the record of this case, and as modified by the guidelines, conditions and standards of this order.

2. The project shall be developed with office, residential and retail uses, together with public spaces, generally as depicted in the preliminary plans submitted in this first-stage application.

3. The maximum building height in the project shall be 112 feet and the maximum aggregate gross floor area shall be 4.33, comprised of 3.64 FAR devoted to office and retail uses and 0.69 FAR devoted to residential apartments. Not less than 1,335 parking spaces shall be provided.

4. The Applicant is authorized to proceed with matter-of-right phases of this multi-phase project for those buildings that comply with the height, bulk and use provisions of the existing C-3-B District, as set forth generally above under Finding of Fact Number 26 (a).

5. The remaining phases of development shall be processed as one or more second-stage PUD applications. The applicant shall submit with each second-stage application detailed plans and elevations indicating the design treatment of the proposed PUD project, including but not limited to building and landscape materials, color, architectural and landscape details, and zoning data as required for a second-stage PUD application.

6. The four corners of the PUD Site shall be zoned C-3-C, encompassing a land area of 222,429 square feet as depicted in Sheet 20 of Exhibit ___of the record. This area is between the eastern and western boundaries of the PUD Site to a distance of 245 feet from the southern boundary along M Street (305 feet from the centerline of the street), and to a distance of 250 feet from the northern boundary.

7. The residential and office square footage shall be developed in accordance with the following sequence:

    a. After 1.6 million square feet of new and renovated office space (including at least 75,000 square feet of retail floor area) has been redeveloped, the Applicant shall obtain a Certificate of Occupancy ("C of O") for the first 200,000 square feet of residential space. At this point, the Applicant may

obtain a C of O for all of the remaining 500,000 square feet of new office construction, so long as Applicant has presented or concurrently presents a C of O for the final 200,000 square feet of residential use. In this case the project will total 2.1 million square feet of office space and 400,000 square feet of residential use.

b. Alternatively, after 1.6 million square feet of new and renovated office space has been developed, the Applicant may choose to develop less than 500,000 square feet of new office space. In this event, the Applicant shall not obtain a C of O for the next 250,000 square feet of office space (to go from 1.6 to 1.85 million square feet) except by presenting a C of O for the first 200,000 square feet of residential space. In this case, the project will total 1.85 million square feet of office space and 200,000 square feet of residential space.

c. If the Applicant chooses to develop additional office space beyond the 1.85 million square feet, the Applicant may obtain a C of O for the 200,000 square feet of office space between 1.85 million and 2.05 million square feet only by presenting a C of O for an additional 200,000 square feet of residential space. At this point the total development would be 2.05 million square feet of commercial space and 400,000 square feet of residential use. Once this has been completed, the Applicant may develop up to the remaining authorized office square footage without a further residential requirement.

8. The residential portion of the project shall have a direct pedestrian connection to the reopened 4th Street.

9. The project shall designate a minimum of 75,000 square feet of gross floor area for retail and service uses. Such floor area shall be located at the ground floor level along the entirety of the M Street frontage and on both sides of the reopened 4th Street from M Street to the northern property boundary, as depicted in the revised Sheet 15 of the PUD plans dated January 22, 2003.

10. The Applicant shall construct a 25,000-square-foot landscaped public plaza around the escalator of the Metrorail station.

11. The Applicant shall assume the responsibility to maintain the former federal land north of the PUD boundary (Square 499, Lot 57) as a public park amenity that remains after construction of the reopened 4th Street, S.W.

12. Second-stage PUD applications shall reflect traffic mitigation measures recommended in the "4th Street SW Transportation Study" prepared by the District of Columbia Department of Transportation by DMJM+Harris, Inc., dated January 2003.

13. The Applicant shall execute the following agreements prior to the adoption of the final Zoning Commission order of the initial second-state PUD in this case:

    (a) A First-Source Employment Agreement with the Department of Employment Services; and

    (b) A Memorandum of Understanding with the District of Columbia Office of Local Business Development ("LSDBE") to ensure minority vendor participation.

14. This first-stage PUD approval by the Zoning Commission shall be valid for a period of three (3) years from the effective date of this order. Within such time, the applicant shall file a second-stage PUD application in order for this first-stage application to remain in effect. A total of three second-stage applications may be filed in this PUD case. With the filing of the first second-stage application, the first-stage order will fully vest. The second, second-stage application shall be filed within five years after the first-stage approval, and the third, second-stage application within 17 years of the first-stage approval.

15. Pursuant to D.C. Code § 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified at D.C. Code, Title 1, Chapter 25 (1991). Nothing in this order shall be understood to require the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at its public hearing of this case on [ ], 200, by a vote of [ ].

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register, that is, on _____.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning