Government of the District of Columbia
Office of Zoning

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Alberto P. Bastida
Secretary to the Zoning Commission

DATE: November 19, 2003

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on November 28, 2003:

1. Z.C. Order No. 02-38 (Case No. 02-38); and
2. Z.C. Order No. 02-45 (Case No. 02-45).

Received By

11/19/03
Date

Attachments

ZONING COMMISSION
District of Columbia
Case 02-38
Exhibit 122

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ZONING COMMISSION
District of Columbia
CASE NO.02-38
EXHIBIT NO.122

ZONING COMMISSION ORDER NO. 02-38
Case No. 02-38
(First-Stage PUD – Waterfront)
July 31, 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 ("Applicant"), 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" or "the Project") 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

1. On September 30, 2002, the Applicant 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 four (4) 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 consisting of approximately 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, I, 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 December 20, 2002 (49 DCR 11387). 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 consolidated PUD. The two-stage PUD process is appropriate in this case as it involves 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 stage 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.

5. The parties in the case were the Applicant and ANC 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 June 9, 2003, the Zoning Commission took proposed action to approve the application by a vote of 5-0-0.

8. After referral to and review by the National Capital Planning Commission (see Finding of Fact 36), the Zoning Commission took final action to approve the application on July 31, 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, I, 3rd, and 6th Streets, S.W. Fourth Street between M and I Streets, S.W., was closed to create this large development site and to facilitate the new construction.

10. The central mall structure is three (3) stories and forty-five (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 and some 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 (2) 130-foothigh office towers, which were leased for many years up to 2002 to the General Services Administration ("GSA") and occupied by the Environmental Protection Agency ("EPA"), with 5,500 employees..

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 there are two

(2) 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 (4) large, high-rise apartment buildings – two (2) of them to the east and two (2) to the west of the mall. To the north, fronting on the south side of I Street, are two (2) churches, federal parkland, and a District of Columbia library (Southwest Branch). To the south, the 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 I Street.

15. Across 3rd Street to the east is the low-rise Greenleaf Gardens public housing complex, situated on three (3) city blocks bounded by M, I, 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 half a 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 twenty (20) to forty (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." (11 DCMR § 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 (70) feet/six (6) stories, a maximum density of 5.0 FAR for residential and mixed uses, with a maximum density of 4.0 FAR for commercial and other non-residential uses. In Zoning Commission ("ZC") Order No. 967 dated September 9, 2002, the Commission adopted a text amendment that allows the Waterside Mall property to continue to be treated as one building for zoning purposes in the event that construction of a right-of-way through the property creates two (2) physically separate buildings.

18. The existing improvements, which are entirely non-residential, occupy approximately 2.25 FAR. This is well within the permitted maximum density 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 ZC 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 Applicant requests that the four (4) corners of the site be rezoned C-3-C in order to accommodate additional height and bulk and to offset the loss of land area for the new roadway 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 ninety (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 and 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 consist of retail uses on the ground floor of new or renovated office buildings, two (2) 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 roadway along the axis of 4th Street that will connect with 4th Street to the north and south of the PUD Site. The roadway 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 fifty-five (55) foot wide roadway will provide two (2) lanes of moving traffic, a turning lane, and curbside parking lanes on both sides of the street, as well as wide sidewalks within the ninety (90) foot wide passageway. The wide sidewalks and curbside parking are designed to enhance the retail and pedestrian environment along 4th Street. The two (2) moving lanes match the two-lane configuration of 4th Street to the north of the site.

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 both visually and 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 density of 3.64 FAR. This will include a minimum of 75,000 square feet of g.f.a. for retail uses with the remainder being office space. The two (2) apartment buildings will total 400,000 square feet of g.f.a., or 0.69 FAR, for a total built density of 4.33 FAR. This is less than the maximum 5.0 FAR for mixed residential and commercial uses allowed in the existing C-3-B zone as a matter of right. The minimum number of parking spaces will be 1,335.

25. The height of buildings will range from renovations with additions at fifty-six (56) feet; new construction at seventy-nine (79) and 112 feet; and renovation of the two (2) existing office towers at 130 feet. The new residential buildings are proposed to be 112 feet high, as are the two (2) 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 optimal 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 majority of

leasing and construction is projected to be completed within the next seven (7) years. These phases are summarized as follows:

a. Matter-of-right construction of an addition to the Northeast Mid-rise Building, renovation of the existing East and West (office) Towers, Central Building (office and retail), and Southeast Mid-rise Building;

b. Second-stage PUD (No. 1) for the East and West 4th Street buildings;

c. Second-stage PUD (No. 2) for the West M Street and Northwest residential towers; and

d. Second-stage PUD (No. 3) for the East M Street and Northeast buildings, 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 (2) 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 four (4) 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; and

e. 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 ("DDOT") 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 with close cooperation between the Applicant 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 protracted 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 passageway through the site will improve the existing situation in several ways. It will create a safer, quicker, and more appealing passageway through the site for pedestrians and 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 property lines 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 two (2) large apartment buildings 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 sixty-eight (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. DDOT'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 profile suitable to this neighborhood landmark site. The proposed roadway 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 eighty-seven percent (87%) 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 DDOT 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 4th Street, 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 11, 2003, and by testimony at the public hearing, 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 (2) 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, and recommended that this should be a condition of PUD approval. DHCD also strongly supported the amount 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. The proposed 110-foot-high buildings would, "dwarf neighboring structures, significantly blocking light, vistas and open space, and creating a 'canyon effect';"

b. 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 toward 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; and

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.

Recommendation of the National Capital Planning Commission ("NCPC")

36. The proposed PUD and map amendment were referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. The NCPC considered this matter at its July 10, 2003, meeting and approved the staff recommendation, which states in part, "The Commission concludes that the proposed First-Stage PUD and related rezoning . . . to allow for the mixed use redevelopment of Waterside Mall . . . would not adversely affect the identified federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital."

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 the 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 loss of sunlight; that the ample width of M Street and the existence of some ninety (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 toward 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. In addition, the Comprehensive Plan designates the site for commercial development of this magnitude, as reflected by the underlying zoning;

   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 strip 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 appropriate to the degree of zoning flexibility being requested;

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; and

f. The decision to reopen 4th Street rests with the Mayor of the District of Columbia, not the Commission. D.C. Official Code § 9-203.01 (2001). This order does not authorize the street to be reopened, but considered the proposed reopening as part of its analysis of the merits and impact of this project. As a result of that analysis, the Commission concurs with the ANC recommendation that the District commit itself to the traffic mitigation measures recommended in the DDOT report. The Commission has also fashioned a condition to require that each second stage PUD application include the traffic mitigation measures recommended in the DDOT study.

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, as amended, 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 PUD design shall be developed in accordance with the site plan and preliminary architectural and landscape plans submitted as Exhibits 5 and 17 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. A minimum of 75,000 square feet of retail space shall be included in the project.

3. The maximum building height in the Project shall be 112 feet and the maximum aggregate floor area ratio shall be 4.33, comprised of 3.64 FAR devoted to office and

retail uses and 0.69 FAR devoted to residential apartments. No fewer than 1,335 parking spaces shall be provided.

4. The four (4) 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 17 of the record.

5. 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). The remaining phases of development shall be processed in accordance with Condition 6.

6. a. 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 must file a second-stage PUD application for at least one (1) of the buildings described in Finding of Fact 26(b), (c), or (d), in order for this first-stage approval to remain in effect;

b. No later than five (5) years after the effective date of this Order, the Applicant shall apply for a second, second-stage PUD for all the buildings described in Finding of Fact 26(b) and (c) that were not included, in the first second-stage PUD, and may also include either or both of the buildings described in Finding of Fact 26(d); and

c. If not included in the second second-stage PUD application, a third second-stage application for one or both of the buildings described in Finding of Fact 26(d) shall be made no later than seventeen (17) years after the effective date of this Order, but only if the Applicant has complied with (a) and (b) of this condition.

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.

7. The Project shall include both residential and nonresidential components. In order to ensure that the proposed residential space is developed prior to the completion of all the nonresidential project components, the Applicant has agreed to be bound by the following condition, which shall be included in each subsequent Zoning Commission Order granting a second-stage PUD approval:

> The applicant may not obtain a certificate of occupancy for more than 1.57 million square feet of new and renovated office and retail space (whether matter-of-right or PUD approved) until it has obtained a certificate of occupancy for at least 200,000 square feet of residential space for the Northwest Residential Towers. After a certificate of occupancy for this minimum amount of residential use is issued, the applicant may obtain a certificate of occupancy for an additional 250,000 square feet of new and

renovated office and retail space. Thereafter, the applicant may not obtain a certificate of occupancy for any additional non-residential space (whether matter-of-right or PUD approved), until it has obtained a certificate of occupancy for an amount of residential space for the Northwest Residential Towers so as to bring the amount of occupied residential space in that building to at least 400,000 square feet.

However, nothing in this condition is intended to limit the Commission, as part of the first or second second-stage PUD order that approves the residential use, from specifying the timing of the residential and nonresidential uses that are approved in that order, as permitted in 11 DCMR § 2408.7.

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 generally depicted in the revised Sheet 15 of the PUD plans dated January 22, 2003. As part of the 75,000-square-foot requirement, so long as the neighborhood, (as shown on the Neighborhood Service Map set forth in Exhibit 121, is not served by a full-service grocery store at least 30,000 square feet in size, the Applicant will set aside a minimum of 30,000 square feet for a grocery store in the Project. The Applicant will use reasonable efforts to lease the space for grocery store use.

10. The Applicant shall construct a 25,000-square-foot landscaped public plaza around the escalator of the Metrorail station in general conformance with Exhibit 17.

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. The Applicant's obligation to maintain this parkland shall begin with the opening of 4th Street through the PUD Site and shall continue for the life of the PUD project.

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 first second-state PUD in this case:

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

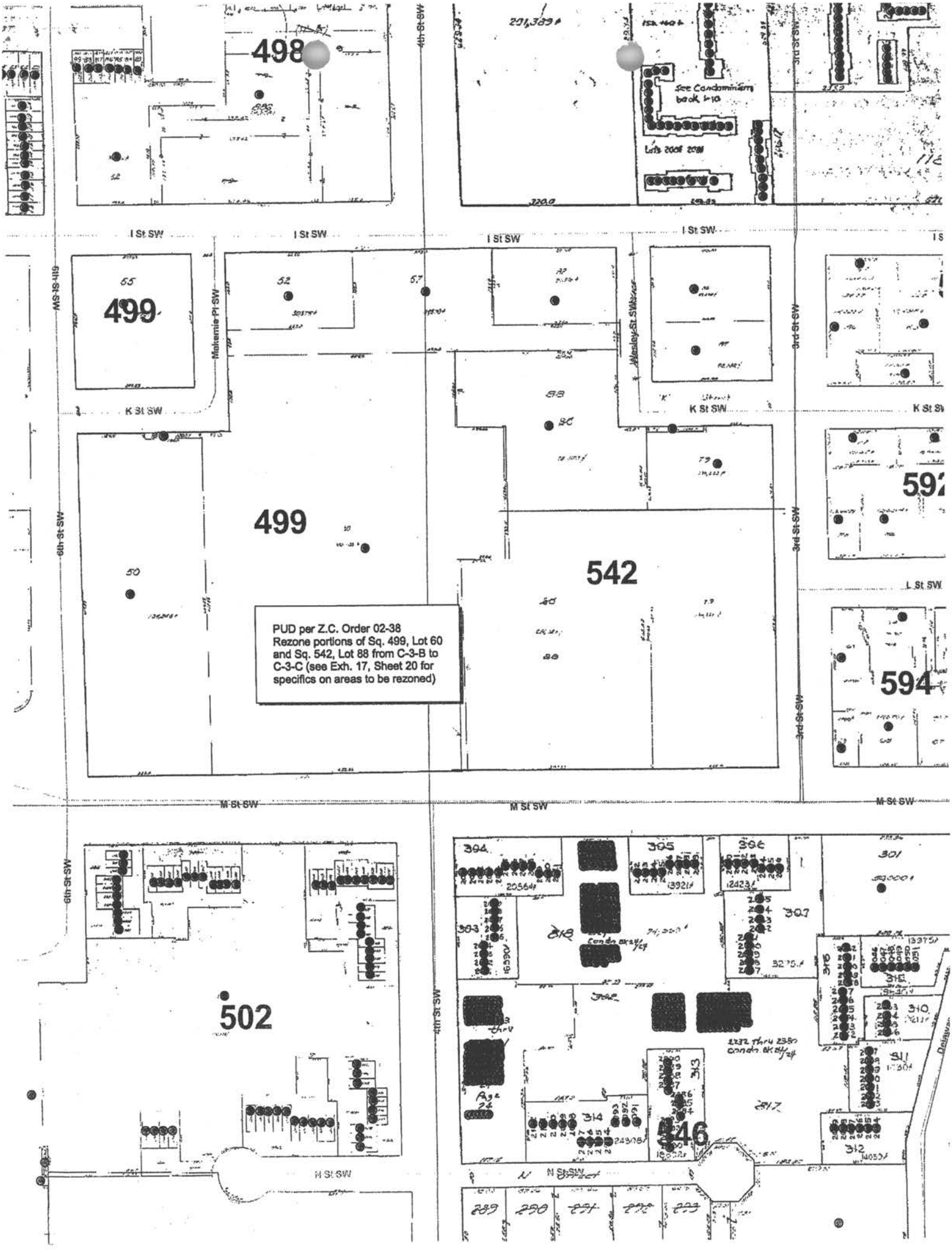
(b) A Memorandum of Understanding with the District of Columbia Local Business Opportunity Commission ("LBOC") to ensure minority vendor participation.

14. 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, familial status, family responsibilities, matriculation, political affiliation, 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 the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

15. On June 9, 2003, the Zoning Commission approved the applications by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, James H. Hannaham, and Peter G. May approved).

16. This order was adopted by the Zoning Commission at its public meeting held on July 31, 2003, by a vote of 5-0-0 (John G. Parsons, Carol J. Mitten, Anthony J. Hood, James H. Hannaham, and Peter G. May adopted).

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 _____.


498
I St SW
I St SW
I St SW
I St SW
4th St SW
3rd St SW
See Condominium book 1-10
Lots 2001 2011
55
499
52
57
Makemie Pl SW
Wesley St SW
3rd St SW
K St SW
K St SW
K St SW
53
60
79
6th St SW
499
542
50
592
L St SW
PUD per Z.C. Order 02-38
Rezone portions of Sq. 499, Lot 60
and Sq. 542, Lot 88 from C-3-B to
C-3-C (see Exh. 17, Sheet 20 for
specifics on areas to be rezoned)
594
M St SW
M St SW
M St SW
6th St SW
502
4th St SW
H St SW
394
395
396
301
307
303
308
Condo Bk 84/24
315
316
310
311
2232 Thru 2280
condo Bk 84/24
313
314
312
546
N St SW
289
290
291
292
293