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January 13, 2014

VIA HAND DELIVERY AND ONLINE SUBMISSION

Anthony J. Hood, Chairman
Zoning Commission for the District of Columbia
441 Fourth Street, NW, Suite 210S
Washington, DC 20001

Re: Zoning Commission Case Nos. 06-40B and 06-40C – Application of Gateway Market Center, Inc., for 340 Florida Avenue, NE (Lot 8 in Square 3587), Washington, DC (the “Property”) – Review and Approval of a Modification to and Extension of an Approved Consolidated Planned Unit Development and Related Zoning Map Amendment – Submission of Draft Order

Dear Chairman Hood and Commissioners:

Gateway Market Center, Inc. (the “**Applicant**”), the applicant in Zoning Commission Case Nos. 06-40B and 06-40C and co-developer of the Property, hereby files its draft Order in response to the Zoning Commission’s request at the case’s public hearing on December 5, 2013 (the “**Hearing**”).

The Applicant is requesting the modification to, and extension of, the consolidated planned unit development and related map amendment (the “**Project**”) approved in Zoning Commission Order Nos. 06-40 and 06-40A.

If you have any questions regarding this application or draft Order, please feel free to contact Maureen at 202-721-1101 or Jeff at 202-721-1132. Thank you for your comments on and review of this application.

Respectfully submitted,



Maureen E. Dwyer



Jeffrey C. Utz

Certificate of Service

I certify that on January 13, 2014, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



Jeffrey C. Utz

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ANC Commissioner Peta-Gay Lewis (5D01)
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NOS. 06-40B and 06-40C
Z.C. Case Nos. 06-40B and 06-40C
Consolidated PUD & Related Map Amendment-Gateway Market Center Inc.,
Gateway Market and Residences – 340 Florida Avenue N.E.
January 27, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (“**Commission**”) held a public hearing on December 5, 2013, to consider applications from Gateway Market Center, Inc. (the “**Applicant**”) for consolidated review and approval of a modification to a planned unit development (“**PUD**”) for Lot 8 in Square 3587 (the “**Property**”)¹, and a related map amendment to rezone the PUD Site from C-M-1 to C-3-C approved by Zoning Commission Order No. 06-40 and extended by Zoning Commission Order No. 06-40A (collectively, the “**Order**”). The modification application proposes a mixed-use development incorporating retail and residential uses, and the removal of the office component of the project. The Applicant also requested a two (2) year extension to the Order for good cause shown. The Commission considered the applications pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“**DCMR**”). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications with conditions.

FINDINGS OF FACT

Procedural History

1. By Z.C. Order No. 06-40 dated April 24, 2009 and effective April 28, 2009, the Commission approved a PUD for the Property. Z.C. Order No. 06-40 approved a mixed-use, residential, retail, and office development containing a maximum of 307,384 gross square feet (7.7 FAR) and constructed to a height of 119 feet. Z.C. Order No. 06-40 also approved a related map amendment to rezone the Property from C-M-1 to C-3-C. Pursuant to Condition No. 17 of Z.C. Order No. 06-40, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2011. (Zoning Commission Order No. 06-40A, Finding of Fact Number 1.)

¹ The original application and Order dealt with Lots 5, 800, 802, and 809 and Parcels 129/9 and 129/32 in Square 3587. Those lots have been combined through subdivision into Lot 8.

2. By Z.C. Order No. 06-40A dated May 23, 2011 and effective July 22, 2011, the Commission approved a two (2) year extension to Z.C. Order No. 06-40. Pursuant to Z.C. Order No. 06-40A, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2013. (Zoning Commission Order No. 06-40A.)
3. On April 18, 2013, the Applicant submitted applications to the Commission for a modification to the PUD approved by the Order and an extension to the Order. The Applicant requested a modification to the project approved by the Order to allow for the removal of the office component and the enlargement of the residential component, among other changes. In addition to the PUD review, the Applicant maintained the request for the variance relief from the loading requirements of § 2201.1 for the retail and residential uses which was approved under the Order and added a request for variance relief from § 411.3 requiring one roof structure enclosure.
4. At the Commission's June 10, 2013 public meeting, the Commission deferred the Order extension request (Z.C. Case No. 06-40B) until the later of Applicant's modification public hearing or December 9, 2013.
5. At a public meeting on July 29, 2013, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding:
 - (a) More information about the original case that was approved by the Order (such as additional drawings);
 - (b) Further refinements the project drawings;
 - (c) Sections showing how building materials were proposed to work together;
 - (d) Further design of the western façade of the project;
 - (e) A sample materials board;
 - (f) Additional information relating to the sustainability, maintenance, durability, and quality for the composite paneling originally proposed for portions of the façade by the modification;
 - (g) A more detailed roof plan; and
 - (h) The proposed amenities package, in concert with the Advisory Neighborhood Commission ("ANC").
6. On August 13, 2013, the Applicant filed a Pre-Hearing Statement responding to the Commission's requests. (Exhibit ["Ex."] 13.) The Applicant removed its request relating to the size and number of residential units to respond to the Commission's comments. The Applicant also removed the initially-requested hotel option (Option C) in response to the Commission's comments.
7. The Applicant filed its Final Pre-Hearing Submission in response to Zoning Commission and OP requests and containing its Transportation Impact Study on November 15, 2013. (Ex. 19 and Ex. 24D.)

8. After proper notice was provided, the Zoning Commission held a hearing on the application on December 5, 2013. Parties to the case included the Applicant, ANC 5D², the ANC within which the Property is located, and ANC 6C, the ANC for the area directly across Florida Avenue, NE from the Property.
9. The witness appearing on behalf of the Applicant at the hearing was Jeff Kaufman; the expert witnesses appearing on behalf of the Applicant at the hearing were Dennis Connors of SK&I Architects and Jami Milanovich of Wells & Associates, Inc. The Applicant presented a sample materials board during the December 5, 2013 hearing, as requested by the Commission during the setdown meeting.
10. The Office of Planning (“OP”) filed a report recommending approval of the modification request on November 25, 2013. (Ex. 21.) At the hearing, OP reiterated that they “strongly support the project” and requested that the Applicant consider a “cool roof” and further articulate the western façade of the project.
11. The District Department of Transportation (“DDOT”) submitted a report into the record on November 27, 2013 noting that the Applicant largely mitigated its concerns and setting forth other issues. (Ex. 23.) DDOT noted that it agreed in principle to allowing the curb cut access on Florida Avenue, among other items. DDOT stated that it was working with the Applicant to address its concerns and would continue to do so. DDOT appeared at the hearing on December 5, 2013 and reiterated the contents of its report.
12. At the conclusion of the hearing, the Commission requested that the Applicant file a post hearing submission containing information regarding the following: further information regarding the project’s sustainability (specifically its LEED point generation), further details on and articulation of the project’s western party wall façade, alteration of the project’s roof structures to a darker color, further details regarding the project’s interior courtyard, further details regarding the venting on the façade, further information regarding the design and operation of the community room, and further information regarding Applicant’s Transportation Demand Management Plan. The Applicant submitted these materials to the Zoning Commission in its post-hearing submission dated January 6, 2014. (Ex. 32.)
13. The proposed action of the Commission was referred to NCPC as required by the District of Columbia Home Rule Act. NCPC, by action dated _____ *[to be filled in by Office of Zoning/Office of the Attorney General]*, found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
14. On December 5, 2013, the Commission voted to take proposed action to approve the applications. On January 27, 2014, the Commission voted to take final action to approve the applications subject to the conditions enumerated in this Order.

² At the time of the issuance of Z.C. Order No. 06-40 and 06-40A, the Property was located within the boundaries of ANC 5B. Since that time, the Property was relocated within the boundaries of ANC 5D.

Description of Property and Surrounding Areas

15. The Property consists of approximately 38,452 square feet of land area and is currently vacant. The Property is located within the boundaries of ANC 5D (formerly ANC 5B) and abuts the boundaries of ANC 6C across Florida Avenue.
16. The Property is located in the Northeast quadrant of the District of Columbia between Morse Street, 4th Street, and Florida Avenue, NE in the southwest portion of the Florida Avenue Market. It is less than 350 yards from the entrance to the NoMA-Gallaudet University Metrorail station. It is in the Ivy City neighborhood, with Trinidad to the east and Eckington to the west. The burgeoning “NoMA” neighborhood is located to the south, across Florida Avenue, NE. The site is currently vacant. Previously, the site was occupied by the vacant and boarded-up Washington Beef warehouses, a vacated Bank of America branch and a small “Ironworks” welding shop, all of which were demolished by the Applicant.
17. The project is within the Florida Avenue Market a warehouse district whose history has been to accommodate the city’s food wholesalers. The Market has evolved significantly over the years and had many names over such time. Most recently, the heart of the areas has been relaunched as the Union Market by affiliates of Edens. In fact, the project marks an opportunity to capitalize upon the renovation and revitalization of the DC Farmers’ Market into Union Market. Today, the Market is a conglomeration of wholesalers and retailers of foodstuffs, dry goods, jewelry, tourist souvenir items, hair care products, and general merchandise. The Gallaudet University campus is north and east of the Market.

Underlying and Previously-Approved Zoning

18. The Property’s underlying zoning is C-M-1 which permits “low bulk commercial and light manufacturing uses” with a maximum FAR of 3.0, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted in such underlying Zone District. (11 DCMR §§800.1, 800.4, 840.1, and 841.1.)
19. The entire Florida Avenue Market area is zoned C-M-1. Northwest of the Market, across New York Avenue, property from the railroad right of way north to Rhode Island Avenue and east to Brentwood Road is zoned in the M District. Directly to the east of the Market, the Gallaudet campus and nearby residential properties are in the R-4 District. South of the Market, properties south of Florida Avenue to H Street, from the railroad tracks on the west to about 3rd Street on the east, are zoned in a mixture of C-M-1, C-M-3, C-2-B, C-3-A, and C-3-B Districts. From 3rd Street moving east, most properties are zoned in the R-4 and R-5 Districts. The property at 501 New York Avenue, NE, was rezoned from the C-M-1 Zone District to the C-3-C Zone District by Z.C. Order No. 11-25.
20. The Applicant requests the modification and extension of a PUD-related map amendment approval rezoning the Property to C-3-C. The C-3-C Zone District permits residential

use in addition to retail uses. Pursuant to 11 DCMR §§ 2405.1, 2405.2, and 2405.6, the Applicant also requests application of the PUD standards for C-3-C which allow a maximum height of 130 feet, rather than the C-3-C matter-of-right maximum of 90 feet, and a maximum density of 8.0 FAR, rather than the C-3-C matter-of-right maximum density of 6.5 FAR, and flexibility from the loading berth requirements set forth at 11 DCMR § 2201.

Previously Approved Project

21. The previously proposed project was approved by the Commission in 2008 pursuant to Order No. 06-40. The previously approved project included a retail/office/residential structure, named the “Gateway Market and Residences”. The design of the building consisted of three distinct elements: a two story retail market hall-inspired masonry base; a glass curtain wall office middle and a glass and metal panel residential and office tower above; and vertical embellishments at the corner of New York and Florida Avenues and at the ends of each residential wing. The project had a building area of 307,384 gross square feet, for an effective FAR of 7.7. The building included 134,237 square feet of residential use, 69,704 square feet of office use, 26,026 square feet of retail use, and 71,381 gross square feet for common, support, and circulation areas. The lot coverage was 93% and the maximum height of the building was 119'-4" feet (10 stories on the Florida Avenue side, stepping down to 40 feet and four stories on the Morse Street side).

Modified Project Overview

22. The Applicant is requesting the modification of the approved PUD in order to create an exciting mixed use retail and residential project that will provide a catalyst for future development of the 44 acre Florida Avenue Market area consistent with the goals of the Florida Avenue Market Study – Small Area Plan and the DC Comprehensive Plan. In total, approximately 170 to 216 residential units (containing approximately 153,310 square feet of residential space), with a significant affordable housing component, and approximately 27,410 square feet of retail, will be created as a result of the modified project. The total square footage of the project is approximately 189,036 square feet. The project will contain approximately 5.0 FAR and have a height of approximately 80 feet. (Ex. 2, Ex. 19, Ex. 24D, Ex. 28, and Applicant’s presentation at the December 5, 2013 hearing (“**Applicant’s Presentation**”).)
23. The modified PUD eliminates the office component, increases the residential use, proposes a redesign of the retail and below-grade space, and shifts the construction type from concrete to wood frame over a concrete podium in order to respond to current and shifting market fundamentals. The design is intended to present the structure as a cohesive whole, with a residential component rising above a retail platform engaging pedestrians on all street frontages. (Ex. 2, Ex. 19, Ex. 28, and Applicant’s Presentation.)
24. The proposed PUD modification utilizes and augments the previously-approved amenities package as its base despite the reduction in the previously-approved building square footage. Further, with the set-aside of 20% affordable units and the increase in size of the residential component of the project, the amount of affordable residential

space will increase from 26,847 gross square feet to approximately 30,662 gross square feet. The project also produced a greater amount of transportation benefits, as further described herein. (Ex. 2, Ex. 19, Ex. 24D, Ex. 28, and Applicant's Presentation.)

25. The residential component is arranged with a U-shaped configuration with facades on all three street frontages. This arrangement provides an appropriate urban edge to the Project and allows the entrance to the Florida Avenue Market to be strongly enunciated, while providing the greatest number of units with spectacular views to the south and east. These facades surround an inviting, landscaped courtyard for the use of the residents. The three wings of the tower frame the outdoor courtyard over the retail space below. The residential component is comprised of five stories. Amenity space for the residential use is located on the second floor. The residential lobby is completely separated from the retail functions. (Ex. 2 and Applicant's Presentation.)
26. The project's retail component has been redesigned to provide a much more robust consumer street retail experience. The retail spaces are entered through the unique tenant storefronts that will ring the exterior of the building on the Florida Avenue, 4th Street, and Morse Street sides. The development team aimed to provide the maximum amount of street-life activating retail space on the ground floor of the Project. The building's retail base is primarily comprised of glass and metal, while underscoring the industrial/commercial feel of the Market. (Ex. 2, Ex. 19, Ex. 28, and Applicant's Presentation.)
27. The slope of 4th Street provides an opportunity for the anchor tenant to have significant 27 foot floor to ceiling heights. The retail located along 4th and Morse Streets is envisioned as an interactive zone that will be filled with smaller shops and restaurants, and include the energy created through sidewalk patios and seating. The ceiling clearance in such areas will be sixteen (16) feet. (Ex. 2, Ex. 19, Ex. 28, and Applicant's Presentation.)
28. A 2,422 square foot community room will be provided on the first floor of the project. The primary user of the space, and the organization that will control and manage the space, will be ANC 5D (or the ANC within which the property sits in the event of a redistricting). The space will be primarily accessed from Morse Street, NE. The community room will be finished and furnished by the Applicant. In addition, at Applicant's cost, address information identifying the location of the community space will be placed on the exterior of the building at the request of the ANC, giving the ANC a permanent meeting place. (Ex. 32, Ex. 32F, and Ex. 32G.)
29. The residential courtyard provides the "extended outdoor living" concept that the development team proposes to introduce into the site. The proposed courtyard is envisioned as a series of open rooms designed for different aspects of outdoor living, with particular attention to the enjoyment of food, given the project's adjacency to Union Market. In addition to these specific issues, each space is also designed for maximum flexibility for varied programming and multiple uses throughout the year. (Ex. 2 and Applicant's Presentation.)

30. The modified design of the building alludes to the industrial cast iron facades from the turn of the 19th century that can be found in mixed-use warehouse districts such as New York and Chicago. The Northeast Gateway of Washington contains many similar existing industrial warehouses of brick and steel; however, there is no presence of that architecture to create an identity for the entry point of the Florida Avenue Market area. Since this particular site is the visible entry to the Market from the Metro, the design team deemed it a highly desirable location for such an architectural expression. The revised design keeps the massing concept of a solid background with three separate forms – one for each street with frontage. (Ex. 19.)
31. The Applicant incorporated the selected materials to strengthen the “loft-like” design motifs of the project. The white outer frame is a metal industrial frame made of piers, channels, metal panels, and with expansive glass similar to period cast iron buildings, while the solid frame behind is a dark brick façade with single punched windows similar to the warehouses found in the surrounding area. In addition to drawing heavily from brick and steel, the Project utilizes a large degree of glass to accentuate the warehouse feel. The light metals and dark brick contrast creates a sense of visual interest and depth that accentuates the different characteristics of each type of materials. (Ex. 19.)
32. Parking for approximately 215 cars is provided on two underground levels, with approximately 108 spaces reserved for residential use and the remainder reserved for retail use. The modification increased the 188 parking spaces approved under the Order. Parking on site is accessed from Florida Avenue, as far removed from the intersection with Fourth Street as practicable. Multiple retailers who have expressed interest in the retail space have indicated their requirement that the Florida Avenue frontage be utilized for the curb cut so that customers can more easily find their business. In addition, since the site has a significant slope, such entrance takes advantage of a lower topographical point and greatly reduces the amount of ramping necessary while improving efficiency and functionality. (Ex. 2, Ex. 19, Ex. 28, and Applicant’s Presentation.)
33. The loading dock is located off Morse Street, at the first floor level, so truck maneuvering will not adversely impact Florida Avenue or Fourth Street. Space for trucks, delivery vans, and loading docks are provided similar to that provided in the project by the Order. This location was chosen due to its greater relative safety profile and as the result of its location away from the heaviest anticipated degree of pedestrian activity on Florida Avenue, NE and away from the Project’s ingress/egress point for passenger vehicles. (Ex. 2.)
34. The Transportation Impact Study, included in Tab C of the Applicant’s November 15, 2013 Prehearing Statement, concluded that the proposed project would have only a marginal impact on traffic operations. It also confirms that the modified project’s access plan, with its primary use of Florida Avenue, NE, for passenger vehicles, and Morse Street for loading, will be suitable. The Study made suggestions for minor public space and traffic pattern modifications to mitigate traffic impacts in the area. The number of proposed curb cuts would be reduced from seven (7) to two (2) at the Property. (Ex. 19C.)

35. The Applicant will design the project to achieve 40 LEED (Leadership in Energy and Environmental Design) points for New Construction v 2.2 Project Checklist, as set forth on the Exhibit A to Exhibit 32 of the record. Such point total is significantly higher than the 20 LEED points previously approved under the Order. Such 40 point total is the same as the number of points required to achieve a LEED certified project; however, LEED certification is at Applicant's discretion. Further, the project incorporates a "cool roof" (i.e., a white roof), at the request of OP. (Ex. 31 and Ex. 32.)
36. The Commission finds that the project's energy and environmental design features are superior to what would be provided in a matter-of-right development at the PUD Site.

Development Incentives and Flexibility

37. In addition to the map amendment, the Applicant requests continuation of the previously approved variance relief from 11 DCMR § 2201.1 to allow a combined loading area for the retail and residential uses, rather than providing separate, compliant loading facilities for each use, and additional variance relief from 11 DCMR § 411.3 to allow the construction of two roof structures where one connected roof structure would typically be required.

Public Benefits and Project Amenities

38. In addition to the sustainability features discussed in Paragraph 35 above, the following benefits and amenities will be created as a result of the PUD project:

(a) *Affordable Housing (§2403.9(f))* – The Applicant will set aside 20% (approximately 30,662 gross square feet) of the residential units as affordable housing in perpetuity. These units will be made affordable to households earning no more than 80% of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for household size). Such amount of affordable housing exceeds the amount of affordable residential space that would be required under Inclusionary Zoning. The affordable units will be equitably dispersed among the market-rate units in the project on all floor of the project, and will be of a size and type comparable to the market-rate units. The Commission finds that the provision of affordable housing is a valuable community benefit of the PUD that should be recognized.

(b) *ANC Office, Community Meeting Facilities, MPD Work Station (§2403.9(i))* – The Applicant will provide a community meeting room and related amenities, an ANC office for ANC 5D, and a Metropolitan Police Department work station comprising a total of approximately 2,422 square feet of gross floor area (100 seat capacity), and the furnishings for such uses. This space will be provided to the community without charge for the life of the project. The Applicant will coordinate with ANC 5D on the final design of the community room. The ANC office will be assigned to ANC 5D, or any successor ANC which may be designated to represent the PUD Site by redistricting legislation enacted by the Council of the District of Columbia and signed by the Mayor. If the Metropolitan

Police chooses not to use the work station, the Applicant may use the space for building security purposes.

(c) *Urban design, architecture and landscaping (§ 2403.9(a))* - The project exhibits the characteristics of exemplary urban design, architecture, and landscaping. The project provides a superior urban design response that fully responds to the site location and topography, efficiently integrating a variety of uses of direct interest to the community. The design creates a sense of scale and visual interest, incorporating elements from the Market's industrial past, while tying it to an exciting and reenergized future. The building as a whole employs traditional, time-tested materials in new and modern ways in a design that is aesthetically enduring and which adds to the fine urban texture of the District. The design is also fully responsive to the environment of the Florida Avenue Market, providing a defining urban edge to both Florida Avenue and Fourth Street to help define the primary Market entrance. The project will also improve the public space surrounding the Property as it upgrades the streetscapes, both the hardscaping and landscaping, adjacent to the Property as shown on the plans submitted into the record, in coordination with DDOT.

(d) *Benches in public space (§ 2403.9(i))* – The Applicant will provide benches in public space adjacent to the project, subject to the public space permitting process. The final number and location of such improvements in public space shall be implemented in coordination with DDOT.

(e) *Site planning, and efficient and economical land utilization (§ 2403.9(b))* - The project reflects creative design and engineering, and careful use of height and density, to accommodate residential and retail uses on a relatively small plot of land with significant grade changes. Overcoming the challenges of a difficult slope, the Applicant's development team succeeded in providing both underground parking as well as retail space that will be experienced as one continuous platform to pedestrians. Further, the design leverages the slope of the site to allow for the ground floor retail facing Florida Avenue to achieve a dramatic ceiling height of 27 feet. The Applicant team was also able to design pedestrian and vehicular entrances that keep residential and commercial traffic safely separate from each other. Specifically, the project's loading will be located on Morse Street, the street with the lowest amount of vehicular and pedestrian traffic, and the Applicant will implement the Loading Management Plan described as on Page 18 of Exhibit 19C of the record along with requiring residential and retail tenants to schedule loading activities with loading coordinator and including loading requirements and obligations as exhibits or rules incorporated into retail and residential leases. Perhaps most importantly, the project will introduce a significant amount of community-anchoring retail space to an area that is currently underserved.

(f) *Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures*

to mitigate adverse traffic impacts (§ 2403.9(c)) – The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant’s Transportation Demand Management Plan described on Page 19 of Exhibit 19C of the record (the Applicant’s Transportation Impact Study) and the supplemental and additional elements described by Applicant in Exhibit 32. In addition, the Applicant will introduce traffic infrastructure upgrades adjacent to the Property described in the Applicant’s Transportation Demand Management Plan.

(g) *Bike racks (§ 2403.9(i))* – The Applicant will provide bike racks in public space adjacent to the project for at least sixteen (16) short-term bicycle parking spaces, subject to the public space permitting process. The final number and location of such improvements in public space shall be implemented in coordination with DDOT.

(h) *Car-sharing service space (§ 2403.9(i))* – The Applicant shall reserve at least one (1) parking space for a car-sharing service in the underground parking garage. If the reserved space is not desired by any car-sharing service, then it shall revert to the Applicant’s general use.

(i) *Infrastructure for car charging stations (§ 2403.9(i))* – The Applicant shall provide the electrical wiring and disconnects to allow for the subsequent outfitting, at the request of retail tenants or as market demand otherwise dictates, of two (2) parking spaces with 208/240-volt electric car charging stations in the parking garage accessible to residents and visitors.

(j) *First-Source Employment Agreement (§2403.9(e))* – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services (“DOES”) on May 29, 2008 to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project. (Ex. 55 in the record for Z.C. Case No. 06-40.)

(k) *CBE Contracting Commitment (§2403.9(e))* – As approved under the Order, the Applicant entered into a Certified Business Enterprise (“CBE”) Agreement with the D.C. Department of Small and Local Business Development (“DSLBD”) dated September 9, 2004 in order to achieve the goal of 35% participation by D.C.-certified local, small, and disadvantaged businesses in the project development and construction contracts. (Ex. 17 in the record for Z.C. Case No. 06-40.)

39. The Commission finds that the Applicant’s public benefits and project amenities provide value to the District and the community surrounding the Property and are sufficient to justify the relief requested.

Compliance with the Comprehensive Plan

40. The Commission finds that the proposed modification to the approved PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.
41. The project as modified carries out Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment as modified bring growth and revitalization to a long-vacant and underutilized industrial site.
42. The modified project carries out Transportation Element policies that promote transit-oriented development and urban design improvements to major thoroughfares such as Florida Avenue. The modified PUD brings new housing and retail uses within walking distance of the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.
43. The modified project carries out Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing. The modified PUD brings 170 to 216 new residential units to an underserved neighborhood, with a 20% of the total, or approximately 30,662 gross square feet, set aside as affordable units in perpetuity.
44. The modified project carries out Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a once-blighted site bordering Florida Avenue.
45. The project carries out Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing and retail uses.

Government Reports

46. OP noted in its November 25, 2013 report ("**OP Report**") that it recommended approval of the proposed modification. OP noted that the modification to the project "conforms to the Comprehensive Plan's objectives for the area and to the Generalized Land Use and Policy Maps, and would contribute to the redevelopment of the Florida Avenue Market area." The OP Report noted that there "have also been extensive discussions and meetings with the community and OP, which have led to improvements in the proposal since its original submission, including the incorporation of façade elements alluding to an "industrial warehouse" character. OP noted that it desired greater articulation along the western wall of the project. The OP Report noted that "[g]enerally, the Comprehensive Plan provisions applicable in the earlier approval for this site also apply to this proposal. The proposal would particularly further the following Guiding Principles of the Comprehensive Plan." The OP Report also stated that "The development proposal would particularly further the Land Use, Housing, Economic Development, Transportation, Historic Preservation, and Urban Design Citywide Elements, as well as the Upper Northeast Area Elements and policies." Further, OP noted that the "Project is in accordance with the Small Area Plan, adopted by Council on October

6, 2009.” Likewise, OP did not object to any of the requested variance or special exception relief. The OP Report stated that the project is in compliance with Chapter 24 of the Zoning Regulations. (Ex. 21.) At the December 5, 2013 Zoning Commission hearing, OP voiced “strong support” for the modification to the Project.

47. DDOT submitted a report into the record on November 27, 2013 noting that the Applicant is largely mitigating its concerns and setting forth other issues. (Ex. 23.) DDOT noted that it agreed in principle to allowing the curb cut access on Florida Avenue, among other items. DDOT stated that it is working with the Applicant to address its concerns. DDOT appeared at the hearing on December 5, 2013 and reiterated the contents of its report.

Advisory Neighborhood Commission Reports

48. ANC 5D submitted a letter in support of the requested modification to, and extension of, the project noting that “On November 12, 2013, at the duly-noticed, regularly scheduled monthly meeting of Advisory Neighborhood Commission 5D, with a quorum of 6 commissioners and the public present”, ANC 5D voted “unanimously to support this application and the two-year extension.” (Ex. 25.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.
49. ANC 6C submitted a letter in support of the requested modification to, and extension of, the project noting that “On November 13, 2013, at the duly-noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of 6 out of 6 commissioners and the public present”, ANC 6C voted “unanimously to support this application and the two-year extension” with conditions. The conditions included exterior bike racks, public benches, and additional efforts to provide safer and cleaner sidewalks and public spaces. (Ex. 20.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.

Parties in Support or Opposition

50. No other parties appeared at the hearing to support or oppose the Project.

Persons in Support or Opposition

51. The Trinidad Neighborhood Association submitted a letter in support dated October 1, 2013 noting that it supports the application for a modification and a two (2) year time extension of the Order. The letter noted that the Applicant presented the project to the Trinidad Neighborhood Association at its June 2013 meeting and the project was well received by residents. (Ex. 8 in the record for Z.C. Case No. 06-40B and Ex. 18.)
52. Two Rivers Public Charter School, located directly across Florida Avenue from the Property, submitted a letter in support dated December 3, 2013 noting that it supports the application for a modification and a two (2) year time extension of the Order. (Ex. 26.)

Extension Request

53. The Applicant submitted evidence that the project has experienced delays beyond the reasonable control of the Applicant. The evidence included an affidavit explaining the Applicant's efforts since the prior Order was issued to implement the project.
54. The Applicant served copies of the request on ANC 5D and ANC 6C, the only two parties in the case. Both ANC 5D and ANC 6C submitted letters in support of the requested two-year time extension, detailed further below. (Ex. 20 and Ex. 25.)
55. OP submitted a report dated May 31, 2013, indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations for an extension to the Order to be granted. (Ex. 4 in the record for Z.C. Case No. 06-40B.)
56. The Office of the Deputy Mayor for Planning and Economic Development submitted a letter in support of the extension dated May 31, 2013, noting that the project is an important catalyst to encourage the revitalization and renaissance in the Capital City Market. (Ex. 5 in the record for Z.C. Case No. 06-40B.)
57. ANC/SMD 5D01 Peta-Gay Lewis submitted a letter in support of the extension dated June 6, 2013, noting that the project would bring much needed development to this neighborhood and along this particular segment of Florida Avenue. (Ex. 6 in the record for Z.C. Case No. 06-40B.)
58. ANC/SMD 6C06 Tony Goodman submitted a letter in support of the extension dated June 6, 2013, noting that the project will help fill a void in the street fabric of Florida Avenue. (Ex. ____ in the record for Z.C. case No. 06-40B)
59. As noted above, the Trinidad Neighborhood Association and Two Rivers Charter School submitted letters in support of the time extension of the Order. (Ex. 8 in the record for Z.C. Case No. 06-40B, Ex. 18., and Ex. 26.)
60. The Commission finds that the Applicant meets the standards of § 2408.10 and has provided substantial evidence that there is good cause for the extension, pursuant to 11 DCMR § 2408.11(a). Therefore, the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

1. Pursuant to 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, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the

matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.

3. The Property still meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
4. The PUD, as approved by the Commission, still complies with the applicable height, bulk, and density standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail uses for this modified project are appropriate for the Property. The impact of the modified project on the surrounding area is acceptable given the quality of the public benefits of the project, and the modification application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
5. The Applicant's request for flexibility from the Zoning Regulations, as modified, is consistent with the Comprehensive Plan. Moreover, the modified project's public benefits and amenities strike a reasonable balance with the requested development flexibility.
6. Approval of the modification to this PUD and related map amendment is appropriate because the proposed development is consistent with the present and future character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the modified project will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
7. The PUD-related rezoning of the PUD Site to C-3-C is still consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01).
8. The Commission may also approve variance and special exception relief that would otherwise require approval by the Board of Zoning Adjustment. The Applicant is slightly modifying its previously granted variance relief from § 2101.1 for loading and requested additional variance relief from the roof structure requirement of § 411.3. The Applicant has carried its burden to demonstrate each of the three relevant factors for the modification of the previously-approved loading variance and the newly-requested roof structure variance.
9. 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 the recommendations of OP in all zoning cases. The Commission carefully considered the OP report and found OP's reasoning persuasive in recommending approval of the modification application.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions 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 concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 5D position supporting approval of the modification application and concurred in its recommendation

of approval. The Commission also gave careful consideration to the ANC 6C position supporting approval of the modified project concept with recommendations for project improvements. The Commission concluded that the Applicant satisfactorily addressed the ANC 6C recommendations.

11. The Commission provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to the ANC, OP, and to owners of property within 200 feet of the site in accordance with the Zoning Regulations and applicable case law.
12. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under Chapter 24 and the burden for the variances requested. The Commission finds that the Project as modified fully satisfies the goals and objectives of the PUD Regulations of Chapter 24 to encourage the development of well-planned developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Commission finds that the Property is subject to exceptional conditions as outlined in the Applicant's application. The Commission agrees that the Applicant faces practical difficulties satisfying the strict application of the Zoning Regulations with regard to the loading requirements of § 2201.1 and the roof structure requirements of § 411.3. The Commission agrees with the Applicant's written statements and testimony at the public hearing that it would be unnecessarily burdensome for the Applicant to satisfy these requirements. The Commission also finds that granting this variance relief will not cause substantial detriment to the public good and the variances can be approved without impairing the intent, purpose, and integrity of the Zone Plan.
13. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

Extension Request

14. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided for in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other

condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

15. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by the Applicant serving ANC 5D and ANC 6C with a copy of the application and allowing 30 days for a response by the ANCs.
16. The Commission concludes that there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
17. The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant reconfigured its development team, sought additional development partners for the residential component, expended a great deal of money on project costs, and redesigned the originally approved project into a viable proposal, which are all conditions beyond the Applicant's reasonable control.
18. As noted above, the Commission is required under § 13(d) of the Advisory Neighborhood Commissions 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 concerns raised in the written report of the affected ANC. ANC 5D and ANC 6C submitted letters in support of the requested extension. (Ex. 20 and 25.) The Commission has given ANC 5D's and ANC 6C's recommendations great weight in approving this extension.
19. As noted above, 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 the recommendations of the Office of Planning in all zoning cases. OP submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.
20. The Commission concludes that its decision to extend the validity of the Order is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

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 applications for a modification to the approval of a consolidated review of a Planned Unit Development and a related Zoning Map amendment from C-M-1 to C-3-C for the Property. In addition, in consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the time in which to file a building permit for the construction of a new mixed-use development in Square 3587, which was initially approved in Z.C. Order No. 06-40 and extended by Z.C. Order No. 06-40A. The approval of the two-year extension shall be valid until two (2) years after the date of issuance of this Order, within which time an application shall be

filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than three (3) years after the date of issuance of this Order.

This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by SK&I Architects, Bohler Engineering, and Landscape Architecture Bureau, dated April 12, 2013, in the record as Exhibit 2A, as modified by the plans dated November 14, 2013, in the record as Exhibits 19A and 24D and the plans dated January 6, 2014, in the record as Exhibit 32, and as modified by the guidelines, conditions, and standards herein (collectively, the **"Plans"**).
2. The PUD shall be a mixed-use residential and retail project, containing approximately 189,036 square feet of gross floor area and including approximately 170-216 residential units. Approximately 27,410 square feet of gross floor area, located on the ground and first floors, shall be devoted to retail and approximately 153,310 square feet of gross floor area, located on the second through sixth floors, inclusive, shall be devoted to residential use. The maximum density of the project shall be 5.0 FAR.
3. The maximum height of the building shall be approximately 80 feet as shown on the Plans.
4. The project shall include approximately 215 vehicle parking spaces in the below-grade parking garage. The project shall provide one 30-foot loading berth, one 55-foot loading berth, and one 20-foot delivery vehicle space, as shown on the Plans.
5. Prior to the issuance of a certificate of occupancy for the residential component of the project, the Applicant shall demonstrate that it has set aside 20% (approximately 30,662 gross square feet) of the residential units as affordable housing in perpetuity. The affordable units shall be equitably dispersed among the market-rate units in the project on all floor of the project, and shall be of a size and type comparable to the market-rate units.
6. The affordable housing units shall be available to households with an annual income of no more than 80% of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for household size).
7. Prior to the issuance of a certificate of occupancy for the residential component of the project, the Applicant shall provide evidence that the building has been designed to achieve the equivalent of 40 LEED points. However, the Applicant shall not be required to obtain LEED Certified or any other certification level from the United States Green Building Council. In addition, the project will provide a "cool roof" as requested by the Office of Planning.
8. Prior to the issuance of a certificate of occupancy for the residential component of the project, the Applicant shall provide, at no cost and for the life of the project, a community meeting room and related amenities, an ANC office, and a Metropolitan Police Department work station comprising a total of approximately 2,422 square feet of gross

floor area (100 seat capacity), and the furnishings for such uses, as shown on the Plans and in accordance with Exhibit 32 of the record. If the Metropolitan Police Department chooses not to use the work station, the Applicant may use the space for building security purposes.

9. The ANC office shall be assigned to ANC 5D, or any successor ANC which may be designated to represent the Property by redistricting legislation enacted by the Council of the District of Columbia and signed by the Mayor.
10. Prior to the issuance of a certificate of occupancy for the residential component of the project, unless other timing results from the public space permitting process, the Applicant will provide benches in public space adjacent to the project for the life of the Project. The final number and location of improvements in public space shall be implemented in coordination with DDOT.
11. The Applicant shall implement measures to promote the use of public transit and bicycle transportation and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Demand Management Plan described on Page 19 of Exhibit 19C of the record (the Applicant's Transportation Impact Study) and the supplemental and additional elements described by Applicant in Exhibit 32 for the life of the Project. Such additional elements are as follows:
 - (a) reserving at least one (1) parking space for a car-sharing service in the underground parking garage. If the reserved space is not desired by any car-sharing service, then it shall revert to the Applicant's general use;
 - (b) providing a \$40 subsidy for a car sharing program or bike share program upon move-in for each new resident for the first three (3) years after the issuance of the Certificate of Occupancy for the building's residential use;
 - (c) providing an electronic message screen displaying real-time transportation information in the building's lobby; and
 - (d) providing the electrical wiring and disconnects to allow for the subsequent outfitting, at the request of retail tenants or as market demand otherwise dictates, of two (2) parking spaces with 208/240-volt electric car charging stations in the parking garage accessible to residents and visitors.
12. Prior to the issuance of a certificate of occupancy for the residential component of the project, unless other timing results from the public space permitting process, the Applicant shall make the traffic network improvements described as Recommendation 13 on Page 29 of Exhibit 19C of the record (the Applicant's Transportation Impact Study). The final design of any improvements in public space shall be subject to final approval from DDOT and the Applicant shall have flexibility to modify such improvements in response to DDOT direction as well as modify the corresponding elements in private space to align with the final design of streetscape improvements in public space.
13. The Applicant will provide approximately 72 bike parking spaces within the parking garage. Prior to the issuance of a certificate of occupancy for the residential component of the project, unless other timing results from the public space permitting process, the

Applicant will provide bike racks in public space adjacent to the project for at least sixteen (16) short-term bicycle parking spaces. The final number and location of improvements in public space shall be implemented in coordination with DDOT.

14. The project shall provide loading consistent with the Plans, provided that the Applicant shall have flexibility to modify such plans in response to continued coordination efforts with DDOT. The Applicant shall implement the Loading Management Plan described as on Page 18 of Exhibit 19C of the record (the Applicant's Transportation Impact Study) and the supplemental and additional elements described by Applicant in Exhibit 32 for the life of the Project. Such additional elements are as follows:
 - (a) Requiring residential and retail tenants to schedule loading activities with loading coordinator; and
 - (b) Including loading requirements and obligations as exhibits or rules incorporated into retail and residential leases.
15. The Applicant shall abide by the terms of the above-described "CBE Agreement" dated September 9, 2004 executed with the DSLBD in order to achieve the goal of 35% participation by D.C.-certified local, small, and disadvantaged businesses in the project development and construction contracts.
16. The Applicant shall abide by the terms of its "First Source Employment Agreement" dated May 30, 2008 executed with DOES to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project.
17. With respect to the design of the project, the Applicant shall have flexibility to incorporate the elements of Condition 14 of Zoning Commission Order No. 06-40. In addition to such flexibility and the flexibility noted in the Plans, Applicant shall have the following flexibility to revise the design of the project:
 - (a) To revise the design of the public space surrounding the Property and the exterior design of the project to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities;
 - (b) To vary the final streetscape design and materials subject to review and approval by the appropriate District permitting authorities;
 - (c) To vary the number of residential units between 170 to 216 residential units;
 - (d) To vary the number, size, location, and design features of retail entrances, including the size, location, and design of windows, doors, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design and market requirements; and
 - (e) To vary the number, size, location, and other features of proposed building signage, provided that such signage is otherwise permitted under the applicable provisions of the Building Code.
18. The PUD and Zoning Map Amendment approved by the Commission 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 as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.

19. 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 owner of the Property 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. 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.
20. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*, ("**Act**"). This order is conditioned upon full compliance with those provisions. In accordance with the 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 sexual discrimination, which 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

For this reason stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the applications be **GRANTED**.

On January 27, 2014, upon the motion of _____, as seconded by _____, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of ____-____-____ (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert M. Miller to _____).

In accordance with the provisions of § 3028 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING