Government of the District of Columbia
Office of Zoning

MEMORANDUM

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

FROM: Jerrily R Kress, FAIA
Director

DATE: May 12, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on May 20, 2005.

1 Z C Order No 04-11 (Z C Case No 04-11)

Attachments

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Office Of Documents And Administrative Issuances

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ZONING COMMISSION
District of Columbia
CASE NO.04-11
EXHIBIT NO.59

ZONING COMMISSION ORDER NO. 04-11
ZONING COMMISSION CASE NO. 04-11
(Consolidated Planned Unit Development and
Zoning Map Amendment for 611 Emerson Street, NE)
April 11, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on November 22, 2004, to consider applications from Rocky Gorge at Fort Totten, LLC, for consolidated review and approval of a planned unit development and related zoning map amendment from the R-2, FT/M, and FT/C-M-1 Districts to the R-4 District. The Commission considered the applications pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). 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 applications.

FINDINGS OF FACT

The Applications, Parties, and Public Hearing

1. On April 16, 2004, Rocky Gorge at Fort Totten, LLC (the "Applicant"), owner of Square 3788, Lot 811, filed applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment (collectively, the "Applications") for a portion of Lot 811 (the "Property")

2. At its June 14, 2004 public meeting, the Zoning Commission (the "Commission") determined to set down the Applications for public hearing

3. The Commission held a public hearing for the Applications on November 22, 2004. The Commission heard testimony from the Applicant, including its expert witnesses in land planning, site engineering, architecture, and traffic engineering and from Advisory Neighborhood Commission ("ANC") 5A, the ANC within which the Property is located

4 The Applicant and ANC 5A were the only parties to the case The Commission considered requests for party status made by Belinda V. Bell and the Considered Citizens of North Michigan Park The Commission denied both requests as not satisfying the

requirements for party status set forth in § 3022.4 of the Zoning Regulations. The Commission received testimony from a number of persons regarding the Applications.

5 At the end of the public hearing, the Commission requested that the Applicant submit certain additional information regarding its proposed plans and community benefits, and to respond to the comments raised in community testimony, which materials were submitted to the Commission on December 20, 2004 and February 4, 2005.

6 At its March 14, 2005, meeting, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the Applications and plans presented at the public hearing and in post-hearing submissions filed with the Zoning Office on December 20, 2004 and included in the record at Exhibit 48.

7. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated March 31, 2005 found that the proposal would not adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital

8. The Commission took final action by a vote of 4-0-1 to approve the Applications at its public meeting on April 11, 2005.

The Property and Surrounding Area

9. The Property is located at 611 Emerson Street, NE, in Square 3788 The total land area for the Property is approximately 255,975 square feet (5.87 acres), which exceeds the minimum area requirement of two (2) acres for a PUD in the R-4 District established in § 2401.1(a) of the Zoning Regulations.

10. The Property is currently occupied by an abandoned concrete plant along with associated structures, including metal shed storage facilities, abandoned railway tracks, underground concrete hopper tunnels, several tons of excess concrete stored along the perimeter of the site, office trailers, adjacent paved surface storage areas, and other miscellaneous storage barrels, containers, and debris, all of which would be demolished and removed as part of the Applicant's proposal

11. The Property is irregularly shaped with comparatively very little public street frontage There are significant changes in grade affecting the Property to the north, south, and west, effectively isolating and buffering the site from adjacent uses

12 The Property is bounded to the north by Emerson Street, NE. To the north and west, the Property is bounded by District of Columbia-owned property that is controlled by the Office of Property Management and contains equipment and materials storage for the Department of Public Works. The Property is bounded to the west by railroad

tracks/right of way, and to the south by property owned by the Thos. Somerville Co., which continues to be operated as an industrial plumbing facility. To the east of the Property is a strip of properties fronting on 7th Street, NE, which are owned by the Applicant

13 The Fort Totten Metrorail Station is located approximately 1,200 feet (approximately a six-minute walk) to the northwest of the Property. The Comprehensive Plan's Generalized Land Use Map identifies mixed-use medium density commercial and production and technical employment uses as appropriate on portions of the Property, and low density residential on other portions. The Comprehensive Plan's Generalized Land Use Policies Map includes the entire Property within both the Fort Totten Housing Opportunity Area and the Fort Totten Metrorail Station Development Opportunity Area.

14. To the northeast, east, and southeast of the site, the immediately surrounding area is zoned R-2 and improved with a mixture of detached and semi-detached single-family residences.

Existing and Proposed Zoning

15. The Property is split zoned and lies partly in the Fort Totten (FT) Overlay District. The Property is zoned R-2, FT/C-M-1 (Commercial-Light Manufacturing), and FT/M (General Industry). Residential uses are not permitted in the M and C-M Districts Rowhouse development is not permitted in the R-2 District. A rezoning of the Property is necessary to permit the residential use proposed in the Applications.

16. The maximum permitted height in the R-2 District is forty (40) feet (three (3) stories) There is no prescribed floor area ratio ("FAR"), although the lot occupancy in the R-2 District of forty percent (40%) results in a density of 1.2 FAR.

17 The maximum permitted height in the C-M-1 District for commercial and light manufacturing uses is also forty (40) feet (three (3) stories). The maximum height permitted in the M District is ninety (90) feet, with no limitation on the number of stories New construction and redevelopment up to a 3 0 FAR (172,788 square feet for the Property) is permitted in the C-M-1 District and up to a 6.0 FAR (736,602 square feet) is permitted in the M District. Overall, more than 900,000 square feet of non-residential development is permitted as a matter of right on the Property.

18. The Applicant requests rezoning of the Property to R-4. The maximum permitted height in the R-4 District is forty (40) feet (three (3) stories). There is no maximum FAR in the R-4 District. The Applicant proposes the rezoning of the Property to R-4 in combination with the PUD in order to permit the development of multi-family housing on the site, which is not permitted under the existing zoning for the Property.

The PUD Project

19 The Applicant proposes to demolish and remove the extensive abandoned industrial operations and materials from the site and to develop the site into seventy-five (75) units of individually owned townhouses (the "Project"). The townhouse units will be arranged around prominent landscaped common spaces in fourteen (14) buildings ranging from five (5) units to eight (8) units in length. The Project has been designed to follow neo-traditional design principles, including rear-loaded garages accessed through an alley system, the inclusion of two (2) formal public greens that will serve as the focal points of the development, and an extensive and coordinated internal sidewalk system that will allow for a high level of neighborhood walkability and easy connections to both nearby transit and other uses in the surrounding community.

20. Two (2) townhouse configurations will be offered in the Project: (1) an 18' x 36' footprint with a rear-loaded large one-car garage integrated into the building, containing two or three (3) bedrooms and approximately 1,950 gross square feet (including the garage); and (2) a 20' x 40' footprint with a rear-loaded two-car garage integrated into the unit, containing two (2) to four (4) bedrooms and approximately 2,400 gross square feet (including the garage). Each unit will have a rear deck.

21. The units will be three (3) stories in height, slab-on-grade, with attic space hidden behind a variety of rooflines including gables, hipped roofs, and dormers Typical units will measure approximately thirty (30) feet in height from finished grade level of the building to the ceiling of the unit's third story.

22. Fifteen (15) units will have individual parking pads between the garage and alley, providing twenty-one (21) stacked parking spaces in addition to the 156 parking spaces being provided throughout the site which are accessible in accordance with the Zoning Regulations.

23. The architectural treatment chosen for the Project, particularly the elevations of the townhouses, is inspired by the Federal-style townhouse design built throughout Washington in the late nineteenth and early twentieth centuries. The richly detailed eaves and cornices, including layered trim with dentil molding and brackets, are in keeping with the townhouse character. Varied exterior elevations utilizing maintenance-free materials will provide a diverse streetscape throughout the Project Some front elevations will be full-brick with intricate brick details, including header soldier courses, jack arches, and continuous rowlock sills Other elevations will include a brick water table, with a combination of double five-inch and triple three-inch beaded horizontal vinyl lap siding with accent details such as vinyl accent strips and window header trim The side elevations will be a combination of a brick water table with vinyl siding. The use of brick and vinyl will ensure that the exteriors of the townhouses maintain a fresh appearance Roofing material will consist of self-sealing, asphalt shingles.

24. The Project includes two (2) formal public greens that will serve as the focal points of the Project The public greens will be centrally located and will provide easy access to passive recreation for the residents of this development The western public green is rectangular in shape and more than 200 feet in length. Approximately twenty-five percent (25%) of the units will directly face this attractive area. The eastern public green is circular, and will provide direct frontage for more than twenty percent (20%) of the units. Both public greens will be extensively landscaped using a variety of coordinated trees, shrubs, and groundcover. There will be landscaped seating areas with benches that are designated by elegant concrete pavers with parquet banding and running bond field. Both public greens will be easily accessible to all units in the Project, as they are bordered by a four-foot wide concrete sidewalk that will connect the various buildings of the Project. Additional landscaped open space will be provided at the western end of the site, providing buffering from the rail tracks, and along the southern portion of the site, providing buffering from the industrial operations to the south

25. Notwithstanding the rezoning to R-4, the proposed density of the Project is approximately 0.69 FAR, a small fraction of that which is permitted in the FT-M District (6.0 FAR). The proposed height of buildings within the Project, at 30 feet, is well within the building height limitations of the R-4 District. Lot occupancy will total approximately twenty-six percent (26%), far less than the sixty percent (60%) permitted in the R-4 District.

26. The Commission finds that the Project is intended to supplement the housing stock in an area of the District that has historically been underserved. The target market for the Project includes a significant percentage of workforce households, including households at or near the metropolitan area median income, individuals and families looking to own rather than rent, those looking for larger or newer homes and those looking to utilize ready public transportation rather than a lengthy commute.

27. At the same time, the Commission finds that the Applicant has remained mindful of the stated preference of neighboring property owners for the Project density to be kept low and consistent with the surrounding neighborhood and to minimize any traffic congestion. According to the Applicant's expert land use and traffic testimony, the Project will be developed at a lower density (approximately sixteen (16) units per acre) than the immediately adjoining residential areas (approximately twenty (20) units per acre) and the increase in traffic created by the Project will be negligible.

28. In any event, no increased building density is being requested as part of the Project. In fact, only a small fraction of the building density currently available on the site as a matter of right is proposed to be developed under the Project. Whereas more than 900,000 square feet could conceivably be developed on the site consistent with its existing zoning, less than 180,000 square feet will be developed through the PUD The Project proposes only slightly more residential square footage across the entire site

(175,244 square feet) than is currently permitted as a matter of right in the R-2 portion of the site alone (approximately 173,376 square feet).

29. The Project includes a commitment by the Applicant to restrict the sale of two (2) of the 18' x 36' townhouse units within the Project, for a period of twenty (20) years, to those households that are qualified and determined by the Office of Planning and Department of Housing and Community Development to be moderate-income households with incomes not to exceed eighty-five percent (85%) of the metropolitan area median income, as provided in the record at Exhibit 37.

Public Benefits and Project Amenities

30 The Commission finds that the following benefits and amenities will be created as a result of the Project:

a. *Housing* Under § 2403.9(f) of the Zoning Regulations, the production of housing is a public benefit that the PUD process is designed to encourage. To that end, the Project will convert the site of an abandoned concrete plant into seventy-five (75) residential units. This provision is especially important given that the site is located within the Fort Totten housing opportunity area, and, as such, non-residential property is encouraged to be transformed into residential property. In addition, two (2) of the residential units will be dedicated as affordable housing for District residents with incomes not to exceed eighty-five percent (85%) of area median income. The entire Project is also targeted to workforce housing (those households at the average median income level).

b *Urban Design and Architecture.* Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. These Applications present a residential design that accomplishes these criteria The Project follows the transit-oriented development ("TOD") model that the Mayor's Task Force and the Office of Planning have championed throughout the District in efforts to enhance traditional neighborhood centers with minimal disruption. The TOD model stresses six (6) design principles, namely. (1) orientation and connectivity; (2) quality public realm and amenities; (3) pedestrian-friendly, safe environment; (4) attractive architecture and design; (5) mix of uses, and (6) creative parking management The Project satisfies these criteria in the context of the surrounding area. The demonstrated results of successful TOD include increased property values, tax base, and economic strength throughout a neighborhood as well as protection of the existing neighborhood character by focusing development nearest transit

c *Site Planning and Efficient Land Utilization.* Pursuant to § 2403.9(b) of the Zoning Regulations, "site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning

Commission. The Project makes very efficient use of its highly irregular shape and topography The Project is also an efficient and economical use of land in that it will generate a significant amount of revenue for the District in the form of vastly increased property taxes and income taxes payable by new residents. Furthermore, the new occupants of the approximately seventy-five (75) units will add significantly to the market demand for existing neighboring retail uses and amenities, further invigorating the neighborhood.

d *Transportation* Pursuant to § 2403.9(c) of the Zoning Regulations, "Effective and safe vehicular and pedestrian access; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts" are representative public benefits and project amenities Pursuant to testimony received from the Applicant, the Project will have an inconsequential impact on vehicular traffic. The Project provides an ample supply of on-site parking in order to ensure that the Project does not increase the pressure on the neighborhood for limited street parking. The Property also is well located within easy walking distance of a Metrorail station and several Metrobus routes.

e *Open Space and Landscaping*. The Project provides more than adequate open space through the two (2) landscaped public greens provided as well as the buffered open space at the far western portion of the site. In addition, owing to the Property's unique topography, with steep slopes up to both the north and south, the Project will be largely isolated and buffered from any adjacent industrial uses. Due to the steep grades along the southern edge of the Property, virtually all of the existing vegetation in that location will be preserved for slope stabilization purposes. Retaining walls will be installed where appropriate in order to minimize impact on existing tree root systems. Additional tree preservation techniques will be applied as necessary in order to maintain and enhance the health of the existing forest stand. The planting of exotic ornamentals species will be kept to a minimum.

f. *Uses of Special Value to the Neighborhood or the District as a Whole* The Project involves removing the Property from its longstanding underutilized and abandoned industrial use and replacing it with vibrant residential use. As noted by certain persons who testified at the public hearing, in the past the Property has been the site of various crimes. Given the site's industrial and poorly maintained past, the cleanup and mitigation of the Property is integral to the residential development of the site and serves to enhance the larger neighborhood.

Pursuant to the economic analysis conducted by the Applicant at the Commission's request, the Commission finds that the Project will provide in excess of $870,000 to the District of Columbia in the form of annual tax revenue, including an annual net cash flow of $300,000. The Project will also generate one-time construction related benefits exceeding $1 million.

g *Other Public Benefits and Project Amenities.* As additional benefits/amenities to the community, the Applicant has worked with the ANC, various community organizations, interested neighbors, and the District of Columbia to arrive at a package of community enhancements that should enhance all aspects of the surrounding neighborhood. In addition to the dedication of two (2) townhouse units to affordable housing and the agreement by the Applicant to enter into a construction management plan, this package includes the following.

i. $15,000 payable to the District of Columbia Public Library Foundation to be utilized for the exclusive benefit of the Lamond-Riggs Branch Library, including computer instruction, and book, music, and game purchases.

ii $15,000 to the North Michigan Park Civic Association ("NMPCA") for enhancements to the North Michigan Park Recreation Center, including computers, furniture, a public address system, a marquee, and enhancements to the pavilion in the park area of the center.

iii. $12,000, also to the NMPCA, for fabrication and installation of new community signage.

iv. $120,000 payable to the Friends of North Michigan Park Civic Association ("FNMPCA"), a registered not-for-profit organization, to be used exclusively for community enhancement programs and events, including certain public space beautification efforts in coordination with the Department of Transportation, all within the North Michigan Park neighborhood. These programs may include: (a) improvements to the playground, basketball court, and tennis courts at Bertie Backus Middle School; (b) public space landscaping and maintenance (through the FNMPCA Garden Club); (c) an elderly neighbors assistance program (*e.g.*, minor house repairs, snow removal, mowing); (d) sponsorship of a summer job internship program for neighborhood youths; (e) sponsorship of a college scholarship program, (f) sponsorship of a back-to-school program for neighborhood children (including gifts of backpacks and school supplies), (g) sponsorship of the annual North Michigan Park Family Day at the North Michigan Park Recreation Center, free to the community; (h) sponsorship of the NMPCA annual awards dinner (for approximately 1,000 people), and (i) sponsorship of community Mothers Day/Fathers Day luncheons. The Applicant has agreed to provide the funding to the FNMPCA as follows: $25,000 within ninety (90) days of publication in the DC Register of a final order from the Zoning Commission approving the Applications; an additional $75,000 within fifteen (15) days of obtaining construction permits for the townhouses; and

an additional $5,000 on or before the tenth day of January 2007, 2008, 2009, and 2010

31. The Commission finds that the Project is consistent with many of the Comprehensive Plan's major themes as follows.

    a. *Respecting and Improving the Physical Character of the District.* The PUD process will ensure the development of an exceptional design and appropriate density in this well-developed and established community. The Project not only replaces an abandoned concrete plant with a vibrant residential development, but also accomplishes this transformation in a manner that is consistent and complementary to the density and layout of the immediately surrounding neighborhood.

    b. *Reaffirming and Strengthening District's Role as the Economic Hub of the National Capital Region.* The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems The Project takes advantage of this asset by its proximity to the Fort Totten Metrorail Station as well as numerous routes of Metrobus. It fulfills the tenets of TOD espoused by the District and furthers the efforts to create housing need to bring additional residents to the District, especially within designated housing priority areas.

    c. *Preserving and Ensuring Community Input.* Beginning in the Summer of 2003, the Applicant initiated contact with adjacent neighbors to the Property and with ANC representatives in an effort to gather community input on the Project and to gain community support. Community concerns as to density, parking, traffic, and green space issues have been thoroughly reviewed by the Applicant and thoughtfully incorporated into the Applications

32. The Commission finds that the Project furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

    a. *Economic Development Element* According to the Economic Development element of the Comprehensive Plan, the District places a high priority on stimulating and facilitating a variety of commercial, retail and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use element and ward plans, with sensitivity to the surrounding area. 10 DCMR § 204.2(m) The Project serves to attract and retain residents, which further increases the tax base and creates revenue for the District of Columbia. The Applicant's economic benefits and cost analysis supports the Commission's finding that the Project will provide a significant annual positive economic cash flow to the District.

b *Housing Element.* According to the Housing element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. (10 DCMR § 300.4). A policy of the Comprehensive Plan is to designate, as residential development opportunity areas, sites where significant housing development can appropriately occur. (10 DCMR § 302.2(d)). The Property is located within a designated housing opportunity area, is located in close proximity to the Fort Totten Metrorail and Metrobus stations, and will further the total urban living system with its access to public transportation.

c. *Transportation Element.* One underlying objective of the District's Transportation element is to provide for the efficient movement of people and goods within the District and its metropolitan area. (10 DCMR § 500.2). The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. (10 DCMR § 502.1(a)). The location of the Project near the Fort Totten Metrorail and Metrobus stations as well as its location within a larger mixed-use area is appropriate and furthers this goal. The Commission accepts the conclusion of the Applicant's Traffic Impact Analysis that the Project will have no significant impact on vehicular traffic.

d. *Urban Design Element* The Urban Design element states that it is the District's goal to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. (10 DCMR § 701 1). The Project has been designed to greatly improve the existing condition of an abandoned industrial site, to enhance the physical character of the area and to complement the materials, height, scale, and massing of the surrounding land uses. (10 DCMR § 708.2). The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services (10 DCMR § 709.1). The Project provides efficient pedestrian connections both within and outside of the Property

e *Land Use Element* The Land Use element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail Stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing (10 DCMR § 1100 2(b)) The Land Use

element includes the Subject Property within a housing opportunity area, where the District expects and encourages either new housing or rehabilitated housing Housing opportunity areas are not the only areas where new housing units will become available, but represent locations of significant concentrations. The conversion to residential uses of land in a housing opportunity area and which is currently zoned industrial and commercial-light manufacturing is consistent with this policy.

33. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 5, as follows:

a. *Ward 5 Economic Development* Development is sought in Ward 5 that will enhance and expand existing businesses, create new ownership opportunities, increase retail services and opportunities for ward residents, and promote the vitality of ward neighborhoods. Economic development potential in Ward 5 is perceived as particularly high in and around Ward 5's three Metrorail stations. The Project goes far to address and capitalize on these various issues.

b. *Ward 5 Housing Element.* Primary housing objectives in Ward 5 include the protection and preservation of the Ward's housing stock, the production of new housing, and the provision of incentives for housing at desired locations such as the Fort Totten Metrorail Station Special Treatment Area. (10 DCMR §§ 1608.1(a), (b), and (c)). The Project, which is adjacent to the Fort Totten Metrorail Special Treatment Area, responds to these important objectives through its significant contribution to the housing stock.

c. *Ward 5 Transportation Element.* Two (2) of the primary objectives for transportation in Ward 5 are to increase the use of mass transit and to improve the pedestrian environment on major streets and roadways. (10 DCMR §§ 1614.1(a)(e)). The residents of the Project will be able to take advantage of the Property's close proximity to the Fort Totten Metrorail and Metrobus stations.

d. *Ward 5 Urban Design Element* The Project specifically and substantially addresses the objectives in the Ward 5 Urban Design element, including the promotion of a physical environment that upgrades the ward's aesthetic qualities, enhances neighborhood stability, emphasizes neighborhood identity and function, and physically enhances the gateways and entrance ways into the District (10 DCMR § 1620.1(a)), and the provision of special design attention to those areas in the ward that maintain a poor physical image, where new development can improve the neighborhood's visual qualities while providing needed services (10 DCMR § 1620 1(b)) The Project provides an exceptionally designed residential development that will help to physically revitalize the Fort Totten area while creating a sense of community through its design.

e *Ward 5 Land Use/Zoning Element.* Important among the Ward 5 actions in support of land use and zoning is determining the appropriate mix of uses, scale, density, and design of development in the Fort Totten Special Treatment Area in order to fully realize the area's potential for development and to serve the Ward 5 community and District, and to protect and preserve the surrounding residential areas. (10 DCMR § 1630.1(b)). The Project provides much-needed residential development that will significantly revitalize the neighborhood surrounding the Fort Totten Special Treatment Area.

Office of Planning Report

34 By report dated November 8, 2004, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Applications with an amenities package including: (1) two (2) affordable housing units marketed at eighty-five percent (85%) of area median income for twenty (20) years; (2) contributions to the Lamond Riggs Library ($15,000) and to the North Michigan Park Civic Association for the North Michigan Park Recreation Center ($15,000) and for community signage ($12,000); and pedestrian streetscape improvements along 6th Street, NE. OP stated that the Applications are not inconsistent with the Comprehensive Plan, will maintain housing within the neighborhood, and will bring needed housing to the District.

35. By supplemental report dated February 14, 2005, OP noted that the Commission allowed the Applicant additional time to meet with community representatives to further refine the Applicant's community benefits package, and that the Applicant and community representatives, including representatives of ANC 5A, met and reached consensus on an expanded package of benefits, which OP stated significantly enhanced the Applicant's earlier proposal to the Commission OP noted its continued enthusiastic recommendation that the Commission approve the Applications.

36. The Commission concurs with the reports of OP and agrees that the enhanced community benefits package represents a significant improvement to the Applicant's earlier proposal.

Other District Agencies

37 By report dated November 23, 2004, the District Department of Transportation ("DDOT") supported the findings of the Applicant's Traffic Impact Analysis and recommended approval of the Applications with conditions, as follows: (a) determination of the proposed removal from the DC Highway Plan of a portion of the 6th Street, NE, right-of-way within the Property; and (b) resolution on the proposed use of an access easement across District-owned property to the north of the Property With respect to the Highway Plan, as part of its post-hearing submissions, the Applicant provided information responsive to DDOT's request Regarding the access easement, the Applicant continues to discuss the feasibility of such an easement with the Office of

Property Management ("OPM") In the event that such an easement is not provided, the Applicant has provided the Commission with alternative site plans, including the removal of two townhouse units and the installation of certain retaining wall solutions, included in the Record at Exhibit 48. The Commission finds that the Applicant has responded satisfactorily to the items raised for consideration by DDOT, and the Commission concurs with DDOT's recommendation in support of the Applications.

38. By letter dated November 8, 2004, and supplemented by letter dated November 22, 2004, the Department of Housing and Community Development ("DHCD") recommended support of the Applications provided the approval was conditioned on the Applicant restricting seven townhouse units for affordable housing for households at 80 percent area median income. The Commission appreciates the comments provided by DHCD; however, the Commission finds that the minor flexibility requested by the Applications is more appropriately conditioned upon the provision of two affordable housing units, pursuant to the terms proposed by the Applicant and OP

39 By letter dated November 4, 2004, the Fire and Emergency Medical Services Department ("FEMS") indicated no objection to the Applications provided that the Project has acceptable FEMS access and that new construction will comply with the building code. The Commission appreciates the comments of FEMS and notes that issues relating to the building code will be addressed as part of the building permit application process.

40 On November 22, 2004, the Commission received a letter from OPM, in its position as a neighboring property owner to the Property. In the letter, OPM requested that the Commission deny the application, noting that OPM was in discussions to purchase the property to the south of the Property and the Project was incompatible with potential future uses of the surrounding property. The Applicant responded to OPM's letter, indicating that the Applicant had sought for months to initiate dialogue with OPM regarding the possibility of an access easement, and that OPM was incorrect as to the status of negotiations on the neighboring property. No representative of OPM appeared at the public hearing and no formal response to the Applicant has been received from OPM, although it is the Commission's understanding that OPM and the Applicant have held discussions regarding the potential egress easement. The Commission finds support in the Applicant's position that much has changed in the years since the Property was zoned industrial, and that the industrially zoned properties within the area, with minor exception, can be reached by truck only through well established residential areas The Commission also finds support for the Applicant's position that the unusual topography of the Property, with 30-foot grade changes to the west and south, significantly buffers the Property, and new residents, from surrounding properties

ANC 5A

41. By letter dated November 15, 2004, and through testimony at the public hearing from ANC 5A Chair Norma Broadnax, ANC 5A indicated its support for the Applications.

The ANC requested a construction management schedule and designation of an ombudsman In its December 20, 2004 filing, included in the record at Exhibit 48, the Applicant submitted a detailed construction management plan, providing for permits, site management, site cleanliness, work hours, traffic, parking and loading, and establishing contact parties/ombudsmen.

42. Following the directions of the Commission at the public hearing, representatives of ANC 5A, including outgoing Single Member District ("SMD") 5A03 representative, Norma Broadnax, incoming SMD 5A03 representative, Levin Lee, and SMD 5A04 representative Joseph Bowser, met with the Applicant, representatives of the Concerned Citizens of North Michigan Park, and representatives of the Friends of North Michigan Park Civic Association, to reach consensus on an enhanced community benefits package. Consensus was reached as described in the letter of agreement dated January 13, 2005, included as Exhibit 49 of the record.

43. At the public hearing, the Commission requested that ANC 5A submit any responses to the Applicant's post-hearing submissions, filed December 20, 2004, by January 27, 2005. No submission was made by ANC 5A.

Comments at Public Hearing

45 At the public hearing, the Commission heard considerable testimony from a large number of persons regarding the Project and the community benefits and project amenities proposed. The testimony fell within the following general categories· (a) support for conversion of land to residential use; (b) support for cleaning up the site, (c) concern regarding increased traffic congestion, including construction traffic; (d) desire for enhanced community benefits as part of the Applications; (e) concern regarding potential increased real estate taxes, (f) desire for consideration of the needs of the community, especially seniors; (g) appreciation for contributions proposed for the library and recreation center; (h) concerns regarding construction noise; and (i) comment regarding a perception of a gated community.

46. Through the testimony received at the public hearing and through the post-hearing materials submitted, the Commission finds that the Applicant has responded satisfactorily to the comments and concerns raised at the public hearing. The Commission further finds that the Project enjoys general support within the community and that the Applicant has addressed concerns regarding its community benefits package by reaching consensus with the ANC and a number of concerned citizens and representative community organizations on a greatly enhanced benefits package. The Commission finds that the Applicant has addressed concerns regarding construction traffic and noise by proposing a detailed construction management plan. The Commission accepts the Traffic Analysis prepared by the Applicant's expert in traffic engineering and adopted by DDOT, which indicates that the Project will have no additional impact on the surrounding community The Commission also notes that in response to concerns raised regarding the perception

of the Project as a gated community, the Applicant has proposed to remove all landmark entrance signage and to further enhance the pedestrian access way from 7th Street.

Development Flexibility

47. Subsection 2405.7 of the Zoning Regulations provides, "notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment." Further, § 2405.8 of the Zoning Regulations provides, "Approval of the Board shall not be required for any such use approved by the Commission under §2405 7, and the Commission shall not be required to apply the special exception standards normally applied by the Board." Accordingly, the Applicant requests the Commission's approval of certain project features pursuant to 11 DCMR § 2405 7, namely:

a. Approval of multiple buildings on a single record lot, pursuant to § 2516 1 of the Zoning Regulations Consistent with § 2516, the Project involves the siting of multiple buildings on a single record lot. Because most of the buildings in the Project have no street frontage, the Applicant must divide the lots into theoretical building sites.

b As a result, § 2516.5 requires that the building sites maintain a front yard equivalent to that of the rear yard The Applicant is unable to provide totally compliant front yards for a small number of the theoretical lots and still maintain the pedestrian-focused neo-traditional site planning for the Project. For this reason, the Applicant requests flexibility pursuant to the Commission's authority under § 2405.5 to provide certain front yards that are not completely compliant with the dimensional requirements of the Zoning Regulations. With respect to the front yard setback flexibility requested, the Commission finds that in all but one of the seven situations in which the front setback is noncompliant with the minimum dimensions as established in the Zoning Regulations, immediately opposite the noncompliant front yard is a side yard to another of the buildings comprising the Project. Each such side yard provides a significant amount of open space and setback between buildings, even if technically noncompliant with the Zoning Regulations Furthermore, as a result of easements that will be placed across the side yards to provide for sidewalks and pedestrian access between units and "public spaces" owned in common by the Project's homeowners association, there is no future threat that those side yards might in the future be improved As for the one situation in the Project (Building No 14, Lots 71-75) where the noncompliant front yard faces onto an adjacent property rather than onto the side yard of another building in the Project, the Commission finds that, as a result of topography and zoning requirements affecting the adjacent property, there is little likelihood that any future construction on the adjacent property would ever be

undertaken in such close proximity to Building No 14 so as to provide less distance between the buildings than is required under the Regulations

CONCLUSIONS OF LAW AND OPINION

1 Pursuant to § 2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a 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 The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project (11 DCMR § 2403.3).

3. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated 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 Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment

4 The development of this Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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.

5. The Project meets the minimum area requirements of § 2401 1 of the Zoning Regulations

6. The Project is within the applicable height, bulk, and density standards of the Zoning Regulations The Project involves extensive improvement to an underutilized and abandoned industrial site and sensitive development of a 75-unit, pedestrian-oriented townhouse development in a designated housing priority area, in keeping with the

relative density of surrounding residential development. Accordingly, the Project should be approved. The impact of the Project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the neighboring residential properties in terms of height and mass and is complementary to adjacent buildings

7 The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

8. The Project's benefits and amenities are reasonable for the development proposed on the site.

9 Evaluating the Project according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the Applications qualify for approval Judging, balancing, and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits, in conjunction with the amenities discussed above, are appropriate in this case.

10. Approval of this Project is appropriate because the proposed development is consistent with the present character of the area.

11 Approval of this Project and related change of zoning is not inconsistent with the Comprehensive Plan

12. Approval of this Project and related change of zoning is not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D C Official Code § 6-641.02, including as follows:

a. The proposed zone is not inconsistent with the Comprehensive Plan;

b. The proposed zone will not produce objectionable traffic conditions;

c. The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land; and

d. Approval of this Project will promote health and general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services

13 The Commission is required under D C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's issues and concerns, which related principally to

construction management and the strength of the amenities package. The Applicant responded in a satisfactory manner so that the Commission concludes that the ANC's issues and concerns have been addressed

14. The Applications for a PUD and related map amendment 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 Map of the District of Columbia.

15. The Applications for a PUD and related map amendment are 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 contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development and for a related Zoning Map amendment from R-2, FT/C-M-1, FT/M to R-4 for the Property located at 611 Emerson Street, N E., in Square 3788, part of Lot 811. This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Bowman Consulting and Design Concepts Architects, and submitted to the Commission on April 16, September 8, and December 20, 2004, located, respectively, at Exhibits 5, 14, and 48 of the record, as modified by the guidelines, conditions, and standards herein.

2. The Project shall be a multifamily residential development consisting of not more than seventy-five (75) townhouse units and approximately 175,244 square feet of gross floor area and density of approximately 0.69 FAR. A maximum of approximately twenty-six percent (26%) lot occupancy shall be provided. Building height shall measure approximately thirty (30) feet from finished grade level of the building to the ceiling of the unit's third story, but may vary depending upon final grade A minimum of 156 parking spaces shall be provided throughout the Project.

3. Landscaping for the Project shall be provided consistent with the Landscape Plan provided at Exhibits 5, 14, and 48 in the record

4 The Applicants shall have flexibility with the design of the Project in the following areas

   a to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided the variations do not change the exterior configuration of the buildings;

b. to vary the location and arrangement of parking spaces,

c to vary the final selection of the exterior materials within the color ranges and material types as, based on availability at the time of construction, without reducing the quality of the materials;

d to make minor refinements to exterior details and dimensions, including cornices, railings, and trim, or any other changes to comply with the building code or that are otherwise necessary to obtain a final building permit; and

e to vary the final selection of landscaping materials to provide equivalent plant material dependent on market availability.

5 In coordination with OP and DHCD, the Applicant shall agree to make available and restrict the sale of two (2) 18' x 36' townhouse units for a period of twenty (20) years, as affordable housing to qualifying households not exceeding eighty-five percent (85%) area median income

6 The Applicant shall make the following contributions within ninety (90) days after the recordation of the PUD Covenant referenced in Condition No 8:

a. $15,000 payable to the District of Columbia Public Library Foundation to be utilized for the exclusive benefit of the Lamond-Riggs Branch Library, including computer instruction, and book, music, and game purchases,

b $15,000 to the North Michigan Park Civic Association ("NMPCA") for enhancements to the North Michigan Park Recreation Center, including computers, furniture, a public address system, a marquee, and enhancements to the pavilion in the park area of the center; and

c $12,000, also to the NMPCA, for fabrication and installation of new community signage.

7 The Applicant shall also contribute $120,000, to the Friends of North Michigan Park Civic Association ("FNMPCA"), a registered not-for-profit organization, as follows.

(a) $25,000 within 90 days of publication in the *DC Register* of this Order;
(b) $75,000 within 15 days after obtaining construction permits for the townhouses; and
(c) $5,000 on or before the tenth day of January 2007, 2008, 2009, and 2010.

The payments are to be made conditional on FNMPCA using the monies exclusively for community enhancement programs and events, including certain public space

beautification efforts in coordination with the District Department of Transportation, all within the North Michigan Park neighborhood. These programs may include: (a) improvements to the playground, basketball court, and tennis courts at Bertie Backus Middle School; (b) public space landscaping and maintenance (through the FNMPCA Garden Club), (c) elderly neighbors assistance program (*e g.* minor house repairs, snow removal, mowing); (d) sponsorship of a summer job internship program for neighborhood youths, (e) sponsorship of a college scholarship program; (f) sponsorship of a back-to-school program for neighborhood children (including gifts of backpacks and school supplies), (g) sponsorship of the annual North Michigan Park Family Day at North Michigan Park Recreation Center, free to community; (h) sponsorship of the NMPCA annual awards dinner (for approximately 1,000 people), and (i) sponsorship of community Mothers Day/Fathers Day luncheons.

If FNMPCA ceases operation, refuses to or cannot accept a contribution, or fails to use the monies as anticipated in this Order, the Applicant shall make no further payments, but shall seek a modification of this condition that substitutes an equivalent public benefit.

7. The Applicant shall enter into a construction management plan substantially in the form submitted to the Commission at Exhibit 48 of the record.

8. No building permit shall be issued for the Project and the PUD related map amendment shall not become effective until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors in title to construct on and use the Property in accordance with this order or amendment thereof by the Zoning Commission.

9. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission

10 The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1 Construction shall begin within three years of the effective date of this Order

11 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 that 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

On March 14, 2005, the Zoning Commission approved the Applications by a vote of 4-0-1 (John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Kevin L. Hildebrand to approve, Carol J. Mitten, not having participated, not voting).

The order was adopted by the Zoning Commission at its public meeting on April 11, 2005, by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Kevin L Hildebrand to adopt; Carol J. Mitten, not having participated, not voting)

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

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 20, 2004

Plat for Building Permit of SQUARE 3768 LOT 811

Scale: 1 inch = 80 feet Recorded in A & T Book Page 3768-L

Receipt No. 09546

Furnished to: HOLLAND & KNIGHT

Surveyor, D.C.

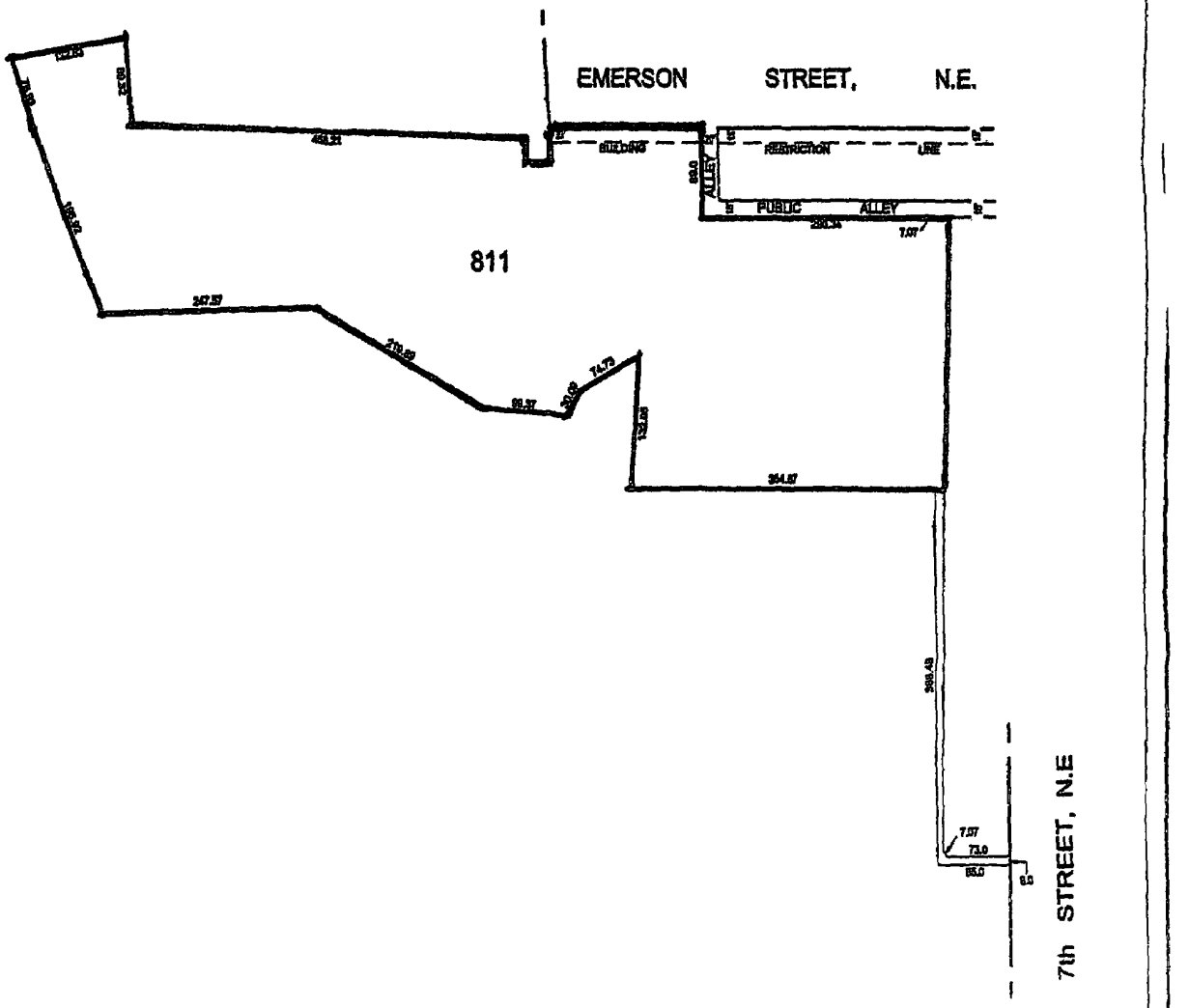
By L.E.S.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately in the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that the area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and other grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



SO-09546(2004)