

PLANNED UNIT DEVELOPMENT COVENANT

THIS PLANNED UNIT DEVELOPMENT COVENANT ("Covenant"), made and entered into as of this 13th day of October, 2011, between STREET ROADSIDE, LLC (the "Declarant"), and the DISTRICT OF COLUMBIA, municipal corporation (the "District").

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property consisting of Lot 32 (also known for assessment and taxation purposes as Lots 829 and 830) in Square 398 in the District of Columbia (the "Subject Site"); and

WHEREAS, the Declarant intends to develop the Subject Site for use as a Planned Unit Development (the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission ("Commission") Order No. 07-26, effective July 18, 2008, in Case No. 07-26 as that order has been modified by 07-26B and 07-26C in the manner described below; and

WHEREAS, by Order No. 07-26A effective August 27, 2010, the Commission approved a two year extension of the validity of the Project until July 18, 2012, within which time an application for a building permit must be filed; and

WHEREAS, by Order No. 07-26B effective August 27, 2010, the Commission approved minor modifications to the Project to change the rooftop configuration and certain other aspects of the approved facades; and

WHEREAS, by Order No. 07-26C effective August 5, 2011, the Commission approved additional minor modifications to eliminate the 80 parking spaces proposed to be located in the vaults in public space; and

WHEREAS, said Chapter 24 and Order No. 07-26 require the Declarant to enter into this Covenant with the District assuring the Declarant's, and its successors and assigns in title, development and use of the Project as approved by the Commission in Order No. 07-26, and any subsequent modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Commission's approval of the Planned Unit Development and Amendment to the Zoning Map under Order No. 07-26, effective July 18, 2008, as extended and modified by Order Nos. 07-26A, 07-26B and 07-26C, as that approval may hereafter be amended and/or modified from time to time, is incorporated herein by reference and made a part hereof as Exhibits A, B, C, and D, and shall be considered a part of this Covenant. As required by Order No. 07-26, the Subject Site will be developed and used in accordance with the plans approved by Order No. 07-26 as modified by Order No. 07-27B, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or the Zoning Commission may authorize, pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. The Declarant covenants that it will use the Subject Site only in accordance with the terms of modified Order No. 07-26, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Declarant, its successors or assigns should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in

Order No. 07-26A, the Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

3. Default. In the event that Declarant, its successors or assigns fails to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in Order No. 07-26A or within any extension of time granted by the Zoning Commission for good cause shown pursuant to section 2408.10, the benefits granted by Order Nos. 07-26 shall terminate pursuant to section 2408.14 of the Zoning Regulations.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. The Declarant shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

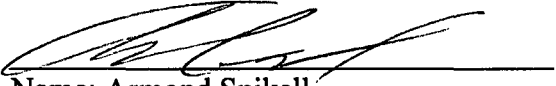
8. Rescission/Alteration of This Covenant. If Order No. 07-26 is further modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that the Declarant, or its respective successors or assigns, record a notice of modification in the Land Records of the District of Columbia together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, as of the date first written above, October 13, 2011, intending to be legally bound, has caused this Planned Unit Development Covenant to be executed by Armond Spikell, Member of O Street Management LLC, the manager of O Street Roadside LLC, for purposes of executing, acknowledging and delivering this Planned Unit Development Covenant, as the free act and deed of said Declarant, for the uses and purposes herein contained.

O STREET ROADSIDE, LLC , a District of
Columbia limited liability company,
By: O Street Management LLC, its manager

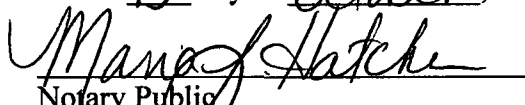
By:


Name: Armond Spikell
Title: Member

DISTRICT of COLUMBIA, ss:

I, Maria Hatcher, a Notary Public in and for the District of Columbia, do hereby certify that Armond Spikell, in his capacity as Member of O Street Management, LLC, in its capacity as the manager of O Street Roadside LLC, a District of Columbia limited liability company, party to the foregoing Planned Unit Development Covenant, personally appeared before me and, being personally well known to me, acknowledged said Planned Unit Development Covenant to be the act and deed of said limited liability companies and that he delivered the same as such.

GIVEN under my hand and seal this 13 day of October, 2011.


Notary Public

My commission expires: October 14, 2014.

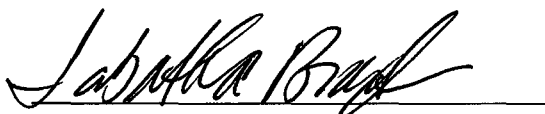
[NOTARIAL SEAL]

Maria J. Hatcher
Notary Public, District of Columbia
My Commission Expires 10/14/2014


IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Planned Unit Development Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

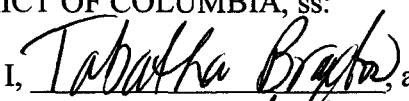
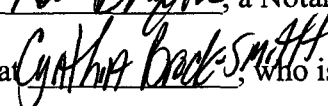
DISTRICT OF COLUMBIA,
a municipal corporation



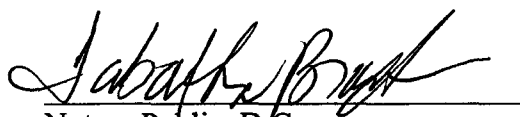
(Corporate Seal)

By: 
Secretary, D.C.

DISTRICT OF COLUMBIA, ss:

I, , a Notary Public in and for the District of Columbia, do hereby certify that , who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Planned Unit Development Covenant bearing date of the 3rd day of October, 2011, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

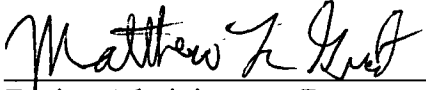
GIVEN under my hand and seal this 3 day of November, 2011.


Notary Public, D.C.

My commission expires: _____
[NOTARIAL SEAL]

TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires May 14, 2012

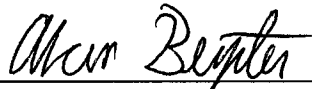
APPROVED:



11-1-2011

Zoning Administrator, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

A handwritten signature in black ink, appearing to read "Alan Bergstein", written over a horizontal line.

Alan Bergstein, Section Chief
Land Use and Public Works Section
Office of the Attorney General for the District of Columbia

EXHIBIT A

Zoning Commission Order No. 07-26

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-26

Z.C. Case No. 07-26

Consolidated Planned Unit Development and Related Zoning Map Amendment
O Street Roadside LLC -- Square 398, Lots 829 & 830
May 12, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 6, 2008, to consider an application from O Street Roadside LLC, owner of Lots 829 and 830 in Square 398, for consolidated review and one-step approval of a planned unit development ("PUD") and a related map amendment from the C-2-A Zone District to the C-3-C Zone District to construct a mixed-use development on the property. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

Applications, Parties, and Hearings

1. On September 17, 2007, O Street Roadside LLC (the "Applicant"), as owner of Lots 829 and 830 in Square 398 (the "Subject Property"), filed applications with the Commission requesting consolidated review and one-step approval of a PUD and a related map amendment from the C-2-A Zone District to the CR or C-3-C Zone District for the Subject Property. At the public hearing, the Commission only considered rezoning to the C-3-C Zone District.
2. The Subject Property has a combined land area of approximately 149,600 square feet and is currently zoned C-2-A. Square 398 is located in the northwest quadrant of the District, and is bounded by P Street on the north, 7th Street on the east, O Street on the south, and 9th Street on the west. The Subject Property is bisected by the former 8th Street, N.W. right-of-way, which was legally closed in 1977.
3. The Applicant proposes to construct a mixed-use development consisting of market-rate housing, senior and affordable housing, a hotel (as an alternative the development may include additional residential uses in lieu of a hotel), a grocery store, and other retail uses on the Subject Property. The new development will contain approximately 770,780 square feet of gross floor area, with an overall density of 5.15 floor area ratio ("FAR")

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and a maximum building height of 95 feet. Approximately 545,775 square feet will be devoted to residential uses, approximately 115,115 square feet will be devoted to hotel or devoted to additional residential uses should the Applicant elect not to construct the hotel, and approximately 69,000 square feet will be devoted to retail uses. The project includes 500 parking spaces in underground and first floor garages, as well 80 additional spaces in vault space, but the Applicant requested the flexibility to provide approximately 225 parking spaces for the retail grocery store, instead of the 250 spaces originally allocated, which represents a 10% reduction.

4. On November 9, 2007, the Applicant filed a supplemental statement (Exhibits 15A and 16), in support of the application, which included additional information regarding the planning and design of the project, as well as numerous letters in support of the project.
5. On December 5, 2007, the Applicant submitted a letter with revised plans (Exhibits 18 and 19), indicating that the project's height has been reduced with various setbacks and step downs. The overall density of the project was also reduced to 5.15 FAR, which is significantly less than the 8.0 FAR permitted under the PUD guidelines. The plans also included photo-renderings of the 9th Street elevation illustrating the transition from the west elevation of the PUD to the 30- to 40-foot height structures across 9th Street.
6. At its public meeting held on December 10, 2007, the Zoning Commission voted to schedule a public hearing on the applications.
7. On December 27, 2007, the Applicant submitted a Prehearing Statement, along with revised architectural drawings (Exhibits 22 and 23).
8. On February 15, 2008, the Applicant submitted additional Supplemental Hearing Materials (Exhibits 29 and 29A), which included revised architectural drawings, information regarding the proposed public benefits and amenities, sustainable design features information, and expert witness resumes. The materials also reflected a five-foot increase in the height of the project for a portion of the eastern residential building.
9. After proper notice, the Commission held a public hearing on the applications on March 6, 2008. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2C, the ANC within which the Subject Property is located.
10. The Applicant presented four witnesses at the hearing of March 6, 2008, including Armond Spikell, principal of Roadside Development and accepted by the Commission as an expert in urban mixed use development; Robert Sponseller, an architect with Shalom Baranes Associates and accepted by the Commission as an expert in architecture; Christopher Gay, of Vanasse, Hangen & Brustlin and accepted by the Commission as an expert in transportation; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight, accepted by the Commission as an expert in land use and zoning. Also

available to testify was Jeff Lee, on behalf of Lee + Papa and Associates, as a landscape architect.

11. Tim Mack, of Shaw Main Street; Cary Silverman, of Mount Vernon Square Neighborhood Civic Association; Leroy Thorpe, President of East Central Civic Association; and Alexander Padro, Single Member District Commissioner for ANC 2C01 all testified in support of the project at the hearing.
12. The record includes the following letters in support of the applications: ANC 2C; East Central Civic Association of Shaw; French Street Neighborhood Association; The Blagden Alley Association; Ralph Brabham; a petition signed by numerous property owners; Councilmembers Vincent C. Gray and Jack Evans; Neil Albert, the Deputy Mayor for Planning and Economic Development; the Community Preservation and Development Corporation; and 1330 Seventh Street Limited Partnership (See Exhibits 15, 17, 20, 31 and 32).
13. ANC 2C submitted a letter in support of the applications. ANC 2C indicated that it is fully supportive of the project's density, proposed rezoning to C-3-C, and building heights. ANC 2C also indicated that it has fully supported the redevelopment of the Subject Property and its Comprehensive Plan designation to allow high-density and medium-density commercial so that this specific project, which is of extreme value and importance to the community could move forward. The ANC also requested that the Commission approve the applications as expeditiously as possible.
14. On March 13, 2008, the Applicant submitted a Post-Hearing Submission, which included updated architectural drawing sheets and a response to the District of Columbia's Department of Transportation ("DDOT") report dated March 5, 2008 (Exhibits 40, 41, and 42) .
15. At its special public meeting on March 24, 2008, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the applications and plans that were submitted to the record. The Commission also voted to approve the related map amendment for the Subject Property from C-2-A to C-3-C.
16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated March 27, 2008, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
17. The Commission took final action to approve the application on May 12, 2008, by a vote of 5-0-0.

The PUD Project

18. The proposed project will have an overall density of 5.15 FAR and a total gross floor area of approximately 770,780 square feet dedicated to a mixed-use development that includes affordable residential units for rent to senior citizens, homeownership and rental residential units, and a hotel with 210 rooms (or additional residential uses in the space reserved for hotel use). The proposed project also includes retail and services uses including a 65,000 square foot grocery store, 10,000 square feet of additional retail space, and an 8,000 square foot restaurant. The existing historic O Street Market will be rehabilitated and incorporated into the new grocery store.
19. The proposed residential density of the project is 3.65 FAR, the hotel's density is 0.77 FAR, the retail density is 0.46 FAR, and the retail parking on the ground floor of the west building accounts for 0.27 FAR in the project. If the Applicant elects to construct additional residential uses instead of a hotel, the residential density will be 4.42 FAR.
20. The portion of the eastern residential building located above the grocery store will be constructed to a height of 95 feet; the remainder of the building will be constructed to a height of 90 feet. The increase in height to 95 feet was necessitated by the 15-foot finished floor-to-ceiling height of the proposed grocery store on the eastern portion of the project site. The proposed eight floors of residential units could not provide acceptable floor-to-ceiling heights without the additional five feet of building height. Without the increase, the units would have a finished ceiling height of 7'-1" in the kitchen and bathroom areas, and 8'-1" in the living areas. With the five-foot increase in building height, the ceiling heights would increase to 7'-8" to 8'-8", respectively. The Commission finds the additional five feet in overall building height for the portion of the east building located above the grocery store to be acceptable and necessary to the successful functioning of the project and the residential units, in particular. It is consistent with the provisions of several overlay districts, such as the H Street Overlay, which permits an increase in overall building height to encourage and compensate for greater than average floor-to-ceiling heights for ground floor retail.
21. The western residential building will be constructed to a height of 90 feet facing 8th Street, and step down to 72 feet and then 62 feet at the property line facing 9th Street. The proposed hotel portion of the project (which may be used as residential uses at the election of the Applicant) will be constructed to a height of 90 feet. The retail uses at the ground level along 8th Street will have a floor-to-ceiling height of 15 feet. The grocery store will have a ceiling height of 16 feet.
22. The proposed project includes 500 parking spaces in underground and first floor garages, as well 80 additional spaces in vault space. The project includes four loading berths at 55 feet deep, three berths at 30 feet deep, and five service/delivery loading spaces at 20 feet deep. All loading and service bays for the project are located on the B-2 level of the

garage and are accessed from a single driveway on 9th Street. All maneuvering is accomplished on-site and below-grade.

Matter of Right Development under Existing Zoning

23. The Subject Property is currently zoned C-2-A. The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11 DCMR § 720.2.) Moreover, the C-2-A Zone Districts are generally located in low- and medium-density residential areas with access to main highways or rapid transit stops, and include office employment centers, shopping centers, and medium-bulk mixed use centers. (11 DCMR § 720.3.)
24. The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet, with no limit on the number of stories. (11 DCMR § 770.1.) The C-2-A Zone District permits a maximum density of 2.5 FAR, all of which may be residential, but of which not more than 1.5 FAR may be used for other, non-residential permitted purposes. (11 DCMR § 771.2.) Pursuant to § 772.1 of the Zoning Regulations, no building or portion of a building in the C-2-A Zone District devoted to a residential use, may occupy more than 60% of the lot upon which the structure is located. (11 DCMR § 771.2.) There is no lot occupancy limitation for commercial uses in the C-2-A Zone District.
25. Development under the PUD guidelines for the C-2-A Zone District would allow a maximum building height of 65 feet, and a maximum density of 3.0 FAR, of which not more than 2.0 FAR may be devoted to commercial use, including hotels. (11 DCMR §§ 2405.1 and 2405.2.)

Matter of Right Development Under C-3-C Requirements

26. The Applicant also sought a PUD-related map amendment to the C-3-C Zone District. The C-3-C Zone District permits medium- to high-density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) The C-3-C Zone District also permits a maximum height of 90 feet, and a maximum density of 6.5 FAR for all uses. (11 DCMR §§ 770.1, 771.2.) The C-3-C Zone District permits 100% lot occupancy. (11 DCMR § 772.1.)
27. Pursuant to § 774.1 the Zoning Regulations, a minimum 12-foot rear yard must be provided for each structure in the C-3-C Zone District. Side yards are generally not required for any building or structure located in the C-3-C Zone District. (11 DCMR § 775.5.) However, if a side yard is provided, its minimum width must be two inches wide per foot of building height, but not less than six feet. (11 DCMR § 775.5.)

28. With respect to off-street parking, an apartment house or multiple dwelling in the C-3-C Zone District requires one parking space for each four dwelling units; a hotel requires one parking space for each four rooms useable for sleeping, plus one parking space for each 300 square feet of floor area in either the largest function room or the largest exhibit space (whichever is greater); and a retail establishment in excess of 3,000 square feet requires one additional parking space for each additional 750 square feet of gross floor area and cellar floor area. (11 DCMR §2101.1.)
29. Under the PUD guidelines for the C-3-C Zone District, the maximum permissible building height on this site is 110 feet and the maximum density is 8.0 FAR for all uses. (11 DCMR §2405.1, 2405.2.)

Development Incentives and Flexibility

30. The Applicant requested the following areas of flexibility from the Zoning Regulations:
 - a. Flexibility to Permit Multiple Principal Buildings on a Single Record Lot - The Zoning Regulations provide that, "[w]hen [two portions of a structure are] separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building." (11 DCMR § 199.1 - definition of "building") In order to visually re-instate the former historic 8th Street vista, relief from this provision is necessary, because there will be no meaningful above-grade communication between all of the proposed buildings. Therefore, the Applicant is seeking flexibility to permit multiple principal buildings on a single record lot. Section 2516 of the Zoning Regulations authorizes the placement of two or more principal buildings on a single record lot. (11 DCMR § 2516.1.) The requested flexibility will allow the development of a project that will have a substantial benefit for the community, since the project includes, among other things, the rehabilitation and adaptive reuse of the O Street Market and the provision of significant new housing, much of which will be set aside for senior citizens.
 - b. Flexibility from Roof Structure Requirements - The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because the project includes multiple roof structures and a number of the structures cannot be setback from all exterior walls a distance equal to their height above the roof. (11 DCMR §§ 411.2, 411.3.) Each roof structure is a necessary feature and the structures have to be separated due to the different construction schedules for each component of the development, as well as the desire to break up massing on the roof. In addition, the Applicant is providing the greatest setbacks possible given the size of the roofs and the internal configuration of the proposed buildings. The requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize their visibility. Therefore, the intent and purposes of the Zoning Regulations will not

be materially impaired and the light and air of adjacent buildings will not be adversely affected.

- c. *Flexibility from Court Width Requirements* - Courts in the C-3-C Zone District are required to have a minimum width of court of four inches per foot of height but not less than 15 feet. (11 DCMR § 776.3.) This yields a requirement of 27 feet for Court 5 shown on the plans. However, Court 5, which is located between the hotel (which may instead be additional residential uses) and a wing of the west residential building, has a width of 17 feet, 2 inches. Thus, the Applicant is seeking a reduction of 9 feet, 10 inches in the required court width.
- d. *Additional Areas of Flexibility* - The Applicant also requests flexibility in the following areas:
 - (i) To be able to provide a range in the number of residential units, senior housing units, and hotel rooms;
 - (ii) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - (iii) To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the minimum level required under the zoning regulations; and
 - (iv) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Public Benefits and Amenities

- 31. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
 - a. *Housing and Affordable Housing.* The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan and the Mayor's housing initiative. The proposed PUD will contain approximately 545,775 square feet of gross floor

area dedicated to residential uses, including approximately 80 affordable residential units for rent to seniors (at 60% of AMI), and 527 market rate units.

- b. *Environmental Benefits.* The site plan is designed to be highly efficient in land utilization. The Applicant has committed to attempting to achieve a minimum of 26 LEED points depending on construction costs at the time the project moves forward.
- c. *Urban Design, Architecture, Landscaping and Open Space.* The project's design will further the goals of urban design and enhance the streetscape and surrounding neighborhood. The design concept for the site is guided by the idea of expressing the multiple individual buildings and uses which make up the development program, and the expression of the various buildings reinforces the high quality of buildings on the site and allows the buildings to relate to both the similarly scaled structures in the surrounding context and importantly the historic O Street Market building. Moreover, the retail pavilions to be located along the former 8th Street right-of-way provide a visual base to these buildings, by scaling them to the pedestrian and activating the former street through multiple retail tenants, which form a two-sided retail pavilion. In addition, the architectural treatment of the project is sensitive to the scale and stature of the existing market building. With respect to massing, the project has been designed to place the taller buildings and penthouses along the wider former 8th Street frontage, and tapers the buildings to the eastern and western sides of the site. The use of a rich material palette and the proposed street level murals are additional enhanced features of the project. In addition, all loading and service bays for the project are located on the B-2 level of the garage and are accessed from a single driveway on 9th Street. All maneuvering is accomplished on-site and below-grade.
- d. *Uses of Special Value to Neighborhood.* The project includes a significant amount of area dedicated to new retail uses, which the community has expressed as a strong need. Specifically, the project includes a reconstructed and expanded grocery store, additional retail spaces along O Street and the former 8th Street axis, and restoration of O Street Market and its return to active retail use as part of grocery store. The Applicant has also committed to work with the District's Department of Parks and Recreation to make repairs and contribute funds for uniforms at the Kennedy Recreation Center; assist in the development of a girl's softball field at Bundy Recreation Center; provide a community shuttle service to the Tivoli/Brentwood Giant grocery store while the O Street Giant is being renovated; and contribute funds for computer labs or other amenities at neighboring buildings, and scholarships for Shaw residents, among other important contributions. These additional commitments further emphasize the significant value of this project to the surrounding community and the city as a whole.

- e. *Employment and Training Opportunities.* Expanding employment opportunities for residents and local businesses is a priority of the Applicants. Therefore, the Applicants have entered into a First Source Employment Agreement with the Department of Employment Services. The Applicants have also executed a Local, Small, and Disadvantaged Business Enterprises ("LSDBE") Memorandum of Understanding with the District's Office of Local Business Development.

Consistency with the Comprehensive Plan

32. The Comprehensive Plan for the National Capital: District Elements ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), designates the Subject Property as being located in a mixed-use, medium-density commercial, and high-density residential category. The medium-density commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate-density commercial areas but generally do not exceed eight stories in height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply. (§ 224.13.) The high-density residential designation is used to define neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. The corresponding zone districts are generally R-5-D and R-5-E, although other zones may apply. (§ 224.9.)
33. The Generalized Policy Map includes the Subject Property in a Neighborhood Enhancement Area. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development "fits-in" and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map. (§ 223.7.) New development in these areas should improve the real estate market, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents. (§ 223.8.)
34. The Applicant's proposal to construct housing, retail, and possibly a hotel on the Subject Property is consistent with the Future Land Use Map and the Generalized Policy Map designation of the Subject Property. The Applicant is proposing to rezone the Subject Property from C-2-A to C-3-C in connection with this application. The C-3-C Zone District permits medium- to high-density development, including office, retail, housing, and mixed-use development, which is consistent with the designation of the Subject Property.

35. The proposed project is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:
- a. *Managing Growth and Change.* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§ 2.3, ¶ 217.4.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. (§ 2.3, ¶ 217.6). The proposed PUD is fully consistent with each of these goals. Redeveloping the Subject Property into a mixed-use development that will include a grocery store and other retail uses, apartment buildings, a possible hotel, and an affordable senior housing facility will further the revitalization of the neighborhood and will generate significant tax revenue for the District.
 - b. *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is the recognition that many neighborhoods include commercial uses that contribute to the neighborhood's character and make communities more livable. (§ 2.3, ¶ 218.2). Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 2.3, ¶ 218.8). The proposed PUD further these goals with the construction of a grocery store and other retail uses, apartment buildings, a possible hotel, and an affordable senior housing facility, the creation of additional employment opportunities, and generate significant tax revenues for the District. In addition, as part of the PUD process, the Applicant will continue to work with the Advisory Neighborhood Commission, local community groups and HPRB to assure that the development provides a positive impact to the immediate neighborhood.
 - c. *Increasing access to education and employment.* An economically strong and viable District of Columbia is essential to the economic health and well being of the region. Thus, a broad spectrum of private and public growth (with an appropriate level of supporting infrastructure) should be encouraged. The District's economic development strategies must capitalize on the city's location at the center of the region's transportation and communication systems. (§ 2.3, ¶ 219.2) The project is fully consistent with these goals. The proposed development includes a significant amount of retail space that will help to create new jobs for residents.

- d. *Building green and healthy communities.* The Comprehensive Plan provides that as the nation's capital, the District should be a role model for environmental sustainability and new developments should minimize the use of non-renewable resources, promote energy and water conservation, reduce harmful effects on the natural environment, and improve the quality of surface and groundwater. (§ 2.3, ¶¶ 221.3, 221.4). As discussed in the Environmental Benefits section of this Order, the proposed PUD includes a significant number of low impact development measures designed to promote environmental sustainability and mitigate development impacts on the environment.
36. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- a. *Land Use Element.* Major goals of the Land Use Element include ensuring the efficient use of land resources to meet long-term neighborhood, city-wide, and regional needs; protecting the health, safety, and welfare of District residents and businesses; sustaining, restoring, or improving the character and stability of neighborhoods in all parts of the city; and effectively balancing the competing demands for land to support the many activities that take place within District boundaries. (¶ 302.1). This element also recommends better utilization of land around transit stations and along transit corridors as a means to accommodate the growth of the city and minimize the number and length of auto trips generated by households. (¶ 306.3). The development of diverse housing types, including both market-rate and affordable units and housing for seniors and others with mobility impairments, as well as attractive, pedestrian-friendly design is also encouraged. (¶ 306.4). The proposed development responds to these goals with the construction of a high-quality project that includes residential, potential hotel, and retail uses. The proposed project is also fully-consistent with and implements the following policies:
 - (i) Policy LU-1.1.5: Urban Mixed Use Neighborhoods - The proposed development encourages new central city mixed used neighborhoods combining high-density residential, office, retail, cultural, and open spaces uses. Housing, including affordable housing, is particularly encouraged and should be a vital component of the future land use mix.
 - (ii) Policy LU-1.4.1: Infill Development - The project is consistent with the goal of encouraging infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. The development complements the established character of the area and does not create sharp changes in the physical development pattern.

- (iii) Policy LU-2.1.1: Variety of Neighborhood Types - Consistent with this policy element, the development adds to the variety of residential neighborhood types in the District, ranging from low-density, single family neighborhoods to high-density, multi-family mixed use neighborhoods.
 - (iv) Policy LU-2.2.4: Neighborhood Beautification – This policy encourages projects to improve the visual quality of the District’s neighborhoods. The development of the site will be an improvement to the current neighborhood condition and will help to revitalize the area.
 - (v) Policy LU-2.4.10: Use of Public Space within Commercial Centers - This policy encourages the development of outdoor sidewalks cafes, flower stands, and similar uses which “animate” the street. As shown on the Architectural Plans and Elevations, the project includes the visual reestablishment of the 8th Street right-of-way for use as plaza retail, and access area is ideally situated to engage the public throughout the day and is designed to become part of the urban streetscape.
- b. *Transportation Element.* The overall goal of the Transportation Element is to create a safe, sustainable efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents. (§ 401.1) The proposed PUD is consistent with a number of the policies and actions included in this element, including:
- (i) Policy T-1.1.4: Transit-Oriented Development - Encourages support for transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major corridors, and transfer points. The subject property has frontage on 7th Street, which provides convenient access to numerous locations on the District. Moreover, the subject property is within walking distance of the Mount Vernon Metrorail station.
 - (ii) Action T-2.3-A: Bicycle Facilities - This element encourages new developments to include bicycle facilities. The Applicant proposes to include secure bicycle parking and bike racks as amenities within the development that accommodate and encourage bicycle use.
- c. *Housing Element.* The policies and actions for the Housing Element state that expanding the housing supply is a key part of the District's vision to create successful neighborhoods, and housing production is essential to the future of the District's neighborhoods and key to improving the city's fiscal health. (§ H-1.1,

¶ 503.1) Ensuring the affordability of housing is also a critical objective of the housing element. (§ H-1.2, ¶ 504) The PUD supports these initiatives by increasing the housing supply with the construction of a significant number of new units, as well as the construction of affordable senior housing.

- d. *Economic Development Element.* The Economic Development Element of the Comprehensive Plan recommends expanding the retail sector and pursuing a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers and visitors, and that will meet the retail needs of underserved areas. (Policy ED-2.2.1.) Policy ED-2.2.6 specifically highlights the need to develop new grocery stores and supermarkets, particularly in neighborhoods where residents currently have to travel long distances for food and other shopping services. The economic development element also recommends the continued support and growth of the hospitality industry, which is a core industry in the District. Indeed, Policy ED-2.3.1, "Growing the Hospitality Industry," provides that the District should develop an increasingly robust tourism industry and strive to increase the number of visitors staying in the District (rather than in suburban hotels). The Applicant's proposal to construct a mixed-use development on the property that includes a grocery store, other retail uses, and a potential hotel is consistent with, and implements, each of these goals.
- e. *Urban Design Element.* The proposed project is also consistent with a number of the policies included in the Urban Design Element of the Comprehensive Plan. For example, as shown on the Architectural Plans and Elevations, the project includes an attractive, visually-interesting and well-designed building façade that eschews monolithic or box-like forms, or long blank walls which detract from the human quality of the street. (Policy UD-2.2.5.) The project is also consistent with the improved streetscape design goals.
- f. *Historic Presentation Element.* The Historic Preservation Element calls for the promotion of appropriate preservation of historic buildings; the application of design guidelines without stifling creativity or having an adverse impact on the balance between restoration and adaptation of historic buildings, permitting compatible new infill development, and using historic preservation as a tool for economic and community development and revitalization. (Policy HP-2.4.1, 2.4.3, 3.2.1, 3.2.3.)

The Historic Preservation Review Board has recommended approval of the overall site plan and architectural plans in concept. In addition, the Mayor's Agent has found that the scope of the preservation program contemplated by the proposed project represents a significant public benefit to the District and that the project was approved as one of "special merit." Moreover, the Mayor's Agent found that the sensitive treatment of the historically significant portions of the O

Street Market, and the integration of that historic structure into the new development, is precisely the type of adaptive reuse encouraged by the city and will provide a significant public benefit to the city. Thus, the project is fully consistent with the historic preservation element of the Comprehensive Plan.

- g. *Near Northwest Area Element.* The proposed project is consistent with a number of the policies of the Near Northwest Area Element. For example, Policy NNW-1.1.4 calls for improving the neighborhood shopping areas along 7th and 9th Streets, which the proposed development will certainly help to improve. Moreover, the Shaw/Convention Center Area element also recommends protecting existing affordable housing within the Shaw/Convention Center area, producing new affordable housing and market rate housing on underutilized sites, and supporting development of the O Street market site as a mixed use project that becomes the focal point for the 7th and 9th Street retail corridors (Policy NNW-2.1.1, 2.1-F). The proposed project is fully consistent with, and helps to implement, each of these policy objectives.

Convention Center Area Strategic Development Small Area Action Plan

37. The Convention Center Area Strategic Development Small Area Action Plan, adopted by the D.C. Council pursuant to Resolution No. 16-759 on June 20, 2006, establishes a vision whereby the Subject Property would serve as a neighborhood center and mid-city commercial node between downtown and U Street., and the proposed development is fully-consistent with the plan. Specifically, the O Street Market is the focal point for the retail corridor, connecting the commercial sections of 7th and 9th Streets. Both the plan and the Applicant's proposed development allows for more intensive, mixed-use development consisting of mixed income residential on 9th and P Streets, ground floor retail on 7th and O Streets, parking below grade, and new loading facilities for Giant within the building envelope. In addition, both the plan and proposed project includes restoration of the vista of the former 8th Street right-of-way as an important community amenity.

Office of Planning Report

38. By reports dated October 4, 2007 and November 9, 2007, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the applications. (Exhibits 13, 14).
39. By report dated February 25, 2008, OP recommended final approval of the application. (Exhibit 30). OP indicated that the application will further a number of the Guiding Principles of the Comprehensive Plan and is not inconsistent with the Plan's policies and land use maps, and OP supported all of the requested zoning flexibility necessary to

create the traditional layout of the community. OP also indicated that the Applicant's amenity package is adequate in magnitude and appropriate to the neighborhood.

Other Government Agency Reports

40. The D.C. Fire and Emergency Medical Services Department submitted a letter dated February 5, 2008, indicating it has no objections to the proposed project provided the construction is in compliance with the International Fire Code and all applicable D.C. laws.
41. The D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum dated February 20, 2008, indicating that the existing sewer infrastructure is adequate to accommodate the proposed construction. DCWASA further stated that it would coordinate with the Applicant to determine if, and how best, to connect to existing water mains for service. DCWASA also noted that this application would need to conform to District standards for stormwater runoff and erosion control during the building permitting process.
42. The District Department of Transportation ("DDOT") submitted a memorandum dated March 5, 2008, indicating that DDOT has no objections to the project. DDOT indicated that the project will have negligible vehicular trip impacts. Nonetheless, DDOT recommended that the Applicant reduce the number of retail and residential parking spaces, develop a transportation management plan, and coordinate with DDOT to determine whether 8th Street can be dedicated as public roadway instead of as a private road with a public easement.
43. The Applicant responded to DDOT's recommendations in its post-hearing submission dated March 13, 2008. The Applicant committed to implement a number of transportation management measures, including reserving bike parking spaces, providing two car-sharing spaces, providing a Smart Trip card of \$20 for each residential unit at the time of initial move-in, and providing website hot links to godcgo.com and commuterconnections.com. The Applicant disagreed with DDOT's recommendation to reduce the number of retail and residential parking spaces, given the extreme parking shortage in the immediate vicinity caused by, among other things, the lack of public parking in the nearby Convention Center, the agreement with Giant and its necessary cooperation for this project to proceed, and the Applicant's dialogue with the neighboring community as to the amount of parking to be provided. DDOT did not supply any studies or evidence that there would be excess parking for the residential or retail uses. With respect to DDOT's recommendations regarding the former 8th Street right-of-way, the only evidence of record indicates that the Applicant is restoring the vista and, as shown on the plans submitted to the Zoning Commission, will be improving the area with plantings, street trees and other improvements. The Applicant never stated it would be dedicated as a public street. Furthermore, the area of the former 8th Street right-of-way is

part of the "protected area" under the terms of the Giant lease and is, therefore, unavailable for dedication.

44. The Commission agrees with the Applicant and finds that reducing the number of parking spaces to the degree requested by DDOT would be below-market and inconsistent with the Applicant's understanding with the community, as highlighted in testimony at the March 6th public hearing. A reduction in the number of parking spaces would create a significant shortage with major negative ramifications to the community and the proposed users of the development. With respect to DDOT's recommendations regarding the former 8th Street right-of-way, the Commission agrees that the Applicant never proffered to maintain the former 8th Street right-of way area as either a private street with a public easement or a public street. Accordingly, the Commission rejects DDOT's recommendation and finds that the Applicant's proposal to restore the former 8th Street vista is a significant project amenity.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility, and any potential adverse effects.
8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. In this case, ANC 2C voted to support the project and recommended that the Commission approve the applications as expeditiously as possible. (Exhibit 15). The Commission has given ANC 2C's recommendation great weight in approving this application.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. OP recommended approval of the PUD. The Commission has given OP's recommendation great weight in approving this application.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD") and an application for a related amendment to the Zoning Map from the C-2-A to the C-3-C Zone District, subject to the following guidelines, conditions, and standards. References to "Applicant" include successors and assigns, and the owner of the Subject Property, if different:

1. The PUD shall be developed in accordance with the plans prepared by Shalom Baranes Associates, dated February 15, 2008, and as amended or supplemented by drawings dated March 6, 2008, marked as Exhibits 29A and 42, respectively, in the record, and as further modified by the guidelines, conditions, and standards herein.
2. The project shall be a mixed-use commercial and residential development consisting of approximately 770,780 square feet of gross floor area. The PUD project shall not exceed

an overall density of 5.15 FAR and a maximum height of 90 feet for the west building and 95 feet for the east building, with setbacks as shown on the plans. Approximately 545,775 square feet of gross floor area shall be devoted to residential uses; approximately 115,115 square feet of gross floor area shall be devoted to hotel uses or to additional residential uses; approximately 69,000 square feet of gross floor area shall be devoted to commercial retail uses, and approximately 40,890 square feet of gross floor area on the ground floor shall be designated for parking. The project shall provide approximately 500 parking spaces; an additional 80 parking spaces will be located in vault space.

3. The project shall provide approximately 580 to 680 residential units, of which approximately 80 units shall be designated affordable to senior citizens earning no more than 60% of AMI for Washington, D.C. (adjusted for household size).
4. The Applicant shall demonstrate the ability to achieve a minimum of 26 LEED points.
5. Landscaping and improvements to private open spaces and public space along the street elevations of the building shall be in accordance with the plans submitted to the record.
6. The Applicant shall implement a transportation management plan that will include bike parking spaces, two car-sharing spaces, one \$20 Smart Trip card per unit to residents upon initial move-in, provide website hot links to godcgo.com and commuterconnections.com, and request the hotel operator (if there is one) to promote transit use on its website and distribute transportation information and brochures at its reception desk.
7. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To vary the sustainable design features of the building so long as the total number of LEED points achievable for the project does not decrease below 26 points.
 - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and

- d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not exceed the 475 zoning compliant spaces and 80 vault spaces specified.
8. At the time the existing grocery store on the project site is closed to allow construction to proceed on the PUD project until the new grocery store is opened, the Applicant shall provide a minibus shuttle service from the PUD site or adjacent apartment buildings to the Tivoli and/or Brentwood Giant Food Stores, twice a week for two years, based on usage. During construction of the new grocery store and until it is open, the Applicant shall provide free "Peapod" delivery service in partnership with Emmaus Services for the Aging in the Shaw neighborhood.
9. Prior to issuance of any Certificate of Occupancy for the PUD project, the Applicant shall:
 - a. Contribute a total of \$75,000 to the Green Team, in annual increments of \$25,000 during construction of the PUD;
 - b. Contribute \$15,000 for commissioned artwork for the new Watha T. Daniel Library;
 - c. Contribute \$2,500 to each of the following residential building or tenant associations (a total of \$15,000 for all five residential buildings/associations), for computer labs or other community services: Asbury Dwellings, Gibson Plaza Tenants Association, Lincoln Westmoreland, and Foster House; and \$5,000 to the 1330 Tenants/Owners Association.
 - d. Contribute \$25,000 to the D.C. Department of Parks and Recreation for the benefit of Kennedy Recreation Center, of which \$10,000 will be directed to the repair and refinish gym floors two times between 2008 and 2011, and \$15,000 directed to the purchase of uniforms and equipment;
 - e. Contribute \$5,000 to Shaw Together to sponsor special community events;
 - f. Provide a total of \$10,000 to fund scholarships to four residents of the Shaw neighborhood (\$2,500 each) to attend the University of the District of Columbia Certified Addition Counselor Program. Scholarship recipients must meet all of the UDC program requirements and will be selected by the East Central Civic Association; and
 - g. Contribute an additional \$25,000 to the D.C. Department of Parks and Recreation enterprise fund for development of girls softball field[s] at Bundy recreation Center.

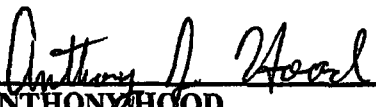
10. Prior to issuance of the building permit for the PUD project, the Applicant shall enter into a Memorandum of Understanding with the D.C. Department of Small and Local Business Development in order to achieve, at a minimum, the goal of 35% participation by certified business enterprises in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project.
11. Prior to issuance of the building permit for the PUD project, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD project.
12. No building permit shall be issued for this PUD until the Applicants have recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
13. The PUD approved by the Zoning 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.
14. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 24, 2008, the Zoning Commission approved the application by a vote of 5-0-0 (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull, and Peter G. May to approve).


Z.C. ORDER NO. 07-26
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PAGE 21

The Order was **ADOPTED** by the Zoning Commission at its public meeting on May 12, 2008, by a vote of 5-0-0 (Gregory N. Jeffries, Curtis L. Etherly, Jr., Anthony J. Hood, Michael G. Turnbull [by absentee ballot], and Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on JUL 18 2008.



ANTHONY HOOD
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., August 22, 2007

Plat for Building Permit of SQUARE 398 LOT 32

Scale: 1 inch = 60 feet Recorded in Book 166 Page 200

Receipt No. 08875

Furnished to: HOLLAND & KNIGHT (FREDA HOBAR)


Surveyor, D.C.

By: D.M. 

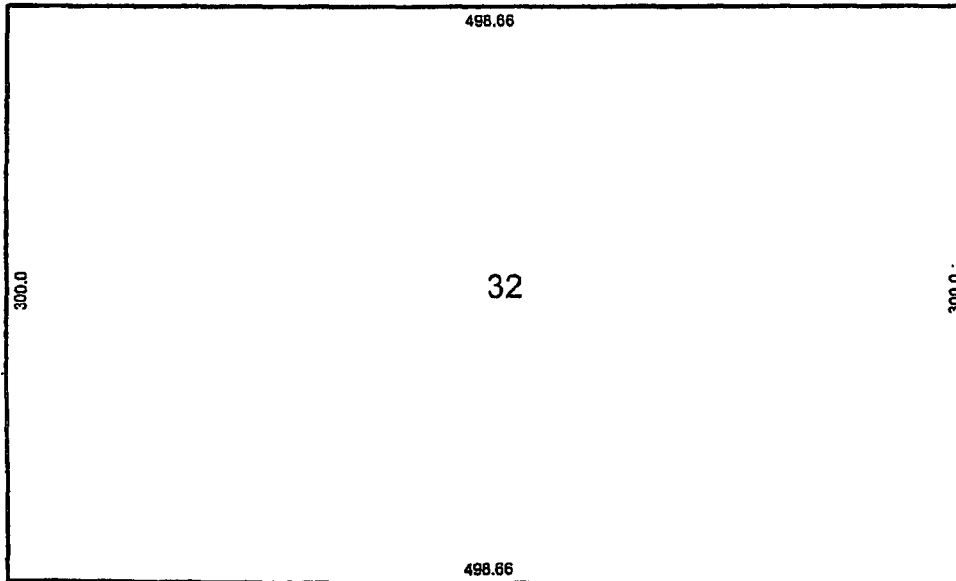
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a ratio of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

9TH STREET, N.W.



O

STREET

7TH STREET, N.W.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-26

JUL 17 2008

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 07-26 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. D.C. Register | 6. Councilmember Jack Evans |
| 2. Norman Glasgow, Jr., Esq.
Holland + Knight
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801 | 7. DDOT (Karina Ricks) |
| 3. Doris Brooks, Chair
ANC 2C
P.O. Box 26182
Washington, DC 20001 | 8. Zoning Administrator (Matthew LeGrant) |
| 4. Commissioner Alexander Padro
ANC/SMD 2C01
1519 8 th Street, N.W.
Washington, DC 20001 | 9. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Office of the Attorney General
(Alan Bergstein) |
| | 11. Phillip Appelbaum, Chief Assessor
D.C. Assessor's Office
941 N. Capitol St. - 4 th Floor |

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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EXHIBIT B

Zoning Commission Order No. 07-26A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-26A

Z.C. Case No. 07-26A

(O Street Roadside, LLC)

Two-Year Time Extension for PUD at Square 398, Lots 829 and 830

April 26, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on April 26, 2010. At the meeting, the Commission approved a request from the O Street Roadside, LLC (the "Applicant") for a time extension for an approved consolidated planned unit development ("PUD") and related map amendment for property consisting of Lots 829 and 830 in Square 398 (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR").

FINDINGS OF FACT

1. By Zoning Commission Order No. 07-26 ("Order No. 07-26") the Commission approved a consolidated PUD and related Zoning Map amendment from the C-2-A Zone District to the C-3-C Zone District for the Property. The property includes all of the area bounded by 7th, 9th, O, and P Streets, N.W. The approved PUD authorized construction of a mixed-use development that includes affordable residential units for rent to senior citizens, homeownership and rental residential units, and a hotel with 210 rooms (or additional residential units in the space reserved for the hotel use). The project also includes retail and services uses including a 65,000 square foot grocery store, 10,000 square feet of additional retail space, and an 8,000 square foot restaurant. The existing historic O Street Market will be rehabilitated and incorporated into the new grocery store. The project will have an overall density of 5.15 floor area ratio ("FAR") and a total gross floor area of approximately 770,780 square feet. Order No. 06-31 became effective upon its publication in the *D.C. Register* on July 18, 2010.
2. By letter dated and received by the Commission on March 12, 2010, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed no later than July 18, 2012, and construction must be started no later than July 18, 2013. The Applicant's request was supported by an affidavit from one of the founding members of the LLCs that own the property and will be the developer of the project. The affidavit sets forth details of the Applicant's inability to obtain project financing at this time, as further discussed in Finding No. 3.

3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. Shortly after the PUD was approved, the real estate market suffered a major crisis. The Applicant has been unable to obtain project financing from the various lending institutions with which it has worked in the past and is seeking alternatives to finance the project.
4. The Applicant has taken many steps to move the project forward, including the following:
 - A. Submitted a preapplication for \$101,462,900 in HUD 220D financing for the project that has been supported by an appraisal and marketing study commissioned by AGM Financial, HUD underwriter; the HUD process takes a minimum of 250 days from submission;
 - B. Engaged in serious discussions with four 2009 New Market Tax Credit Allocatees about commitment of 2009 allocation in 2010;
 - C. Finalized commitments for private equity with three equity partners;
 - D. Negotiated Tax Increment Financing ("TIF") Agreement for \$35 million TIF with the Office of the Deputy Mayor for Planning and Economic Development;
 - E. Invested \$3 million in architectural design to complete schematic design of the project;
 - F. Signed Grant Agreement for \$2.5 million in predevelopment funding with the Office of the Deputy Mayor for Planning and Economic Development that included dates for groundbreaking event in 2010 and excavation in early 2011; and
 - G. Signed Certified Business Enterprise Utilization and Participation Agreement with the Department of Small and Local Business Development.
5. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 2C, the only other party to the case. The ANC did not submit a response.
6. The Commission finds that that there has not been a substantial change in the material facts since the original approval of the PUD and finds that the essential elements of the PUD have not changed. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

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 in § 2408.11. (11 DCMR § 2408.10.) Section 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.

The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving ANC 2C with a copy of the application and allowing it 30 days to respond.

The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

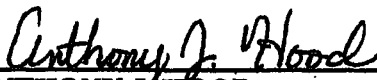
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Case No. 07-26A for a two-year time extension of the PUD approval and related map amendment in Zoning Commission Case No. 07-26.

The final PUD and related map amendment approved by the Commission shall be valid until July 18, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction shall commence no later than July 18, 2013.

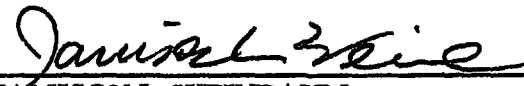
For the reasons stated above, the Commission concludes that Applicant has met its burden. It is therefore hereby **ORDERED** that the application be **GRANTED**.

On April 26, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 4-0-1 (Anthony J. Hood, William W. Keating, III, Peter G. May, and Michael G. Turnbull to adopt; Konrad W. Schlater, having recused himself, not voting).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the D.C. Register; that is, on August 27, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-26A

As Secretary to the Commission, I hereby certify that on AUG 24 2010 copies of this Z.C. Order No. 07-26A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman M. Glasgow, Jr. Esq.
Holland & Knight
2099 Pennsylvania Ave. N.W. #100
Washington, D.C. 20006
3. ANC 2C
P.O. Box 26182
Washington, DC 20001
4. Commissioner Alexander Padro
ANC/SMD 2C01
1519 8th Street, N.W.
Washington, DC 20001
5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004
6. Councilmember Jack Evans
7. DDOT (Karina Ricks)
8. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: *S. S. Schellin*
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

EXHIBIT C

Zoning Commission Order No. 07-26B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-26B

Z.C. Case No. 07-26B

(O Street Roadside, LLC)

Minor Modifications to the Approved PUD at Square 398, Lots 829 and 830

May 10, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on May 10, 2010. At the meeting, the Commission approved an application from the O Street Roadside, LLC (the "Applicant") for minor modifications to an approved planned unit development ("PUD") for property identified as Lots 829 and 830 in Square 398, located in the Shaw neighborhood of Northwest Washington, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("Modification Application"). The Commission determined that the Modification Application was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations ("DCMR").

FINDINGS OF FACT

1. By Zoning Commission Order No. 07-26 ("Order No. 07-26") the Commission approved a consolidated PUD and related Zoning Map amendment from the C-2-A Zone District to the C-3-C Zone District for the Property. The property includes all of the area bounded by 7th, 9th, O, and P Streets, N.W. The approved PUD authorized construction of a mixed- use development that includes affordable residential units for rent to senior citizens, homeownership and rental residential units, and a hotel with 210 rooms (or additional residential units in the space reserved for the hotel use). The project also includes retail and services uses including a 65,000 square foot grocery store, 10,000 square feet of additional retail space, and an 8,000 square foot restaurant. The existing historic O Street Market will be rehabilitated and incorporated into the new grocery store. The project will have an overall density of 5.15 floor area ratio ("FAR") and a total gross floor area of approximately 770,780 square feet. Order No. 06-31 became effective upon its publication in the *D.C. Register* on July 18, 2010.
2. By letter dated April 23, 2010, the Applicant requested that the Commission modify the approval of the PUD to change the rooftop configuration and certain other aspects of the approved façades.
3. The proposed changes are the result of the owner's decision to pursue a central mechanical plant option for the O Street Market buildings. This system would consolidate the heating and cooling functions for the residential buildings into a single

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

penthouse on one building, with lines connecting underground to serve the entire project. Use of a central plant allows the design team to achieve improved energy efficiency in the conditioning (heating and cooling) and maintenance of the residential buildings, and reduced carbon footprint in their construction, thus furthering the project's overall sustainable building goals. Additionally, central plants benefit the larger community by reducing and simplify demands on the local utility grid. Accordingly, these modifications will benefit both the project and the District as a whole by furthering the project's overall sustainable building goals.

4. The roof structure design modifications are necessary because while the equipment involved in the central plant option will be inherently more efficient than a conventional multiple-plant scheme, it also has to be more centralized. Thus, the east penthouse has been enlarged to accommodate the central plant and, conversely, the west penthouse has been reduced. While the roof structure on building #1 has been enlarged in terms of overall length, the setback from 8th Street has been increased from four feet to eight feet, minimizing its impact as seen from the street. The 1:1 setback has been maintained on the east side, facing the lower height historic O Street Market building.
5. Other minor roof structure modifications have also occurred as a part of the overall design development of the project, as follows:
 - A. One roof structure on the east building and two roof structures on the west building are all 10 feet in height and contain secondary mechanical equipment necessary for the operation of the buildings upon which they sit. They have been enlarged to accommodate an improved interior air quality system which provides additional and constant fresh air to the residential units. The enlarged penthouses allow for an additional mechanical unit to provide this function. This is a change from the previous design, which relied on operable windows to provide fresh air to the units, and furthers the project's sustainability goals by improving indoor air quality; and
 - B. The roof structure on the south end of the west building over the hotel matches the original roof structure in overall size, but has been modified by decreasing the exterior terrace area inside its volume. Additionally, a minor bay has been added on the south side to accommodate a specific hotel tenant key plan and elevator configuration.
6. Certain other minor design modifications were made after the PUD approval as a result of (1) further discussions and review by the Historic Preservation Office and the Historic Preservation Review Board ("HPRB"); and (2) the normal evolution in the design process in going from the schematic level plans submitted as part of a PUD to design development level drawings and ultimately to construction documents submitted as part of a building permit application. These modifications do not materially affect the approved building designs or intent. These additional refinements are as follows:

- A. On the South and East Elevations, the trellis frame has been reduced one story on the senior housing "cube." The pattern of bays behind the market on the east residential building has been modified in conjunction with the frame removal;
 - B. On the West Elevation, elevator overruns have been removed from the penthouse level. These are no longer needed due to new elevator technology;
 - C. On the 8th Street East Elevation, the horizontal "eyebrow" articulation has been lowered two stories to the 7th floor. In coordination with the HPRB, the reveal that separated the north and south volumes was revised to create a more unified approach to this elevation; and
 - D. On the 8th Street West Elevation, the penthouse volume has been articulated via openings to an interior roof terrace for the hotel.
- 7. In all other respects, including height, gross floor area, number of units, yards, courts, parking, and loading, the PUD will remain as approved by the Commission.
 - 8. Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for modifications on the Commission's consent calendar for its public meeting on May 10, 2010. At that meeting, the Commission voted to approve the application for modifications to Order No. 07-26.
 - 9. There was no opposition to the modification request. Advisory Neighborhood Commission ("ANC") 2C was served by the Applicant with the requested modifications, but the ANC did not submit a written report.
 - 10. The Office of Planning submitted a report, dated April 30, 2010, recommending approval of the proposed modifications. The report stated that the proposed changes do not materially affect the facts upon which approval of the PUD was granted, including the building's height, parking and loading, number of units, courts, yards, and gross floor area.

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission concludes that the proposed modifications are of little or no importance or consequence and are consistent with the intent of the Commission in approving the original project in Zoning Commission Case No. 07-26. The proposed modifications represent significant enhancements in the energy efficiency of the development. The other changes to the façades are minor and represent minimal changes to the design in response to discussions with the HPRB and in creating more detailed construction documents for the project.

The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of these modifications is not inconsistent with the Comprehensive Plan.

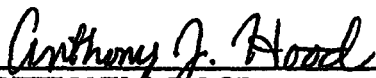
The modifications are of such a minor nature that their consideration as a consent calendar item without public hearing is appropriate.

DECISION

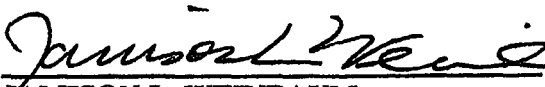
In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of this application for minor modifications of an approved PUD. The plans dated April 23, 2010, marked as part of Exhibit 1 of the Record, shall be incorporated into the plans cited in Condition No. 1 of Order No. 07-26.

On May 10, 2010, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Commission **ADOPTED** this Order at its public meeting by a vote of 3-0-2 (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, having recused himself, not voting; the third Mayoral appointee position vacant).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 27, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-26B

As Secretary to the Commission, I hereby certify that on AUG 24 2010 copies of this Z.C. Order No. 07-26B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Norman M. Glasgow, Jr. Esq.
Holland & Knight
2099 Pennsylvania Ave. N.W. #100
Washington, D.C. 20006
3. ANC 2C
P.O. Box 26182
Washington, DC 20001
4. Commissioner Alexander Padro
ANC/SMD 2C01
1519 8th Street, N.W.
Washington, DC 20001
5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004
6. Councilmember Jack Evans
7. DDOT (Karina Ricks)
8. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

EXHIBIT D

Zoning Commission Order No. 07-26C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-26C
Z.C. CASE NO. 07-26C
O Street Roadside, LLC
(Modifications to the Approved PUD at Square 398, Lots 829 and 830)
June 13, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on June 13, 2011. At the meeting, the Commission approved an application from the O Street Roadside, LLC for modifications to an approved planned unit development ("PUD") for property identified as Lots 829 and 830 in Square 398, located in the Shaw neighborhood of Northwest Washington, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("Modification Application"). The Commission determined that the Modification Application was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 07-26 ("Order No. 07-26") the Commission approved a consolidated PUD and related zoning map amendment from the C-2-A Zone District to the C-3-C Zone District for the property. The property includes all of the area bounded by 7th, 9th, O, and P Streets, N.W. The approved PUD authorized construction of a mixed-use development that includes affordable residential units for rent to senior citizens, homeownership and rental residential units, and a hotel with 210 rooms (or additional residential units in the space reserved for the hotel use). The project also includes retail and services uses including a 65,000-square-foot grocery store, 10,000 square feet of additional retail space, and an 8,000-square-foot restaurant. The existing historic O Street Market will be rehabilitated and incorporated into the new grocery store. The project will have an overall density of 5.15 floor area ratio and a total gross floor area of approximately 770,780 square feet. Z.C. Order No. 07-26 became effective upon its publication in the *D.C. Register* on July 18, 2008.
2. By Z.C. Order No. 07-26A, the Commission approved a two year extension of the validity of the PUD. The final PUD and map amendment are valid until July 18, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction shall commence no later than July 18, 2013. Z.C. Order No. 07-26A became effective upon its publication in the *D.C. Register* on August 27, 2010.

3. By Z.C. Order No. 07-26B, the Commission approved minor modifications to the PUD to change the rooftop configuration and certain other aspects of the approved facades. The proposed changes were the result of the owner's decision to pursue a central mechanical plant option for the O Street Market buildings. Other minor roof structure modifications have occurred as a part of the overall design development of the project and certain other minor design modifications were made after PUD approval as a result of further discussions and review by the Historic Preservation Office and the Historic Preservation Review Board and the normal evolution in the design process in going from the schematic level plans submitted as part of a PUD to design development level drawings and ultimately to construction documents submitted as part of a building permit application. Z.C. Order No. 07-26B became effective upon its publication in the *D.C. Register* on August 27, 2010.
4. By letter dated May 17, 2011, the Applicant requested that the Commission modify the approval of the PUD to eliminate the 80 parking spaces proposed to be located in the vaults in public space.
5. The approved plan for the typical garage levels, Sheet A6 of the plans dated February 15, 2008, shows approximately 40 parking spaces on each of two levels in the vaults along O, P and 9th Streets. These spaces would be eliminated and the project would remain at approximately 500 on-site spaces. The Applicant proposes to have available those spaces as follows:
 - Retail (including the supermarket): 220 spaces
 - Hotel: 45 spaces
 - Residential: 150 spaces
 - Shared and public parking: 85 spaces.
6. The Zoning Regulations require a minimum of 304 off-street parking spaces for the uses described above. The 500 spaces proposed are still substantially in excess of the minimum number required.
7. The proposed change to not provide parking in the vault follows the Applicant's evaluation of the need for that parking. Subsequent to approval of the application, the Applicant's experience with market demand for parking for the various component uses suggests that the 80 additional spaces which were to be in the vault are not necessary to serve the project. With the parking space distribution as set forth above, the Applicant has enough on-site spaces to meet minimum requirement under the Zoning Regulations for each use, meet the actual expected practical demand for parking spaces and still have 85 spaces on-site which can be allocated among the various uses as future demand requires.

8. In all other respects, including height, gross floor area, number of units, yards, courts, parking, and loading, the PUD will remain as approved by the Commission.
9. Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for modifications on the Commission's Consent Calendar for its public meeting on June 13, 2011. At that meeting, the Commission voted to approve the application for modifications to Z.C. Order No. 07-26.
10. There was no opposition to the modification request. Advisory Neighborhood Commission ("ANC") 2C was served by the Applicant with the requested modifications, but the ANC did not submit a written report.
11. The Office of Planning submitted a report, dated June 3, 2011, recommending approval of the proposed modifications. The report stated that the proposed changes do not materially affect the facts upon which approval of the PUD was granted, including the building's height, loading, number of units, courts, yards, and gross floor area.

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission concludes that the proposed modifications are of little or no importance or consequence and are consistent with the intent of the Commission in approving the original project in Z.C. Case No. 07-26. The subject request does not affect the essential elements of the approval given by the Commission for this project, such as use, height, gross floor area, lot occupancy, or setbacks. This proposed change affects only the parking that was in the vault in public space, which is subject to approval by the District Department of Transportation and is outside the private property. The number of parking spaces to be provided still substantially exceeds the minimum number required under the Zoning Regulations and still allows for 85 swing spaces to accommodate potential future shifts in demand. Accordingly, the request falls within the scope of §3030.

The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of these modifications is not inconsistent with the Comprehensive Plan.

The modifications are of such a minor nature that their consideration as a Consent Calendar item without public hearing is appropriate.

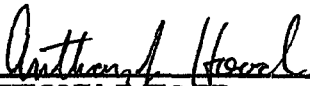
DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of this application for a minor modification of an approved PUD. Condition Nos. 2 and 7d are hereby amended as follows (language to be deleted is shown in ~~strike through~~; language to be added is shown as underlined):

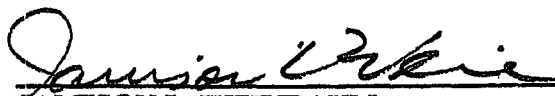
2. The project shall be a mixed use commercial and residential development consisting of approximately 770,780 square feet of gross floor area. ... The project shall provide approximately 500 parking spaces; ~~an additional 80 parking spaces will be located in the vault space.~~
7. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as there are a minimum of 475 parking spaces. ~~does not exceed the 475 zoning compliant spaces and 80 vault spaces specified.~~

On June 13, 2011, upon the motion of Vice Chairman Schlater, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 5, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-26C

As Secretary to the Commission, I hereby certify that on AUG 8 2011 copies of this Z.C. Order No. 07-26C were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. D.C. Register | 6. Councilmember Jack Evans |
| 2. Norman M. Glasgow, Jr. Esq.
Holland & Knight
2099 Pennsylvania Ave. N.W. #100
Washington, D.C. 20006 | 7. DDOT (Karina Ricks) |
| 3. ANC 2C
P.O. Box 26182
Washington, D.C. 20001 | 8. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, D.C. 20024 |
| 4. Commissioner Alexander Padro
ANC/SMD 2C01
1519 8 th Street, N.W.
Washington, D.C. 20001 | 9. Office of the Attorney General (Alan Bergstein) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004 | |

Doc# 2011111558 Fees:\$362.50
11/04/2011 10:26AM Pages 50
Filed & Recorded in Official Records of
WASH DC RECORDER OF DEEDS LARRY TODD

RECORDING	\$	356.00
SURCHARGE	\$	6.50

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning