GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 06-01

As Secretary to the Commission, I herby certify that on OCT - 4 2007 copies of this Z.C. Order No. 06-01 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia
CASE NO. 06-01
EXHIBIT NO. 60

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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 Related Map Amendment for Property Located in the 300 Block of H Street, N.E. Square 776, Lots 9, 25-31, 51-53, 800 and 821
December 11, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 6, 2006, to consider an application from Steuart Investment Company and Steuart-H Street LLC for consolidated review and approval of a planned unit development ("PUD") and a related zoning map amendment from C-2-A to the C-2-B District for a portion of the PUD site. The Commission considered the application 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 application, subject to conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On January 6, 2006, Steuart Investment Company and Steuart-H Street LLC (collectively, the "Applicant"), filed an application for consolidated review and approval of a planned unit development for Square 776, Lots 9, 25-31, 51-53, 800 and 821 and the portions of the alleys proposed to be closed that currently run through Square 776, including a related request to amend the Zoning Map from C-2-A to the C-2-B District for a portion of the PUD site.

2. After proper notice, the 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, Guy Steuart of the Steuart Investment Company, Maurice Walters, an architect with the firm of Torti Gallas and Partners, Martin Wells, a traffic engineer at Wells & Associates, and Steven Sher, a land planner with Holland &

Knight. Messrs. Walters, Wells, and Sher were accepted as experts in their respective fields.

4. Three persons testified in support of the project: Anwar Saleem, chairperson of H Street Main Street, and Todd Davis and Mike Bober, residents of the area. The record contained eight letters of support, including letters from Councilmember Sharon Ambrose, the Capitol Hill Restoration Society, the H Street Community Development Corporation, and Near Northeast Citizens Against Crime and Drugs.

5. There were no parties in opposition to the application. 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 of the application at the public hearing.

7. At its public meeting on October 16, 2006, the Zoning Commission took proposed action by a vote of 5-0-0 to approve, subject to conditions, the application 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") pursuant to § 492 of the District Charter. NCPC, by action dated October 26, 2006, found the proposed PUD would not affect the federal interests in the National Capital, or be inconsistent with the Comprehensive Plan for the National Capital.

9. The Zoning Commission took final action to approve the applications, subject to conditions, on December 11, 2006 by a vote of 5-0-0.

PUD Project

10. The Applicant proposes to construct a mixed-use development containing 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"). The building will have a maximum height of 90 feet, stepped down on the north and east sides. The total gross floor area of the Project will be approximately 304,651 square feet; the proposed maximum overall floor area ratio ("FAR") is 4.8. The Project will contain a total of 400 parking spaces.

11. The property that is the subject of this application consists of approximately 60,870 square feet of land 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, as well as portions of public alleys interior to Square 776 that are proposed to be closed (the "Site"). The subject property is currently split zoned C-2-B and C-2-A.

12. The Site is located at the western edge of the H Street N.E. neighborhood commercial overlay (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. The H Street Overpass (also known as "Hopscotch Bridge") and the railroad tracks leading to Union Station are further west of the Site. The proposed Capitol Place mixed-use project is southwest of the Site across H Street, as is the Station Place office project, which is being built in three phases and is approved to a maximum height of 121 feet. A mix of vacant land and small structures used for retail purposes are located directly south of the Site across H Street. East of the Site, across 4th Street, is a residential area zoned R-4. A commercial corridor zoned C-2-A, C-2-B, and C-2-C is east of the Site along H Street. A mix of residential, commercial and institutional uses is north of the Site, across the alley and I Street. At the corner of 4th and I Streets is 318 I Street, a development project containing 160,000 square feet, 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 served by 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 District to contain a minimum of 15,000 square feet of land. The total land area of the entire PUD site is 60,870 square feet, which 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 density of 2.5 FAR. (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 600 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; one space for each 300 square feet of gross floor area in excess of 3,000 square feet for retail use; and one space for every two 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 65 feet, with no limit on the number of stories, and a maximum density of 3.5 FAR. (11 DCMR §§ 770.1, 770.2) Under the PUD guidelines for the C-2-B District, the maximum permitted height is 90 feet and the maximum permitted density is 6.0 FAR. (11 DCMR §§ 2405.1, 2405.2) Parking is required in the C-2-B District at a rate of one space for each 1,800 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; one space for each 750 square feet of gross floor area in excess of 3,000 square feet for retail use; and one space for every three 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.

17. As a matter-of-right the total development of the Site could be 91,305 square feet of commercial use and 112,668 square feet of residential space. If the Site were developed entirely for residential use, 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

18. Under the proposed PUD, the zoning of the entire site would become C-2-B. The C-2-B designation permits a maximum height of 65 feet, with no limit on the number of stories, and a maximum density of 3.5 FAR. (11 DCMR §§ 770.1, 770.2) Parking is required in the C-2-B District at a rate of one space for each 1,800 square feet of gross floor area and cellar floor area in excess of 2,000 square feet for general office use; one space for each 750 square feet of gross floor area in excess of 3,000 square feet for retail use; and one space for every three dwelling units. (11 DCMR § 2101.1) Commercial development of approximately 91,305 square feet is permitted on the Site as a matter-of-right under C-2-B zoning. Additional residential development of approximately 121,740 square feet is also permitted on the Site as a matter-of-right. If the Site were developed entirely for residential use, approximately 213,045 square feet would be permitted as a matter-of-right under the proposed C-2-B zoning.

19. Under the PUD guidelines for the C-2-B District, the maximum permitted height is 90 feet and the maximum permitted density is 6.0 FAR. (11 DCMR §§ 2405.1, 2405.2)

Development Flexibility and Incentives

20. The Applicant requested flexibility from the following requirements:

    a. *Roof Structures.* The Applicant requested flexibility from the provisions of §§ 411 and 770.6 that require the roof structures to be in a single enclosure and set back from all exterior walls at a 1:1 ratio and that the enclosure be of uniform height. Separate mechanical penthouses were proposed 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 will not meet the required setback and will be located in multiple structures. Also, to reduce their visibility, some of the roof structures will not have walls of equal heights.

    b. *Residential recreation space requirement.* Section 773.3 requires that an area equal to 15 percent of the residential gross floor area be dedicated to recreation space. The Applicant proposes to provide an area equal to approximately 10 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. *Lot occupancy requirements.* Section 772.1 allows a maximum lot occupancy of 80 percent for any level of a building with a residential use in the C-2-B District. The residential use of the proposed building will begin on the second level with 16,906 square feet of residential space, but the building at this level will occupy approximately 82 percent of the lot. The third level, where the residential use will be more substantial (40,570 square feet), will have a lot occupancy of 68 percent.

    d. *H Street Overlay.* The H Street Overlay requires that new buildings be designed and built so that not less than 75 percent of the streetwall will be constructed to the property line abutting the street right of way, so as not to preclude entrances every 40 feet. The Applicant designed the proposed building to be set back approximately four feet from the property line along H Street so as to provide a more pleasant and efficient pedestrian experience. The Project plans do not provide for an entrance every 40 feet on average, because the proposed grocery store tenant requested a single point of entry to control access and prevent inventory loss. The Project will provide the required entrances for the other retail fronting on H Street.

21. 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 appropriate architectural design for the Project that includes 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 fresh, while seeking to complement 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 and H Streets and the residential entrance on H Street, and an overall sculpting of the building's massing in concordance with surrounding neighborhood. For the entire length of H Street frontage, the building will be set back from the property a typical distance of four feet in order to increase the width of the sidewalk. This additional width will enhance the pedestrian experience by reducing congestion and allowing for more open space.

The building facades were 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 will employ a framing armature of brick and stone piers complemented with substantial glazed openings. The style of the fenestration will differentiate between the retail and residential floors, allowing for a unique expression of those two uses. The design includes architectural embellishment at the corner of 3rd and H Streets to accentuate that location as a gateway to the commercial opportunities along H Street and beyond. The design proposal also includes 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.* The Project was designed such that its primary bulk will be on H Street, away from the nearby residential community. The building design will provide relief to the adjacent neighborhood by having the building transition from a maximum of 90 feet down to 69-, 59-, and 49-foot levels as it approaches neighboring properties at different locations, as shown on the approved plans. At the corner of 4th and H Streets, the building height will step down from 69 feet to approximately 59 feet. At the northwest corner of the Site, the building will step down from 90 feet to 49 feet. At the rear of the building, the design calls for an eight-foot setback at the seventh floor level. These reductions in height will minimize any potential adverse on the adjacent residential community. The Applicant also proposes improvements to 3rd, 4th, and H Streets, as well as improvements to the remaining alley system in Square 776. In particular, the PUD building will be set back from the property line along the alley, so that the alley effectively will be widened and, in most areas, the available passageway will be more than doubled. The Applicant will

pave this additional area in the alley to allow more efficient ingress and egress. In addition, the building will be set back four feet from H Street to allow for a wider sidewalk and easier pedestrian passage. The Applicant will also provide significant open space for residents at the second story terrace and roof decks.

c. *Transportation Features.* The Project offers several transportation management measures. (i) The PUD is located along three bus routes and is less than one-third of a mile from the Union Station Metrorail Station; the location provides significant opportunities for public transportation use with Metrorail, Metrobus, and local and regional trains serving Union Station. This proximity will allow a significant proportion of site trips made by mass transit or other non-passenger car modes. (ii) The Project will include a three-level parking garage that 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. (iii) The eastern branch of the Metropolitan Branch Trail, which connects Union Station and Takoma Park and provides access to Capitol Hill, is located two blocks to the west of the Project. (iv) The Transportation Study, submitted as Exhibit 6, concluded that the Project would not significantly change the projected future intersection levels of service.

d. *Employment and Training Opportunities.* The Project will promote 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 Exhibits 7 and 52 projected that the equivalent of 176 full-time jobs will be located at the PUD, with an estimated annual District based payroll of $5,000,000. The development will stimulate economic activity in an area targeted for further revitalization and in accordance with the Comprehensive Plan and its objectives.

The Applicant executed a First Source Employment Agreement to achieve the goal of utilizing District residents for at least 51 percent of the jobs created by the PUD. 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") to achieve, at a minimum, the goal of 35 percent participation in the contracted development costs in connection with design, development, construction, maintenance, and security of the PUD. The Applicant has submitted a Memorandum of Understanding to SLBOC.

e. *Housing.* This Project will create additional housing stock. Approximately 48 percent of the units will be one-bedroom units, approximately 22 percent of the units will be one-bedroom and den units, approximately 28 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 10 percent of the increase in gross floor area as housing units affordable to households making no more than 80 percent of the area median income. The Applicant indicated that additional affordable housing units could not be provided in the PUD due to the cost of providing underground parking for the grocery store.

f. *Special Value to the Neighborhood.* This Project will add special value to the surrounding neighborhood by bringing a grocery store of approximately 45,000 square feet and appropriate retail development that will serve the community. The H Street Overlay specifically encourages a grocery store in this Square.

g. *Other Public Benefits and Project Amenities.* The Project will provide economic development in an area designated as a Development Opportunity area. The Applicant's proposal to locate a major mixed-use development with a grocery store will give a boost to the economic development of the area, as shown by the Economic Impact Analysis submitted as Exhibits 7 and 52.

22. The PUD is acceptable in all proffered categories of public benefits and amenities and is superior in the categories of architecture and special value to the neighborhood, by providing a 45,000-square-foot grocery store in a location identified as appropriate for retail development serving the community.

23. The proposed PUD will advance the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and will further the major themes and elements of the District and Ward 6 Elements of the Comprehensive Plan. The Project will advances the purposes of the Comprehensive Plan by promoting the social, physical, and economic development of the District through the provision of high quality development that will enhance the built environment.

24. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:

a. *Stabilizing and Improving the District's Neighborhoods.* 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 will respect and improve the physical character of the District through the construction of a well-planned and carefully designed development. The PUD's design will enhance the prominence of the H Street corridor and will complement 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 will provide 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 will take advantage of this asset by its location along major Metrobus routes and its proximity to the Union Station and Metrorail.

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 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.

25. 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 the objective, it is a policy to support appropriate development of the H Street, N.E. corridor. (10 DCMR § 206.2(b)) The Project will bring 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 relationships to adjacent buildings. (10 DCMR § 204.2(c)) The Project will contribute to a sense of place in the H Street area. The design is sensitive to the nearby residential communities, acknowledging their low-rise nature by a decrease in height of the proposed building. The Project will also provide 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: (i) 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 (10 DCMR § 302.2(a)); and (ii) 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. (10 DCMR § 302.2(d))

The Project is consistent with the objectives and policies of this element. The PUD will provide 210 to 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 percent of the increased floor area will be affordable housing units.

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 Site, served by major Metrobus routes and within close proximity to the 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 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 will step down – from 90 feet to approximately 69 feet – to better fit with the nearby residential community. In this regard, the Project's massing and scale will be 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, 4th, and H Streets. Of particular note, the proposed building will be set back four feet from the property line along H Street to provide a wider sidewalk 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 will be located within a Development Opportunity Area. These areas offer opportunities to accommodate new growth and development. (10 DCMR § 1118.3)

26. The Comprehensive Plan Generalized Land Use Map depicts the Site in a mixed-use category. The Generalized Land Use Policies Map depicts the Site in a Development Opportunity Area. The proposed PUD is consistent with the Generalized Land Use Maps.

27. The Project will fulfill and further 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))

The Project will provide 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)) The Project will provide 210 to 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, that 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 developments that provide 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))

The Project 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 proposed 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 encourages more business development along the H Street corridor. (10 DCMR § 1732.7) This Project proposes appropriate commercial and retail development in this area.

Office of Planning Report

28. By report dated June 26, 2006 and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD application. OP stated that the proposed PUD is not inconsistent with the objectives and policies of the Comprehensive Plan. OP further stated that the proposal is consistent with the H Street N.E. Strategic Development Plan and the H Street Overlay. OP also stated that the Project met the objectives and evaluation standards and for 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

29. By report dated June 28, 2006, the District Department of Transportation ("DDOT") stated it had no objections to the Project.

Advisory Neighborhood Commission

30. By resolution dated July 6, 2006, ANC 6C supported the proposed PUD project and map amendment.

Issues Raised by Persons in Opposition

31. 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

32. 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 that the project design permitted significant step-downs in height at the corner of 4th and H Streets as well as the northwest 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.

33. In response to comments by the Commission at its public meeting on September 11, 2006, the Applicant submitted revised plans, dated October 5, 2006 (Exhibit 58), that (i) reduced the height of the center apartment wing by two stories; (ii) included a stair penthouse at the south end of the center wing, continuing the second means of egress from the roof terrace on top of the eighth floor of the H Street wing to the penthouse on the top floor of the center wing (two stories down) and then down through the building; (iii) included a six-foot setback on the east side of the sixth floor (the top floor) of the center wing; (iv) eliminated the retail grocery mezzanine and replaced it with residential units; (v) reduced the density from 5.0 FAR to 4.8 FAR; (vi) reallocated the parking supply so as to assign 152 spaces to the retail use and 247 spaces to the residential use; and (vii) required an acoustical façade treatment around the residential loading berth.

CONCLUSIONS OF LAW

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

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. 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 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 construction 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 will not be unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed in

terms of height and mass and will be complementary to the adjacent commercial and residential buildings.

6. The application 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 the related 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 issues and concerns of the affected ANC. The Commission has carefully considered the ANC's recommendation of approval and concurs in its recommendation.

11. The application for a PUD and related map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

12. The application for a PUD and map amendment is 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 application 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 in Square 776, and for a related Zoning Map amendment from C-2-A to C-2-B for Lots 25-31 of Square 776 and portions of the public alleys proposed to be closed, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners dated October 5, 2006, marked as Exhibit No. 58 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 Plans. The building shall contain approximately 304,651 square feet of gross floor area. The total project shall have a maximum overall density of 4.8 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 above the roof upon which it is located, as shown on the Plans.

4. The Project shall include a minimum of 247 parking spaces allocated to the residential use and 152 allocated to the retail use in the below-grade parking garage.

5. The Project shall include three 55-foot loading berths and two 20-foot service/delivery/loading spaces, as shown on the Plans. Trucks using the residential loading berth shall not exceed 30 feet in length. Residential loading shall not occur before 9:00 a.m.

6. The Applicant shall include landscaping for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping for the duration of the Project.

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 for the duration of the Project.

8. Approximately 10 percent of the increase in gross floor area shall be devoted to housing units that will be affordable to households making no more than 80 percent of the area median income.

9. Forty-five thousand square feet of gross floor area shall be reserved for a grocery store use.

10. 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 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.

11. 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.

12. 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.

13. 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.

14. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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 October 16, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Gregory Jeffries, Anthony J. Hood, John G. Parsons, and Michael Turnbull to approve).

On December 11, 2006, the Zoning Commission took final action to **ADOPT** this Order by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael Turnbull to adopt).

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 OCT 1 2 2007.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., December 7, 2005

Plat for Building Permit of: SQUARE 776 LOTS 4,9, 25-31, 51-53 & 821

Scale: 1 inch = 40 feet

Recorded in Book A&T Page B-178 (LOTS 4,9,25-31)
Book 178 Page 41 (LOTS 51 -53)
A & T Book Page 3795-M (Lot 821)

Receipt No. 24546

Furnished to: FREDA

Surveyor, D.C.

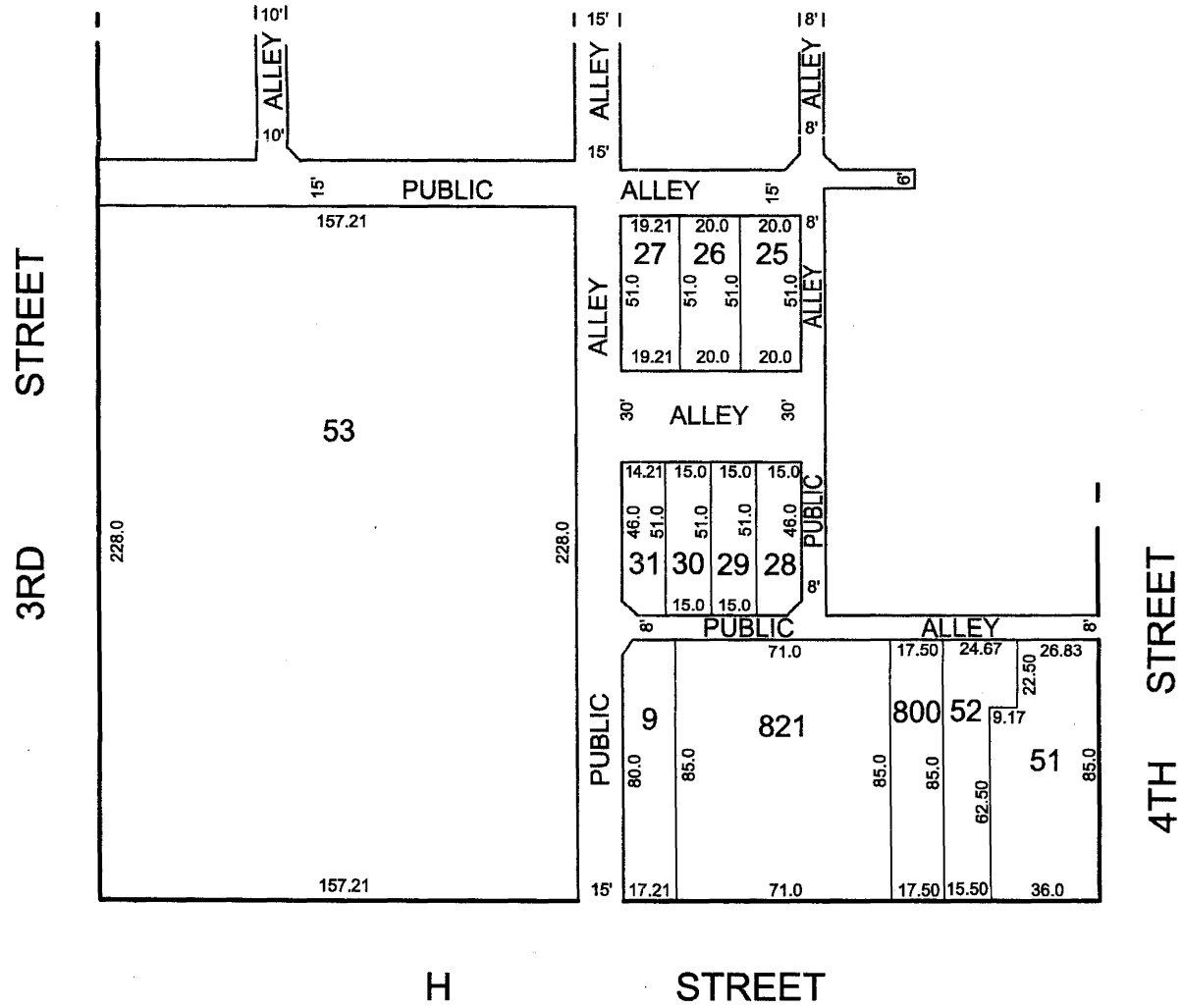
By: L.M.A.

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

Date: _____

_____
(Signature of owner or his authorized agent)

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



Z.C. Case #06-01

SO-24546(2005)