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October 17, 2013

VIA IZIS AND HAND DELIVERY

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

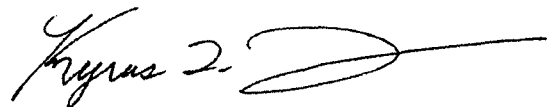
Re: **Applicant's Proposed Order for Z.C. Case No. 06-04C (Florida & Q Street, LLC – Modification to PUD @ Square 3100)**

Dear Members of the Commission:

On behalf of Florida & Q Street, LLC (the “Applicant”), as Applicant in the above-referenced case, we hereby submit the Applicant's proposed order.

Thank you for your attention to this matter.

Sincerely,



Kyrus L. Freeman

Attachment

cc: Advisory Neighborhood Commission 5E (w/attachment, via U.S. Mail)
Karen Thomas, D.C. Office of Planning (w/attachment, via Hand)
Jake Ritting, D.C. Office of the Attorney General (w/attachment, via Hand)

ZONING COMMISSION
District of Columbia
CASE NO.06-04C
EXHIBIT NO.36

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04C/06-04D
Case No. 06-04C/06-04D

Florida & Q Street, LLC
(Time Extension and Modification to Approved Planned Unit Development
@ Square 3100)
[Date of Final Action]

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 3, 2013 to consider applications from Florida & Q Street, LLC (the "Applicant"), the owner of record of Lot 48 in Square 3100, for the approval of a time extension and modifications to the planned unit development ("PUD") approved pursuant to Z.C. Order No. 06-04, as extended pursuant to Z.C. Order Nos. 06-04A and 06-04B. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing on the modification application was conducted in accordance with the provisions of 11 DCMR §3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. Pursuant to Z.C. Order No. 06-04, dated January 8, 2007, effective June 15, 2007, the Commission approved a consolidated PUD and zoning map amendment for the property located at Lot 48 in Square 3100 (the "Subject Property") to enable the development of a new building on the site.
2. The Subject Property has a land area of approximately 18,984 square feet and is located in the northwest quadrant of the District at the intersection Q Street, Florida Avenue, and North Capitol Street. The Subject Property extends approximately 150 feet north along North Capitol Street and is currently unimproved.
3. The approved project includes approximately 85,428 square feet of gross floor area, with approximately 81,428 square feet of gross floor area devoted to residential use, providing between 65 and 85 dwelling units, and approximately 4,970 square feet of floor area was devoted to retail use in the cellar. The approved project has a maximum density of 4.5 FAR and a maximum building height of 86 feet (not including roof structures). The approved project includes 84 parking spaces located on two levels of underground parking accessed from a curb cut on Florida Avenue.
4. Pursuant to Z.C. Order No. 06-04A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 15, 2011. Within said time an application was to be filed for a building permit, as specified in Section 2409.1 of the

Zoning Regulations, and construction of the project was to commence no later than June 15, 2012.

5. Pursuant to Z.C. Order No. 06-04B, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2013, and construction of the project is to commence no later than June 15, 2015.
6. On May 31, 2013, the Applicant filed an application with the Commission for approval of modifications to the approved project. The application included plans that depicted the modifications. The Applicant also filed a request for a two year extension of Zoning Commission Order No. 06-04, as extended by Order Nos. 06-04A and 06-04B, such that an application must be filed for a building permit for the approved PUD no later than June 15, 2015 and construction to start no later than June 15, 2016.
7. The modification request and the time extension request came before the Commission at its public meeting held on July 8, 2013. A hearing on a time extension request is required, "only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD proceedings concerning any of the criteria" for approval. (11 DCMR § 2408.12.) Since no conflict was raised, no hearing was scheduled for the time extension application. Instead, the Commission voted to defer acting on the request until after it took proposed action on the modification, which it also set down for a hearing at that same meeting.
8. On June 28, 2013, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the modification application. (Exhibit 12).
9. On July 17, 2013, the Applicant submitted a Prehearing Statement. (Exhibit 13). The Prehearing Statement included information regarding the Applicant's meeting with the D.C. Department of Transportation ("DDOT") regarding the proposed modifications; information regarding the amount of affordable housing to be provided in the modified project; the anticipated timing for finalizing the updated list of amenity recipients; and the applicable information required pursuant to Section 3013 of the Zoning Regulations. (Exhibit 13).
10. On September 13, 2013, the Applicant submitted a Supplemental Prehearing Statement. (Exhibit 18 to 18B). The Supplemental Prehearing Statement included updated Architectural Plans and Elevations, and a supplemental Transportation Memorandum prepared by Symmetra Design.
11. On October 1, 2013, the Applicant submitted the resume of Jennifer A. Marca, who was proffered as an expert in residential architecture and design on behalf of the Applicant. (Exhibit 21).
12. After proper notice, the Commission held a public hearing on the modification application on October 3, 2013.

13. The parties to the case were the Applicant and the Advisory Neighborhood Commission ("ANC") 5E, the ANC within which the Subject Property is located.
14. OP and DDOT testified in support of the project at the public hearing.
15. Two individuals also testified in general support of the application at the public hearing and submitted written testimony. (Exhibits 31 and 32).
16. At the hearing, the Applicant submitted a summary of the proposed modifications (Exhibit 26); a copy of its transportation expert's hearing presentation (Exhibit 27); and a copy of its architect's hearing presentation (Exhibit 28).
17. Three principal witnesses testified on behalf of the Applicant at the public hearing, including Bill Bonstra, FAIA, LEED AP and Jennifer Marca, on behalf Bonstra | Haresign Architects, as experts in residential architecture and design, and Nicole A. White, P.E. PTOE, on behalf of Symmetra Design, as an expert in transportation planning and analysis. Based on their professional experience, as evidenced by the resumes submitted for the record, Mr. Bonstra, Ms. Marca, and Ms. White were qualified by the Commission as experts in their respective fields.
18. On October 2, 2013, ANC 5E submitted a request that the Commission waive the requirement of Section 3012.5 of the Zoning Regulations, which requires that "[i]f an Advisory Neighborhood Commission (ANC) wishes to participate in a contested case under § 3022, the ANC shall file a written report with the Zoning Commission at least seven (7) days in advance of the hearing," and accept the ANC's report. (Exhibits 23 and 24). The Commission voted to at the public hearing to waive Section 3012.5 and to accept the written report of ANC 5E.
19. The Commission took proposed action to approve the modification application at the conclusion of the public hearing on October 3, 2013.
20. On October 10, 2013, the Applicant submitted its final list of proffered public benefits and amenities (Exhibit 34), and a consolidated listing of the off-site amenity recipients. (Exhibit 35).
21. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on October 9, 2013 under the terms of the District of Columbia Home Rule Act. NCPC, by report dated _____ found that the proposed modifications to the project will not affect the federal interests. (Exhibit _____)
22. The Commission took final action to approve the modification application and the time extension application on November 18, 2013.

Extension Request

23. Section 2408.11(a) of the Zoning Regulations supports the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. Specifically, the residential market has rendered it difficult for the Applicant to obtain sufficient financing for the project, despite the Applicant's good faith efforts.
24. Since the PUD was initially approved, the unanticipated change in the sales and rental environment for the construction of residential projects has suffered significant downturns that have impeded the Applicant's ability to secure financing for this project. Indeed, the Commission has found in a number of cases that the changes in the economy and residential housing market conditions, combined with uncertainty in the markets, has resulted in a general lack of willingness on the part of lenders to finance projects.
25. As indicated in the materials submitted by the Applicant, including materials prepared by the Applicant's real estate broker, the Applicant has worked diligently to secure financing for the project, and has met with numerous potential lenders and other financing sources, but has been unable to due to the volatility in the industry to secure project financing or attract a joint venture partner.
26. Specifically, the Applicant has worked with Cassidy Turley, a leading commercial real estate services provider. Cassidy Turley has actively marketed the development site. They have developed a flyer and a Confidential Offering Memorandum providing details about the site and the development opportunities planned, as well as the surrounding neighborhood to potential investors. Cassidy Turley has reached out to 3,220 groups that include local developers, institutional investors, and major REITS, but not have been willing to provide financing for the approved PUD. The Applicant continues to work with many of the groups mentioned above, along with many others, on an ongoing basis to monitor the financial markets closely in order to secure the necessary financing for the project.
27. To date, the Applicant has been faced with the following impediments in attempting to obtain financing for the project:
 - Construction costs for the project have increased significantly since the PUD was approved.
 - The Applicant has meet with a number of lenders, yet these efforts have not yielded financing for the project because market conditions and construction cost have continued to increase at an unpredictable rate.
 - A number of the banks that the Applicant initially contacted for financing the project have either frozen lending for residential projects or have ceased lending operations due to the uncertainty in market conditions and the softening of the housing market.

28. In addition, as indicated in the expense analysis submitted by the Applicant, the Applicant has invested more than \$3.7 million in the property since 2005. Despite the Applicant's good faith efforts, the Commission finds that that Applicant has been unable to obtain financing for the approved project and thus meets the standards for the extension request.

Modified Project

29. The Applicant is seeking modifications to: reduce the building's maximum height from 86 feet to 72 feet, 4½ inches (not including roof structures); provide approximately 85,428 square feet of gross floor area; provide between 85 and 95 dwelling units and approximately 4,998 square feet of floor area devoted to retail use in the cellar, with the option to convert this space to residential use if it cannot be leased for retail uses; provide 41 parking spaces located on one level of underground parking accessed from Florida Avenue; and to make minor refinements to the exterior facades of the building. The overall density of the modified project is 4.5 FAR, which is consistent with the approved PUD.
30. In addition, given that four of the original amenity recipients identified in Z.C. Order No. 06-04 have been closed, are no longer operational, or otherwise have been completed, the Applicant is seeking approval to reallocate the funds originally designated for Shaed Elementary School, the J.F. Cook Elementary School, the North Capitol Street BID Incubation Fund, and the installation of an entrance gate at the Florida Avenue park, to new uses, while maintaining the aggregate amount of the contributions at \$109,600.00.
31. The Applicant requested that the Commission provide flexibility for the Applicant to convert to residential use the proposed 4,998 square feet of floor area devoted to retail use in the cellar if this space cannot be leased for retail uses. However, based upon comments from the Commission at the public hearing and ANC 5E's recommendation that the Applicant retain the retail space and not be permitted to convert such space into living space, the Applicant withdrew this request for flexibility at the public hearing. The Commission determined that although the Applicant cannot convert the proposed retail space to residential space without coming back to the Commission, the Commission would treat such request as a minor modification in the future if the request is supported by documentation demonstrating the Applicant's efforts to market the space to retail tenants, and the Applicant's inability to secure tenants interested in or capable of leasing the space.

Development Flexibility

32. Pursuant to Z.C. Order No. 06-04, the Zoning Commission approved relief from the court width, residential recreation space, and loading requirements for the approved development. Similar to the approved PUD, the revised design requires relief from the court width and loading requirements, and relief from the roof structure requirements.

Relief is no longer necessary from the residential recreation space requirements since those requirements have been repealed.

33. *Flexibility From Court Width Requirement (Section 776)*. Although the Zoning Regulations do not require that buildings include a court, Section 776.3 of the Zoning Regulations requires that if a court is provided, it must have a minimum court width of four inches per foot of height, but not less than 15 feet (§776.3), and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (§776.4). The modified PUD includes a closed court with a width of 15 feet, 2 inches and an area of 773 square feet located along the northern property line. The court is in the same locations and has the same width as that shown on the approved PUD plans. The height of the court is 77 feet, 6 inches and therefore the required width is 25 feet, 10 inches and the required area is 250 feet, thus triggering the need for relief. The Zoning Commission approved the same court relief as part of the approved PUD. See Z.C. Order No. 06-04, Finding of Fact No. 25(a). Similar to the approved PUD, the Applicant is attempting to provide more open space at the rear of the property to allow for additional buffer to the nearby residences, and therefore would like to provide this court space. However, the Applicant cannot increase the width of the court to meet the requirement since that would impact the ability to offer full sized units along the west side of the North Capitol Street wing. The reduced court area will not be visible from the street.
34. *Flexibility From The Off-Street Loading Requirements (Section 2201)*. The Applicant requests flexibility from the off-street loading requirements. Section 2201.1 of the Zoning Regulations provides that an apartment house or multiple dwelling with 50 or more dwelling units is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. 11 DCMR §2201. However, due to the anticipated needs of the residential use, the Applicant is instead proposing to provide one loading berth at 30 feet deep, one loading platform at 525 square feet, and one service/delivery loading space at 20 feet deep. The Zoning Commission approved the same loading relief as part of the approved PUD and the loading facilities are in the same location as initially approved by the Zoning Commission. See Z.C. Order No. 06-04, Finding of Fact No. 25(c). Given the nature and size of the residential units, it is unlikely that the building will be served by 55 foot tractor-trailer trucks. In addition, the loading areas are likely to be used by the residents primarily when they move in or out of the building, and any subsequent use by residents is generally infrequent and can be restricted to times which pose the least potential conflicts and thus will not result in any adverse impacts.
35. *Flexibility From Roof Structure Requirement (Sections 411 and 770)*. The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because, as shown on the roof plan sheets included in the Modified Plans: (1) there will be multiple roof structures (§411.3 and §770.6(a)); (2) each stair tower cannot be setback from all exterior walls a distance equal its height above the roof (§§ 411.2 and 770.6(b)); and (3) the enclosing walls of a roof structure are not of an equal height (§ 411.4). Specifically, the project includes: (a) a roof structure located along the east-west

portion of the roof that encloses stair tower and elevator, with enclosing walls of 10 feet. This structure meets the set back requirements; (b) a roof structure located behind the tower element of the roof that encloses an elevator, with enclosing walls of 10 feet and 13 feet, 6 inches. This structure does not meet the set back requirement from the courtyard wall; and (c) a roof structure located along the north-south portion of the roof that encloses a stair tower with enclosing walls of 10 feet. This structure meets the set back requirements. Each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The location and number of roof structures is driven by the layout and design of the residential units within the building, as well as the location of the core features such as the elevator. The Applicant designed the roof structures to have walls of unequal height in order to help reduce the visibility of the structures. In addition, the Applicant is providing the greatest setbacks possible given the size of the roof and the internal configuration of the proposed building. The requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

36. *Additional Areas of Flexibility.* The Applicant has made every effort to provide a level of detail that conveys the significance and appropriateness of the project's design for this location. Nonetheless, some flexibility is necessary that cannot be anticipated at this time. Thus, the Applicant also requests flexibility in the following areas:

- i. To be able to provide a range of 85 to 95 residential units.
- ii. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
- iii. To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the number required by the Zoning Regulations.
- iv. 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; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Compliance with PUD Evaluation Standards

37. The Commission found in Z.C. Case No. 06-04 that a number of public benefits and amenities will be created as a result of the approved project (See Z.C. Order No. 06-04, Finding of Fact No. 26); that the approved project is consistent with many of the Comprehensive Plan's major themes (See Z.C. Order No. 06-04, Finding of Fact No. 28); that the approved project will further the specific objectives and policies of many of the Comprehensive Plan's major elements (See Z.C. Order No. 06-04, Finding of Fact No. 29); and that the approved project fulfills and furthers specific objectives for Ward 5 (See Z.C. Order No. 06-04, Finding of Fact No. 31).
38. The OP report filed in this application indicates that the project, as modified, will continue to provide a number of public benefits and amenities, particularly since the project gains no additional density through this PUD modification over what was previously approved. OP also indicated that the project, as modified, is consistent with the 2006 Comprehensive Plan, including the Land Use, Housing, Urban Design and Mid-City Area elements and their related policies.
39. Accordingly, the Commission finds that the project, as modified, continues to meet the applicable PUD evaluation standards of Section 2405 of the Zoning Regulations.

Updates to Approved Public Benefits and Amenities

40. In working with DDOT and ANC 5E, the Applicant has agreed to implement the following Transportation Demand Management ("TDM") measures during the life of the modified project:
 - i. Loading Facilities - The project shall include one 30-foot deep loading berth and one 20-foot deep loading berth, as shown on Sheet A-3.2 of the Plans.
 - ii. Delivery Day/Hours - The Applicant shall require residents of the building to schedule use of the loading berth on Monday through Friday from 10:00 AM to 2:00 PM and after 7:00 PM, and on Saturdays and Sundays from 7:00 AM to 7:00 PM.
 - iii. Truck Size - The Applicant shall prohibit trucks larger than 30 feet from utilizing the loading berth.
 - iv. Loading Management Coordinator - The Applicant shall assign a loading management coordinator to prevent truck queuing and to help guide trucks' back-in movements.
 - v. Residential Parking Permit Prohibition - The Applicant shall include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit (RPP) Program. In addition, the Applicant will request that DDOT remove the Subject

Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP. For so long as the Applicant owns the Subject Property, and once DDOT has removed the Subject Property from the list of properties eligible for RPPs or has classified the Subject Property as ineligible for RPP, the Applicant shall not reapply to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP. The Applicant shall also include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from reapplying to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP.

- vi. Unbundling of Parking - The Applicant shall unbundle all parking cost from the cost of lease or purchase.
 - vii. Posting of Transportation Demand Management Commitments and Promotion of Public Transportation Options - The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised. The Applicant shall also provide each initial tenant a welcome package that promotes website links such as CommuterConnections.org, goDCgo.com, Capital Bikeshare, carsharing, WMATA, and DC bicycle maps.
 - viii. Site Access - The Applicant shall restrict the Florida Avenue curb cut to right-in/right-out movements. The Applicant shall post signage prohibiting left turns in or out of the Florida Avenue curb cut.
 - ix. Bikeshare or Carshare Membership - The Applicant shall offer each initial tenant/owner of the building the one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership.
 - x. Transportation Screen - The Applicant shall provide a transportation information screen in the residential lobby that will show real time arrival /availability for nearby buses, trains, carshare, and bikeshare.
 - xi. Bike Parking Spaces - The building shall include a minimum of 60 bike parking spaces in the building.
41. Decision No. 6. of Z.C. Order No. 06-04 provided that "[a]ffordable housing shall be provided as specified in the Affordable Housing Commitment standards identified as Exhibit No. 42 of the record." However, given that the Inclusionary Zoning regulations have been adopted since issuance of Z.C. Order No. 06-04, the Applicant has committed that during the life of the project, a minimum of 8% of total residential gross floor area (i.e., 6,744 square feet of gross floor area) will be dedicated as affordable housing units and will comply with the applicable Inclusionary Zoning regulations.
42. The approved off-site amenities package, which totals \$109,600, included the Applicant making the following contributions: \$1,000 to Shaed Elementary School (Finding of

Fact No. 26.g.i.); \$6,600 to J.F. Cook Elementary School for the purchase of student school supplies (Finding of Fact No. 26.g.ii); \$1,000 to a contractor selected by the ANC for the installation of an entrance gate at the Florida Avenue park (Finding of Fact No. 26.g.vii); and \$35,000 for the North Capitol Street BID Incubation Fund for the creation of a business improvement district along the North Capitol Street corridor (Finding of Fact No. 26.g.ix.). These four contributions collectively total \$43,600. However, subsequent to the PUD's initial approval in 2006, Shaed Elementary School, the J.F. Cook Elementary School, and the North Capitol Street BID Incubation Fund have been closed and are no longer operational, and the renovation of the Florida Avenue park has been completed.

43. Accordingly, the Applicant worked with ANC 5E and the Ward 5 Councilmember to reallocate the funds originally designated for the closed schools, the entrance gate, and the BID incubation fund. The Applicant agreed to reallocate those funds as follows: \$37,000 to North Capitol Main Street, Inc. for storefront improvements and technical assistance; and \$6,600 to the NOMA Bid or a similar, established organization for neighborhood cleaning and/or beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association. The reprogrammed amounts collectively total \$43,600, while maintaining the aggregate amount of the contributions at \$109,600.00. A consolidated list of the revised off-site amenities follows:

- i. \$6,600 to Dunbar Senior High School for the purchase of band and cheerleader uniforms and band instruments.
- ii. \$6,600 to McKinley Technology High School for the purchase of books, classroom materials, and computer equipment for the school's Biotechnology, Broadcast Technology, and Information Technology instructional programs.
- iii. \$6,600 to William E. Doar, Jr. Public Charter School for the Performing Arts for the purchase of musical instruments.
- iv. \$6,600 to D.C. Preparatory Academy PCS for the purchase of supplies and materials to support the school's academic tutoring, sports, and arts enrichment programs.
- v. \$6,600 to the North Capitol Main Street, Inc. for community improvement projects, such as the purchase of materials for the planting of trees.
- vi. \$6,600 to the Bloomingdale Civic Association for the purchase of equipment and uniforms for youth sports activities and a contribution to the association's student scholarship fund.
- vii. \$6,600 to the Eckington Civic Association for the purchase of equipment and materials necessary to develop a neighborhood website and community newsletter, as well as for the creation of a fund to assist seniors with quality-of-life issues.

- viii. \$6,600 to the Stronghold Civic Association for the purchase of equipment and materials for youth sports activities and a contribution to the association's student scholarship fund.
- ix. \$6,600 to the Bates Street Civic Association for the installation of gates for a pocket park and wrought iron borders for tree boxes and for other community beautification projects.
- x. \$6,600 to the 5th District Citizens Advisory Committee for the sponsorship of and purchase of materials for local youth-related events and programs.
- xi. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs evidence that the Applicant provided \$37,000 to North Capitol Main Street, Inc. for storefront improvements and technical assistance.
- xii. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs evidence that the Applicant provided \$6,600 to the NOMA Bid or a similar, established organization for neighborhood cleaning and/or beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association.

Office of Planning Reports

- 44. By report dated June 28, 2013, OP recommended that the modification application be set down for public hearing, and indicated that the project, as modified, is substantially consistent with the conditions identified in Z.C. Order No. 06-04. (Exhibit 12).
- 45. By report dated September 23, 2013, OP recommended final approval of the modification application. (Exhibit 20). OP indicated that the modified project remains consistent with the permitted height and FAR under the approved map amendment. OP also noted that the modified project gains no additional density through this PUD modification over what was previously approved, and that the modification requests minimal additional flexibility. OP also opined that the modified project is consistent with the 2006 Comprehensive Plan, including the including the Land Use, Housing, Urban Design and Mid-City Area elements and their related policies. OP concluded that it supports the modified project and recommended approval of the modification application. The Commission concurs with the findings and recommendations of OP.

DDOT Report

- 46. By report dated September 23, 2013, DDOT indicated that it has no objections to the modifications, provided that the following conditions be incorporated into the project: (a) the Applicant should assign a loading management coordinator to prevent truck queuing and to help guide trucks back-in movements to eliminate conflicts with pedestrians and bicyclists; (b) in addition to the Transportation Demand Management

elements proposed by the Applicant, the Applicant should offer a Capital Bikeshare membership or carshare membership to all new tenants in perpetuity; and (c) the Applicant should provide a transportation information screen in the lobby that would show real time arrival/availability for nearby buses, trains, carshare, and bikeshare. (Exhibit 19).

47. With respect to the Applicant's request to reduce the amount of parking, DDOT noted that the Subject Property is well-served by transportation alternatives including multiple high-frequency bus routes, Metro, bikeshare, bicycle lanes, and sidewalks, and that the proposed on-site parking meets zoning requirements and is consistent with trends in parking provision across the District. Moreover, DDOT indicated that because of the project's location, the reduction in the size of the units from the previously-approved PUD, the availability of transportation alternatives, and the requested Transportation Demand Management strategies, demand for parking among potential residents is expected to be low. Further, the proposed parking provision is consistent with other recent projects in similar contexts across the District. Accordingly, DDOT concluded that the proposed parking provision should be sufficient to accommodate parking demand generated by the proposed project.
48. The Applicant agreed to implement DDOT's recommendations to assign a loading management coordinator and to provide a transportation information screen in the building's lobby. The Applicant also agreed to offer each initial tenant/owner of a unit in the building a one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership.
49. The Commission finds that the Applicant's proposal to provide a one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership, instead of offering these benefits in perpetuity, is appropriate given that the original approved PUD was not required to provide a Capital Bikeshare membership or carshare membership; the modified project meets the off-street parking requirements; and the Applicant has agreed to implement a number of TDM measures for the modified project.

ANC Report

50. ANC 5E, by resolution dated October 2, 2013, indicated that on September 17, 2013, ANC 5E held a regularly scheduled public meeting, at which notice was properly given and a quorum was present, and voted as follows: (1) that the Zoning Commission approve the requested modifications to the approved building, contingent upon the Applicant retaining the second level of parking included in the approved plans, and that the second level of parking preferably be made available as public parking and that the developer retain the retail space and not be permitted to convert such space into living space; (2) in the event that the Zoning Commission approves the Applicant's request to only provide one level of parking, then the Zoning Commission should require the Applicant to request that DDOT remove the PUD site from the list of properties eligible for Residential Permit Parking ("RPP"), or if presently not on the list, classifying it as

ineligible for RPP; and (3) that the Zoning Commission approve the Applicant's proposal to reallocate the approved amenity amounts of \$1,000 for Shaed Elementary School; \$35,000 for the North Capitol Street BID Incubation Fund; and \$1,000 for the installation of an entrance gate at the Florida Avenue Park (which collectively total \$37,000.00) to North Capitol Main Street, Inc. for storefront improvements and technical assistance since the initial recipients are closed or are no longer operational, provided that the Applicant should meet with the Hanover Area Civic Association to explore the feasibility of reprogramming the \$6,600 initially slated for the J.F. Cook Elementary School to uses within the boundaries of the Hanover Area Civic Association. (Exhibit 25).

51. ANC 5E also indicated that it supports the Applicant's agreement to reallocate the \$6,600 initially slated to the J.F. Cook Elementary School (which is closed) to the NOMA Bid or a similar, established organization for neighborhood cleaning/beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association.
52. As described in this Order, the Commission agrees with ANC 5E's recommendation that the Applicant be required to retain the proposed retail space, and thus the Applicant withdrew this request for flexibility. With respect to the amount of proposed parking, the Commission adopts the findings and analysis of DDOT, as well as the report, presentation, and testimony of the Applicant's transportation expert, all of which support the finding that the amount of parking proposed for the project is sufficient to meet the demand for the project, and is consistent with other recent projects in similar contexts across the District. Moreover, as part of approving the modification application, the Commission has adopted ANC 5E's recommendation requiring the Applicant to include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit (RPP) Program, and also requiring the Applicant to request that DDOT remove the PUD site from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP.

CONCLUSIONS OF LAW

Time Extension

1. The Applicant is requesting that the time for filing for a building permit pursuant to the plans approved by the Commission be extended by two years, with construction under the approved plans to begin a year thereafter.
2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving ANC 5E, the only party in the original PUD proceeding, with a copy of the request.
3. The Commission did not take action on the request until after the party had the requisite 30 days to respond.

4. In addition, Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in Section 2408.11.
5. The Commission concludes that a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in Section 2408.11 of the Zoning Regulations.
6. Pursuant to Section 2408.8 of the Zoning Regulation, the final PUD approved by the Commission is valid for a period of two years, within which time an application shall be filed for a building permit.
7. Construction shall start within three years of the date of final approval. 11 DCMR § 2408.9.
8. Failure of an applicant to complete a proposed development within the time limits set by the Zoning Regulations results in the termination of the benefits granted under the application, and reversion of the zoning controls to the pre-existing regulations and map. (11 DCMR § 2400.7.)
9. The Commission may extend these time periods for good cause shown upon the filing of a written request by the applicant before the expiration of the approval. (11 DCMR § 2408.10.)
10. There must, however, be no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original. (*Id*).
11. Of the three criteria that can be used to show good cause is, the Applicant is relying upon its, "inability to obtain sufficient project financing for the PUD, following ... diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control." (11 DCMR § 2408.11.)
12. The Commission finds there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
13. As to good cause, the Applicant met its burden of proof by presenting substantial evidence of its inability to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
14. The Commission therefore grants the time extension request, with the two-year period to file an application for a building permit under approved plans beginning upon the effective date of this Order.

PUD Modification

15. Having determined that the Applicant's request for a time extension may be granted, the Commission can now consider whether the PUD should be modified in the manner requested.
16. 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.)
17. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in § 3030. (11 DCMR §2409.9.) The Commission treated this modification request as a second-stage PUD application.
18. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
19. Development of the property included in this application 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.
20. The modified PUD meets the minimum area requirements of Section 2401.1 of the Zoning Regulations. The modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
21. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
22. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the

Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property 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.

23. The Commission is required under Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13- 135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. The Commission has given ANC 5E's recommendation great weight in approving the modification application.
24. The Commission is required under Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
25. The PUD modification is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this applications for a time extension and modifications of the PUD approved at Lot 48 in Square 3100 originally approved in Z.C. Order No. 06-04, subject to the following conditions:

1. The PUD shall be developed substantially in accordance with the plans prepared by Bonstra Haresign Associates, dated September 13, 2013 and marked as Exhibit No. 18A1-18A6 of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a mixed-use building having a combined gross floor area of approximately 85,428 square feet and one level of underground parking. Approximately 81,428 square feet will be devoted to residential use, providing between 85 and 95 dwelling units, and approximately 4,998 square feet of floor area will be provided for retail use in the cellar. The Project will have a maximum density of 4.5 FAR.
3. The project shall have a maximum building height of 72 feet, 4½ inches. 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 provide a minimum of 41 parking spaces. Access to the parking garage and the loading dock area will be from Florida Avenue.

5. During the life of the project, the Applicant shall implement the following Transportation Demand Management ("TDM") measures:
- a. Loading Facilities - The Project shall include one 30-foot deep loading berth and one 20-foot deep loading berth, as shown on Sheet A-3.2 of the Plans.
 - b. Delivery Day/Hours - The Applicant shall require residents of the building to schedule use of the loading berth on Monday through Friday from 10:00 AM to 2:00 PM and after 7:00 PM, and on Saturdays and Sundays from 7:00 AM to 7:00 PM.
 - c. Truck Size - The Applicant shall prohibit trucks larger than 30 feet from utilizing the loading berth.
 - d. Loading Management Coordinator - The Applicant shall assign a loading management coordinator to prevent truck queuing and to help guide trucks' back-in movements.
 - e. Residential Parking Permit Prohibition - The Applicant shall include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit (RPP) Program. In addition, the Applicant will request that DDOT remove the Subject Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP. For so long as the Applicant owns the Subject Property, and once DDOT has removed the Subject Property from the list of properties eligible for RPPs or has classified the Subject Property as ineligible for RPP, the Applicant shall not reapply to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP. The Applicant shall also include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from reapplying to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP.
 - f. Unbundling of Parking - The Applicant shall unbundle all parking cost from the cost of lease or purchase.
 - g. Posting of Transportation Demand Management Commitments and Promotion of Public Transportation Options - The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised. The Applicant will also provide each initial tenant a welcome package that promotes website links such as CommuterConnections.org, goDCgo.com, Capital Bikeshare, carsharing, WMATA, and DC bicycle maps.
 - h. Site Access - The Applicant shall restrict the Florida Avenue curb cut to right-in/right-out movements. The Applicant shall post signage prohibiting left turns in or out of the Florida Avenue curb cut.

- i. Bikeshare or Carshare Membership - The Applicant shall offer each initial tenant/owner of the building the one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership.
 - j. Transportation Screen - The Applicant shall provide a transportation information screen in the residential lobby that will show real time arrival /availability for nearby buses, trains, carshare, and bikeshare.
 - k. Bike Parking Spaces - The building shall include a minimum of 60 bike parking spaces in the building.
6. During the life of the project, a minimum of 8% of total residential gross floor area (i.e., 6,744 square feet of gross floor area) shall be dedicated as affordable housing units and shall comply with the applicable Inclusionary Zoning regulations.
7. The Applicant shall include landscaping, streetscape, and open space treatment for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping, streetscape, and open space treatments in good growing condition.
8. 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 such landscaping in the public space in good growing condition.
9. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range of 85 to 95 residential units.
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
 - c. To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the number required by the Zoning Regulations.
 - d. 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; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.
10. The PUD-related map amendment shall not become effective and 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

11. 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.
12. (a) No Certificate of Occupancy shall be issued for this PUD until the Applicant has submitted to DCRA evidence demonstrating that the Applicant has provided the funding for the following items:
 - a. \$6,600 to Dunbar Senior High School for the purchase of band and cheerleader uniforms and band instruments.
 - b. \$6,600 to McKinley Technology High School for the purchase of books, classroom materials, and computer equipment for the school's Biotechnology, Broadcast Technology, and Information Technology instructional programs.
 - c. \$6,600 to William E. Doar, Jr. Public Charter School for the Performing Arts for the purchase of musical instruments.
 - d. \$6,600 to D.C. Preparatory Academy PCS for the purchase of supplies and materials to support the school's academic tutoring, sports, and arts enrichment programs.
 - e. \$6,600 to the North Capitol Main Street, Inc. for community improvement projects, such as the purchase of materials for the planting of trees.
 - f. \$6,600 to the Bloomingdale Civic Association for the purchase of equipment and uniforms for youth sports activities and a contribution to the association's student scholarship fund.
 - g. \$6,600 to the Eckington Civic Association for the purchase of equipment and materials necessary to develop a neighborhood website and community newsletter, as well as for the creation of a fund to assist seniors with quality-of-life issues.
 - h. \$6,600 to the Stronghold Civic Association for the purchase of equipment and materials for youth sports activities and a contribution to the association's student scholarship fund.

- i. \$6,600 to the Bates Street Civic Association for the installation of gates for a pocket park and wrought iron borders for tree boxes and for other community beautification projects.
 - j. \$6,600 to the 5th District Citizens Advisory Committee for the sponsorship of and purchase of materials for local youth-related events and programs.
12. (b) Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall submit to DCRA evidence that the Applicant provided \$37,000 to North Capitol Main Street, Inc. for storefront improvements and technical assistance.
12. (c) Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall submit to DCRA evidence that the Applicant provided \$6,600 to the NOMA Bid or a similar, established organization for neighborhood cleaning and/or beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association.
12. (d) Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall submit to DCRA a letter from each organization identified in 12(a) - 12(c) verifying that the services funded have been or are being provided.
13. The PUD as modified shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Construction of the project must commence within three (3) 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 _____, 2013, the Zoning Commission approved the application by a vote of _ _ _ (_____).

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

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 _____.

ANTHONY J. HOOD
Chairman
Zoning Commission

SARA BARDIN
Director
Office of Zoning