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ZONING COMMISSION
District of Columbia
CASE NO. 04-14B
EXHIBIT NO. 45

ZONING COMMISSION
District of Columbia
CASE NO.04-14B
EXHIBIT NO.45

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14B
Z.C. Case No. 04-14B**

Florida Rock Properties, Inc.

(Modifications to Second-Stage Approval for First Phase of Development and Approval of Reversion to a First-Stage PUD and Modifications to Second, Third, and Fourth Phases of Development @ Square 708, Lot 14)

January 14, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 20, 2012, to consider an application from Florida Rock Properties, Inc. (“Florida Rock”), the owner of the property located in Square 708, Lot 14, (“Property”), and MRP Realty (“MRP”), a partner in the development of the Property (collectively, the “Applicant”) to modify the second-stage approval for the First Phase of development and revert to and modify a first-stage approval for the Second, Third, and Fourth Phases of development of a planned unit development (“PUD”). The Commission considered the application pursuant to Chapters 1, 24, and 30 of the District of Columbia 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 Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. The PUD site consists of Record Lot 14 in Square 708¹ (“Property”). Three Assessment and Taxation Lots have also been established on the Property, Lots 810, 811, and 812. The entire PUD site consists of approximately 253,500 square feet of land. The Property was formerly the site of a concrete plant. (Exhibit [“Ex.”] 4, p. 9; Ex. 5.)
2. The Applicant initially filed its application on December 1, 2011. The application requested review and approval of a modification to an approved consolidated PUD for the First Phase of development and review and approval of a reversion and modification of a first-stage PUD for the Second, Third, and Fourth Phases of development. (Ex. 1-5.)
3. The Office of Planning (“OP”) submitted a report in support of setting the application down for a public hearing on January 20, 2012. (Ex. 16)
4. The application was placed on the Commission’s calendar for hearing action on January 30, 2012. The Commission requested additional information, including the rationale for filing the application as a modification rather than a new application, a comparison of the new proposal and the approved PUD, information regarding the proposed level of detail,

¹ The PUD anticipates a land swap with the District Department of Transportation in order to effectuate the construction of the South Capitol Street oval and the new Frederick Douglass Bridge. This swap will modify Lot 14 but will not alter the size of the Property. The land swap must occur before the construction of Phases III and IV, as the existing Frederick Douglass bridge traverses the site where those buildings will be constructed.

and confirmation that the LEED commitments were not being reduced. The Commission deferred action on the application to its public meeting on February 13, 2012.

5. The Applicant submitted a supplemental statement responding to the Commission's questions on February 6, 2012. (Ex. 17-17C.)
6. The Commission set the application down for a public hearing at its public meeting on February 13, 2012.
7. The Applicant submitted its pre-hearing statement April 30, 2012, and a public hearing was scheduled for September 20, 2012.
8. The Applicant submitted a request to extend the approved PUD on May 11, 2012. The request was held in abeyance until a vote was taken to approve Z.C. Case No. 04-14B.
9. The Applicant supplemented the record with additional information on August 31, 2012. (Ex. 24.)
10. Both the District Department of Transportation ("DDOT") and OP submitted their reports in support of the application on September 10, 2012. (Ex. 25, 26)
11. A public hearing was held on September 20, 2012. Testimony was presented by the Applicant's project team, including the architect, landscape architect, and transportation consultant. The Applicant also addressed questions regarding the proposed land swap that is a prerequisite for the construction of Phases Three and Four of the development.
12. There were no requests for party status.
13. At the close of the hearing, the Commission asked for additional information regarding the exchange of land required for the last two phases of development, conversations the Applicant has had with the Army Corps of Engineers, a market study supporting the proposed residential unit sizes, and additional architectural detail and clarification. The Applicant submitted this information on October 10 and 15, 2012. (Ex. 35, 36.)
14. The Commission took proposed action to approve the application at its public meeting on October 29, 2012.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. By letter dated December 12, 2012, the NCPC Executive Director stated that the NCPC at a meeting held December 6, 2012 commented that proposed PUD modification would not affect the federal interests in the National Capital, and would not be inconsistent with the

Comprehensive Plan for the National Capital. NCPC recommended that the future Phase Three and Phase Four building designs befit the future planned South Capitol Street as a significant gateway connection into the city and vibrant urban boulevard as identified by the Monumental Core Framework Plan, and the overall development design should preserve site #38 as a future potential commemoration site. (Ex. 44.)

16. The Commission took final action to approve the application in Z.C. Case No. 04-14B on January 14, 2012.

The Subject Property and Surrounding Area

17. The PUD Site consists of Record Lot 14 in Square 708. Three Assessment and Taxation Lots have also been established on the Property, Lots 810, 811, and 812. The entire PUD site consists of approximately 253,500 square feet of land. (Ex. 4, p. 9)
18. The PUD site is located at 25 Potomac Avenue, S.E. It is bounded by Potomac Avenue on the north, the Anacostia River on the south, and it is between South Capitol Street and First Street on the west and east, respectively. It is located at the southernmost point of the Capital Gateway Overlay, between Nationals Park and the Anacostia River ("River.") It is well positioned to serve as a gateway to the ballpark district and as a groundbreaking waterfront project with its 900 linear feet along the shoreline of the River. (*Id.* at p. 10.)
19. To the east of the Property, Forest City is developing a 42-acre site with a mixed-use project. Included in that site is the Yards Park. The Forest City project also expects to include a Harris Teeter, which is indicative of the resurgence the southeast waterfront community is experiencing. Also to the east of the Property, is Diamond Teague Park, which was recently completed with the help of a \$800,000 contribution made by Florida Rock. The District just completed the bridge connecting the Yards Park and Diamond Teague Park, consistent with the Anacostia Riverwalk Trail Plans. (*Id.* at p. 11.)

Existing and Proposed Zoning

20. The Property, like those surrounding it, was initially zoned for industrial uses. A PUD-related Map Amendment to the C-3-C Zone District was approved for the Property in connection with Z.C. Case No. 04-14. (*Id.* at p. 10.)
21. Subsequently, the Commission approved a rezoning of the underlying designation to the W-2 Zone District of the Capital Gateway Overlay ("CG") pursuant to Z.C. Order No. 971. (*Id.*)
22. For the most part, the properties east of South Capitol Street were rezoned in connection with the CG Overlay from industrial uses to those use categories that encourage mixed-

use developments, such as the CR Zone District. Consequently, several mixed-use projects have been approved for east of South Capitol Street along with the approval and construction of Nationals Park. The area west of South Capitol Street tends to be more industrial closer to the River; however, it transitions into residential uses farther north along South Capitol Street. The existing residential community is a mix of single-family and multi-family structures. The property to the north of the site is located in the CG/CR Zone District and the immediately adjacent properties to the west and east are located in the CG/W-2 Zone District. The underlying zoning of the Property is CG/W-2. (*Id.*)

23. The C-3 Zone District is designed to accommodate major business and employment centers supplementary to the Central Business District and they provide substantial amounts of employment, housing, and mixed uses. The C-3-C Zone District permits medium-high density development, including office, retail, housing, and mixed-use development in a compact area. A PUD in the C-3-C Zone District is permitted a maximum height of 130 feet and a maximum density of 8.0 floor area ratio (“FAR”), with no distinction between commercial and residential uses. (*Id.* at 12)
24. By contrast, the Waterfront Districts, the underlying zoning of the Property, were established to encourage a diversity of compatible land uses at various densities, including combinations of residential, offices, retail, recreational, arts and cultural, and other miscellaneous uses. The W-2 Zone District is intended to be relatively self-contained by supplying a variety of housing, service, employment, and recreational opportunities in one location. (*Id.*)

Previous Zoning Approvals

25. Pursuant to Z.C. Order No. 850, a first-stage PUD was first approved in 1998 for the Property for an office and retail project consisting of 1.5 million square feet of gross floor area in two buildings (6.0 FAR), with a maximum height of 130 feet. A second-stage PUD was approved in connection with Z.C. Order No. 910 the following year in 1999. The second-stage PUD was consistent with the first-stage approval. It provided amenity spaces along the waterfront, as well as proposed neighborhood serving retail and exhibition space. The PUD included a significant amount of “amenity property” that would be dedicated to maritime programs, residential use (when market appropriate) and park land. Nevertheless, the PUD continued to focus on solely commercial uses. (*Id.* at 13-14.)
26. Prior to the expiration of the PUD approved by Z.C. Order No. 910, the Applicant filed an application to extend the second-stage PUD. The Commission denied the request (Z.C. Order No. 910-A) but ultimately granted a conditional extension of the project as a first-stage PUD. Since the approval of the second-stage PUD in 1999, planning efforts were underway to establish the Capital Gateway Overlay and to construct a stadium for

the Nationals baseball team. In light of the changed conditions of the surrounding area, the Commission wanted the opportunity to review the proposed development for the Property. OP had suggested a series of conditions for the approval of the extension of the first-stage PUD, which were adopted by the Commission in Z.C. Order No. 910-B. (*Id.*)

27. In 2004, the Applicant filed an application for second-stage PUD approval for the Property. Plans for the ballpark were released prior to the hearing, forcing the Applicant to reconsider some aspects of the project. The PUD was ultimately approved in 2008 pursuant to Z.C. Order No. 04-14. The approval contemplated four phases of development as follows:

- a. **Phase One:** Phase One included an office building with ground-floor retail, at the east end of the site with a maximum height of 92 feet. The office building was sited to emphasize the view corridors and access points through the project. It also included "Anacostia Place", which provided for the free flow of pedestrians from First Street, S.E. through and to the Esplanade and Diamond Teague Park. The space was to include a monumental art feature to celebrate the heritage of the River. Finally, the First Phase provided for the construction of the adjacent portion of the Esplanade along the River;
- b. **Phase Two:** Phase Two included the residential building with ground-floor retail. The residential building was approved with a maximum height of 130 feet. This phase also included the construction of "Potomac Quay", a glass enclosed retail galleria extending from Potomac Avenue to the waterfront. It also served to link the east office building and the residential building. Finally, Phase Two included the construction of the adjacent portion of the Esplanade;
- c. **Phase Three:** Phase Three included an office building at the western end of the site, the Cascade Plaza, and the remainder of the Esplanade. The office building was approved with a maximum height of 112 feet and was to include ground-floor retail. The Cascade Plaza was an open civic space at the western end of the Property; and
- d. **Phase Four:** The final phase of development included a hotel building of 130 feet that would include hotel-related retail uses on the ground floor and residential uses on the top two floors. A glass enclosed "Capitol Quay" linked the office building to the hotel.

(*Id.* at 14-15)

28. In all, the project approved in connection with Z.C. Case No. 04-14 included a total of 1,115,400 square feet of gross floor area (4.4 FAR), with 569,623 square feet dedicated

to residential and hotel uses and 545,777 square feet dedicated to commercial office and retail uses.² (*Id.*)

29. The Applicant could not, however, secure the financing necessary to move forward with the first phase of development given the dire economic climate in October 2009. It filed a request with the Commission to extend the entire PUD; the extension was granted and the PUD approval granted by Z.C. Case No. 04-14 was extended until June 27, 2012, pursuant to Z.C. Order No. 04-14A. (*Id.*)
30. Despite not moving forward with the development immediately, the Applicant made a payment of \$800,000 to the District for the construction, installation, and/or on-going maintenance of the Diamond Teague Park, to demonstrate its commitment to the development and the neighboring community. Diamond Teague Park has since been completed and will complement the landscaping proposed in Phase One of the PUD. (*Id.* at 16.)
31. By Z.C. Order No. 04-14C, the Commission extended the validity of the PUD approval granted by Z.C. Order No. 04-14 and extended by Z.C. Order No. 04-14A, until June 27, 2013, by which time an application must be made for a building permit. Z.C. Order No. 04-14C contemplates the phasing granted in this Order.

Description of the PUD Project

32. The Applicant is proposing to modify the PUD approved in Z.C. Case No. 04-14 in two key respects: it will convert one of the approved office buildings to a residential building and it will convert the approvals for Phases Two, Three, and Four from a second-stage approval to a first-stage PUD approval. The approved project will also include modifications to the site plan, circulation, and building design. (*Id.*)
33. The final PUD will have a total of two residential buildings, one hotel and one office building. Residential uses will comprise approximately 50% of the PUD density, whereas residential use only comprised about 29% of the original PUD. The proposed residential uses will also be the first to be constructed as they make up Phases One and Two of the PUD. (*Id.*)
34. The development will consist of four distinct buildings that will be constructed in four separate phases: two residential buildings, one office building and one hotel building.

² The hotel use was often referred to as "residential" use in Z.C. Case No. 04-14. In an effort to remain consistent with the interpretation of hotel use in the C-3-C Zone District, hotel use is categorized as commercial use in this application. Whereas the original PUD included only one residential building and one hotel, the project proposed in this application includes two residential buildings and one hotel.

Each phase will include ground-floor retail. The development also includes a marina that will be developed in connection with Phases Two, Three, and Four. The phases are more specifically described below:

- a. **Phase One:** The Phase One building is located on the eastern end of the site and immediately adjacent to the Earth Conservation Corps pump house. Whereas the initial PUD proposed a commercial building for the First Phase of development, the First Phase is now a residential building. The current market is prime for residential development and residential development will provide the critical mass of people necessary in order to support future office and retail uses. This phase will also include a significant amount of ground-floor retail space:
 - i. The Phase I residential building will be approximately 94.85 feet tall (nine stories), with ground-floor retail, and consist of approximately 300-350 residential units, 286 below-grade parking spaces, and approximately 300,000 square feet of gross floor area. Approximately 22,484 or eight percent of the residential gross floor area, will be dedicated to affordable housing for households with an annual income no greater than 80% of the Annual Median Income. Approximately 18,650 square feet of gross floor area will be dedicated to retail use while 281,050 square feet will be dedicated to residential use;
 - ii. The building's U-shape massing is oriented toward the water. The façade facing the River incorporates more glass in order to provide an open feel to those on the ground, as well as residents in the units. Those units will also have large balconies, which will afford expansive views of the River and the Esplanade below. Units on the northern side will have views of the ballpark and will capitalize on the excitement of the stadium to animate some of the unit interiors. On the east, north, and west facades, the façade consists primarily of masonry and fenestration planes with metal panel and balcony accents. Varying materials will be introduced along the façade to provide depth, definition, and texture. To anchor the building into the nascent urban fabric, the northeast and northwest corners are emphasized through the use of richer materials and more glass. In addition, ground-floor retail along Potomac Avenue will help add to the energy of the ballpark and activate the streetscape;
 - iii. There will be a private courtyard in the center of the building that will provide green space and an outdoor amenity space for building residents. There will be a terrace on top of the retail space that will overlook the Esplanade and open onto the Anacostia Waterfront; the retail activities of

the terrace, though one story up, will help to activate the street level below by expanding the realm of activity on a separate plane;

- iv. The building will be surrounded by significant green/open spaces, including an Esplanade and Anacostia Plaza. Approximately 20,000 square feet of land to its east is being reserved as green space and will support the development. Exclusive of the green space to the east, Phase One maintains a lot occupancy of approximately 46%;
- v. The proposed Esplanade will wind along the Anacostia Waterfront as well as along the retail storefronts. It incorporates seating along the pathway to encourage individuals to sit, relax, and take in the views of all of the activity along the water. The Esplanade will consist of hardscape and plant materials that speak to the site's history, both natural and industrial, while looking to the site's future as a vibrant urban community set in a beautiful natural environment. A boardwalk forms the riverside edge of the Esplanade along its length, relating this new construction to the design vernacular of the adjacent built projects at Diamond Teague Park and The Yards. The railings that are needed at the water's edge will have a unique design but will fall into the same family of materials and forms as those of the adjacent parks and footbridge, providing a sense of continuity across the Anacostia Waterfront. Concrete blocks and gabion walls are among the options for site walls and seating and will lend the Esplanade a note of rugged industrial design;
- vi. Along the Esplanade will be various "green" spaces that will have dual roles – they will serve as a part of the stormwater management system and filter the water draining from the site, and will provide lush green spaces to accent the beautiful landscaping of the Esplanade. The large green space just to the west of the plaza between the Esplanade and the River will be a large bio-filter garden, treating stormwater runoff from the site's impervious surfaces and building roof. The bio-filter garden will be filled with native perennials, shrubs, and trees typical of a Mid-Atlantic riparian environment. Just to the west of the biofilter garden, the "River Garden" will be a space where the community can reach the river's edge and inhabit an area with seating, stairs, and lush planting evocative of the river environment. The portion of the Esplanade extending for the length of the Phase One building will be constructed prior to the issuance of the certificate of occupancy for the Phase One building;
- vii. To the east, the Esplanade will connect with the pier leading to the Earth Conservation Corps. East of the pier, is a stretch of the Anacostia

Waterfront where the District has just completed a portion of the Anacostia Riverfront Trail that will link the project to The Yards. Once complete, there will be a continuous pedestrian pathway along the River. This will provide access to the waterfront, but also create a fluidity among the developments that will allow pedestrians to move between developments with ease. To the west, the Esplanade will provide for future extension toward South Capitol Street. The Esplanade will be constructed in phases corresponding to the construction of each of the four buildings;

- viii. At the very eastern end of the site, just north of the Esplanade, is the Anacostia Plaza. The Plaza has several different functions: a purely pedestrian walkway providing access and views between the ballpark and the River; a passive recreation space for residents and visitors; an area that preserves the First Street viewshed and provides an elevated vantage point of the River. It will also provide an area for outdoor dining, whether in connection with informal picnics or with sidewalk cafes associated with one of the restaurants located in the retail space. The plaza design conveys a contemporary urban attitude and is consistent with the Phase One building architecture and the site's surroundings. A strong, linear paving design emphasizes the connection between the ballpark, Potomac Avenue, and the River. The large opened paved area provides clear views from the Ball Park Grand Stair to the River and will allow for café or restaurant seating. On the east side of the plaza a grove of shade trees with seating and stone dust paving will provide relief from summer sun. A wide gap in the trees, aligned with First Street, provides an open view down First Street to the River. An area for an outdoor bar has been reserved to allow a potential restaurant tenant to move forward with plans to provide outdoor restaurant seating and service; and
- ix. Finally, to the west of the residential building is the "Florida Rock Alley" which will be an attractive pedestrian boulevard that separates the residential building in Phase One from the residential building to be constructed in Phase Two. Florida Rock Alley also provides pedestrian access from Potomac Avenue to the River. Again, it provides views of the waterfront as well as the stadium. Vehicles will be permitted on the Alley, but only in areas specifically marked for the vehicles; there will be no conflict between the vehicular and pedestrian traffic. A dynamic paving design that associates this space with the site's other paved public spaces will help distinguish this area as an urban space that privileges pedestrians over vehicles. Strategically placed tree planters and seating will further the goal of establishing a pedestrian-friendly connection between Potomac

Avenue and the Anacostia Waterfront. The Alley will provide access to parking and loading for the first two phases of the development; and

- b. **Phases Two, Three, and Four:** The remaining phases of development are approved with first-stage PUD approval. The site plan for these phases has been thoughtfully designed so that the buildings integrate with their surroundings but also relate to each other. The site plan also includes an efficient plan for loading and parking by providing access to all four buildings from only two curb cuts from Potomac Avenue. The vehicular circulation will utilize two main drives that will branch off and provide separate access to each building. By minimizing the number of curb cuts and providing an efficient loading and parking plan, the site plan emphasizes the pedestrian and maintains important points of access for the general public to the waterfront, the retail, and the ballpark. The height and density for the remaining phases is appropriate given the context of the Property between the ballpark and the River. The height will give the project a sense of place and establish it prominently along South Capitol Street while the density will attract a critical mass of people to a site that has not traditionally attracted visitors, much less residents or employees. These phases also include a marina.
- i. The second phase will consist of a residential building with 261,515 square feet of gross floor area, including 5,630 square feet of retail gross floor area. Approximately 20,471 square feet, or eight percent of residential gross floor area, will be reserved as affordable housing for households with an annual income no greater than 80% of the Area Median Income. The building will be a height of 130 feet, include approximately 262 below-grade parking spaces and have a lot occupancy of 45.5%;
 - ii. The third phase of the project will be a commercial office building with approximately 313,705 square feet of office area and 11,470 square feet of retail uses. The building will be approximately 130 feet tall and have a lot occupancy of 46% and include approximately 242 below-grade parking spaces;
 - iii. Finally, the fourth phase of the project will be a hotel consisting of approximately 274,370 square feet of gross floor area, including approximately 12,610 square feet of ground floor retail. The building will be approximately 130 feet tall, have a lot occupancy of 43%, and include approximately 233 below-grade parking spaces;
 - iv. The Frederick Douglass Bridge currently bisects the Property where the third and fourth phases will be constructed. DDOT and NCPC are

currently planning improvements to South Capitol Street, which include a traffic oval on the northern side of the River and a new Frederick Douglass Bridge west of its current location. The construction of both the traffic oval and new bridge must be completed prior to the third and fourth phases of the development going forward. Funding for the engineering of the improvements and land acquisition for the oval, as well as the bridge replacement, has been allocated and is currently pending final approval. Construction funding for the improvements has not yet been allocated. Florida Rock is heavily engaged in collaborating with DDOT in developing both the vertical and horizontal design of the improvements; and

- v. The Applicant will provide interim uses on Phases Two, Three, and Four so that the site will not lay dormant pending construction. Some of the uses that it is considering include a park, farmers' market, volleyball courts, an interim beach, and interim turf or other simple, temporary retail uses to help establish the site as a retail destination. A modest amount of surface parking will also be provided, as depicted in the plans submitted into the record.

(Id. at 19-25; Ex. 28, 36, 38.)

Applicant's Testimony

35. At the public hearing, the Applicant provided testimony from Frederick Rothmeijer, a representative of MRP; David deVilliers, Jr., a representative of Florida Rock, Donald Hoover, an expert in landscape architecture with Oculus; Marius Radulescu, an expert in architecture with SK&I Architects; and Robert Schiesel, an expert in transportation engineering with Gorove/Slade.
36. Mr. Rothmeijer testified to the Applicant's vision for the Property, including its plan to make the Property a destination dining site. The complete project will include 48,360 square feet of interior retail space, much of which will be occupied by food service retailers, including sit-down restaurants. Each phase of development will include outdoor retail space to encourage outdoor seating for café and restaurant tenants. Mr. Rothmeijer also testified to the community outreach efforts of the Applicant.
37. Mr. DeVilliers testified to the history of the PUD and the benefits and amenities package being proffered.
38. Mr. Hoover and Mr. Radulescu each testified to the plans for the proposed project, including the site plan and the modifications made to the originally approved PUD.

39. Mr. Schiesel testified to the lack of impacts the project will have on the surrounding properties.

Density Proposed and Flexibility Requested

40. The total gross floor area included in the proposed PUD project is approximately 1,160,760 square feet of gross floor area. Phase One will include approximately 299,700 square feet of gross floor area; Phase Two will include 261,515 square feet of gross floor area; Phase Three will include 325,175 square feet of gross floor area; and Phase Four will include 274,370 square feet of gross floor area. Building heights range from approximately 94.85 feet to 130 feet among the four phases. (Ex. 28, 36, 38.)
41. The Applicant sought flexibility from the loading and penthouse requirements for the First Phase of development. The Commission has the authority to grant this flexibility pursuant to § 2405.6 and 2405.7 of the Zoning Regulations. (Ex. 19, p. 18.)
42. The Applicant also sought flexibility for the final treatment of the fixtures in the plaza area to the east of the Phase One residential building, pending placement of a tenant in the restaurant retail area. (Ex. 24, 28.)
43. No other zoning relief was requested or granted.

Public Benefits and Amenities

44. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:
- a. Design, Architecture, Landscaping, or Creation of Open Spaces: Subsection 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The PUD maximizes the views from every perspective: it focuses attention on the waterfront with a 75-foot setback from the River, guides pedestrians through passive controls to the ballpark, and frames views of the Capitol with the siting of its buildings along South Capitol Street. The PUD design acknowledges and accepts the importance of site location. The building design must relate to a number of competing landmarks – the historic Capitol building, the prominence of the new ballpark, and the River. The PUD design successfully creates a sense of place for the development, while incorporating the neighboring resources. For instance, the 75-foot setback from the River provides ample area for passive recreation for visitors and residents, as

well as sufficient space for landscaping and a network for pedestrian pathways; the building's height and profile along South Capitol Street frame views of the Capitol the minute vehicles cross over the River; and the landscaping of one of the public plazas, guides pedestrians from the ballpark to the PUD Site and encourages them to view and enjoy the Anacostia Waterfront; (Ex. 4, pp. 44-45.)

- b. Site Planning, and Efficient and Economical Land Uses: Subsection 2403.9(b) lists site planning, and efficient and economical land utilization as categories of public benefits and project amenities for a PUD. The project takes advantage of its location next to the River, its entry to South Capitol Street, its adjacency to the ballpark, and its proximity to the Metro. Every aspect of the design considers and responds to this context – including the grand stairway leading to the ballpark, the winding Esplanade taking in the views of the water and introducing pedestrians to the retail, and the residential courtyard providing views that are not available elsewhere in the District.

The site circulation also responds to this context. The site plan minimizes the number of curb cuts in order to promote the pedestrian nature of the project. It also incorporates pedestrian alleys and easy, obvious connections to the ballpark to make the project accessible by foot. Vehicular traffic is removed from the pedestrian routes, for the most part, by minimizing the driveable area of the project. The Applicant has also incorporated way-finding measures to simplify the bicycling experience along the Esplanade; (*Id.* at 42.)

- c. Effective and Safe Vehicular and Pedestrian Access: Subsection 2403.9(c) lists effective and safe vehicular and pedestrian access as categories of public benefits and project amenities for a PUD. The project design pays close attention to vehicular and pedestrian needs and concerns. All of the parking and loading for the entire PUD can be accessed from one of two curb cuts along Potomac Avenue. This minimizes the potential for vehicular and pedestrian conflicts and makes for an efficient site plan. (*Id.* at 42-43.)

The site focuses on the pedestrian and its goal is to make an attractive destination for the pedestrian – it provides an Esplanade along the waterfront, ground floor retail, walkable alleyways, and respites in plazas connecting the ballpark to the riverfront. The Applicant is striving to make this a site that the residents of its buildings want to passively enjoy or that will attract those meandering to the waterfront before or after a baseball game or dinner on the waterfront. The site's proximity to the Metrorail also makes it a destination in its own right that will attract additional pedestrian traffic without any accompanying increase in vehicular traffic;

d. Uses of Special Value: According to § 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The Applicant has agreed to provide the following project amenities as a result of this project:

- i. **Special Value for the Neighborhood** – The development will convert an underutilized, industrial site into a mixed-use residential project. It will make it a contributing part of the District and the Capital Gateway community. It will also provide a key connection between the River and the Nationals Ballpark and complete the fabric of the overall plan for the Capital Gateway. It will also bridge a gap between the east and the west, which is largely divided by South Capitol Street. In all, this project will unite this part of Ward 6 in a way that the concrete plant divided it. It will further connect the resources of Ward 6 to the greater DC area and to guests and visitors;
- ii. **Superior Landscaping and Public Spaces** – The PUD incorporates a number of public spaces throughout the Property. The primary focus of the public space is the Esplanade along the waterfront. The Esplanade winds along the waterfront providing pedestrians with access to magnificent views of the River, including all boating activities, nearby marinas, and local fishermen. Along the path are sitting areas that take advantage of the views and provide a respite for families and friends. The Esplanade will also include bike paths that will help connect the bike trail along the River.

A variety of “green” techniques will be incorporated into the landscaping along the Esplanade, including vegetative bioswales and rain gardens. These environmentally friendly devices will not be readily evident to the passersby, but the green and natural spaces that they create will be. All water from the site will drain through the rain gardens for filtration and will be recaptured for use in the development. The Esplanade design will also incorporate some of the concrete blocks that were created at the former concrete plant and will use them as seating to take advantage of the sites at the Property.

The project design also incorporates a bicycle path that will help connect the Anacostia RiverWalk path along the River; and

- iii. **Contribution to Diamond Teague Park**

The Applicant has made a contribution in the amount of \$800,000 to the construction of the Diamond Teague Park (“Park”). The Park has already

been constructed at the southeast edge of the Property and will complement the open spaces included in this application; and

- e. Comprehensive Plan – According to § 2403.9(j), public benefits and project amenities include “other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.” The proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan.
45. The Applicant also contended that the housing and affordable housing provided in Phases One and Two constituted public benefits of the project. Subsection 2403.9(f) provides that “housing and affordable housing” are a category through which an applicant can demonstrate the public benefits of a PUD project. The Commission credits the residential housing provided by the project as a public benefit. The Commission does not, at this time, credit the Applicant for the affordable housing provided by the Project. The Commission has recognized that affordable housing mandated by Chapter 26 of Title 11, Inclusionary Zoning (“IZ”) to be a public benefit only to the extent it exceeds the amount that would be generated under the project’s existing matter of right zoning.³ In this instance, the Phase One building that constitutes the consolidated portion of this PUD provides no more IZ housing than what would be generated from a matter of right CG/W-2 development. While the Phase Two building may in fact be generating greater IZ square footage than required for a matter of right building, it is premature to consider it a public benefit, particularly given the extent to which this PUD has changed over time. Therefore, the Commission will defer consideration of whether the Parcel Two building’s affordable housing component is a public benefit until a second-stage application is actually filed for its construction.

Comprehensive Plan

46. The proposed PUD is consistent with and fosters numerous goals and policies enumerated in the District Elements of the Comprehensive Plan for the National Capital: (“Comprehensive Plan”), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300). The purposes of the Comprehensive Plan are to: a) define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; b) guide executive and legislative decisions and matters affecting the District and its citizens; c) promote economic growth in jobs for District residents; d) guide private and public development in order to achieve District and community goals; e) maintain and enhance the natural

³ See Parcel Seven Associates, LLC, Z.C. Order 10-03, Z.C. Case No. 10-03, at p. 20.

and architectural assets of the District; and f) assist in conservation, stabilization, and improvement of each neighborhood and community in the District.

47. The project advances these purposes by furthering the social and economic development of the District through the construction of new residential units on underutilized land, providing new retail destinations in the ballpark district, and providing office and hotel opportunities where none existed previously. The development will also provide a number of beautifully landscaped spaces that will be privately owned but open to the general public.
48. The Comprehensive Plan cites the importance of transit-oriented developments and the importance of mixed-use development on large sites. The project is consistent with the following:

Policy LU-1.1.5: Urban Mixed Use Neighborhoods: Encourage new central city mixed use neighborhoods combining high-density residential, office, retail, cultural, and open space uses in the following areas:

- Mount Vernon Triangle
- North of Massachusetts Avenue (NoMA)
- Downtown East
- South Capitol Street corridor/Stadium area
- Near Southeast/Navy Yard

The location of these areas is shown in the Central Washington and Lower Anacostia Waterfront/Near Southwest Area Elements. Land use regulations and design standards for these areas should ensure that they are developed as attractive pedestrian-oriented neighborhoods, with high-quality architecture and public spaces. Housing, including affordable housing, is particularly encouraged and should be a vital component of the future land use mix.

Policy LU-1.2.8: Large Sites and the Waterfront: Use the redevelopment of large sites to achieve related urban design, open space, environmental, and economic development objectives along the Anacostia Waterfront. Large waterfront sites should be used for water-focused recreation, housing, commercial, and cultural development, with activities that are accessible to both sides of the river. Large sites should further be used to enhance the physical and environmental quality of the river.

Policy LU-1.3.2: Development Around Metrorail Stations: Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with

weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas.

Policy LU-2.4.5: Encouraging Nodal Development: Discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them.

Policy LU-2.4.10: Use of Public Space within Commercial Centers: Carefully manage the use of sidewalks and other public spaces within commercial districts to avoid pedestrian obstructions and to provide an attractive and accessible environment for shoppers. Where feasible, the development of outdoor sidewalks cafes, flower stands, and similar uses which “animate” the street should be encouraged. Conversely, the enclosure of outdoor sidewalk space with permanent structures should generally be discouraged.

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The project will revitalize an underutilized parcel of land along the Anacostia Waterfront and make it accessible to the general public through a mixed-use project incorporating hotel, residential, and office uses. The project also maximizes its location near a Metrorail Station to bolster the rationale for providing increased density on the site and it is designed to serve and promote the pedestrian. The site circulation and project design promote and enable pedestrians’ ability to appreciate the natural beauty of the Property. (Ex. 4, p. 46; Ex. 19, pp. 6-7.)

49. The proposed development is consistent with several transportation policies:

Policy T-1.1.4: Transit-Oriented Development: Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points.

Policy T-1.2.3: Discouraging Auto-Oriented Uses: Discourage certain uses, like “drive-through” businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas.

Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning: Integrate bicycle and pedestrian planning and safety considerations more fully into the planning and design of District roads, transit facilities, public buildings, and parks.

Policy T-2.3.2: Bicycle Network: Provide and maintain a safe, direct, and comprehensive bicycle network connecting neighborhoods, employment locations, public facilities, transit stations, parks and other key destinations. Eliminate system gaps to provide continuous bicycle facilities.

Policy T-2.4.1: Pedestrian Network: Develop, maintain, and improve pedestrian facilities. Improve the city’s sidewalk system to form a network that links residents across the city.

Policy T-2.4.2: Pedestrian Safety: Improve safety and security at key pedestrian nodes throughout the city. Use a variety of techniques to improve pedestrian safety, including textured or clearly marked and raised pedestrian crossings, pedestrian-actuated signal push buttons, and pedestrian count-down signals.

The Comprehensive Plan strengthens the link between land use and transportation as new development occurs and that is precisely what this project does. The project is strategically located near the Navy Yard Metrorail Station, as well as along a major transportation and bus corridor. The project’s proximity to public transportation makes it a prime location for additional density and residential uses. The project design also encourages bicycling and walking, as it incorporates an elaborate network of pedestrian pathways throughout the grounds. It also includes a bicycle pathway that will connect the Property with adjacent parcels through the Anacostia RiverWalk trail. Altogether, the project encourages modes of transportation by providing the infrastructure for walking, biking, and using public transportation. The reduced curb cuts along the property also minimize the presence of vehicles in the project design and remove the potential for conflicts between cars and people. (Ex. 4, pp. 48-49; Ex. 19, p. 11.)

50. The PUD promotes several goals of the Environmental Protection Element:

Policy E-1.1.3: Landscaping: Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.

Policy E-1.2.1: River Conservation: Improve environmental conditions along the Anacostia River and other water bodies, including shorelines, wetlands, islands, tributaries, and the rivers themselves. Particular attention should be given to eliminating toxic sediments, improving river edges to restore vegetation and reduce erosion, enhancing wetlands and wildlife habitat, creating new wetlands, and reducing litter.

Policy E-3.1.1: Maximizing Permeable Surfaces: Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff.

Policy E-4.2.3: Control of Urban Runoff: Continue to implement water pollution control and “best management practice” measures aimed at slowing urban runoff and reducing pollution, including the flow of sediment and nutrients into streams, rivers, and wetlands.

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The PUD’s location next to the River makes it attractive as a destination for residential living as well as outdoor recreation; however, it also imposes a burden on the Applicant to ensure that the project does not have any negative effects on the adjacent resources and it creates an obligation to improve the current quality of the River. The project incorporates elaborate landscaping that not only provides aesthetic benefits, but it provides environmental benefits as well, namely, in the form of stormwater management. The project includes a stormwater management program that captures all excess water and reuses it on-site. The project also utilizes permeable pavers, where practical, to reduce the amount of run-off and increase the amount of water absorbed by the soil. Finally, a major feature of the development will be the biofiltration zones that run along the shore of the River that will treat stormwater run-off. (Ex. 4, pp. 49-50; Ex. 19, pp. 9-10.)

51. The Project furthers several of the goals of the urban design element:

Policy UD-1.2.1: Respecting Natural Features in Development: Respect and perpetuate the natural features of Washington's landscape. In low-density, wooded or hilly areas, new construction should preserve natural features rather than altering them to accommodate development. Density in such areas should be limited and setbacks should be provided as needed to protect natural features such as streams and wetlands. Where appropriate, clustering of development should be considered as a way to protect natural resources.

Policy UD-1.2.4: View Protection: Recognize and protect major views in the city, particularly characteristic views of city landmarks, and views from important vantage points. Recognize the importance of views to the quality of life in the city and the identity of Washington and its neighborhoods.

Policy UD-1.3.1: DC as a Waterfront City: Strengthen Washington's civic identity as a waterfront city by promoting investment along the Anacostia River, creating new water-related parks, improving public access to and along the shoreline, and improving the physical and visual connections between the waterfront and adjacent neighborhoods.

Policy UD-1.3.2: Waterfront Public Space and Access: Develop public gathering spaces along the waterfronts, including promenades, viewpoints, boating and swimming facilities, and parks. Such space should be designed to promote continuous public access along the rivers, and to take full advantage of site topography and waterfront views. Design treatments should vary from "hardscape" plazas in urban settings to softer, more passive open spaces that are more natural in character.

Policy UD-1.3.3: Excellence in Waterfront Design: Require a high standard of design for all waterfront projects, with an emphasis on shoreline access, integration of historic features and structures, an orientation toward the water, and the creation of new water-oriented public amenities.

Policy UD-1.3.4: Design Character of Waterfront Sites: Ensure that the design of each waterfront site responds to its unique natural qualities. A range of building forms should be created, responding to the range of physical conditions present. New buildings should be carefully designed to consider their appearance from multiple vantage points, both in the site vicinity and at various points on the horizon.

Policy UD-1.3.6: “Activating” Waterfront Spaces: Encourage design approaches, densities, and mixes of land uses that enliven waterfront sites. Architectural and public space design should be conducive to pedestrian activity, provide a sense of safety, create visual interest, and draw people to the water.

Policy UD-1.3.7: Neighborhood Connectivity: Improve the physical connections between neighborhoods and nearby waterfronts. Where feasible, extend the existing city grid into large waterfront sites to better connect nearby developed areas to the shoreline

Policy UD-1.4.1: Avenues/Boulevards and Urban Form: Use Washington’s major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/ boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city.

Policy UD-1.4.2: City Gateways: Create more distinctive and memorable gateways at points of entry to the city, and points of entry to individual neighborhoods and neighborhood centers. Gateways should provide a sense of transition and arrival, and should be designed to make a strong and positive visual impact.

Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors: Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place.

Policy UD-1.4.5: Priority Avenues/Boulevards: Focus the city’s avenue/boulevard design improvements on historically important or symbolic streets that suffer from poor aesthetic conditions. Examples include North and South Capitol Streets, Pennsylvania Avenue SE, and Georgia Avenue and the avenues designated by the “Great Streets” program.

Policy UD-3.1.8: Neighborhood Public Space: Provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities. Encourage the “activation” of such spaces through the design of adjacent structures; for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas.

The PUD maximizes the views from every perspective: it focuses attention on the waterfront with a 75-foot setback from the River, guides pedestrians through passive controls to the ballpark, and frames views of the Capitol with the siting of its buildings along South Capitol Street. The PUD design acknowledges and accepts the importance of site location. The building design must relate to a number of competing landmarks – the historic grandeur of the Capitol building, the prominence of the new ballpark, and the natural beauty of the River. The PUD design successfully creates a sense of place for the development, while incorporating the neighboring resources. For instance, the 75-foot setback from the River provides ample area for passive recreation for visitors and residents, as well as sufficient space for landscaping and a network for pedestrian pathways; the building's height and profile along South Capitol Street frame views of the Capitol the minute vehicles cross over the River; and the landscaping of one of the public plazas, gently guides pedestrians from the ballpark to the PUD Site and encourages them to view and enjoy the Anacostia Waterfront. (Ex. 4, pp. 50-52; Ex. 19, pp. 8-9.)

52. The PUD is providing residential housing and is consistent with the Housing Element.

Policy H-1.1.1: Private Sector Support: Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.

Policy H-1.1.4: Mixed Use Development: Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.

Policy H-1.1.5: Housing Quality: Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood.

The PUD is providing 536,935 square feet of residential housing and approximately 606 residential units. This will include approximately 42,955 square feet of housing dedicated to households with an annual income no greater than 80% of the average median income. This is an increase of residential use beyond what the initially approved PUD allowed, as this modification contemplates an additional residential building in place of one of the approved office buildings. The residential buildings will be of a high quality design and will incorporate high quality materials. The provision of residential

units at this site is significant given its history and the desire and District objective of introducing new residents to the ballpark community. (Ex. 4, p. 53; Ex. 19, p. 9)

53. Area Element

The Comprehensive Plan also contains ten area elements. The PUD Site is located in the “Lower Anacostia Waterfront and Near Southwest” Area Element. The PUD is consistent with the following goals of the Area Element:

Policy AW-1.1.2: New Waterfront Neighborhoods: Create new mixed use neighborhoods on vacant or underutilized waterfront lands, particularly on large contiguous publicly-owned waterfront sites. Within the Lower Anacostia Waterfront/Near Southwest Planning Area, new neighborhoods should be developed at the Southwest Waterfront, Buzzard Point, Poplar Point, Southeast Federal Center and Carrollsburg areas. These neighborhoods should be linked to new neighborhoods upriver at Reservation 13, Poplar Point, and Kenilworth-Parkside. A substantial amount of new housing and commercial space should be developed in these areas, reaching households of all incomes, types, sizes, and needs.

Policy AW-1.1.4: Waterfront Development Amenities: Leverage new development in the Waterfront Planning area to create amenities and benefits that serve existing and new residents. These amenities should include parks, job training and educational opportunities, new community services, and transportation and infrastructure improvements.

Policy AW-1.1.6: Pedestrian Orientation of Waterfront Uses: Provide a high level of pedestrian amenities along the shoreline, including informational and interpretive signs, benches and street furniture, and public art.

Policy AW-2.1.1: Mixed Use Development: Support the redevelopment of the Southwest Waterfront with medium to high-density housing, commercial and cultural uses, and improved open space and parking. The development should be designed to make the most of the waterfront location, preserving views and enhancing access to and along the shoreline.

Policy AW-2.2.1: South Capitol Street Urban Boulevard: Transform South Capitol Street into a great urban boulevard and “walking” street, befitting its role as a gateway to the U.S. Capitol and a major Anacostia River crossing. Development along the street should include a mix of federal, District, and private uses.

Policy AW-2.2.2: Ballpark Entertainment District: Leverage the construction of the Washington Nationals Ballpark to catalyze development of the South Capitol Street corridor with retail, high density residential, entertainment, and commercial uses.

Policy AW-2.3.3: Near Southeast Housing Opportunities: Significantly increase residential land uses in the Near Southeast, particularly in the Southeast Federal Center, Capper Carrollsburg, Canal Blocks, and South Capitol Gateway areas. Consistent with the existing zoning for these areas, mixed use development that includes housing as well as commercial uses should be strongly encouraged. The mix of housing should accommodate residents of all incomes and household types.

The PUD is converting an underutilized, industrial site, into a mixed-use development with 536,935 square feet of residential development. The project will introduce new residents to the District and existing residents to a new part of town. Altogether, the project will highlight many of the City's resources that have not been accessible to the public until recently. The project will leverage the beauty of the natural environment and the entertainment provided by the ballpark in attracting individuals to the PUD site and the Lower Anacostia River area. The retail uses and outdoor plazas and Esplanade will complement the existing uses in the vicinity of the site and connect the PUD to those uses. In all, the PUD harnesses and promotes the attributes of the waterfront community. (Ex. 4, pp. 53-54; Ex. 19, p. 11.)

Government Agency Reports and District Government

54. By report dated September 10, 2012, OP recommended approval of the PUD modification application, including a maximum height of 130 feet, a total gross floor area of approximately 1,165,000 square feet and a lot occupancy of 44.4% for the entire Property. (Ex. 25.)
55. OP also supported the conversion of the First Phase of development from an office building to a residential building with approximately 324 residential units, 286 parking spaces, 281,000 square feet of gross floor area, and 18,650 square feet of retail and 8,130 square feet of outdoor seating space. (*Id.*)
56. OP supported the requests for relief from the penthouse requirements and the requests for flexibility from the loading requirements. (*Id.*)
57. Finally, OP noted its support for the conversion of Phases Two, Three, and Four to a first-stage PUD. (*Id.*)

58. By report dated September 10, 2012, DDOT noted its support of the application. It noted, however, that Phases Three and Four should not move forward until DDOT effectuates the land transfer needed for the construction of the Frederick Douglass Bridge; that the Applicant should be prohibited from leasing excess parking spaces without proper analysis; that the Applicant should work with DDOT to satisfactorily modify the Riverfront trail; that a performance monitoring plan should be required; and that the Applicant's Transportation Demand Management program should be modified to achieve the assumed mode split. (Ex. 26.)
59. The Applicant responded to each of DDOT's comments at the public hearing, noting that: (1) Phases Three and Four would only have a first-stage PUD approval and no construction would be permitted until a second-stage PUD was approved; accordingly, it was appropriate to include the phases in the application; (2) the Applicant agreed not to lease excess parking spaces without providing DDOT with the proper analysis; (3) the Applicant met with DDOT and incorporated its comments into the plans presented to the Commission; (4) the Applicant agreed with DDOT's suggestion of providing a performance monitoring plan but it did not agree that it needed to be performed for at least three years. The Applicant stated that if it were within 10% of its target numbers after its first analysis, no further monitoring should be required; and (5) the Applicant believes its proposed Transportation Demand Management plan is appropriate and that its scope should not be expanded to include additional measures unless it proves to be ineffective. (September 20, 2012 Transcript, pp. 42-46, 61.)

ANC 6D Report

60. Advisory Neighborhood Commission ("ANC") 6D voted in support of the application at its regularly scheduled meeting on September 10, 2012. The ANC submitted a letter into the record on September 20, 2012, stating that the Applicant presented at multiple ANC meetings and worked with the ANC and the SMD's Citizens' Development Advisory Committee to develop a final plan that responded the comments provided by the ANC. (Ex. 30)
61. The ANC noted that that the "Phase 1 building and public space improvements will be a major boon to the larger neighborhood." (*Id.*)

Parties and Persons in Support

62. There were no parties or persons in support of the application.

Parties and Persons in Opposition

63. There were no parties or persons in opposition of the application.

Satisfaction of the PUD Modification Approval Standards

64. In evaluating a PUD modification application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The record demonstrates that a substantial monetary payment has been made in reliance of this PUD. The plans also contemplate a considerable dedication of property to public use in connection to the PUD, including the construction of an elaborate Esplanade along the waterfront as well as a bicycle trail that is consistent with DDOT’s long term vision for the community. In exchange for the proposed benefits and amenities, the Applicant is proposing a modest development with an appropriate height and density for this site. The Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project. The Commission notes that the amount of development proposed in this PUD project is generally consistent with the amount of density that would be permitted on the Property as a matter of right.
65. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, urban design, landscaping and open space, site planning, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.
66. The Commission finds that the proposed modifications are consistent with the approval of the PUD in Z.C. Case No. 04-14. The Commission also finds that proceeding with a first-stage approval for Phases Three and Four is appropriate despite the fact a land exchange is necessary to effectuate the proposal. Both phases will have to return to the Commission for second-stage approval and the land swap will have to have been finalized prior to submission of a second-stage application for those phases.
67. The Commission finds that the Applicant has satisfactorily responded to each of DDOT’s comments and has provided a legitimate rationale for its proffered monitoring program and transportation demand management program. The Applicant will continue to work with DDOT to address their comments with respect to the delineation of preferred bicycle space and pedestrian space along the proposed Esplanade.
68. The Commission has accorded ANC 6D the “great weight” to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 6D holds with respect to the impact of the proposed PUD on the ANC’s constituents. The Commission

recognizes that the Applicant met with the community on numerous occasions to address residents' concerns with the application.

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, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, 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. (11 DCMR § 2405.)
3. The development of the project will implement 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 and that would not be available under matter-of-right development.
4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The application meets the contiguity requirements of § 2401.3.
6. The proposed height and density of the building in the project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development. Any impact of the project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the Traffic Study submitted by the Applicant and supported by DDOT, the project will not be the cause of any adverse traffic impacts.
7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the project will be properly mitigated.
8. The benefits and amenities provided by the project are significant, thus granting the development incentives proposed in this application is appropriate.

9. The proposed modifications are consistent with the original PUD approval.
10. The application also seeks limited flexibility from the Zoning Regulations regarding courtyard, and roof structure relief.
11. Approval of the PUD modifications is not inconsistent with the Comprehensive Plan. The Commission finds that rezoning the site is consistent with the Comprehensive Plan.
12. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Land Use, Housing, and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Area Element.
13. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 6D voted to support the application subject to adoption of the specified benefits and amenities program.
14. The Commission is also required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to the recommendations of OP. The Commission gives great weight to OP’s recommendation to approve the PUD and concurs with its conclusions.
15. The Commission notes that DDOT has not persuaded the Commission that first-stage PUD approval should be withheld until the land exchange has taken place to effectuate both phases. The Applicant does not currently own all of the property necessary to move forward with development of Phases Three and Four. Nevertheless, both phases will have to return to the Commission for second-stage approval, at which time the Applicant must own the property necessary to effectuate development of those phases. The Commission notes that the Applicant has been working with the District for over five years to effectuate the land exchange and it is confident that the Applicant will continue to work with the District to do so.
16. The Commission was also not persuaded by DDOT’s requests to condition approval on a modified transportation demand management plan and a modified monitoring plan. The Applicant’s proposal holds it accountable for its transportation practices. In the event its mitigation techniques are effective, it should not continue to be held to a monitoring standard. If the mitigation techniques are not effective, the Applicant will have to expand its transportation demand management and extend its monitoring until they are effective.

Since the burden will be on the Applicant to meet its projected targets, the Commission believes that the Applicant shall have flexibility to meet its target numbers as it deems appropriate. The Commission notes that if the Applicant leases out its parking spaces to an unaffiliated party, it will have to provide the requisite analysis to DDOT supporting its action. The Commission also notes that the Applicant will continue to work with DDOT to address their comments regarding incorporation of way-finding elements along the bicycle trail and the delineation of preferred bicycle space and pedestrian space along the proposed Esplanade. The Commission otherwise notes DDOT's support of the application.

17. The Commission also finds that the Applicant's Traffic Impact Study was conducted and prepared in an appropriate manner. The Commission agrees with the conclusions of the Applicant's Traffic Engineering expert that this project will not be the cause of adverse traffic impacts. The Commission finds that the design of this project is consistent with good urban planning principles and will not have a detrimental effect on neighboring properties.
18. The PUD project will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
19. The applications for a PUD and related Zoning 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 this application for modification of an approved planned unit development for the Property (Square 708, Lot 14).

For the purposes of these conditions, the term "Applicant" means the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

The approval of this PUD is subject to the following conditions:

A. Project Development

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 38 of the record (“Plans”), as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall have flexibility with the PUD 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 that the variations do not change the exterior configuration of the structures;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
 - d. To modify the final design of any outdoor fixtures and sculptural elements pursuant to the needs of the tenant, so long as they maintain the same general character as shown in the Plans;
 - e. To vary the location of storefront entrances to the retail spaces as determined by leasing considerations and needs of individual tenants;
 - f. To modify the landscaping and bicycle and pedestrian paths along the Esplanade in order to address comments by DDOT with respect to way-finding elements along the bicycle trail and the delineation of preferred bicycle space and preferred pedestrian space along the proposed Esplanade;
 - g. To make refinements to the garage configuration, including layout, number of parking spaces and/or other elements, as long as the project does not reduce the amount of proffered parking spaces;
 - h. To incorporate such items of final engineering design into the final design of the streetscape, such as, but not limited to, code and/or utility required sidewalk gratings, and access manholes and other similar cover plates for utility meters;

- i. Establish temporary uses and structures on the site of Phases Two, Three and Four, including a maximum of 30 surface parking spaces accessory to the on-site retail and park uses; and
- j. To finalize the final design of the marina in connection with either Phase Two, Three, or Four.

B. Public Benefits

1. The PUD shall be LEED-certifiable for each Phase of the development.
2. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Department of Small and Local Business Development attached as Tab 5 to the Summary of Amenities and Benefits (Ex. 94 in Z.C. Case No. 04-14) to achieve the target goal of 35% participation by Certified Business Enterprises in the contracted development costs in connection with the design, development, construction, maintenance and security for the project to be created as a result of the PUD project, as specified in Z.C. Case No. 04-14.
3. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services, attached as Tab 4 to the Summary of Amenities and Benefits (Ex. 94 in Z.C. Case No. 04-14), to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project. The Applicant shall also abide by the Employment and Skills Training Plan made part of that agreement, also attached as Tab 4 to the Summary of Amenities and Benefits (Ex. 94 in Z.C. Case No. 04-14).
4. The Applicant shall demonstrate proof of having fulfilled the obligation to contribute \$800,000 to the District of Columbia for Diamond Teague Park prior to the issuance of a building permit.

C. Miscellaneous

1. The Applicant shall implement a transportation management plan with the following components in connection with Phase One:
 - a. During construction, the Applicant will maintain or coordinate relocation of any existing bus stops at the Applicant's expense;

- b. The site design complies with zoning requirements to provide bicycle parking/storage facilities;
- c. The development will unbundle all parking costs from the cost of lease or purchase. Parking costs will be set at no less than the charges of the lowest fee garage located within one-fourth mile;
- d. The Applicant will post all Transportation Demand Management (“TDM”) commitments on-line, publicize availability, and allow the public to see what commitments have been promised;
- e. The Applicant will identify a TDM leader and provide DDOT and Zoning Enforcement with annual TDM leader contact updates;
- f. The Applicant will provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites;
- g. The Applicant will provide an on-site business center to residents with access to copier, fax, and internet services;
- h. The Applicant will provide a one-time membership fee subsidy in a car sharing program for each residential unit; and
- i. The Applicant will provide a monitoring report to DDOT no later than one year after Phase 1 reaches 90% occupancy. The monitoring report will document vehicular traffic generated by the site during the AM and PM commuter peak hours. The documentation provided in the monitoring report will include:
 - A summary of the data collected and methodologies used. Detailed counts will be attached as an Appendix;
 - A comparison table of the traffic counts and the forecasted volumes from the Transportation Impact Study (“TIS”);
 - A table showing the results of the parking demand counts; and
 - A list of TDM measures in place and a list of changes to the TDM plan, if necessary.

Traffic counts for the monitoring report will be conducted on a Tuesday, Wednesday, or Thursday when DC Public Schools and Congress are in session, during the AM and PM commuter peak periods (6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.). The counts will be compared to the peak hour projections contained in the TIS. In the event that the measured vehicular traffic exceeds the

projections in the TIS by 10%, the Applicant will include an updated list of TDM measures designed to bring vehicular trips back to their forecasted levels.

In addition to the vehicular counts, the parking demand for Phase One will be documented. During the same time period of the traffic counts, the number of cars parked on Phase One will be counted per hour, from 6:00 a.m. to 10:00 p.m.

2. Two years after a certificate of occupancy is issued for Phase One, the Applicant will conduct a performance monitoring study of TDM measures. At minimum, this study will include a peak hour trip generation analysis and parking demand analysis of the Phase One parking garage. The report will include a comparison with the peak hour trip generation measured and the projections contained in the report submitted as Exhibit 19.
3. No building permit shall be issued for Phase One until the Applicant has recorded a Notice of Modification in the land records of the District of Columbia. Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this Order, or amendment thereof by the Commission.
4. The second-stage PUD approved by the 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 for the Phase One residential building as specified in 11 DCMR § 2409.1. Construction of the Phase One residential building approved herein must begin within three years of the effective date of this Order.
5. The first-stage PUD approved by the Commission shall be valid for a period of 10 years, provided that within two years of the issuance of a building permit for Phase One, an application for a second-stage approval must be filed for Phase Two. An application for second-stage approval for Phase Three shall be filed within two years after the later of the completion of the reconstruction of the Frederick Douglass Bridge, the completion of the construction of the South Capitol Street Oval, or issuance of a certificate of occupancy for Phase Two. Within two years of the issuance of a certificate of occupancy for Phase Three, an application for second-stage approval must be filed for Phase Four.
6. For illustrative purposes, the first-stage plans for Phases Three and Four show some construction on land adjacent to but not entirely within the confines of Lot 14. These illustrative plans contemplate the land swap that has been discussed with DDOT since 2006 but has not been effectuated. This Order affects only Lot 14 and any construction by the Applicant on the adjacent property must be specifically included in the second-stage PUD application along with proof that the land swap occurred.
7. 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, 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.

On November 14, 2012, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller, not having participated, not voting).

On January 14, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Robert E. Miller, not having participated, not voting.)

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 5, 2013.