

VIA HAND DELIVERY

Tom Carroll
202 419 2632
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August 7, 2006

D.C. Zoning Commission
Suite 210
441 4th Street, N.W.
Washington, DC 20001

Re: PUD and Map Amendment – 3rd & H Street, N.E.
Zoning Commission Case No. 06-01

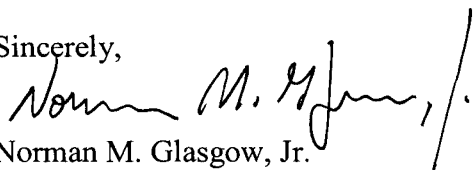
Dear Members of the Commission:

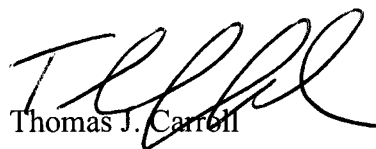
Enclosed, please find one original and twenty copies of the Applicant's Post Hearing Submission for the above-referenced application. At the Commission's hearing of July 6, 2006, the Commission left the record open until August 7, 2006, for specific additional submissions. In response, the Applicant submits the following:

- Closing Statement
- Letter dated August 7, 2006 confirming Applicant's agreement to provide certain amenities listed in the letter from ANC 6B dated 7/6/06
- Economic Impact Analysis and Supplement
- Memo giving the parking ratio of selected grocery stores within the District
- DOES/LSDBE Agreements
- Draft Findings of Fact and Conclusions of Law

Thank you for your review of this application and we look forward to receiving the Commission's decision in this matter.

Sincerely,


Norman M. Glasgow, Jr.


Thomas J. Carroll

ZONING COMMISSION
District of Columbia

Enclosures

CASE NO. 06-01

EXHIBIT NO. 52

cc: Travis Parker, Office of Planning

A

CLOSING STATEMENT
NORMAN M. GLASGOW, JR.
STEUART, 3RD AND H STREETS, NE

On behalf of the applicant, Steuart Investment Company, we submit the following closing statement with regard to its application for a Planned Unit Development approval and Map Amendment, with associated alley closings, for property fronting on H Street, N.E. between 3rd and 4th Streets, N.E.

At the Commission's hearing of July 6, 2006, we presented testimony from Mr. Guy Steuart, on behalf of the applicant; Maurice Walters of the architectural firm of Torti Gallas; Marty Wells, traffic engineer; and Steven Sher, Land Planner. Mr. Walters, Mr. Wells and Mr. Sher were all accepted as experts in their respective fields.

The Applicant's witnesses explained at the hearing how this application anchors the west end of the H Street Corridor with an important project, consistent with the H Street Strategic Development Plan and the H Street Overlay District. It was shown that the project is fully consistent with the H Street Plan, which envisions a mainly residential project of 8 and 6 stories on this site, and the newly adopted H Street Overlay, which provides for the location of a grocery store in the square.

Prior to the hearing the applicant met with members of the community a total of 9 times from early February through mid-June, and received support from the Near Northeast Citizens Association, the ANC, H Street CDC, the Capitol Hill Restoration Society, and Councilmember Ambrose. While a few persons testified in opposition at the July 6th hearing, the vast majority of residents in the community and of community groups are supportive of this project, which involves a number of community amenities, including the provision of a grocery store with

below grade parking without requesting any special legislation from the District, a setback along H Street, the removal of curb cuts from H Street, the provision of 10% of the increased FAR in affordable housing units, along with a well-designed mixed use building.

The project has a maximum height of 90' along H Street. The center wing in the interior of the square and the western wing along 3rd Street step down. The FAR for the project is approximately 5.0 FAR, which is approximately 60,000 square feet less than would be permitted in a 6 FAR, C-2-B PUD development. The Applicant has also requested a rezoning from C-2-A to C-2-B for approximately 10,000 square feet of land area within the site. As is evident from the zoning map and site and as was shown by the witnesses at the hearing, C-2-B zoning for this area is consistent with the Commission's treatment of the west side of the square.

At the conclusion of the July 6th hearing the Commission requested additional submissions from the Applicant including: the economic analysis for the grocery store; an explanation as to how the applicant will mitigate the impact of loading on the 4th Street alley; the number of parking spaces provided by other grocery stores in the city; the LSDBE/DOES agreements; the Applicant's confirmation of the letter submitted by ANC Commissioner Anthony Rivera outlining additional community amenities; this closing statement and a draft Order of Findings of Fact and Conclusions of Law.

The Applicant has submitted all of the requested materials and trusts that they will be satisfactory in answering any of the Commission's questions from the hearing. In response to testimony concerning the potential impact of large trucks accessing the loading area in the alley off 4th Street, the Applicant will prohibit the use of tractor trailers and will prohibit residential loading before 9am. This concession by the Applicant should sufficiently mitigate possible impacts of the loading on the homes located off of this portion of the alley.

In conclusion, the applicant has met its burden for approval of the requested PUD and Map Amendment and has provided a substantial amenities package for the benefit of the community. This well-designed mixed use development will bring a much needed grocery store to the community and is an appropriate scale and bulk considering its prominent location along the H Street Corridor and proximity to several options for public transportation.

B

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August 7, 2006

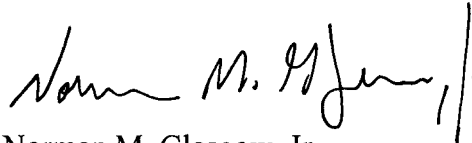
D.C. Zoning Commission
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Re: PUD and Map Amendment – 3rd & H Street, N.E.
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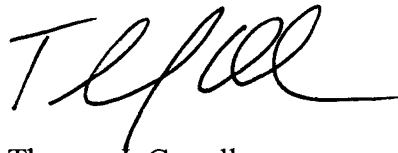
Dear Members of the Commission:

At the Commission's hearing of July 6, 2006 for the above-referenced application, the Commission requested that the Applicant confirm its offer of additional community amenities as detailed in a letter dated July 6, 2006 and submitted by Commissioner Anthony Rivera of Advisory Neighborhood Commission 6C. A copy of this letter is attached. The Applicant hereby confirms its offer to provide support in concert with other developers for the establishment of a business improvement district covering H Street from 2nd to 12th Street NE and to provide partial funding in concert with other developers, toward an historic resources survey of the area which the local communities desire to have reviewed in the H Street area.

Sincerely,



Norman M. Glasgow, Jr.



Thomas J. Carroll

Enclosures

cc: Travis Parker, Office of Planning
ANC 6C

3951053_v1

ADVISORY NEIGHBORHOOD COMMISSION 6C05

July 6, 2006

Zoning Commission of the District of Columbia
441 4th Street, NW
Room 210S
Washington, DC 20001

Re: Development in Square 776
3rd and H Streets, NE
Zoning Commission Case No. 06-01 and
Related Alley Closings

Dear Members of the Zoning Commission:

This letter is to advise that after Advisory Neighborhood Commission 6C, at its regularly scheduled June 14th public meeting, for which proper notice was given and at which a quorum was present, voted 5 in favor and 2 opposed to support the above-referenced development project with the understanding and contingency that:

1. The applicant will provide support for the establishment of a business improvement district which covers the H Street, NE corridor from Second Street to 12th Street, NE, in concert with other major developers.
2. That the developer will provide partial funding in concert with others toward an historic resources survey, the total cost of the study is estimated at \$20,000, for surveys of areas which the local communities desire to have reviewed in the H Street, NE area.

Here is a chronology of community meetings:

February 1, Planning and Zoning ANC Committee
February 2, Near N.E. Community Association
February 8, Full ANC meeting
February 13, Single Member District/H Street, Main Street
March 6, Linden Street Neighborhood Association
June 6, Single Member District
June 7, Planning and Zoning ANC Committee
June 8, Capitol Hill Restoration Society
June 14, Full ANC 6C

Truly yours,


Anthony Rivera
Commissioner 6c05

ZONING COMMISSION
CASE No. 06-01
211

C

BOLAN SMART ASSOCIATES, INC.

900 19TH STREET, NW, SUITE 600, WASHINGTON, DC 20006 • (202) 371-1333 • FAX (202) 371-1334

July 2006

RE: 3rd & H Street, Square 776, Washington, DC
Office of Planning Request Regarding Grocery Store Economics

In its prehearing statement the applicant identified that providing underground parking represents a substantial extra development cost that cannot be recovered from a grocery in terms of market rent. The District of Columbia in its report dated June 26 asks for further documentation of the economics of providing a grocery store.

Issues (comparing urban vertical mixed-use and suburban single-use surface parked buildings):

- In addition to parking, building shell costs in vertical mixed-use building are more expensive than in single-use buildings.
- Building and store operations are more expensive (and complex).
- District of Columbia real estate and operation related taxes are higher for the grocery store operator.
- Potential sales per square foot are generally lower in areas of lower average income, and leakage is generally higher.
- Reflecting the above factors, the market rent for a grocery store at the subject location cannot support the full construction cost of the required space and associated parking.

Market Rents

Regardless of the marketplace in question, grocery store rents are a derivative of the combination of potential sales per square foot, operating costs, and competition for space from other users. In the Washington region newly executed leases for modern supermarkets are generally occurring in the range of \$18.00 to \$24.00 per square foot triple net (NNN). The lease rates at the lower end (or below) are typical to more marginal locations with the rates at the higher end representing locations where household incomes are generally higher and land for retail use commands premium prices. Although the achieved rents have no direct relationship with the development cost of parking, locations that have higher land values also tend to be in marketplaces with higher household incomes, meaning that grocers can project the higher sales volumes that can support rents at the higher end of the range.

To maximize achieved densities of land use, and in many cases to satisfy public interest (and in some instances to provide an enhanced on-site amenity for other market uses), developers have been increasingly motivated to provide structured parking for supermarket use even though the grocer tenant is not directly paying for the full development cost. This phenomenon is as true in the suburbs as it is in more urban locations. While the rent structure in high income locations like Alexandria and Bethesda for higher dollar grocers such as Whole Foods and Harris Teeter is reported to support a premium that can exceed \$24.00 per square foot (highest quoted of \$28.00 NNN) these are the more rarified examples.

Emerging Urban Markets

Despite the much improved opportunities to expand supermarket services to broader urban markets, the challenges facing the developers and operators alike remain substantial. The District of Columbia government and related public oriented agencies have illustrated considerable understanding of these issues, given the District's history of actively recruiting grocery stores, including past Council action to support targeted tax abatements and other inducements. Examples of recent supermarket commitments in the District include locations in Columbia Heights (Giant replacement store), NoMa (City Vista Safeway), Capitol Hill (Jenkins Row Harris Teeter) and at Camp Springs (Giant). The rents for these newest examples, one which has opened and three which are in various stages of construction, are reported to range between \$12.00 and \$24.00 per square foot NNN. The key fact which each of these examples illustrate, albeit in different ways, is that the rents that grocery stores can support are limited by a variety of factors, and in no cases are the rents alone sufficient to cover the full development costs of providing structured or below grade parking in a mixed-use building.

Subject Property

Comparing the potential market rent for the subject location at 3rd and H Street's Northeast with market rents at other urban and suburban locations in the Washington region suggests that the applicant will do well if a grocer can support rents in the upper middle range of \$18.00 to \$24.00 per square foot. The location, while exhibiting sufficient potential to support a store, does not have the highest average household incomes or dramatic population growth potential to match premium priced supermarket locations elsewhere, and faces a variety of operating cost premiums. The resulting economics is that the developer needs to absorb a substantial portion of the development costs in order to attract and retain a modern supermarket.

Appendix – Development Cost Illustration

	<u>Square 776</u>	<u>Surfaced Parked Center</u>
<u>Landlord Cost to Delivery Space</u>		
Land	\$0	\$25/FAR = \$1,446,500
Shell (57,860 gsf) ¹	\$83 psf = \$4,802,380	\$65 psf = \$3,760,900
includes loading area		
\$60 psf allowance (51,168 gla)	\$3,070,080	\$3,070,080
Additional tenant improvements (\$50+ psf)	tenant paid	tenant paid
Parking 121 spaces @ \$35,000 per sp =	\$4,235,000	\$2,500 per sp = \$500,000 (200 sp)
Vertical circulation	\$225,000	0
Additional streetfront animation	\$350,000	0
Soft costs @ 25%	<u>\$3,170,615</u>	<u>\$2,194,370</u>
Total	\$15,853,075	\$10,971,850
<u>Financing (75% debt / 25% equity)</u>		
25 year debt @ 7.0% (.08484 constant)	\$1,008,731	\$698,139
Equity @ 15% IRR, 10% NOI on cash	<u>\$396,327</u>	<u>\$274,296</u>
Required rent	\$1,405,058 per yr	\$972,435 per yr
<u>Revenue</u>		
NNN rent ²	\$22.50 psf = \$1,151,280	\$20.00 psf = \$1,023,360
Escalations = fixed base rent	0	0
Unrecovered Operating Expenses	\$1.00 psf = (\$51,168)	\$0.50 psf = (\$25,584)
Capital Reserves @ 0.25 psf	(\$12,792)	(\$12,792)
Asset Management	<u>(\$20,000)</u>	<u>(\$20,000)</u>
Net Cash Flow	\$1,067,320 per yr	\$964,984 per yr
<u>Profit / Loss</u>	(\$437,738) per yr	\$7,341 per yr
<u>Capitalized Cost @ 8.0% cap</u>	(\$4,221,725) project value loss	

¹ James G. Davis Construction, May 2006.

² Comparable NNN rents vary based on location in the District and the suburbs from \$12 net of tenant improvements to \$28 including tenant allowance.

BOLAN SMART ASSOCIATES, INC.

900 19TH STREET, NW, SUITE 600, WASHINGTON, DC 20006 • (202) 371-1333 • FAX (202) 371-1334

July 2006

**RE: Square 776, Washington, DC
Economic Impact Overview**

Bolan Smart Associates has been asked to provide a brief overview of the magnitude of economic importance to the District of Columbia of constructing the proposed \$85 million mixed-use development at 3rd and H Streets NE. Not only does this new development represent a highly positive economic use to the District of Columbia – most significantly represented in the addition of a major new supermarket, also including some 330 residents and 180 jobs – the project is a vital part of repositioning the gateway to H Street, enhancing the new development potential and value for the entire surrounding neighborhood.

Based on evaluating a 100% completed project, our findings are summarized below.

1. **Direct Annual District Tax Revenue:** The principal direct tax revenues to the District of Columbia resulting from the completion of this project – calculated in \$2006 – total approximately \$3.15 million per year. The primary components, as summarized in Table 1, are estimated to be comprised of:
 - 1) \$683,000 per year in real estate taxes (compared with \$52,000 in real estate taxes as currently assessed);
 - 2) \$758,000 in (non resident related) sales taxes attributable to \$5.45 million in annual on-site taxable retail sales (not including non-taxable sales comprising the bulk of supermarket sales) derived from 53,618 rentable square feet of retail space. (See Table 2);
 - 3) limited parking tax revenue (excess charge over free grocery parking of \$16,000) from a 121 space commercial parking component;
 - 4) a limited amount of employment related sales tax revenues (\$30,000), attributable to \$350,000 in annual taxable sales (\$40 per week in retail expenditures per employee). (See Table 2);

- 5) \$1.25 million per year in DC resident income taxes derived from the development of 232 rental apartments. (See Tables 3 and 4);
 - 6) \$315,000 per year in DC resident retail sales tax revenues, attributable to \$4.42 million in DC based taxable sales. (See Tables 3 and 4); and
 - 7) \$105,000 in DC resident related use taxes and fees (residential building operation's, resident DMV fees, utility and telecommunications fees, etc.). (See Tables 3 and 4).
2. **Additional Project Related DC Residents:** Per a broad-based District goal, the planned construction of 232 residential living units will result in accommodations for approximately 330 residents. By creating an additional supply of new multi-family units at this location, not only will new residents currently living outside of the District be attracted to relocate, but those existing DC residents that choose to relocate will free up needed inventory for other prospective DC residents.
3. **Employment and Economic Activity Benefits:** As summarized on Table 1, a total of 176 full time equivalent jobs are estimated to be located at the proposed development, including over 165 retail related jobs, and a number of project support jobs, estimated to provide over \$5.0 million in annual District based payroll. Assuming that District residents hold 30% of the direct office jobs and 35% of the retail jobs, totaling over 60 DC resident jobs, the annual direct payroll going to District residents is over \$2.0 million. Adding a 25% economic multiplier to the District resident employment indicates a total District resident annual income base directly dependent on the subject project's job related activity of \$2.5 million (and close to \$0.20 million in annual District income tax receipts not directly related to project resident households).
4. **Neighborhood Enhancement:** Given the significance of the location and nature of the proposed investment relative to the existing dormant land uses, accentuated by the prominence of a new supermarket in a generally underserved location, the degree of positive

impact on neighborhood conditions, community vibrancy and associated tax revenues is substantial. Examples of the positive neighborhood related economic impacts include:

- a) The addition of a major supermarket represents a highly sought after consumer convenience, providing enhanced choices, increased market competition and improved neighborhood access. The provision of enclosed on-site parking brings an added level of consumer options to the greater neighborhood, allowing for supermarket operations to function in a contemporary format on a scale that would otherwise not be sufficient to support the sales volumes necessary to sustain a major new facility.
- b) The restoration of a functional use for the underused property should lead to stronger neighborhood conditions, impacting a number of city blocks proximate to the site. Modest estimates suggest that the increase in area real estate tax values and assessments associated with the revitalization of this significant site, enhanced by the presence of a much sought after supermarket operator, would be on the order of 5% or more, and typically would run higher for other currently underdeveloped properties.

5. **One-time Construction Related Benefits:** The combination of recordation fees associated with the proposed development, coupled with development processing fees and permits, could generate well in excess of \$1.5 million of direct District of Columbia tax revenues consequent from the initial development effort. In addition, more than 215 direct annual construction jobs are estimated to be created as part of a 24-month, \$58 million base building construction budget. The economic multipliers directly benefiting the District associated with this size of construction expenditure, including the purchase of over \$34 million of construction materials, will obviously be considerable.

6. **Provision of a Mix of Housing for DC Residents:** A distinguishing feature of the proposed project is the intent to build rental units, a product which has been overtaken of recent by ownership condominium (and conversion) activity. The average residential unit is projected to rent to households requiring incomes of less than \$85,000 per year, or within the range of published Area Medium Incomes for the greater region. Similarly, the anticipated inclusion of select units specifically set aside for moderate income households will provide needed homes for a range of households that are under housed or otherwise priced out of the marketplace.

**Table 1 - Combined Land Uses - Square 776, Washington, DC
ECONOMIC IMPACT SUMMARY - \$2006**

Direct Annual District Tax Revenues (assuming no abatements etc.)

District Tax Revenue

		<u>taxable value</u>	<u>tax value per sf</u>	<u>RE Taxes</u>	<u>total</u>
1) Real Estate Tax	retail	\$13,891,680	\$259	\$256,996	
see Tables 2-4	rental apartments	\$55,699,800	\$240	\$409,951	
	moderate priced rental	<u>\$1,245,539</u>	<u>\$133</u>	<u>\$11,957</u>	
	total	\$70,837,019			\$678,904
2) Retail Space Direct Tax (non real estate)		<u>gross DC taxes</u>	<u>net DC retail related tax</u>		
see Table 2	supermarket	\$678,787	100.0%	\$678,787	
	general retail	<u>\$79,545</u>	100.0%	<u>\$79,545</u>	
	total	\$758,332			\$758,332
3) Parking Tax	discounted general retail	<u>taxable revenues</u>	<u>DC parking tax</u>		
see Table 2		\$132,495	\$15,899		\$15,899
4) Employee Related Sales Tax Revenue	retail employees	<u>taxable sales</u>	<u>DC sales tax</u>		
see Table 2		\$350,331	\$29,778		\$29,778
5) DC Resident Income Tax		<u>total potential</u>	<u>net DC income tax</u>		
see Tables 3-4	rental apartments	\$1,342,918	90.0%	\$1,208,626	
	moderate priced rental	\$37,423	90.0%	<u>\$33,681</u>	
					\$1,242,307
6) DC Resident Retail Expenditures		<u>total potential taxable sales</u>	<u>DC capture</u>	<u>DC sales tax</u>	
see Tables 3-4	rental apartments	\$6,805,482	60.0%	\$306,247	
	moderate priced rental	<u>\$176,738</u>	65.0%	<u>\$8,616</u>	
		\$6,982,220			\$314,863
7) Other DC Resident Related Fees	rental apartments			\$102,082	
see Tables 3-4	moderate priced rental			<u>\$3,030</u>	
					\$105,112
Total Direct Annual DC Tax Revenue		\$3,145,196			\$3,145,196
8) Total Direct Annual Tax Revenue By Use	retail	<u>gross DC taxes</u>	<u>net DC taxes</u>		
see Tables 2-4	rental apartments	\$1,061,006	100.0%	\$1,061,006	
	moderate priced rental	\$2,026,906	100.0%	\$2,026,906	
		<u>\$57,284</u>	100.0%	<u>\$57,284</u>	
	Total Direct Annual DC Tax Revenue	\$3,145,196			\$3,145,196

One-time District Revenue

Recordation Taxes and Development Fees	\$1,500,000+
Construction Related Sales Tax	\$750,000+

Additional Project Related Residents

	<u>total residents</u>		<u>net DC residents</u>
rental apartments	315	100.0%	315
moderate priced rental	<u>15</u>	100.0%	<u>15</u>
total	330		330

Direct Project Full Time Employment (FTE jobs)

	<u>DC jobs</u>		<u>DC residents</u>
Retail	164	35.0%	58
Parking	4	35.0%	1
Residential (one job / 50 units)	<u>5</u>	35.0%	<u>2</u>
Total Permanent FTE Jobs	173		61
Temporary Construction FTE Jobs (a)	<u>215</u>	35%	<u>75</u>
Total FTE Jobs	388		136

Indirect Employment, Economic and Tax Multipliers

not considered

(a) Construction employment: \$58,000,000 construction cost x 40% direct labor divided by \$54,000 average annual income, equaling 430 person years divided by 2.0 years for project completion, realizing 215 construction full time equivalent jobs.

Table 2 - Retail
Square 776 - Washington, DC
ANNUAL DIRECT DC TAX REVENUE NET OF MULTIPLIERS - \$2006

Project Description

1) Supermarket	51,168 gla
2) General Retail	<u>2,450</u> gla
3) Total Retail	53,618 gla @ 96% of gsf
4) Supermarket Parking	
5) General Retail Parking	121 spaces

Direct Project Full Time Employment (a)

300 sf per retail job
<u>164</u> retail jobs
40 parking space / job
<u>4</u> parking jobs
168 total jobs

Real Estate Tax

6) Supermarket Retail Real Estate Value	
7) General Retail Real Estate Value	
8) Parking (included above)	
9) Total Taxable Real Estate Value	100.00% of assessment
10) Commercial Real Estate Tax (net of possible DC abatements)	1.85% commercial tax rate
11) Total Real Estate Taxes	

Building / Parking		
	one sf	total sf
	\$260.00	\$13,303,680
	\$240.00	\$588,000
		<u>NA</u>
	\$259.09	\$13,891,680
	\$4.79	\$256,996
	\$4.79	\$256,996

Supermarket Direct Tax Revenues

12) On-site Taxable Retail Sales (\$450 per sf total)	\$90 per sf
13) DC Average Applicable Sales Tax	5.75%
14) Sales Tax Net of On-Site Residents or Tenants	95.0% not on-site consumers
16) DC Corporate Tax	9.975% on 10% profit on gross
17) Business Personal Property	\$100.00 FF&E per sf
18) Business Personal Property Tax	\$3.40 per \$100 assessed value
19) Other Operating Taxes and Fees (b)	\$0.50 per sf
20) Total Retail Related Taxes	
21) Net DC Supermarket Retail Related Taxes	100.0% net DC sales

	one sf	total sf
	\$90.00	\$4,605,120
	<u>\$5.18</u>	<u>\$264,840</u>
	\$4.92	\$251,598
	<u>\$4.49</u>	<u>\$229,680</u>
	<u>\$100.00</u>	<u>\$5,116,800</u>
	\$3.40	\$173,971
	<u>\$0.46</u>	<u>\$23,537</u>
	<u>\$13.27</u>	<u>\$678,787</u>
	\$13.27	\$678,787

General Retail Direct Tax Revenues

22) On-site Taxable Retail Sales (adjusted for 8% vacancy)	\$375 per sf
23) DC Average Applicable Sales Tax (blended categories)	8.0% inc. 1% convention center
24) Sales Tax Net of On-Site Residents or Tenants	95.0% not on-site consumers
25) DC Corporate Tax	9.975% on 10% profit on gross
26) Business Personal Property (adjusted for 8% vacancy)	\$75.00 FF&E per sf
27) Business Personal Property Tax	\$3.40 per \$100 assessed value
28) Other Operating Taxes and Fees (b)	\$0.50 per sf
29) Total General Retail Related Taxes	
30) Net DC General Retail Related Tax Capture	100.0% net DC sales

	one sf	total sf
	\$345.00	\$845,250
	<u>\$27.60</u>	<u>\$67,620</u>
	\$26.22	\$64,239
	\$3.44	\$8,431
	<u>\$69.00</u>	<u>\$169,050</u>
	\$2.35	\$5,748
	<u>\$0.46</u>	<u>\$1,127</u>
	<u>\$32.47</u>	<u>\$79,545</u>
	\$32.47	\$79,545

Parking

31) Parking Income (discounted for retail patrons)	\$3.00 per space per day
32)	\$1,095 per space per year
33) DC Parking Revenue Tax	12.0% of gross revenue

	one space	total spaces
	<u>\$1,095</u>	<u>\$132,495</u>
	\$131	\$15,899

Employee Related Sales Tax Revenue

34) FTE Employee Retail Expenditures Subject to Sales Tax	\$40.00 per FTE per week
35) Employee Related Sales Tax	8.5% mostly meals

	one sf	total sf
	<u>\$6.53</u>	<u>\$350,331</u>
	\$0.56	\$29,778

Total Direct Annual Tax Revenue

36)

	\$19.79	\$1,061,006
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Notes:

- (a) FTE is full time equivalent employee, assumed at 40 hours per week.
(b) Operations purchases, utility and telecommunications fees, other business license fees and charges.

Table 3 - Market Rental Apartments
Square 776 - Washington, DC
ANNUAL DIRECT DC TAX REVENUE NET OF MULTIPLIERS - \$2006

Project Description

1) Total Apartments	232 units
2)	
3) Market Rate Apts	221 units
4) Average Apt Size	840 rsf (net rentable area)
5) Apartment RSF	185,666 rsf

Project Related DC Residents

1.4 persons / unit
<u>225</u> occupied units
315 total residents
<u>100.0%</u> net residents
315 DC residents

Real Estate Tax

6) Apartment Real Estate Assessment
7) Parking (included above)
8) Real Estate Value
9) Residential Real Estate Tax
10) Total Real Estate Tax Revenue

Residential Direct Tax Revenues

11) Monthly Rent
12) Minimum Required Gross Household Income
13) Taxable Income
14) Initial DC Income Tax
15) Additional DC Income Tax
16) Total Potential DC Income Taxes
17) Income Taxes Adjusted for Average Occupancy
18) Potential DC Residents
19) Income Tax Revenue Adjusted for Resident Status
20) Resident Retail Expenditures Subject to Sales Tax
21) District of Columbia Resident Sales Capture
22) DC Average Applicable Sales Tax (a)
23) Other Resident Related Use Taxes and Fees (b)
24) Personal Property Tax (not applicable) (c)
25) Total Residential Direct Tax Revenues

Parking (tax not applicable on residential parking)

Total Direct Annual Tax Revenue

26)

Building / Parking		
	one sf	total sf
	\$240.00	\$44,559,840
		<u>NA</u>
125.0% of assessment	\$300.00	\$55,699,800
0.92% residential tax rate	\$2.21	\$409,951
	\$2.21	\$409,951
	one unit	total units
\$2.50 per sf	\$2,100	\$487,268
333.3% multiple of rent	\$84,003	\$19,488,780
90.0% of gross	\$75,603	\$17,539,902
\$30,000 of initial taxable income	\$2,000	\$464,000
8.7% DC tax rate over initial	<u>\$3,967</u>	<u>\$920,452</u>
	\$5,967	\$1,384,452
97.0% occupancy	\$5,788	\$1,342,918
100.0% net DC residents	<u>\$5,788</u>	<u>\$1,342,918</u>
90.0% of residents pay taxes	\$5,210	\$1,208,626
40.0% of taxable income	\$29,334	\$6,805,482
60.0% of expenditures	<u>\$17,600</u>	<u>\$4,083,289</u>
7.5% blend of categories	\$1,320	\$306,247
0.6% of taxable income	\$440	\$102,082
		<u>NA</u>
	\$6,970	\$1,616,955
	\$10.92	\$2,026,906

Notes:

- (a) Based on blend of sales tax on general goods and services and DC retained sales tax on restaurant related sales.
- (b) Building operations purchases, resident DMV fees, utility and telecommunications fees, other licensing fees and charges.
- (c) Fixtures, etc. included in real property value; residents assumed not to exceed \$50,000 personal property exemption.

Table 4 - Moderately Priced Rental Apartments
Square 776 - Washington, DC
ANNUAL DIRECT DC TAX REVENUE NET OF MULTIPLIERS - \$2006

Project Description

1) Total Apartments	232 units
2)	
3) Moderate Priced Apartments	11 units (estimated)
4) Average Apartment Size	852 rsf (net rentable area)
5) Apartment RSF	9,374 rsf

Project Related DC Residents

1.4 persons / unit
<u>11</u> occupied units
15 total residents
<u>100.0%</u> net residents
15 DC residents

Real Estate Tax

6) Apartment Real Estate Assessment
7) Parking (included above)
8) Real Estate Value
9) Residential Real Estate Tax
10) Total Real Estate Tax Revenue

Building / Parking		
	one sf	total sf
	\$132.87	\$1,245,539
		<u>NA</u>
100.0% of assessment	\$132.87	\$1,245,539
0.92% residential tax rate	\$1.28	\$11,957
	\$1.28	<u>\$11,957</u>
	one unit	total units
\$1.50 per sf	\$1,278	\$14,061
333.3% multiple of rent	\$51,126	\$562,384
\$3,800 blended exemption	\$47,326	\$520,584
\$30,000 of initial taxable income	\$2,000	\$22,000
8.7% DC tax rate over initial	<u>\$1,507</u>	<u>\$16,581</u>
	\$3,507	\$38,581
97.0% occupancy	\$3,402	\$37,423
100.0% net DC residents	<u>\$3,402</u>	<u>\$37,423</u>
90.0% of residents pay taxes	\$3,062	<u>\$33,681</u>
35.0% of taxable income	\$16,067	\$176,738
65.0% of expenditures	<u>\$10,444</u>	<u>\$114,880</u>
7.5% blend of categories	\$783	<u>\$8,616</u>
0.6% of taxable income	\$275	<u>\$3,030</u>
		<u>NA</u>
	\$4,121	<u>\$45,327</u>
Parking (tax not applicable on residential parking)		
Total Direct Annual Tax Revenue		
28)	\$6.11	<u>\$57,284</u>

Notes:

- (a) Based on blend of sales tax on general goods and services and DC retained sales tax on restaurant related sales.
- (b) Building operations purchases, resident DMV fees, utility and telecommunications fees, other licensing fees and charges.
- (c) Fixtures, etc. included in real property value; residents assumed not to exceed \$50,000 personal property exemption.

D

Holland Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801
www.hklaw.com

Memorandum

Date: August 7, 2006

To: DC Zoning Commission

From: Norman M. Glasgow Jr.

Re: ZC Case 06-01

Norman M. Glasgow Jr.
202 955 3000
norman.glasgow@hklaw.com
com

Attached please find a parking analysis for local urban grocery stores as requested at the Commission's hearing on the above referenced case on July 6, 2006. As noted at the hearing, the parking proposed by the applicant meets the requirements of the regulations. As shown by the analysis provided M.J. Wells and Associates, the proposed project is near the low end of the ratio for parking spaces per square foot of store area. However, as testified to by Mr. Wells during the hearing on this matter, and as shown in the attached analysis, the proposed parking ratio is exactly as suggested by the Institute of Transportation Engineers.

3953076_v1

Table 1
Urban Grocery Store Parking Analysis

Store	Built/ Planned	Location	Ward	Parking Supply (Spaces)	Size (Square Feet)	Parking Ratio (Spaces/ 1,000 S.F.)	Source	Comments
TBD	Planned	Square 715	6	121	53,300	2.27		
Trader Joe's	Built	The Columbia, L Street/25th Street	2	50	11,833	4.23	Trammell Crow	Built, ready for occupancy
Whole Foods	Built	1440 P Street	2	197	42,000	4.69	Wells & Assoc.	
Whole Foods	Built	Tenleytown 4530 40th Street	3	100	25,000	4.00	JBGR	
Giant	Built	Columbia Heights 1345 Park Road	1	225	48,500	4.64	JBGR	Spaces shared with other retail tenants
Harris Teeter	Planned	Jenkins Row	6	NA	NA	4.00	JBGR	Under construction.
Safeway	Built	Bethesda Place	NA	148	43,000	3.44	Albemarle Group	
Harris Teeter	Planned	Adams Morgan Kalorama Road/17th Street	1	120	38,556	3.11	Faison	Under construction, some portion of spaces will be shared with day time office tenant
Range	High Low			225 50	53,300 11,833	4.69 2.27		
Average				137	37,456	3.80		
<i>Institute of Transportation Engineers (ITE)</i>								
Parking Generation (Demand)								
Suburban Weekday:						4.36		
Suburban Saturday						4.75		
Urban Weekday						2.27		

3946033_v1

E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services



Thomas J. Carroll
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, DC 20006

JUN 14 2006

Dear Mr. Carroll:

We have been advised by the Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration, Office of the Surveyor that you recently submitted an application (File Number: S.O. 06-9227) on behalf of Steuart Investment Company and Steuart-H Street LLC for the proposed closing of a public alley in Square 776.

In accordance with D.C. Law 5-93, First Source Employment Agreement Act of 1984, of Steuart Investment Company and Steuart-H Street LLC are required to enter into a First Source Employment Agreement with the D.C. Department of Employment Services (DOES) and to use DOES as the first source for recruitment, referral, and placement of any new employees employed as a result of the alley closing project.

Enclosed for your review and signature is a copy of the First Source Employment Agreement. Please complete and return it to:

Vernell Jordan, Program Analyst
D.C. Department of Employment Services
609 H Street, NE, Room 429
Washington, D.C. 20002

If you have any questions regarding this requirement, please contact Vernell Jordan at (202) 698-5774. We are looking forward to working with you, and I trust this information is useful.

Sincerely,

Susan O. Gilbert
Associate Director
Office of Employer Services

Enclosure

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: S.O. 06-9227

Contract Amount: _____

Project Name: Construction of 300 H Street, NE

Project Address: 300 H-Street NE Ward: 6

Nonprofit Organization with 50 Employees or Less: (Yes) _____ (No) ☒

This First Source Employment Agreement, in accordance with D. C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and STEWART INVESTMENT CO & STEWART H-SMITH LLC, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as well, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

- A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.
- B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.
- D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

- E. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract.
- F. This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract.
- G. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- H. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156, as amended, are included.
- I. The EMPLOYER shall register an apprenticeship program with the D.C. Apprenticeship Council for construction or renovation contracts or subcontracts totaling \$500,000 or more. This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more.
- J. All contractors who contract with the Government of the District of Columbia to perform information technology work with a single contract or cumulative contracts of at least \$500,000, let within any twelve (12) month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council.
- K. The term "information technology work" shall include, but is not limited to, the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, database specialist, network support specialist, and any other related occupations as the District of Columbia Apprenticeship Council may designate by regulation.

II. RECRUITMENT

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements. The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified.

- B. Notification of specific needs, as set forth in Section II.A. must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.
- C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral.
- D. The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

III. REFERRAL

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV. PLACEMENT

- A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.
- B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.
- C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.
- D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

V. TRAINING

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

- A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

- A. Contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
 - 2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.
 - C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.
 - D. If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.
 - E. With the submission of the final request for payment from the District, the EMPLOYER shall:
 1. Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents; or
 2. Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
 - a. Material supporting a good faith effort to comply;
 - b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
 - F. The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that:
 1. A good faith effort to comply is demonstrated by the contractor;
 2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.
- G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract.
- H. Nonprofit organizations with 50 or less employees are exempted from the requirement that 51% of the new employees hired on the project be District residents.
- I. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.
- J. The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement.
- IX. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?
YES ☒ NO
If yes, certification number: _____
- X. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council?
YES ☒ NO
If yes, D.C. Apprenticeship Council Registration Number: _____
- XI. Indicate whether your firm is a subcontractor on this project: YES ☒ NO
If yes, name of prime contractor: _____

Dated this 16th day of July 2006

Signature Dept. of Employment Services

[Signature]

Signature of Employer
STEVANT H. SNEET LLC
STEVANT INVESTMENT CO.

Name of Company

5451 WISCONSIN AVE #1600

Address CHEV CHASE AND 2081T

301.451.2700

Telephone

By 30Stella.com

E-mail

EMPLOYMENT PLAN

NAME OF FIRM _____

ADDRESS _____

TELEPHONE NUMBER _____ FEDERAL IDENTIFICATION NO. _____

CONTACT PERSON _____ TITLE _____

E-mail: _____ TYPE OF BUSINESS: _____

ORIGINATING DISTRICT AGENCY _____

CONTRACTING OFFICER: _____ TELEPHONE NUMBER: _____

TYPE OF PROJECT _____ FUNDING AMOUNT _____

PROJECTED START DATE _____ PROJECT DURATION _____

NEW JOB CREATION PROJECTIONS (Attach additional sheets, as needed.) Please indicate the new position(s) your firm will create as a result of this project.

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES: Please list the names and social security numbers of all current employees including apprentices and trainees who will be employed on the project. Attach additional sheets as needed.

[illegible]

LSDBE MEMORANDUM OF UNDERSTANDING

Between THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT
And
STEUART INVESTMENT COMPANY

Steuart Investment Company and (hereinafter, the “Developer”), in accordance with D.C. Law 1-95 (as amended), D.C. Code Section 2-215.03 et seq. (2001 Ed.) and 2-217.01 et seq. (2001 Ed.), the statutes regarding “Equal Opportunity for Local, Small and Disadvantaged Business Enterprises” and in consideration of the Zoning Commission for the District of Columbia's approval of a Planned Unit Development and Map Amendment known as Zoning Commission Case No. 06-01 the “PUD”), to construct a mixed use building, including ground floor retail, to a maximum height of 90 feet and including approximately 375 parking spaces, on parts of Lots 9, 25-31, 51, 53, 800, and 821 in Square 776 in the District of Columbia (the “Property Site”), Developer does hereby covenant and agree to make a bona fide effort to contract and subcontract with Local, Small and Disadvantaged Business Enterprises certified by the D.C. Small and Local Business Opportunity Commission (“LSDBEs”) to achieve a contracting and subcontracting goal of thirty-five percent (35%) LSDBEs participation in the Developer's contracted development costs in connection with the architectural and design, development, construction (including but not limited to, excavation, provision of construction materials, interior design and improvements, purchase of goods and supplies and equipment, janitorial and refuse collection services and other pre and post construction activities, maintenance and security for the project being created (the “Project”), in accordance with the following provisions.¹

- A. The Developer by entering into this Memorandum of Understanding Agreement (the “MOU”) agrees to develop a master procurement plan inclusive of LSDBEs for redeveloping of the Site, including implementation of all design, pre-development and development activities contemplated by such master plan, and the demolition and/or construction of all improvements (as defined in the MOU) to be located at the Site (collectively, the “Project”). The Developer, on its behalf and/or on behalf of its successors and assigns (if any), hereby agrees to use bona fide efforts (as defined herein) to achieve, at a minimum, LSDBE participation in professional/technical services, construction management, construction trade subcontracting, and construction trade suppliers for the Project equivalent to 35% of the adjusted development budget. The actual amount of the 35% Goal will be based upon Developer's final construction budget submitted to the DSLBD Director.
- B. The Developer shall utilize the resources of the Department of Small and Local Business Development (“DSLBD”), including the Small and Local Business Opportunity Commission's Directory of Certified Local, Small and Disadvantaged Business Enterprises, and periodic updates, as the primary referral sources for LSDBEs. The primary contact for such referrals shall be the Director of the Department of Small and Local Business Development (the “Director”).

¹

The actual amount of the 35% Goal will be based upon Developer's final construction budget submitted to the DSLBD Director.

- C. The **Developer** shall designate one or more representatives (the “**Representatives**”) who shall be duly authorized to negotiate, sign, and implement this MOU, and the **Developer** shall provide the name(s) of the Representatives to DSLBD promptly upon their selection together with reasonably satisfactory evidence of their authority to act as Representatives. The Representatives shall meet with DSLBD officials to explore and develop ways for achieving the 35% Goal.
- D. The **Developer** agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by the **Developer** to conduct its daily operations during the Project, and understands that such efforts will accrue toward the 35% Goal.
- E. Not later than 60 days following the filing of application for a building permit pursuant to the approved PUD, the Developer agrees to submit a local business plan, in the form of **Attachment A** to DSLBD for approval, which plan shall be incorporated in and made a part of this MOU.
- F. Not later than 45 days after the local business plan has been approved by DSLBD, the **Developer** will submit to DSLBD a more extensive plan listing all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to LSDBEs certified by the Small and Local Business Opportunity Commission.
- G. The parties hereto understand and agree that the means of achieving the 35% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBEs. However, the **Developer** agrees to make a bona fide effort to achieve, at minimum, the 35% Goal.
- H. The **Developer** further agrees to submit quarterly LSDBE contracting and subcontracting reports, in the form of **Attachment B**, to DSLBD no later than fifteen (15) days after the end of each calendar quarter; the quarterly report periods shall begin on **January 1, April 1, July 1, and October 1**. These reports should include detailed documentation of outreach efforts to LSDBEs in order for DSLBD to determine whether the Owners have made bona fide efforts.
- I. The Representatives of **Developer** shall meet quarterly with DSLBD staff on a mutually agreeable schedule to discuss LSDBE participation during the construction phase(s) of the Project.
- J. The **Developer** further agrees to include in the terms of its contractual agreements with the general/prime contractor(s) and/or construction manager (any such general contractor or construction manager, the “**General Contractor**”), language that requires the General Contractor to make a bona fide effort to achieve the 35% Goal in (1) in its own contracting with respect to the Project, and (2) engaging subcontractors to perform work on the Project, and the General Contractor will require that the any of its contractors include in all lower-tier contracts a provision requiring such lower-tier subcontractors make bona fide efforts to achieve the

35% Goal.

The **Developer** shall take responsibility for training the General Contractor and any subcontractors to ensure that they understand the economic development commitments made by the **Developer** to certified Local, Small and Disadvantaged Business Enterprises.

The **Developer** shall employ and maintain an aggressive contract tracking and monitoring program, along with a prescribed and detailed means of dealing with inconsistent, incorrect and/or tardy reports. To the extent that the **Developer** experience or discover non-compliance with this MOU, the **Developer** may request additional retainage be withheld from non-complying subcontractors (including the General Contractor) until complete and correct documentation reflecting bona fide efforts to achieve the 35% Goal is submitted. Contractors shall be advised that any and all non-compliance with this MOU may negatively impact all future opportunities with the **Developer** or the General Contractor, as applicable.

- K. The **Developer** will publish, at a reasonable time period prior to any bid opening henceforth, a public notice in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, to inform the business community as a whole of the overall project including a general description of projected phases of the development and anticipated time tables.
- L. For purposes of this MOU agreement, the term “bona fide effort” shall mean good faith efforts designed to meet all applicable requirements with consideration for the particular facts and circumstances of any given situation. Furthermore, “bona fide efforts” shall include, among other things, the following actions, together with a commitment from the **Developer** that it shall enforce the same:
 - 1. The General Contractor subject to this MOU will publish a public notice in a newspaper of general circulation in the District of Columbia, and in other newspapers serving the District of Columbia local business community, designed to inform the business community as a whole of specific contracting and subcontracting procurement opportunities.
 - 2. The General Contractor subject to this MOU will publish public notices in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, soliciting bids for products or services being sought, and will allow a reasonable time for all bidders to respond to the invitation for bid.
 - 3. The General Contractor subject to this MOU will contact DSLDB to obtain a current listing of all LSDBEs qualified to bid on procurements as they arise.
 - 4. The General Contractor subject to this MOU will negotiate with each bidder pre-qualified by the **Developer** and the General Contractor, including LSDBEs, to obtain such bidder's best and final price as understood in the marketplace.

5. The General Contractor will not require that LSDBEs provide bonding on contracts with a dollar value less than **\$100,000**, provided that in lieu of bonding the General Contractor may accept a job specific certificate of insurance.
6. The General Contractor will design and include in all contracts and subcontracts a process for dispute settlement. This process shall incorporate an opportunity for the presentation of documentation involving the work performed and invoices regarding requests for payments. Included in such contracts shall be a provision for selecting a mutually agreed upon mediator or provisions for arbitration in accordance with the rules of the **American Arbitration Association**.
7. The General Contractor and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the General Contractor, the General Contractor is to immediately notify any affected subcontractor as to the date on which payment can be expected.
8. The General Contractor commits to pay all subcontractors, including LSDBEs, in accordance with the terms of the relevant subcontract, within thirty - (30) days following the General Contractor's receipt of a payment, which includes funds for such subcontractors, from the **Developer**. The **Developer** agrees to require the General Contractor to establish a procedure for giving notice to the subcontractors of the Developer's payment to the General Contractor.

M. In order to encourage the **Developer** to develop creative, cost competitive ways in which to meet its 35% Goal, DSLBD will give credit for new opportunities created by the **Developer** in areas not traditionally made available to LSDBEs and expansion of opportunities in existing areas.

- N. If at the end of the first calendar quarter following the issuance of a building permit for the Project, the **Developer** is unable to comply with the LSDBE utilization plan for the Project as presented by the **Developer**, the Representatives of the **Developer** and the Director of DSLBD shall meet and discuss the possibilities for adjusting goals and strategies to extend the time of performance based on facts and circumstances.

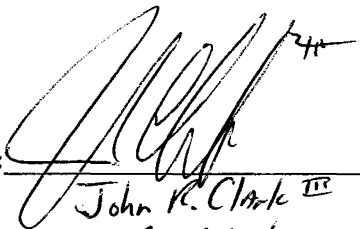
This Memorandum of Understanding shall be construed in accordance with the laws of the District of Columbia.

DATE THIS _____ DAY OF _____, 2006

DEPARTMENT OF SMALL AND LOCAL
BUSINESS DEVELOPMENT

STEUART INVESTMENT COMPANY

BY: _____
JACQUELYN A. FLOWERS
DIRECTOR

By: 
John R. Clark II
President

Contact Information:

Department of Small and Local Business Development
441 4TH Street, N.W., Suite 750N
Washington, DC 20001
Attn: Contract and Compliance Division
Ph. 202-727-3900
Fax: 202-724-3786

Office of Zoning
441 4th Street, N.W., Suite 210
NW, Washington, DC 20001
Attn: Compliance Division
Ph.: (202) 727-56311
Fax: (202) 727-6072

F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. 06-01
Z.C. CASE NO. 06-01

Consolidated Planned Unit Development and Map Amendment for
Property Located at 300 Block H Street, N.E.
(Site of the Anacostia Gateway Government Center)
Square 776, Lots 9, 25-31, 51, 53, 800 and 821
August 7, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on July 6, 2006, to consider applications from Steuart Investment Company and Steuart-H Street LLC, for consolidated review and approval of a planned unit development and related zoning map amendment from C-2-A to the C-2-B District for a portion of the Subject Property. The Commission considered the applications pursuant to Chapters 24 and 30 of the D.C. 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 Hearing

1. On January 6, 2006, Steuart Investment Company and Steuart-H Street LLC (the "Applicant"), filed an application for consolidated review and approval of a planned unit development ("PUD") for Square 776, Lots 9, 25-31, 51, 53, 800 and 821 and the various portions of the alleys proposed to be closed which currently run through Square 776 and an application with the Zoning Commission to amend the Zoning Map from C-2-A to the C-2-B District for a portion of the Property.
2. After proper notice, the Zoning Commission held a hearing on the applications on July 6, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the property is located.
3. The Applicant presented four witnesses, Mr. Guy Steuart of the Steuart Investment Company, Maurice Walters, Architect with the firm of Torti Gallas and Partners, Martin Wells, Traffic Engineer of Wells & Associates, and Mr. Steven Sher, Land Planner with Holland & Knight. Messrs. Walters, Wells and Sher were accepted as experts in their respective fields.

4. Three persons testified in support: Anwar Saleem, Chairperson of H Street Main Street, Mr. Todd Davis and Mike Bober, residents of the area. The record contained nine letters of support, including letters from: Councilwoman Sharon Ambrose, the Capitol Hill Restoration Society, H Street Community Development Corporation, Near Northeast Citizens Against Crime and Drugs, and ANC 6C.
5. There were no parties in opposition. Seven persons testified in opposition. The record contained two letters of opposition.
6. ANC 6C submitted a report dated July 6, 2006, indicating its support for approval of the application. Commissioners Mark Dixon and Anthony Rivera provided testimony in support.
7. At its Public hearing held on _____, the Zoning Commission took proposed action by a vote of ____ to approve with conditions the applications and plans that were submitted to the record.
8. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated _____, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
9. The Zoning Commission took final action to approve the applications on _____.

The PUD Project

10. The Applicant proposes to construct a mixed-use development containing approximately 210 to 250 apartment units and approximately 60,500 square feet of gross floor area devoted to retail and service uses, including a grocery store of approximately 45,000 square feet plus additional loading and support space (the "Project" or "3rd & H Street"). The building will have a maximum height of 90 feet, stepping down to the north and east sides of the project. The total gross floor area of the project is approximately 304,651 square feet; the proposed overall floor area ratio (FAR) of the project is 5.00. The project will contain a total of 376 parking spaces.
11. The property that is the subject of this application consists of approximately 60,870 square feet of land area and is located in the block bounded by 3rd, 4th, H and I Streets, N.E. The property fronts on 3rd, 4th and H Streets and is known as Square 776, lots 9, 25-31, 51-53, 800 and 821 and portions of public alleys proposed to be closed (the "Site"). The subject properties are currently zoned C-2-B and C-2-A.
12. The Project is located at the western edge of the H Street N.E. Neighborhood

Commercial Overlay District (the "H Street Overlay"). Directly to the west across 3rd Street is Senate Square, a large residential development on the site of the former Capital Children's Museum. This development is approved to a maximum height of 110 feet. Further west of the Site, there is the H Street Overpass (a/k/a Hopscotch Bridge) and the railroad tracks leading to Union Station. Southwest of the Site across H Street, is the proposed Capitol Place mixed use project and the Station Place office project which is being built in three phases and is approved with a maximum height of 121 feet. Directly south of the site across H Street is a mix of vacant land and small structures used for retail purposes. East of the Site, across 4th Street, there is a residential area zoned R-4. To the east of the Site along H Street, there is a commercial corridor zoned C-2-A, C-2-B, and C-2-C. North of the Site, across the alley and Eye Street, there is a mix of residential, commercial and institutional uses. At the corner of 4th and Eye Streets is 318 Eye Street, a planned unit development project with approximately 160,000 sq. ft., 140 residential units and a maximum building height of 65 feet.

13. The Site is located approximately one-third of a mile from the entrance to the Union Station Metrorail Station, and fronts on H Street, a major through street with three Metrobus routes. The Generalized Land Use Map of the Comprehensive Plan designates the Site as mixed use for moderate density residential and low density commercial, and the Policies Map designates it as a Development Opportunity Area.
14. The PUD regulations require a site in the C-2-A or C-2-B Districts to contain a minimum of 15,000 square feet of land area. The total land area of the entire PUD site is 60,870 square feet, and thus meets the minimum area requirements for a PUD.

Matter of Right Development under Existing Zoning

15. Approximately 14.9 percent (9,072 square feet) of the site is zoned C-2-A. The C-2-A District is designed to provide facilities for shopping and business needs, housing and mixed uses. 11 DCMR § 720.2. The C-2-A District permits development to a maximum height of 50 feet, with no limit on the number of stories, and a maximum FAR of 2.5. 11 DCMR §§ 770.1, 771.2. A mixed use commercial/residential building in the C-2-A District is permitted as a matter of right. Parking is required at a rate of one space for each additional 600 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; 1 space for each additional 300 square feet of gross floor area in excess of 3,000 square feet for retail use; and 1 space for every 2 apartment house or multiple dwelling units. 11 DCMR § 2101.1. Commercial development of approximately 13,608 square feet is permitted as a matter-of-right with additional residential development of approximately 9,072 square feet also permitted as a matter-of-right.
16. Approximately 85.1 percent (51,798 square feet) of the Site is zoned C-2-B. The C-2-B District is designated to serve commercial and residential functions similar to the C-2-A

District, but with high density residential and mixed uses. 11 DCMR § 720.6. It permits a maximum height of sixty-five feet, with no limit on the number of stories, and a maximum FAR of 3.5. 11 DCMR §§ 770.1, 770.2. Under the PUD guidelines for the C-2-B District, the maximum height is ninety feet and the maximum FAR is 6.0. 11 DCMR §§ 2405.1, 2405.2. Parking is required in the C-2-B District at a rate of one space for each additional 1800 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; 1 space for each additional 750 square feet of gross floor area in excess of 3,000 square feet for retail use; and 1 space for every 3 apartment house or multiple dwelling units. 11 DCMR § 2101.1. Commercial development of approximately 77,697 square feet is permitted as a matter-of-right under C-2-B. Additional residential development of approximately 103,596 square feet is also permitted as a matter-of-right.

As a matter of right the total development of the Site could be 91,305 square feet of commercial use and 112,668 of residential. If the Site were developed entirely with residential development, approximately 203,973 square feet would be permitted as a matter-of-right on the Site under the proposed C-2-B zoning.

Matter of Right Development under Proposed Zoning

17. Under the proposed PUD, the zoning of the entire site would become C-2-B. The C-2-B permits a maximum height of sixty-five feet, with no limit on the number of stories, and a maximum FAR of 3.5. 11 DCMR §§ 770.1, 770.2. Parking is required in the C-2-B District at a rate of one space for each additional 1800 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; 1 space for each additional 750 square feet of gross floor area in excess of 3,000 square feet for retail use; and 1 space for every 3 apartment house or multiple dwelling units. 11 DCMR § 2101.1. Under the PUD guidelines for the C-2-B District, the maximum height is ninety feet and the maximum FAR is 6.0. 11 DCMR §§ 2405.1, 2405.2. Commercial development of approximately 91,305 square feet is permitted as a matter-of-right under C-2-B. Additional residential development of approximately 121,740 square feet is also permitted as a matter-of-right. If the Site were developed entirely with residential development, approximately 213,045 square feet would be permitted as a matter-of-right on the Site under the proposed C-2-B zoning.

Development Flexibility and Incentives

18. The Applicant requested flexibility from the following requirements:
 - a. *Roof Structures.* The Applicant requested flexibility from the requirements of Sections 411 and 770.6 that the roof structures be in a single enclosure setback from all exterior walls at a 1:1 ratio and that the enclosure be of equal heights.

Separate mechanical penthouses are proposed in order to provide more efficient distribution of mechanical systems and to reduce the mass of the structures on the roof. Due to the narrowness of the building wings and the requirements of the mechanical systems, some of the penthouses are not able to meet the required setback and are located in multiple structures. As well to reduce their visibility, some of the roof structures do not have walls of equal height. As stated herein, the requested relief from the roof structure regulations is appropriate. The proposed flexibility will not diminish the intent of the requirements to provide uniformity of the structure and reduce the impact of the perceived height of the building.

- b. *The residential recreation space requirement.* Section 773.3 requires that an area equal to fifteen percent of the residential gross floor area to be dedicated to recreation space. The Project proposes to provide an area equal to approximately ten percent of residential gross floor area for recreation space, totaling approximately 23,647 square feet. Additional space of approximately 4,885 square feet, equal to approximately two percent of residential gross floor area, will be devoted to private outdoor terraces.
- c. *The lot occupancy requirements.* Section 772.1 allows a maximum lot occupancy of 80% for a building with a residential use in the C-2-B District. The residential use of the proposed building begins on the second level with only 16,906 square feet of residential space, but the building at this level occupies approximately 82% of the lot. The third level, where the residential use is more substantial (40,570 sq. ft.), has a lot occupancy of only 68% and upper floors occupy even less. The amount that the second level exceeds the lot occupancy (2%) is *de minimis*, and the third level where the main residential use begins, is well below the maximum lot occupancy.
- d. *H Street Overlay.* The Overlay Regulations require that new buildings be designed and built so that not less than seventy-five percent (75%) of the streetwall shall be constructed to the property line abutting the street right of way and that building shall be designed so as not to preclude an entrance every forty (40) feet. The Applicant has designed the proposed building it is set back approximately four (4) feet from the property line along H Street. This setback allows for a more pleasant and efficient pedestrian experience. The Project plans also do not allow an entrance every forty feet on average because the proposed grocery store tenant has requested a single point of entry to control access and prevent inventory loss. The Project does provide the required entrances for the other retail fronting on H Street.

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

- a. *Urban Design, Architecture, Landscaping and Open Space.* The Applicant has presented an exceptional and appropriate architectural design for the Project. The project design provides a number of features that will benefit both the H Street Corridor and the surrounding residential neighborhoods. These benefits include an architectural design that is both fresh and engaging, while seeking to complement into the existing contextual setting in both form and materials. Particular attention has been paid to creating an active, urban retail streetscape, celebratory architectural forms for the corner at 3rd & H Streets and the residential entrance on H Street, and an overall sculpting of the buildings massing in concordance with surrounding neighborhood. For the entire length of the H Street front, the building has been set back from the property a typical distance of four feet in order to increase the width of the sidewalk. This additional width will significantly enhance the pedestrian experience by reducing congestion and allowing for more open space.

The building facades are designed in a style that complements and respects the adjacent buildings, particularly those with a distinct historic character. The facades on the principal street fronts of 3rd and H Streets employ a framing armature of brick and stone piers complemented with substantial glazed openings. The character of the fenestration differentiates between the retail and residential floors, allowing for a unique expression of those two uses. The design includes architectural embellishment at the 3rd and H Street corner to accentuate the significance of that location as a gateway to the commercial opportunities along H Street and beyond. The design proposal also includes substantial improvements to the streetscape and adjacent alleys. These improvements will include new paving for the sidewalks, new street lighting fixtures, new and replacement tree boxes, bike racks and trash receptacles.

- b. *Site Planning and Efficient Economical Land Utilization.* 3rd & H Street is designed such that its primary bulk is on H Street, away from the nearby residential community. The building design provides relief to the adjacent neighborhood by having the building transition from a maximum of ninety feet down to sixty-nine, fifty-nine and forty-nine foot levels as it approaches neighboring properties at different locations as shown on the approved plans. At the corner of the of 4th and H Streets the building height steps down from 69 feet to approximately 59 feet. At the northwest corner of the site, the Building steps down from 90 feet to 49 feet. At the rear of the building, the design call for an eight (8) foot setback at the seventh floor level. These reductions in height minimize any potential adverse on the adjacent residential community. The Applicant also proposes significant improvements to 3rd, 4th and H Streets, as well as improvements to the remaining alley system in Square 776. In particular, the Applicant is setting the building back from its property line along the alley. Thus, the alley is effectively widened and in most areas, the available passageway is

more than doubled due to the setback of the building. The Applicant will pave this additional area in the alley to allow more efficient ingress and egress. In addition, the Applicant proposes setting the building back four feet from H Street to allow for a wider sidewalk and easier pedestrian passage. The Applicant is also providing significant open space for residents at the second story terrace and roof decks.

- c. *Transportation Features.* The Project offers several transportation management measures and is an excellent example of "Smart Growth." First, 3rd & H Street is located along three bus routes and is less than one-third of a mile from the Union Station Metrorail Station. 3rd & H Street's location next to Union Station provides significant opportunities for public transportation use with Metrorail, Metrobus and local and regional trains all serving Union Station. This proximity will result in a significant proportion of site trips being made by mass transit or other non-passenger car modes. Second, 3rd & H Street will include a three level parking garage which will accommodate approximately 376 cars. This number of parking spaces is more than that required by the Zoning Regulations and will adequately accommodate market parking demands. Third, the eastern branch of the Metropolitan Branch Trail, which connects Union Station and Takoma Park and provides access to Capitol Hill, is only 2 blocks to the west. Finally, the Transportation Study, submitted as Exhibit ____, concluded that the Project would not significantly change the projected future intersection levels of service. The Project will not adversely impact the traffic situation for the area.
- d. *Employment and Training Opportunities.* 3rd & H Street promotes residential, retail and commercial development at an appropriate location that will add to the economy of the District as well as provide expanded employment opportunities for District residents. The Economic Impact Analysis submitted as Exhibit ____ projects that the equivalent of 176 full time jobs will be located at 3rd & H Street with an estimated annual District based payroll of \$5,000,000. Moreover, the development will stimulate economic activity in an area targeted for further revitalization and in accordance with the Comprehensive Plan and its objectives.

As an additional public benefit and in order to further the policies established in Mayor's Order No. 83-265 and D.C. Law 5-93, the Applicant has executed a First Source Employment Agreement in order to achieve the goal of utilizing District residents for at least fifty-one percent of the jobs created by 3rd & H Street. Likewise, as another public benefit and in order to further the policies established in D.C. Law 1-95, D.C. Code Section 1-1-1141 *et seq.* (1987 Ed. as amended), the Applicant will commit to make a bona fide effort to utilize Local, Small or Disadvantaged Business Enterprises ("LSDBE") certified by the D.C. Small and Local Business Opportunity Commission ("SLBOC") in order to achieve, at a minimum, the goal of thirty-five percent participation in the contracted

development costs in connection with design, development, construction, maintenance and security of 3rd & H Street. The Applicant has submitted a Memorandum of Understanding to SLBOC.

- e. *Housing.* This Project will create additional housing stock as encouraged by the City. Approximately forty-eight percent of the units will be one bedroom units, approximately twenty-two percent of the units will be one bedroom and den units, approximately twenty-eight percent of the units will be two bedroom units and approximately two percent of the units will be two bedroom and den units. The Project will provide approximately ten percent of the increase in gross floor area as housing units affordable to households making no more than eighty percent of the area median income. The Applicant is only providing ten percent of the increase as AHU instead of fifteen percent in order to offset the cost of providing underground parking for the grocery store. This additional cost to the project is explained in the supplemental economic analysis submitted as Exhibit ____.
 - f. *Special Value to the Neighborhood.* This Project adds special value to the surrounding neighborhood by bringing a grocery store of approximately 53,000 square feet and appropriate retail development that will serve the community. Grocery stores are needed within the city and benefit the community. The H Street Overlay specifically encourages a grocery store in this Square.
 - g. *Other Public Benefits and Project Amenities.* The Project provides for economic development in an area designated as a Development Opportunity area. The Applicant's proposal to locate a major mixed use development with a major grocery store will give a much needed boost to the economic development of the area, as shown by the Economic Impact Analysis submitted as Exhibit ____.
20. The proposed PUD advances the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and furthers and complies with the major themes and elements for the District and Ward 6 in the Comprehensive Plan. The project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of quality commercial development that will enhance the built environment.
21. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:
- a. *Stabilizing and Improving the District's Neighborhood.* The proposed PUD will stabilize and improve commercial character of the neighborhood.
 - b. *Respecting and Improving the Physical Character of the District.* The proposed PUD respects and improves the physical character of the District through the

construction of a well-planned and carefully designed development. The PUD has an exceptional design that will significantly enhance the prominence of the H Street corridor and will compliment the neighboring residential area.

- c. *Reaffirming and Strengthening District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. The Project provides additional jobs to strengthen the economic health of this area. 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. 10 DCMR §109.1(b). The Project takes advantage of this asset by its location along major Metrobus routes and its proximity to the Union Station and the Metrorail system.
 - d. *Preserving and ensuring community input.* The Comprehensive Plan also encourages the active involvement and input of local communities. For more than six months, the Applicant has worked with the Office of Planning in an effort to gather community input on the project and modify the design of the Project to address community concerns.
22. The Project also furthers the specific objectives and policies of many of the Comprehensive Plan's major elements as follows:
- a. *Economic Development Element.* The objective of economic development outside of the Central Employment Area is to create and expand economic activity and employment centers. 10 DCMR 206.1 In support of such objective, it is a policy to support appropriate development of the H Street, N.E. corridor. 10 DCMR 206.2(b) This Project brings appropriate commercial and retail development to the H Street area.

An additional policy of this element is to enhance the environmental quality of areas of significant development through guidelines related to access and egress, setbacks, landscaping, lighting, facades and structural relationship to adjacent buildings. 10 DCMR 204.2(c) The Project continues a sense of place in the H Street area and is sensitive to the nearby residential communities, acknowledging their low rise nature by a decrease in height of the proposed building. 3rd & H Street also proposes significant improvements to the surrounding streetscapes and will enhance the overall environmental quality of the area.
 - b. *Housing Element.* The general objectives for housing are to stimulate production of new and rehabilitated housing to meet all levels of need and demand and to

provide incentives for the types of housing needed at desired locations. 10 DCMR §302.1

Policies in support of these objectives are:

- to 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 (See 10 DCMR §302.2(a));
- to designate, as residential development opportunity areas, sites where significant housing development can occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed employment centers and office areas (See 10 DCMR §302.2(d)).

The Project is consistent with the objectives and policies of this element. 3rd & H Street will provide approximately 210-250 new housing units in an area designated by the Comprehensive Plan as a Development Opportunity Area and designated by the H Street N.E. Strategic Development Plan as a housing sub-district. Approximately 10% of the increased floor area will be Affordable Housing Units. 3rd & H Street is located approximately one-third of a mile from the Union Station Metrorail Station.

- c. *Transportation Element.* It is the goal of the District to “[p]romote the increased use of mass transit, in the District and the region.” 10 DCMR § 503.2(c).

Development of the Project at the present Site along major Metrobus routes and within close proximity to Union Station Metro Station will promote and stimulate the use of existing mass transit service.

A basic philosophy 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 along major Metrobus routes and near Union Station Metrorail station furthers this goal.

- d. *Urban Design Element.* “The policy...in support of the urban design objective is to enhance the physical image and symbolic qualities of the District that establish its character as an urban center and the nation’s Capital.” 10 DCMR 702.2.

The proposed PUD will enhance the quality of the area through superior design elements that respect the special character of this prominent commercial corridor. It is the goal of the District to “encourage new development within areas of strong architectural character to contribute to the physical identity and character of the area.” 10 DCMR 710.2(d).

The Project proposes a distinguished design that provides a rich and vibrant texture to this prominent gateway and enhances the vibrancy of this commercial corridor.

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 enhance the physical character of the area and complement the materials, height, scale and massing of the moderate density commercial area to the east along H Street and the moderate density residential community to the east and north. 10 DCMR § 708.2. As previously stated, the Project’s height steps down significantly – from ninety feet to approximately 69 feet to better fit with the nearby residential community. In this regard, the Project’s massing and scale are sensitive to the established patterns of development in the area. 10 DCMR §710.2(e).

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 proposes significant enhancements to the streetscape along 3rd Street, 4th Street, H Street. Of particular note, the proposed building will be set back 4 feet from the property line along H Street to provide a wider passageway and better pedestrian environment.

- e. *Land Use Element.* It is the goal of the District to "promote appropriate commercial development, including centers for retail and office uses, to serve the needs of the economy of the District and its neighborhoods....” 10 DCMR § 1108.1(a).

The Project responds to this goal by providing mixed use development with a superior design that will foster the continued growth of the District's economy and employment base while providing additional residential stock for its citizens. The Project is located within a Development Opportunity Area. These areas offer

opportunities to accommodate new growth and development. See 10 DCMR § 1118.3.

23. The Comprehensive Plan Generalized Land Use Map depicts the Site as located in a mixed use category. The Generalized Land Use Policies Map depicts the Site as located in a Development Opportunity area. The proposed PUD is consistent with the Generalized Land Use Maps.
24. The Project also fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 6:
 - a. *Ward 6 Economic Development.* An objective of this element is to encourage a range of commercial services and facilities for Ward 6 residents through appropriate development of commercial areas when needed and to upgrade commercial areas such as H Street, N.E. 10 DCMR § 1701.1(a). It is a policy to ensure that the redevelopment of the commercial corridors, such as H Street, N.E., include a large percentage of neighborhood-serving commercial uses. 10 DCMR § 1702 (c).

3rd & H Street provides commercial and retail development, including a grocery store, to serve the surrounding neighborhood while upgrading the H Street commercial area.
 - b. *Ward 6 Housing.* A policy of this element is to stimulate private investment in housing in Ward 6 and expand home ownership opportunities. 10 DCMR § 1706.1(c) 3rd & H Street will provide 210-250 new dwelling units to the area, a portion of which will be affordable housing.
 - c. *Ward 6 Transportation.* An objective of this element is to provide an adequate balanced circulation system, properly related to residential, commercial/retail, and other land uses, which will enhance the aesthetic and environmental characteristics along streets in the Ward 6 area as well as to minimize traffic congestion. 10 DCMR § 1713.1(a) The Project complies with this element.
 - d. *Ward 6 Urban Design Element.* This element encourages high quality architecture consistent with the styles and characteristics of buildings in Ward 6 (10 DCMR 1721.1(c)) and is meant to ensure that redeveloped and new structures in Ward 6 commercial corridors strengthen the urban design image of those areas and relate to adjacent residential neighborhoods (10 DCMR § 1722.1(a)). It also encourages development that provides streetscape improvements, trees, signs, lights and other such elements to enhance the environment in Ward 6. 10 DCMR § 1722.1(d) A policy of this element is to continue to improve the design and upkeep of public spaces, including streets, sidewalks, small open spaces and large formal squares in Ward 6. 10 DCMR § 1722.1(e)

3rd & H Street has been designed to enhance the physical character of the area and complement the materials, height, scale and massing of the nearby moderate density commercial uses and the established moderate density residential community to the east. The Applicant proposes significant landscaping and streetscape improvements to 3rd, 4th, and H Streets, as well as improvements to the alley system in the center of Square 776.

- e. *Ward 6 Land Use Element.* The Land Use Element for Ward 6 recognizes that the H Street Corridor is still rebuilding from the disturbances of 1968 and encourages more business development in the area. See 10 DCMR § 1732.7. This Project proposes appropriate commercial and retail development in this area.

Office of Planning Report

- 25. By report dated 6/26/06, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD application. OP found that the proposed PUD is not inconsistent with the objectives and policies of the Comprehensive Plan. OP further found that the proposal is consistent with the H Street NE Strategic Development Plan and the H Street Overlay. Office of Planning also found that the Project met the objectives and evaluations standards of a PUD. OP stated that the grocery store will be a significant amenity to the community. OP stated that it was "very supportive" of the PUD.

District Department of Transportation Report

- 26. By report dated June 28, 2006, the DDOT stated it had no objections to the Project.

Advisory Neighborhood Commission

- 27. By resolution dated July 6, 2006, dated Advisory Neighborhood Commission ("ANC") 6C supported the proposed PUD project and map amendment.

Issues Raised by Persons in Opposition

- 28. Seven persons testified in opposition. Issues raised by these persons generally included concerns about traffic and parking in the area, noise and odors in the alley system from loading and trash collection, the impact that the height and mass of the building would have on neighboring residential properties and the closing of the alleys.

Response Presented by the Applicant

- 29. The Applicant presented responses to the issues raised by the persons in opposition during its rebuttal and its post hearing submissions. As well, several issues were

previously addressed during the Applicant's case in chief and its application materials. During rebuttal the Applicant's witness, Mr. Walters explained that trash would not be stored outdoors. The trash dumpsters would be kept indoors and rolled outside when ready for pick up by the trash collection service. Mr. Walters also pointed out during his presentation that the project design permits significant step downs in height at the corner of 4th and H Streets as well as the north west corner of the project along 3rd Street. The design calls for setbacks from the building line to widen the alley and an additional eight foot setback beginning at the seventh floor at the rear of the building. The Applicant in its post hearing submission proposed to limit the size of trucks accessing the alley off 4th Street and the hours of use of that area. The Commission will so condition this Order.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage 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.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The size, scale, design, and use of the building are appropriate for this site and the commercial nature of H Street. 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 in terms of height and mass and is complementary to the adjacent commercial and residential buildings.

6. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The number and quality of the project benefits and amenities offered are commensurate with the degree of flexibility granted for the development proposed on the site, including requirements. The PUD responds to both the surrounding commercial and residential buildings.
8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area.
9. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The applications for a PUD and 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.
12. The applications for a PUD and map amendment are subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and the Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the applications for a Map Amendment from C-2-A to C-2-B for Lots 25-31 of Square 776 and portions of public alleys proposed to be closed and for consolidated review of a Planned Unit Development for Square 776, Lots 9, 25-31, 51, 53, 800 and 821 and the various portions of the alleys proposed to be closed which currently run through, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Torti Gallas and Partners dated July 6, 2006, marked as Exhibit No. ____ of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.

2. The PUD shall be a mixed use building containing residential, retail and service uses including a grocery store as shown on the approved plans. The building shall contain approximately 304,651 square feet of gross floor area. The total project shall have an overall density of approximately 5.00 FAR.
3. The maximum height of the building shall be 90 feet, as shown on the Plans. The building may include a roof structure in excess of that height with a height not to exceed 18.5 feet of the roof upon which it is located as shown on the Plans.
4. The Project shall include a minimum of 1 parking space for each dwelling unit and 121 parking spaces for the retail in the below-grade parking garage.
5. The Project shall include three, 55' deep loading berths and two, 20' deep service/delivery/loading space, as shown on the Plans. Trucks using the residential loading berth shall not exceed thirty feet in length. Residential loading shall not occur before 9am.
6. The Applicant shall include landscaping for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping.
7. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping in the public space.
8. The Applicant shall have flexibility with the design of 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, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - 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, without reducing the quality of the materials;
 - c. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
 - d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified.

9. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners 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). Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
10. 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.
11. 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.
12. 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 _____, the Zoning Commission approved the applications by a vote of _____.

The Order was adopted by the Zoning Commission at its public meeting on _____, by a vote of _____.

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

CAROL J. MITLEN
Chair
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning