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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 06-41

Case No. 06-41

(Zoning Commission Design Review, Camden Development, Inc.)

_____, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on February 22, 2007, to consider an application for Camden Development, Inc. for design review pursuant to the Capitol Gateway Overlay Zoning Regulations, as well as for special exception and variance relief for Lot 111 in Square 653. Camden's application was evaluated pursuant to Chapters 16, 31 and 34 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its special public meeting on March 26, 2007, the Zoning Commission took proposed action by a vote of _____ to approve the application and plans that were submitted into the record.

The Office of Zoning referred the case to the National Capital Planning Commission ("NCPC") pursuant to Section 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated _____, found that the project _____.

The Commission took final action to approve the application on _____, by a vote of _____.

A. FINDINGS OF FACT

1. The property that is the subject of this application is located in Lot 111, Square 653 (the "Subject Property" or "Property"). The building is located in Southwest D.C. in Ward 6. The Property consists of approximately 41,019 square feet of land area and is known as 1325 South Capitol Street, SW. (Exhibit 4, p. 1.)

2. The Subject Property is owned by South Capitol Acquisition LLC through Camden Development, Inc. (Exhibit 4, p. 1.)

3. The Property was located in the C-2-C Zone District at the time it was purchased by the Applicant. (Exhibit 25, p.1.)

4. The Office of Planning filed a report on May 19, 2006, proposing to expand the boundaries of the Capital Gateway Overlay District to the west side of South Capitol Street to include the Subject Property. The Zoning Commission set the proposed text amendment, also known as Zoning Commission Case No. 06-25, down for public

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hearing at its meeting on May 25, 2006. A public hearing for Case No. 06-25 was held on November 16, 2006.

5. The Property became subject to the provisions of the Capital Gateway Overlay pursuant to 11 DCMR Section 3202.5, which provides that a building permit filed for a property that the Commission is considering rezoning must comply with the most restrictive provisions of the current or proposed zone. Accordingly, the Applicant filed its application for design review pursuant to Chapter 16 while Case No. 06-25 was still pending. (Exhibit 4, p.1; Exhibit 20, p.1.)

6. The Office of the Attorney General advised it was appropriate for the Zoning Commission to review the application despite the pending status of Zoning Commission Case No. 06-25 because the requirements of that case would apply to the Property prior to the issuance of construction permits. The Office of the Attorney General further advised that no decision to grant or deny the application could occur prior to the Zoning Commission taking final action with respect to Zoning Commission Case No. 05-10. Exhibit 20, p.1.)

7. The Zoning Commission took final action on Zoning Commission Case No. 05-10 at its regularly scheduled public meeting on January 8, 2007.

8. The Zoning Commission scheduled a public hearing for the above-referenced application, Case Number 06-41, for February 1, 2007. The date was subsequently changed to ensure final action would have been taken on Zoning Commission Case No. 05-10. The above-referenced application was then scheduled for a public hearing on February 22, 2007. (Exhibit 20, p. 1.)

9. At the February 22, 2007, public hearing, John Epting of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of Applicant. The Commission accepted Eric Liebmann of WDG Architecture as an expert in architecture. (Transcript, p. ____.)

10. At the close of the hearing, the Zoning Commission requested additional information from the Applicant, including a detailed roof plan or section, additional green design information or a LEED scorecard; ground floor elevations or perspectives to demonstrate level of activity from retail or amenity space; further analysis of the western façade; photographs of other buildings using similar materials; and clarification of vents in the courtyard.

11. The Applicant timely submitted its post-hearing submission on March 12, 2007.

PROJECT SITE

12. The Property consists of 41,019 square feet of vacant land in Ward 6 at the northwest corner of the intersection of O Street, SW and South Capitol Street. (Exhibit 4, Exhibit D.)

13. The area to the west of the Property is located in the R-4 Zone District and consists of two-story rowhouses. Immediately to the east of South Capitol Street is the site of the new baseball stadium for the Washington Nationals. It is located in the CG/CR Zone District. North of the Property is located in the CG/C-2-C Zone District and south of the Property is located in the CG/R-5-E Zone District. (Exhibit 24, pp.1-2, Exhibit D.)

14. The Property is located between the Navy Yard and the Waterfront-Southeastern University Metrorail stations. (Exhibit 4, p.3.)

15. The Generalized Land Use Map includes the Subject Property in the Medium Density Residential and Moderate Density Commercial categories. (Exhibit 25, P.4.)

PROJECT DESCRIPTION

16. The Applicant seeks to construct a residential building with the possibility of ground floor retail on the Subject Property ("Building"). (Exhibit 4, Exhibit A.)

17. The Building is subject to the design review provisions of the Capital Gateway Overlay. The Applicant simultaneously seeks variances for relief from the height regulations, floor area ratio regulations, courtyard regulations, residential recreation space regulations, the pending Capital Gateway Overlay regulations, and a special exception for its rooftop structures. The Applicant also seeks flexibility in the implementation of the pending inclusionary zoning regulations. (Exhibit 4, p. 1.)

18. The Zoning Commission took final action to eliminate the residential recreation space requirement; however, a final Order was still pending at the time the Zoning Commission took proposed action on the subject application. Thus, the Applicant was still required to seek relief from the residential recreation space requirement delineated in Section 773 of the Zoning Regulations. See Zoning Commission Case No. 05-02.

19. The Applicant will construct the Building to a height of 110 feet along South Capitol Street. In light of the work the District Department of Transportation is performing on South Capitol Street, the Applicant chose a measuring point for building height at the Applicant's property line, which is at a grade of 32'10". The building will gradually step down to 70 feet 8 inches along its western façade, closest to the rowhouses. The building will have three levels of below-grade parking. (Exhibit 4, Exhibit F; Exhibit 24, Exhibit E.)

20. The gross floor area of the entire project is approximately 268,628 square feet. There will be 265,998 square feet of residential use and approximately 2,988 square feet of potential retail use. The floor area ratio ("FAR") for the Building is 6.6. The Building will have a lot occupancy of approximately 66%.

21. The Building will include 261 parking spaces as well as one loading dock and one service delivery space.

22. The Applicant chooses to participate in the inclusionary zoning program which was pending at the time final action was taken in this matter. This program affords the Applicant bonus density in exchange for providing affordable housing units for households with an income of up to 80% of the area median income.

23. Pursuant to the pending inclusionary zoning regulations, the Applicant will use approximately 22,514 square feet of the available 49,222 square foot bonus density. 11,250 square feet of the Building will be reserved for affordable housing for households making 80% of the area median income. The Applicant submitted evidence into the record demonstrating the financial hardship it bears in providing the affordable units and its inability to provide affordable units off-site. The evidence supported their findings that it will take nine market-rate units to offset the cost of providing one affordable unit.

24. The Applicant receives an additional \$10 for rent per floor per month the higher the level is. Thus, the financial loss to the Applicant for providing affordable housing increases with each floor. To minimize the loss to the Applicant in providing affordable housing, the affordable units will be located on the first five floors of the Building. The units will be appropriately dispersed on those floors. The Office of Planning previously recommended to the Zoning Commission that affordable units only be required on the floors in the lower half of residential buildings to minimize the cost to the developer since the units on the higher floors help subsidize the cost of providing the affordable units.

25. The Building's façade presents a modern asymmetric frontage above South Capitol Street, which honors, in its distribution of architectural elements, the historic Washington division of building base, middle, and top. The single level building base, which encloses residential amenity spaces and potential retail space at the southwest corner, maintains the designated setback line, and is sheathed in a combination of oversized masonry units, glass and metal, with cast stone accents. The setback line is held above by the full height entry bay, as well as projecting bays and balconies at floors three through ten. The top floor and the second floor are set back to provide clarity, rhythm, and hierarchy to overall façade composition. The building enclosures at these planes consist of a variety of sizes and colors of masonry units, in concert with glass, metal, and cast stone.

26. The Building will incorporate a number of low-impact development features that will result in the attainment of at least 16 LEED-NC v2.2 points for the project. These points may be achieved through the following project features: (Exhibit 34, Exhibit B.)

- Reduction of pollution from construction activities by controlling soil erosion, waterway sedimentation and airborne dust generation

- Avoidance of development of an inappropriate Greenfield site and reduced the environmental impact from the location of the building on the site
- Development of the density of the residential use in an urban area with existing infrastructure and did not disturb existing Greenfield or habitats and natural resources.
- Reduction of pollution and land development impacts from automobile use by taking advantage of alternative transportation by locating the project in close proximity to public transportation, by providing bicycle storage to encourage bicycle use by tenants and visitors, and by providing parking for fuel efficient single occupancy vehicles to encourage their use as well
- Limitation of the disruption of natural hydrology by consideration of impervious coverage, increasing on-site infiltration, and managing storm water runoff
- Reduction of water pollution by increasing on-site filtration, eliminating source of contaminants, and removing pollutants from storm water runoff
- Reduction of heat island effect (thermal gradient differences between developed and undeveloped areas) to minimize impact on microclimate and human and wildlife habitats through a combination of vegetation at the roof, reflective roof, and at-grade landscape features
- Limitations of the use of potable water for landscape irrigation enhances water efficiency
- Reduction of the burden on municipal water supply and waste water system by reducing water use
- Use of building components to prescribed levels of energy efficiency performance in the design of the building envelope and building systems
- Use of at least 10%, and possibly 20%, recycled content materials, thereby reducing the impacts resulting from extraction and processing of virgin resources
- Use of at least 10%, and possibly 20%, regional extracted, processed, and manufactured materials and resources, thereby reducing the impacts resulting from extraction and processing of virgin resources
- Reduction in the quantity of indoor air contaminants by limiting the amount of Volatile Organic Compounds (VOCs) from adhesives & sealants, carpet systems, and possibly paints and coatings that are odorous, irritating and/or harmful to the comfort and well being of installers and occupants
- Minimization of the exposure of building occupants to potentially hazardous indoor particulates and chemical pollutants by source control
- Provision of a high level of lighting system and thermal comfort control by individual occupants or by specific groups in multi-occupant spaces while still promoting the productivity, comfort and well-being of building occupants
- Provisions for the building occupants a connection between indoor spaces and the outdoors through the introduction of daylight and views into the regularly occupied areas of the building
- Participation by LEED Accredited Professional on Architect's staff.

CAPITAL GATEWAY OVERLAY STANDARDS

27. Each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet, with the exception of buildings within Squares 649 and 651: The Building is set back from the property line 15 feet. Six tiers of balconies composed of an aluminum rail system with wire mesh project 3'-5" beyond the setback line. The projection of the balconies beyond the setback line is permissible. (Exhibit 4; Exhibit 24.)

28. For each new building or structure located on South Capitol Street, a minimum of 60% of the street-wall shall be constructed on the setback line. Approximately 16,752 feet, or 59.43%, of the South Capitol Street façade meets or exceeds the setback line, which meets the intent of the Zoning Regulations. Id.

29. Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one step back from the building line along South Capitol Street, with the exception of buildings within Square 649: The Building is no taller than 110 feet. Id.

30. No private driveway may be constructed or used from South Capitol to any parking or loading berth areas in or adjacent to a building or structure constructed after the effective date of this section: Access to and from the Building is via O Street. Id.

GOVERNMENT REPORTS

31. In its February 12, 2007, the Office of Planning ("OP") recommended that the Zoning Commission approve the project subject to OP's receipt of additional information, including:

- Analysis of western façade;
- Confirmation that rooftop kitchen is exempt pursuant to definition of "habitable room" in Section 199 of Zoning Regulations;
- Additional information regarding the roof plan;
- Additional detail regarding materials along South Capitol streetscape;
- Elevation of first two floors of Building;
- More information on balcony materials;
- Increased commitment to green design;
- Information regarding need for northern court;
- Cross-section of the Building's context; and
- Increased commitment to providing affordable housing. (Exhibit 25.)

32. OP noted that "[t]he proposed development will help establish South Capitol Street as a monumental civic boulevard. The 110 foot height is appropriate for a major avenue in the city and is consistent with recent South Capitol Street corridor planning studies. The building will help frame the street by matching the height of the

baseball stadium on the east side of South Capitol. Redevelopment of the previously industrial site with a more aesthetically pleasing building will enhance this major city street and increase pedestrian movement in the area. The view north towards the Capitol or south towards the Anacostia River will be improved.” (Exhibit 25, p.10.)

33. At the hearing, OP indicated that the Applicant had responded to its requests for additional information. OP further noted that it would like the Applicant to provide 8% of its matter-of-right density to affordable units and that the units should be more widely dispersed throughout the building. OP also requested that the Applicant consider increasing its commitment to green design.

34. In its February 22, 2007 report, the District Department of Transportation (“DDOT”), stated that it had no objection to the project provided the Applicant coordinate with DDOT to ensure that their project plans reflect DDOT’s roadway improvement plans and other streetscape plans for the area. (Exhibit 32, p.1.)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

35. The Advisory Neighborhood Commission (“ANC”) 6D submitted a letter into the record on February 22, 2007 stating that it believes the project meets the criteria of height massing and setback from South Capitol Street imposed by the Capital Gateway Overlay, and provides a suitable step-down and courtyard space on the rear side of the building to mitigate the height of the building on South Capitol Street. (Exhibit 29, p.1.)

36. The ANC’s support was contingent on the following conditions:

- The Applicant will abide by the Development and Construction Management Plan as submitted into the record for this case. This Development and Construction Management Plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.
- The project will reserve 11,250 square feet of gross floor area as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with the Department of Housing and Community Development (“DHCD”) to make such changes comply with the same.
- Within 6 months of stabilization of the property as defined as being 94% occupied, the Applicant shall contact the Advisory Neighborhood Commission Single Member District Representative to make any surplus spaces in the garage available to the community at market-rate.

- Current residents of 2, 4, 6, and 8 O Street, SW shall be provided the opportunity to lease a parking space in the parking garage of the building at 50% of the market rate for a period of twenty years upon completion of the residential building.
- No less than 30 days before securing construction permits for this project, the Applicant shall provide the Advisory Neighborhood Commissioner Single Member District Representative an anticipated schedule of construction, including use of heavy machinery such as pile drivers.
- The Applicant shall coordinate with the adjacent property owners regarding the provision of a decorative fence identical to that lining the Applicant's property line from the Applicant's property and continuing north to N Street, at the Applicant's expense.
- The Applicant will give preference to existing residents living within the jurisdiction of Advisory Neighborhood Commission 6D when reviewing applications for tenancy. The Applicant will present its program to the ANC within 18 months of the Zoning Commission's issuance of an Order approving the proposed building.

PARTIES AND PERSONS IN OPPOSITION

37. On February 1, 2007, Karl Fraser submitted into the record a request for party status. He stated he would appear as an opponent of the application unless he was provided parking in the Building. (Exhibit 23, pp.1-2.)

38. Fraser failed to appear at the public hearing and the Zoning Commission denied his request for party status.

B. CONCLUSIONS OF LAW

1. The Zoning Commission has jurisdiction to review the design of structures constructed along South Capitol Street within the Capitol Gateway Overlay pursuant to Section 1610.1(d) of the Zoning Regulations.

2. The Commission may hear and decide additional requests for special exception or variance relief needed for the Property pursuant to Section 1610.7 of the Zoning Regulations.

3. Under the design review process, the Zoning Commission may impose development conditions, guidelines, and standards. In this application, the Commission finds that the design of the Building is consistent with the intent of the Capital Gateway regulations and will assure development of the area with a mixture of residential and commercial uses, and is of a suitable height, bulk and design as generally indicated in the Comprehensive Plan and recommended by planning studies of the area.

4. This project carries out the purposes of Chapter 16 of the Zoning Regulations to encourage well-planned developments which offer attractive design and thoughtful planning and establish South Capitol Street as a monumental boulevard.

5. The Commission finds the requested variance relief from the height, courtyard, residential recreation space, and inclusionary zoning regulations can be granted because of an extraordinary or exceptional situation or condition is inherent to the Property and that a practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations. Granting the variance relief will not harm the public good or the zoning plan.

6. The Commission finds that the requested special exception relief for the rooftop structures regulations is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring properties.

7. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide.

8. Approval of the design is not inconsistent with the Comprehensive Plan.

9. The Commission finds that the Development and Construction Management Plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community.

10. In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. ANC 6D submitted a letter in support of this case and it testified to the same effect at the hearing.

11. Approval of the application 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 Zoning Map of the District of Columbia.

12. Notice of the public hearing was provided in accordance with the Zoning Regulations.

13. The Applicant 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 design review and variance and special exception relief for Lot 111, Square 653. The approval of the project is subject to the following guidelines, conditions and standards:

1. The project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 4, 24, 26, and 35 of the record, and their testimony at the hearing, as modified by the guidelines, conditions and standards of this order, including its proposal outlined above to implement green design features.

2. The Applicant will abide by the Development and Construction Management Plan as submitted into the record for this case. This Development and Construction Management Plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.

3. The project will reserve 11,250 square feet of gross floor area as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same. The affordable units will be located on the first five floors of the Building.

4. Within 6 months of stabilization of the property as defined as being 94% occupied, the Applicant shall contact the Advisory Neighborhood Commission Single Member District Representative to make any surplus spaces in the garage available to the community at market-rate.

5. Current residents of 2, 4, 6, and 8 O Street, SW shall be provided the opportunity to lease a parking space in the parking garage of the building at 50% of the market rate for a period of twenty years upon completion of the residential building.

6. No less than 30 days before securing construction permits for this project, the Applicant shall provide the Advisory Neighborhood Commissioner Single Member District Representative an anticipated schedule of construction, including use of heavy machinery such as pile drivers.

7. The Applicant shall coordinate with the adjacent property owners regarding the provision of a decorative fence identical to that lining the Applicant's property line from the Applicant's property and continuing north to N Street, at the Applicant's expense.

8. The Applicant will give preference to existing residents living within the jurisdiction of Advisory Neighborhood Commission 6D when reviewing applications for

tenancy. The Applicant will present its program to the ANC within 18 months of the Zoning Commission's issuance of an Order approving the proposed building.

9. The Applicant shall have flexibility with the design of the Building in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
- To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

15. The Applicant shall be permitted to use the property line at a grade of 32'10" as the measuring point for the height of the Building.

16. The Applicant shall coordinate with DDOT to ensure that their project plans reflect DDOT's roadway improvement plans and other streetscape plans for the area.

17. The Applicant shall have the flexibility to provide retail use in the ground floor of the Building.

18. A parapet of 3 feet, 6 inches shall be permitted around the perimeter of the roof.

19. All applications for building permits authorized by this Order may be processed in accordance with the Zoning Regulations in effect on the date this Order is promulgated.

20. Approval of the design of the Building, as well as the variance and special exception relief that is simultaneously approved shall be valid for a period of two years from the effective date of Zoning Commission Order No. 06-41. Within such time, an application for a building permit for construction must be filed. As specified in 11 DCMR Section 2409.1, the filing of the building permit application will vest the Zoning Commission Order.

21. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of

Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, 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 the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

VOTE:

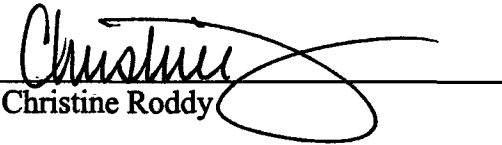
In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

ANTHONY HOOD
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document were hand delivered or mailed first class, postage prepaid to each of the persons at the addresses listed below on March 26, 2007.


Christine Roddy

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