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December 4, 2006

ZONING COMMISSION
District of Columbia

VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 Fourth Street, N.W., Suite 210
Washington, D.C. 20001

CASE NO. 06-14
EXHIBIT NO. 38

**Re: Zoning Commission Case No. 06-14 / Supplemental Filing
(Consolidated PUD – MRP Realty)**

Dear Members of the Zoning Commission:

This supplemental filing (one original and twenty copies) is submitted on behalf of MRP Realty (the "Applicant") in support of the above-referenced PUD application. The following information is provided in response to the comments and concerns raised by the Zoning Commission at the public hearing on November 30, 2006.

Community Outreach

The Applicant and Applicant's representatives met with the following organizations to inform the community about the proposed PUD:

9/18/06	Bloomingdale Civic Association
9/19/06	Advisory Neighborhood Commission 5C
10/02/06	Bates Area Civic Association
10/03/06	North Capitol Main Street, Inc.
10/16/06	Eckington Civic Association
10/23/06	Edgewood Civic Association
10/17/06	Advisory Neighborhood Commission 5C
11/21/06	Advisory Neighborhood Commission 5C

No organization to which this project was presented ever took action to object to or oppose the proposed development.

Adequacy of Project Benefits and Amenities

Under §2403.8 of the Zoning Regulations, "In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential

adverse effects according to the specific circumstances of the case.” Public benefits are defined as “superior features of a proposed PUD that benefit the surrounding neighborhood or the *public in general* to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” (§2403.6) (*Emphasis added.*) A project amenity is “one type of public benefit, specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience, or comfort of the project for *occupants* and immediate neighbors.” (§2403.7) (*Emphasis added.*)

The subject property is zoned C-3-C, which permits a maximum building height of 90 feet and 875,323 square feet of gross floor area as a matter-of-right. All of the permitted density could be commercial office and retail space; no residential density is required.

The PUD, as presented at the hearing, proposes a total density of 929,601 square feet of gross floor area, of which 579,467 square feet (62%) are for office; 120,442 square feet (13%) are for hotel; and 229,690 square feet (25%) are for residential. Thus, overall, the PUD includes 54,279 square feet more than what is permitted as a matter-of-right, but 295,856 square feet less office space than could be built as a matter-of-right. The project also provides 229,690 square feet more residential space than the Applicant would build as a matter-of-right.

The PUD proposes a maximum building height of 130 feet on the New York Avenue side of the project, stepping down on the Florida Avenue side of the project by 16 feet on the residential/hotel building and 37 feet on the office building. Consequently, the development incentives sought through the PUD process are an increase in total density of 6.2 % and a 40 feet increase in height for a portion of the site.

The increase in height is directly related to and offset by two PUD public benefits: (1) the inclusion of residential, hotel and retail uses and (2) the open space resulting from the increased setbacks from New York and Florida Avenues and the plaza at the center of the project. The increase in height allows “breathing space” around the hotel/residential building, which, ideally, should be longer and slimmer than the office building. (For example, the residential/hotel building is approximately 65 feet from exterior wall to exterior wall, while the same measurement is 120 feet for the office building.) Providing mixed use and knitting the PUD into the street grid to the south are two public benefits that cannot be quantified in the same manner as many of the other PUD benefits and amenities, but these features are highly desired by the District, as indicated in the NoMA planning analysis and the draft NoMA plan presented to the Council.

The total density provided on the site is dictated by the peculiar circumstances of the site (the triangular shape and the change in grade across the site), the height and design constraints in the form of setbacks from the property line, and the need to create an organizing open space in the center of the site. The PUD guidelines for the C-3-C District allow a maximum FAR of 8.0, or 1,077,320 square feet for the subject property. Currently, the project is over 200,000 square feet below the maximum permitted density. However, as discussed below, the Applicant's

alternative plan, submitted herewith, proposes a slight increase in density for the project in order to leverage the provision of additional affordable housing.

We submit that the benefits and amenities returned to the public good far exceed the development incentives requested when considering the major non-quantifiable PUD benefits with the +\$6 million in improvements and contributions proposed in connection with the PUD. Further, the major benefits of the PUD (housing and open space) accrue to the public at large, as specifically allowed by the Zoning Regulations, and cannot be judged simply on the basis of a dollar value. Again, neither of these benefits would occur if the Applicant developed the property as a matter-of-right under the C-3-C District.

Affordable Housing

The amount of affordable housing provided must be judged in the context of the development presented – a mixed use project with housing and affordable housing where the subject property can be developed as a matter of right without any residential use.

The PUD proposes 229,690 square feet of residential use to accommodate 218 to 270 dwelling units. (Originally, the Applicant proposed up to 250 dwelling units.) Currently, 13,781 square feet of the residential gross floor area for the PUD will be reserved for households making no more than 80% of the area median income. The area reserved is equal to:

- 6% of the total amount of residential provided;
- 25% of the total increase in gross floor area that would be achieved under the PUD; and
- 103% of the proportional increase in residential gross floor area (i.e., if the total increase in gross floor area is 54,729 square feet and residential accounts for 25% of the project, then the increase in residential gross floor area by virtue of the PUD is 13,411 square feet).

The affordable housing provided must also be considered in the context of the project location. The area south of Florida Avenue is in the North Capitol Street Receiving Zone for transferable development rights (TDR). Accordingly, that area will not be mapped in the Inclusionary Zoning Overlay District. Increasing the amount of affordable housing in the PUD will put the project at a competitive disadvantage to the other sites to the south, unless proper incentives are provided. Also, please note that while housing has been proposed for other sites in the TDR Receiving Zone, none has actually been constructed. The risks and economics for housing are substantially more difficult than those for an office building as housing is not the highest and best use of the property. It would be unwise to overload the pro forma of the PUD with more costs associated with affordable housing without partially offsetting those costs somehow.

The Applicant is willing to increase the amount of affordable housing for the PUD from 6% to 8% of the residential gross floor area, or 18,375 square feet, if the Commission approves an increase in the amount of office space for the PUD. Specifically, the office space would have

to be increased from 569,468 square feet to 591,897 square feet, which would be achieved by adding an additional floor on the southern portion of the office building. The income stream from the additional 22,429 square feet of office space would help subsidize the additional Inclusionary Zoning component. The increased affordable housing is reflected in the enclosed PUD Inclusionary Housing Standards form, dated December 4, 2006.

Revised Drawings & Development Data

The architects have revised the drawings to address the Commission's comments regarding the design columns on the residential/hotel building near Florida Avenue, the height of the wall along New York Avenue, and the sign for the hotel building. Also, the architects have prepared revised drawings reflecting the additional story on the southern section of the office building, which would offset the cost for the increase in affordable housing. With the additional office space, the overall density for the PUD increases from 929,601 square feet and an FAR of 6.9 to 950,585 square feet and an FAR of 7.06. The drawings and the updated development data are enclosed.

As noted at the hearing on the application, the penthouse for the residential/hotel building has a 6' setback at the "T-shaped" portion of the building. This reduced setback results from the location of the core elements of the building, including the recreational amenities such as the pool, showers and club room, and the architects desire to fit the penthouse into the overall scheme of the building. Please note that despite not meeting the 1:1 setback requirement, the penthouse is setback 84 feet from the Florida Avenue property line. Based on the foregoing, the Applicant respectfully requests flexibility from the roof structure requirements for this portion of the project.

Proposed Conditions

A draft of the proposed conditions for the approval of the PUD is enclosed.

We remain hopeful of the Zoning Commission's favorable review of the PUD application. Thank you for your considerate attention to this matter.

Sincerely,

HOLLAND & KNIGHT, LLP



Leila M. Jackson Batties

cc: Ms. Jennifer Steingasser, Office of Planning (via hand delivery, w/ enc.)
Mr. Steve Cochran, Office of Planning (via hand delivery, w/ enc.)
ANC 5C (via hand delivery, w/ enc.)

RECEIVED

D.C. OFFICE OF ZONING

Planned Unit Development
Inclusionary Housing Commitment Standards

DEC -4 PM 3:22

(Based Upon the Standards Issued by the Office of the Director
of the D.C. Office of Planning in Previous PUD Cases)

Zoning Commission Case No. 06-14

December 4, 2006

Development Standards

- Total Square Footage: Applicant shall commit to reserve 18,375 square feet of the total marketable residential square footage for units affordable to households within the targeted income range.
- Unit Types: The mixture of affordable unit types shall be comparable to the mixture of market rate unit types. The proportion of affordable studios and one-bedroom units may not exceed the proportional mix of market rate studio and one-bedroom units.
- Unit Sizes: Internal square footage of affordable units should be comparable to that of market rate units.
- Unit Distribution: Affordable apartment units shall be distributed vertically and horizontally throughout the residential building, except for the top three floors. No floor shall be comprised of 100% affordable units.
- Construction: External design and materials of affordable units shall be indistinguishable from market rate units. Internally, appliances and finishes shall be comparable, but may be of different quality.

Household Standards

- Target Income Range: Eligible households are defined as those households that meet all of the following:
- Having a household income not less than 60% and not exceeding 80% of the area median income for the Washington, D.C. Metropolitan Statistical Area, as adjusted for family size (see below for the summary of current income limits).
 - Purchasing or renting their primary residence.
 - Have no ownership interest in any other housing within the past three years.
 - Commit to continuous occupancy per the lease terms or deed covenants.

ZONING COMMISSION
District of Columbia

CASE NO. _____

- Qualify for any necessary mortgage financing and down payment.
- Have an income eligibility certification letter by making application to the home purchase assistance programs of the District of Columbia Department of Housing and Community Development (DHCD).

Affordability Control Period:

The affordability control period shall be for a time period of ten (10) years from the issuance of the first certificate of occupancy for the residential unit.

Initial Housing Cost:

Shall be determined by the District based on the following assumptions, as may be adjusted by future income limits:

- Monthly housing payment shall equal 30% of the income limits by family size and unit type.

<u>Unit Type</u>	<u>Household Size</u>	<u>FY 2006 AMI</u>
Studio/Efficiency	1 Person Household	\$63,200
1 -Bedroom	2 Person Household	\$72,200
2-Bedroom	3 Person Household	\$81,300
3-Bedroom	5 Person Household	\$97,500

- Purchase assumptions include:
 - 5% down payment;
 - Monthly housing payment includes principal, interest, taxes, insurance and condo or home association fees;
 - 30 year term; and
 - Current national average interest rate determined by FreddieMac weekly survey of mortgage (see www.freddiemac.com).
- Rental assumptions include:
 - Housing payment does not include utility allowance.

Final Housing Cost:

Shall be determined 60 days prior to marketing of the affordable units using current information for the same assumptions above.

Occupant Selection:

Applicant shall hold a lottery of all qualified families to be selected as the initial unit purchasers. Applicant will provide notice of the lottery through advertisements in local newspapers and other vehicles reasonable to ensure broad exposure to potentially eligible purchasers. DHCD will also advise existing applicants to its home purchase assistance programs of this affordable housing opportunity. The initial unit purchasers and the initial unit price shall be determined six months prior to the projected completion of the affordable units.

Resale Restrictions:

Resale During Control Period - The affordable units will be restricted (through a deed restriction, covenant and/or other legal means) in

their resale, for a period of 10 years as follows: (1) available to income-eligible homebuyers, a list of whom may be obtained from the DHCD's applicant pool for home purchase assistance programs; (2) the maximum purchase price shall be equal to the initial unit price plus the cumulative change in the consumer price index and the cost of permanent improvements to the unit; and (3) the sale of a unit within a given 10 year affordability restriction period creates a new 10 year affordability restriction period for the unit.

Resale After Control Period - Upon the expiration of the 10 year restricted selling period, the then current Owner of the unit may sell the unit without restriction, but the sales proceeds shall be allocated as follows:

First, to the-seller in the amount of their original sales price plus the cumulative change in the consumer price index, the cost of permanent improvements to the unit, the closing costs paid by the seller at their closing and a reasonable sales commission.

The remainder shall be split equally between the seller and a District of Columbia government fund dedicated to the provision of affordable housing, if District funds are used to underwrite the affordability of the units. If District funds are not used, then to the Applicant or its affiliated entity developing the project.

Enforcement:

If District funds are used to underwrite the affordable units, the restrictive covenants applicable to the contributing funding source used will apply.

The District government shall retain all rights to enforce the provisions of the affordability covenants, according to the provisions of this document or such enforcement mechanisms as the District government may deem appropriate. The District government shall have the right to recapture any enforcement costs.

Procedural Changes:

The substance of any of the above clauses that are included in deed restriction terms may not be modified without consent of both the unit owner(s) and the District government. Administrative monitoring and enforcement mechanisms not included in the deed restrictions may be modified at the sole discretion of the District government.