

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO 06-14B
Z C Case No 06-14B
MidAtlantic Realty Partners, LLC
(Modification to Approved Planned Unit Development)
April 25, 2011

Pursuant to notice the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 7 2011 to consider an application from MidAtlantic Realty Partners (the "Applicant"), on behalf of the owners of Lot 26 (formerly Lots 23 811 812 and 813) in Square 3584 for the approval of a modification to the planned unit development ("PUD") approved pursuant to Z C Order No 06 14 The Commission considered the application 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 was conducted in accordance with the provisions of 11 DCMR §3022 For the reasons stated below, the Commission hereby approves the application

FINDINGS OF FACT

The Application, Parties, and Hearing

- 1 Pursuant to Z C Order No 06-14 dated June 8 2009 effective June 19 2009 the Commission granted consolidated approval of a PUD for Lots 23 811 812 and 813 in Square 3584 The subject property has since been subdivided into a new single record lot and is now known as Lot 26 in Square 3584 (the "Property")
- 2 The Property has a land area of approximately 134 665 square feet It is a triangular parcel bounded by New York and Florida Avenues NE and the Metrorail tracks The Property is designated mixed-use High-Density Residential/High-Density Commercial on the Comprehensive Plan Future Land Use Map and is zoned C-3 C
- 3 The approved PUD is a mixed use project that consists of 594 896 square feet of office use approximately 229,690 square feet of residential use approximately 120 443 square feet of hotel use and approximately 7 000 square feet of retail use Of the residential gross floor area for the project eight percent will be devoted to affordable housing for households with incomes that do not exceed 80% of the area median income ("AMI"), in accordance with Z C Order No 06 14 The approved project has a density of 7 06 floor area ratio (FAR") and a building height of 130 feet Parking will be provided at a parking ratio of 0 6 space per dwelling unit for the residential use 0 25 space per guest

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room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space whichever is greater and one parking space for each 1 800 square feet of gross floor area of office use At least two of the parking spaces shall be reserved for use by a car sharing service

- 4 Pursuant to Z C Order No 06 14A the Commission granted a two year extension of time for the PUD extending the approval until June 29 2011 within which time an application must be filed for a building permit as specified in § 2409 1 of the Zoning Regulations Construction must commence no later than June 29 2012
- 5 On May 17 2010 the Applicant filed an application with the Commission for a modification of the PUD (Exhibits 3 4A 4B and 5) Under the modification the Applicant would have the option of (a) constructing and operating the residential/hotel building proposed in the approved PUD or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346 405 square feet of residential floor area and approximately 5 070 square feet of ground floor retail (the PUD Modification) Under the PUD Modification the apartment building would have a maximum of 430 dwelling units and eight percent of the residential floor area would be reserved for units for households with incomes that do not exceed 80% of the AMI The FAR for the PUD as modified is 7 08
- 6 At its public meeting held on July 26 2010 the Commission voted to schedule a public hearing on the application
- 7 On December 21 2010 the Applicant submitted a Prehearing Statement (Exhibit 19) The Prehearing Statement included revised plans showing additional details on the project's design and materials and roof structure and addressed issues raised by the Commission and the Office of Planning (OP)
- 8 On February 1 2011 the Applicant submitted a Supplemental Filing which included a revised set of architectural plans and elevations with a cover sheet dated January 31 2011 (Exhibits 25 and 26) The revised drawings were in response to additional concerns about the design of the project from OP
- 9 After proper notice the Commission held a public hearing on the application on March 7 2011 The parties to the case were the Applicant and Advisory Neighborhood Commission (ANC) 5C the ANC within which the Property is located
- 10 At the public hearing on the modification application the Applicant submitted a Supplemental Statement in which the Applicant confirmed certain enhancements to the project design the distribution of the affordable housing units and provided revisions to the PUD calculations (Exhibit 29) Revised drawings dated March 7 2011 (Sheets 251 255) were also submitted as part of the filing

- 11 Three principal witnesses testified at the public hearing on behalf of the Applicant Matthew Robinson of MidAtlantic Realty Partners LLC Marius Radulescu of SK&I Architectural Design Group LLC and Steven E Sher Director of Zoning and Land Use Services at Holland & Knight LLP Based upon his professional experience as evidenced by the resume submitted for the record Mr Radulescu was qualified by the Commission as an expert in architecture Mr Sher previously qualified as an expert by the Commission testified as an expert in land use and zoning A copy of Mr Sher's Report to the Commission was submitted at the hearing (Exhibit 32)
- 12 OP testified in support of the modification application at the public hearing
- 13 Commissioner Timothy Clark the Single Member District representative for ANC 5C05 testified in support of the modification application at the public hearing
- 14 At the public hearing the Applicant testified that the PUD Modification was presented to the Edgewood Civic Association the Eckington Civic Association and ANC 5C and each organization supported the proposed modification
- 15 At the conclusion of the public hearing held on March 7 2011 the Commission took proposed action to approve the modification application and the architectural plans and drawings that were submitted into the record The Commission requested an exhibit showing the distribution of the affordable dwelling units and a resolution in support of the application from ANC 5C The Applicant also offered to file a consolidated set of the current architectural plans and drawings for the PUD Modification
- 16 On March 11 2011 the Applicant filed Z C Case No 06-14C seeking a two year extension of time for the PUD approval as established in Z C Order 04 16A Under the extension request the original PUD and the proposed modification to the PUD would be valid until June 29 2013 within which time an application must be filed for a building permit as specified in § 2409.1 of the Zoning Regulations Construction must commence no later than June 29 2014
- 17 The proposed action of the Commission was referred to the National Capital Planning Commission (NCPC) on March 8 2011 under the terms of the District of Columbia Home Rule Act NCPC by report dated April 7 2011 found that the proposed modification to allow the residential use in lieu of the previously approved hotel use as an option for the PUD will not affect the federal interests (Exhibit 41)
- 18 The Commission took final action to approve the modification application on April 25 2011

Modified PUD Project

- 19 The PUD as modified will give the Applicant the option of (a) constructing and operating on the Property the previously approved residential/hotel building or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346 405 square feet of residential floor area and approximately 5 070 square feet of ground floor retail
- 20 The PUD Modification requires an increase of approximately 40 residential parking spaces depending on the exact number of units constructed The parking ratio for the residential use will remain at 0 6 spaces per dwelling unit
- 21 As noted in the final OP Report dated February 25 2011 the general footprint height massing materials and color for the residential building for the PUD as modified would be similar to the approved building (Exhibit 27) As reflected on Sheet 253 of the architectural drawings filed on April 11 2011 the garage doors near the intersection of Florida and New York Avenues will employ frosted glass and a frosted glass window will be added to the brick veneer wall on Florida Avenue to the left of the loading dock (Exhibit 39) These refinements were made to reduce the visual impact of loading docks and blank walls and to provide a more welcoming and interesting treatment

Development Flexibility

- 22 For the PUD Modification the Applicant requested flexibility from the following requirements
 - a *Roof Structures* The Applicant requested flexibility from §§ 411 and 770 6 of the Zoning Regulations which require the penthouse to be setback from all exterior walls a minimum distance of 18 feet six inches The penthouse meets this requirement except on the southeast corner where it has a setback of 12 feet six inches which is due primarily to the narrowness of the building The penthouse has been designed to be the minimum size necessary to house all of the required rooftop equipment services and access The building is designed to step back from Florida Avenue and curve at New York Avenue in order to make it more architecturally appealing but these elements also significantly reduce the building width The reduced setback for the penthouse is necessary in order to accommodate exterior cladding structure equipment and the required clearances and the visual impacts are mitigated by the fact that this section of the penthouse faces the interior courtyard for the project and
 - b *Additional Areas of Flexibility* The Applicant requested flexibility in the following areas

- (i) To vary the location and design of all interior components including partitions structural slabs doors hallways columns stairways and mechanical rooms elevators escalators and toilet rooms provided that the variations do not change the exterior configuration of the building
- (ii) To make refinements to the garage configuration including layout number of parking spaces and/or other elements so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations
- (iii) 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
- (iv) To make refinements to exterior materials details and dimensions including belt courses sills bases cornices railings roof skylights architectural embellishments and trims or any other minor changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit or any other applicable approvals

Public Benefits and Amenities

- 23 The PUD as modified has the same public benefits and amenities as originally approved for the project in Z C Order No 06 14
- 24 As required under Z C Order No 06 14 the Applicant has made the following contributions to the community
 - a \$50 000 contribution to the District of Columbia Commission on the Arts and Humanities for the arts related project for the Florida Avenue underpass
 - b \$25 000 contribution to City Year to cover the five year operating costs for the Young Heroes Program
 - c \$10 000 contribution to Emery Elementary School Student Activity Fund for field trips educational celebrations audio/visual upgrades and technology upgrades
 - d \$10 000 contribution to the Harry Thomas Community Service Center for the purchase and installation of a scoreboard and
 - e \$5 000 contribution to North Capitol Main Street Inc for the development of a database of the commercial/retail properties in the organization's service area

Documentation of the contributions is attached as Exhibit H of the Applicant's statement dated May 17 2010 (Exhibit 3)

- 25 The Applicant entered into a First Source Employment Agreement with the Department of Employment Services (DOES) ensuring cooperation with DOES for employee recruitment for jobs created by the project with the objective that 51% of the employees hired in connection with the development of the project are District of Columbia residents A copy of the First Source Employment Agreement is attached as Exhibit K of the Applicant's Statement dated May 17 2010 (Exhibit 3)
- 26 The approved PUD is exempt from the Inclusionary Zoning provisions of Chapter 26 of the Zoning Regulations because it was set down prior to March 14 2008 (11 DCMR § 2608.2) The exemption applies to this modification as well
- 27 The approved PUD required the Applicant to devote a minimum of approximately 18 375 square feet or eight percent of the residential gross floor area to affordable housing for residents with incomes no greater than 80% of the AMI The Applicant agreed to devote the same percentage of the residential gross floor area added by this PUD modification to affordable housing for residents with incomes no greater than 80% of the AMI So if the Applicant builds the modified PUD it will be required to devote an additional 9 337 square feet of gross floor area to affordable housing resulting in a total of approximately 27 712 square feet of gross floor area devoted to affordable housing for residents with incomes no greater than 80% of AMI Because the Applicant is not required by law to provide this affordable housing the proffer remains a relevant public benefit
- 28 The affordable units shall have the same proportion of unit types (studio one bedroom and two bedroom units) as the market rate units The construction of the affordable units the affordability control period and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4 2006 and marked as Exhibit No 38 of the record of Z C Case Number 06 14 The affordable units required by the original PUD shall be distributed in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards The affordable units added through this PUD modification shall be distributed as depicted in the chart submitted as part of the Applicant's post hearing submission dated April 11 2011 (Exhibit 38)

Office of Planning Report

- 29 By report dated July 16 2010 OP stated that the requested modifications remain consistent with the Comprehensive Plan and the proposed alternative plans respect the general intent of the previously approved PUD The report recommended that the Commission schedule a public hearing on the modification application (Exhibit 15)

- 30 By report dated February 25 2011 OP recommended the Commission approve the modification application contingent upon the Applicant providing a supplemental statement prior the hearing containing certain clarification and changes related to the building design and the distribution of the affordable units (Exhibit 27)
- 31 The OP report dated February 25 2011 stated that the District Department of Transportation indicated to OP that it had no concerns with the requested modification There were no other agency responses at the time the OP report was submitted

Post Hearing Submissions

- 32 On April 11 2011 the Applicant submitted a post hearing submission (Exhibits 38 and 39) The post hearing submission included (i) an exhibit that was presented at the public hearing depicting that area of the PUD covered under the modification application (ii) a chart showing the distribution of the affordable units and (iii) a consolidated set of the architectural plans and drawings for the modification application
- 33 An electronic copy of the resolution in support of Z C Case No 06 14B from ANC 5C was posted on April 11 2011 (Exhibit 40)¹

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations the PUD process is designed to encourage high quality development that provides public benefits (11 DCMR § 2400 1) The overall goal of the PUD process is to permit flexibility of development and other incentives provided that the PUD project offers a commendable number or quality of public benefits and that it protects and advances the public health safety welfare and convenience (11 DCMR § 2400 2)
- 2 Under the PUD process of the Zoning Regulations the 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

¹ When the Commission took final action it observed a discrepancy between the number of ANC Commissioners listed as voting on this resolution and the number of Commissioners listed on the letterhead and agreed to keep the record open for the ANC to submit a corrected letter The ANC has advised Office of Zoning staff that a corrected letter will not be filed Because the discrepancy does not affect the prerequisite for giving the ANC great weight this Order is being issued and the record is now closed

- 3 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 on for yards and courts The Commission may also approve uses that are permitted a special exceptions and would otherwise require approval by the Board of Zoning Adjustment
- 4 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
- 5 The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations
- 6 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 Property The impact of the project on the surrounding area and the operation of city services are acceptable given the quality of the public benefits in the project
- 7 The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan
- 8 The project benefits and amenities are reasonable tradeoffs for the requested development flexibility
- 9 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
- 10 The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975 effective March 26 1976 (D C Law 1-21 D C Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC In this case ANC 5C voted unanimously to support the modification application and recommended that the Commission approve the application (Exhibit 40) The Commission has given ANC 5C's recommendation great weight in approving the modification application
- 11 The Commission is required under § 5 of the Office of Zoning Independence Act of 1990 effective September 20 1990 (D C Law 8-163 D C Official Code § 6-623.04) to give great weight to 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

- 12 The application for the modified is PUD 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 the application for modifications to the approved planned unit development located at Lot 26 (formerly Lots 23 811 812 and 813) in Square 3584 originally approved in Z C Order No 06 14 subject to the following conditions For the purposes of these conditions the term Applicant shall mean the person or entity then holding title to the Subject Property If there is more than one owner the obligations under this Order shall be joint and several If a person or entity no longer holds title to the Subject Property that party shall have no further obligations under this Order however that party remains liable for any violation of these conditions that occurred while an Owner

A PROJECT DEVELOPMENT

- 1 The Applicant has the option to develop the PUD consistent with Z C Order No 06 14 If the Applicant develops the original project the conditions of Z C Order 06 14 will apply to the project If the Applicant develops the project as modified by this Order the following conditions will apply
- 2 The Applicant may develop the PUD as modified herein in which case the project shall contain approximately 594 896 square feet of office use approximately 346 405 square feet of residential use and approximately 12 070 square feet of retail use The maximum density shall be 7 08 FAR The maximum height of the building shall be 130 feet as shown on the Plans The building may include roof structures in excess of that height with a height not to exceed 18 5 feet above the roof upon which they are located as shown on the Plans
- 3 The PUD Modification shall be developed in accordance with the plans prepared by SK&I Architectural Design Group dated April 11 2011 marked a, Exhibit 39 of the record (the Plans)
- 4 The Applicant shall continue to comply with affordable housing requirements of Condition No 3 of Z C Order 06-14 which is incorporated into this Order pursuant to Condition B 1 The PUD shall further devote an additional 9 337 square feet of gross floor area of the residential gross floor area for the project to affordable housing for households with income that do not exceed 80% of the

AMI (Affordable Units) The Affordable Units shall have the same proportion of unit types (studio one bedroom and two bedroom units) as the market rate units The construction the affordability control period and the method of selecting the occupants/purchasers of the Affordable Units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4 2006 and marked as Exhibit No 38 of the record of Z C Case Number 06 14 The Affordable Units shall be distributed as depicted in the chart submitted as part of the Applicant's post hearing submission dated April 11 2011 and marked as Exhibit 38 of the record

- 5 Parking for the modified PUD shall be provided at a ratio of 0.6 space per dwelling unit for the residential use one parking space for each 1 800 square feet of gross floor area of office use and one parking space for each 3 000 square feet of gross floor area for retail use At least two of the parking spaces shall be reserved for use by a car sharing service
- 6 The project shall include three 30 foot deep loading berths and one 20 foot-deep loading berth for the office use and one 55 foot deep and one 20 foot-deep loading berth for the residential/hotel use
- 7 The Applicant shall have flexibility with the design of the PUD in the following areas
 - a To have a roof structure that does not meet the setback as required under §§ 411 and 770.6 of the Zoning Regulations to the extent depicted in the Plans and the architectural plans and drawings approved in Z C Order No 06 14
 - b 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
 - 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
 - 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 specified in the Zoning Regulations and

- e To eliminate the interior drive to the south section of the office building should operational and/or security needs require

B PUBLIC BENEFITS

- 1 The PUD as modified shall comply with Condition Nos 3 5 through 8 and Condition No 15 of Z C Order No 06 14

C MISCELLANEOUS

- 1 **Prior to the issuance of a building permit for the project** the Applicant shall record 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 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 Commission
- 2 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
- 3 The PUD shall be valid until June 29 2011 in accordance with Z C Order No 06 14A Within such time an application must be filed for a building permit as specified in 11 DCMR § 2409.1 Construction must commence no later than June 29 2012 Failure to take these actions will result in the expiration of the PUD approval as of the applicable date
- 4 In accordance with the D C Human Rights Act of 1977 as amended D C Official Code §§ 2-1401.01 et seq. (Act) the District of Columbia does not discriminate on the basis of actual or perceived race color religion national origin sex age marital status personal appearance sexual orientation gender identity or expression familial status family responsibilities matriculation political affiliation genetic information disability source of income or place of residence or business Sexual harassment is a form of sex discrimination which is prohibited by the Act In addition harassment based on any of the above protected categories is prohibited by the Act Discrimination in violation of the Act will not be tolerated Violators will be subject to disciplinary action

On March 7 2011 upon the motion of Commissioner Selfridge as seconded by Vice Chairman Schlater the Zoning Commission **APPROVED** this Application at the conclusion of its public

hearing by a vote of **5 0 0** (Anthony J Hood Konrad W Schlater Peter G May Greg M Selfridge and Michael G Turnbull to approve)

On April 25 2011 upon the motion of Vice Chairman Schlater as seconded by Commissioner Turnbull the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5 0 0** (Anthony J Hood Konrad W Schlater Peter G May Michael G Turnbull and Greg M Selfridge 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 July 22 2011



ANTHONY J HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L WEINBAUM
DIRECTOR
OFFICE OF ZONING

APPENDIX TO ORDER 06-14B

The following are the conditions in Z C Order 06 14 that are referenced in Condition B(1) of Order 06-14B

- 3 Of the residential gross floor area for the project a minimum of approximately 18 375 square feet, or eight percent of the residential gross floor area, shall be devoted to affordable housing for residents with incomes no greater than 80% of the area median income The construction and distribution of the affordable units the affordability control period and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4 2006 and marked as Exhibit No 38 of the record
- 5 The Applicant shall design and implement a transportation management plan that includes the strategies set forth on pages 46 through 50 of the Transportation Impact Study by Wells & Associates LLC dated November 9 2006 and marked as Exhibit No 29 of the record
- 6 The Applicant at its sole expense, shall cause the design and installation of a traffic signal at the intersection of Florida Avenue and 2nd Street NE in accordance with DDOT standards and guidelines The traffic signal shall be installed prior to the issuance of the first certificate of occupancy for the PUD
- 7 The Applicant shall enter into an agreement with DDOT for the installation and maintenance of the improvements to the Metropolitan Branch Trail along the eastern boundary of the PUD site The improvements shall include, but not be limited to the enclosed atrium/rest area with a stair elevator, seating bike parking drinking fountains restroom access signage an information kiosk and landscaping
- 8 Public access to the project to and from New York Avenue and the Metropolitan Branch Trail shall be permitted in accordance with the following schedule
 - (i) The New York Avenue staircase shall be open from 7 00 a m to 7 00 p m
 - (ii) The Metropolitan Branch Trail Atrium and the stairs and elevators to the plaza shall be open from 6 00 a m to 9 00 p m

Additionally the PUD shall include one public restroom for use during normal retail hours
- 15 The Applicant shall abide by the term, of the First Source Employment Agreement entered into with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z C CASE NO 06 14B

JUL 20 2011

As Secretary to the Commission I hereby certify that on JUL 20 2011 copies of this Z C Order No 06 14B were mailed first class postage prepaid or sent by inter office government mail to the following

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|---|--|---|--|
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ATTESTED BY

A handwritten signature in dark ink, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S Schellin
Secretary to the Zoning Commission
Office of Zoning