

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-01

As Secretary to the Commission, I hereby certify that on SEP 30 2008 copies of this Z.C. Order No. 08-01 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|--|
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ATTESTED BY: Sharon S. Schellin

Sharon S. Schellin

**Secretary to the Zoning Commission
Office of Zoning**

**ZONING COMMISSION
District of Columbia**

CASE NO. 08-01

EXHIBIT NO. 40

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ZONING COMMISSION
District of Columbia
CASE NO. 08-01
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GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 08-01

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Southeast Federal Center Overlay Review

Forest City SEFC, LLC on behalf of the United States General Services Administration

April 24, 2008

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on April 24, 2008 to consider an application by Forest City SEFC, LLC (the "Applicant"), for property owned by the United States General Services Administration ("GSA"), for review and approval of a new development within the SEFC/CR Zone District that fronts M Street, S.E., pursuant to the Southeast Federal Center Overlay provisions ("SEFC Overlay District Review") set forth in § 1803.8 of the District of Columbia Zoning Regulations ("Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). In addition, the Applicant sought approval for (1) permission to construct a building that fronts M Street, S.E. at a height of 110 feet pursuant to § 1803.6; (2) a special exception from the rooftop structure requirements of § 639; (3) an area variance from the rear yard requirements of § 636; and (4) a variance from the loading requirements of § 2201.1.¹

The property that is the subject of this application consists of approximately 101,376 square feet of land and is located on the south side of M Street, S.E., east of 4th Street, S.E. within the Southeast Federal Center. The property is known as "Parcel D" and also known as Lot 800 in Square 826. The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On January 14, 2008, the Applicant filed an application for review and approval of a new development, pursuant to the SEFC Overlay District Review, for property located in the Southeast quadrant of Washington, D.C. and generally bounded by M Street on the north, 4th Street on the west, the proposed extension of Tingey Street on the south, and the

¹ Applicant also sought variance relief from certain design standards for ground floor preferred uses mandated by 11 DCMR § 1803.3. At the time of the application and hearing, those provisions applied regardless of whether the preferred uses were required or, as in the case of the Applicant's project, voluntarily provided. After the hearing, but before the effective date of this Order, the Zoning Regulations were amended to no longer impose the design standards on non-required preferred uses. Therefore, the relief sought, and approved, is no longer necessary and will not be discussed in this Order.

historic 202 Building on the east. Pursuant to § 1803.8 of the Zoning Regulations, the Applicant seeks review and approval of the proposed development under the SEFC Overlay District Review; permission to construct a building to a height of 110 feet; a special exception from the rooftop structure requirements; and variances from rear yard, loading, and preferred use requirements of the Zoning Regulations. The Parcel D site consists of approximately 101,376 square feet of land (the "Subject Property" or "Property"). The Property is presently zoned SEFC/CR.

2. The purposes of the SEFC Overlay District that are relevant to the proposed development include:
 - a. Assure development of the area with a mixture of residential and commercial uses and a suitable height, bulk, and design of buildings, as generally identified in the Comprehensive Plan and in recognition of the objectives of the Anacostia Waterfront Initiative and the Near Southeast Urban Design Framework Plan;
 - b. Encourage high-density residential development with a pedestrian-oriented streetscape through flexible zoning parameters;
 - c. Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses;
 - d. Require suitable ground-floor level retail and service uses near the Navy Yard Metrorail station; along M Street, S.E.; near the SEFC/W-0 District; and at other key pedestrian locations; and
 - e. Encourage the design and development of properties in a manner that is sensitive to the adjacent Navy Yard and the historically significant buildings within the SEFC.
3. The Property is also subject to Historic Preservation Design Guidelines (the "SEFC Design Guidelines") which were prepared in consultation with the District of Columbia State Historic Preservation Officer and the Advisory Council on Historic Preservation, to provide a framework for the treatment of the historic structures, site features, street improvements, and new construction within the Southeast Federal Center site. The SEFC Design Guidelines were prepared in order to avoid, minimize, and/or mitigate any potential adverse effects that new development might have on the historic resources within the SEFC site.
4. After proper notice, the Commission held a hearing on the application on April 24, 2008. Parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located.
5. At its duly noticed meeting held on April 14, 2008, ANC 6D voted 4-2-0 in support of the application for SEFC Overlay District review. In its April 22, 2008 report, the ANC found that the proposed mixed-use development has the potential to meet many needs in

the burgeoning Southeast neighborhood. As well, the ANC found that the grocery store and the affordable housing proposed with the development will greatly enhance the livability of the new community.

6. Expert witnesses appearing on behalf of the Applicant included: Mark Gilliland, AIA, of Shalom Baranes Associates, and Robert Schiesel, P.E. of Gorove/Slade Associates, Inc.
7. The Commission took final action at the April 24, 2008 public hearing, by a vote of 5-0-0, to approve the plans submitted into the record and the relief requested.

Description of Surrounding Area

8. The Subject Property is located within the 42-acre site known as the Southeast Federal Center (the "SEFC Site"). The SEFC Site is a former annex of the U.S. Navy Yard and is being redeveloped into a mixed-use waterfront neighborhood to include office space, residential and commercial uses, a waterfront park, and open space. There are several historic industrial buildings located within the SEFC site, including Building 202, which is proposed for redevelopment into a residential building, and Building 167, which will be re-developed for retail uses. The SEFC Site is currently under development.
9. Immediately across 4th Street to the west of the Subject Property is the U.S. Department of Transportation headquarters buildings and Building 167. To the east of the Property is Building 202. The U.S. Navy Yard is two blocks east of the Property and the National's Baseball Stadium is approximately five blocks west of the Subject Property. To the south of, and adjacent to the Property, is the proposed extension of Tingey Street, S.E.²
10. An historic brick structure known as the "Sentry Tower and Wall" borders the northern edge of the Subject Property along M Street and a portion of the western edge of the Subject Property at the corner of 4th and M Streets. The brick wall is approximately 12 feet in height. At the corner is a guard turret. The Sentry Tower and Wall were constructed in 1901.

Project Overview

11. The Applicant proposes to develop the Subject Property with a 605,000-square-foot mixed-use development consisting of residential, office, grocery, and retail uses. The proposed development includes two towers with a shared loading pavilion between the two towers and below-grade parking. The north tower of the proposed development will be located on the southeast corner of M and 4th Streets, S.E. (the "North Tower"). The south tower of the development will be located on the northeast corner of 4th and Tingey Streets, S.E. (the "South Tower").

² The proposed extension of Tingey Street, S.E., as well as the dedication of other streets within the SEFC Site, is the subject of Application S.O. 07-8802 for street dedications currently pending with the District of Columbia Office of the Surveyor (the "D.C. Surveyor"). As such, the Property is expected to be, but is not yet, bounded by public streets on three of its sides.

12. Because the two Towers are connected above the “lowest floor,” the project is considered one building for zoning purposes. (11 DCMR § 199.1, definition of “Building.”)
13. The North Tower will include a ground floor level grocery store with a partial mezzanine of approximately 51,300 gross square feet. An office lobby will also be located on the ground floor of the North Tower. The North Tower will contain approximately 336,700 gross square feet of office space within the 10-story tower.
14. The South Tower will provide approximately 5,400 square feet of ground floor retail and a residential lobby facing the proposed extension of Tingey Street, S.E. The South Tower will also contain between 170-200 residential units within the 11-story tower.
15. Two openings are proposed in the Sentry Tower and Wall in order to provide an ADA-compliant pedestrian entry from the M Street, S.E. sidewalk to the Property, subject to historic preservation approvals.
16. The maximum non-residential density permitted in a CR zone is 3.0 FAR. The Applicant proposes a non-residential density of 3.88 FAR, which it will achieve through the entry of a combined lot development with another property located in the SEFC/CR District in accordance with § 1803.4 and the procedures set forth in § 1810. The additional non-residential development rights will not become available and cannot be utilized unless and until a combined lot development covenant is executed and recorded in accordance with the provisions of § 1810.
17. The proposed development will have two levels of below-grade parking to contain at least 325 parking spaces for the office, grocery, residential, and retail uses. The proposed development will also have a shared loading area providing two 55-foot loading berths, four 30-foot loading berths, three 20-foot service/delivery loading spaces, and two 200-square-foot and four 100-square-foot loading platforms. These shared loading facilities will serve the office, grocery, residential, and retail uses.
18. A green roof will be located on the third floor of the proposed development above the loading area between the North and South Towers. A second green roof will be located above the grocery store on the fourth floor.
19. At the hearing, the Applicant requested authorization to phase the development and construction of the South Tower for a period of five years from the date of substantial completion of the North Tower due to the current challenges in housing markets and the uncertainty in the credit markets, either or both of which may cause delays.

110-Foot Building Height

20. Section 1803.6 of the Zoning Regulations permits a height of greater than 90 feet and no more than 110 feet for sites fronting on M Street, S.E. east of 4th Street, S.E., if reviewed and approved by the Commission. In its consideration of the proposed building height,

the Commission must consider the relationship of the proposed building to the Navy Yard and may require graduated height and/or design features due to the building's proximity to the Navy Yard.

21. The Applicant requested a maximum building height of 110 feet. Both the North Tower and the South Tower have a proposed height of 110 feet.
22. The proposed height of the development is appropriate for the Subject Property. The U.S. Department of Transportation Buildings located west of the Property are constructed to heights of 110 feet and 120 feet. The properties located south of the Subject Property, across Tingey Street, are allowed a maximum height of 110 feet pursuant to the Zoning Regulations. Also, the Subject Property's position in relation to the Navy Yard is the furthest site from the Navy Yard which can be considered by the Commission for a height of 110 feet and accordingly, due to the distance, the proposed development will have no or minimal impact on the Navy Yard.
23. The height of the proposed development is therefore compatible with other buildings in the vicinity of the Subject Property, as well as with the Navy Yard, and thus, the proposed height of 110 feet is appropriate for the development.

Requested Areas of Relief: Special Exception

24. The Applicant requested special exception relief pursuant to § 639 of the Zoning Regulations to permit roof structures with walls of unequal heights. The Applicant will locate one roof structure each on both the North Tower and the South Tower. The North Tower roof structure will have enclosing walls with heights of 18.5 feet and 17 feet. The South Tower will have enclosing walls with heights of 18.5 feet and 15.5 feet. The maximum allowable height of the enclosing walls on both towers is 18.5 feet.
25. The proposed "unequal" heights of the rooftop enclosures were designed in accordance with the SEFC Design Guidelines so as to relate to the SEFC Site's historic industrial buildings' massing and structural characteristics and to provide an articulated roof line.
26. The proposed unequal heights of the rooftop enclosures will not cause objectionable conditions or adversely affect neighboring or nearby property. The unequal heights result in portions of the rooftop enclosures being at lower heights than allowed by the Zoning Regulations. The uneven heights will establish an articulated roof line for the proposed development and the enclosures' design is in harmony with the historic industrial character of the SEFC Site and the Navy Yard.

Requested Areas of Relief: Variances

27. Pursuant to §§ 1809.1 and 3103.2, the Applicant requested: (i) an area variance from the rear yard requirements of § 636; (ii) a variance from the preferred use requirements of § 1803.3; and (iii) a variance from the loading requirements of § 2201.1.

Exceptional Situation and Condition of the Property

28. The Subject Property is subject to an exceptional situation and condition due to the presence of the historic Sentry Tower and Wall along the northern and northwestern boundaries of the Property, its location within the 100-year flood plain and the need for flood plain retaining walls to be installed on the southeast corner of the Property, the lack of internal dedicated streets within the SEFC Site, and the presence of the WMATA Metrorail tunnel easement and zone of influence which runs beneath the Property. The Sentry Tower and Wall effectively blocks any development of the Property from M Street and forces it to be oriented towards 4th and Tingey Street. The flood plain retaining walls limit street-oriented development and potential building access on the southeast corner of the Property. The dedication application for Tingey Street, east of 4th Street [the southern boundary of the Property], is currently pending with the D.C. Surveyors Office. As such, the Property is expected to be, but is not yet, bounded by public streets on three of its sides. Thus, the Applicant has met its burden of showing of "an extraordinary or exceptional situation or condition" of the property. D.C. Official Code § 6-641.07 (g)(3) (2001).

Rear Yard Requirements of § 636

29. The Zoning Regulations require a rear yard for each residential building or structure located within a CR zone district at a minimum depth of three inches per one foot of vertical distance from the horizontal plane upon which the residential use begins to the highest point of the main roof (but not less than 12 feet). However, the Zoning Regulations also provide that where a lot abuts three or more public streets, no rear yard is required for any building or structure located on such a lot (§ 636.5).
30. The Property is bounded by two dedicated public streets and one proposed public street: M Street to the north and 4th Street to the east are open and dedicated public streets, and proposed Tingey Street to the south is proposed for, but has not yet been dedicated for, public use. Because the Subject Property is not currently bounded by three public streets, the proposed development is required to have a rear yard of 28.25 feet. The proposed development has provided a rear yard of 12.58 feet. Thus, the Applicant seeks a variance of 15.67 feet.
31. Strict application of the rear yard requirements of the Zoning Regulations would force the Applicant to create a setback that would inappropriately remove the building face from the property line and sidewalk along Tingey Street. Furthermore, it would result in a rear yard that eventually will not be required for the Subject Property. Although the Property is not currently bounded by three public streets, upon the dedication of Tingey Street, the Property will be bounded by three public streets, and thus will not require a rear yard in accordance with the Zoning Regulations. As well, even if Tingey Street was not dedicated for public use, the street would still exist as a private right-of way and function in the same manner for purposes of rear yard requirements and would provide light and air for residential occupants of the Building. Additionally, the proposed South Tower,

which contains the residential units in the Building, will have significant “set backs” and open space on each of its sides. Specifically, on the west of the South Tower is 4th Street, S.E., which is a 60-foot right-of-way, on the south is Tingey Street, which will be a 90-foot right-of-way, on the east is a private drive, which will be approximately 30 feet in width, and to the north, the South Tower will be set back from the North Tower by (i) the loading driveway, by approximately 31 feet, and (ii) the terrace over the Building’s loading area, by approximately 78 feet. Thus, a variance from the rear yard requirements will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

Loading Requirements of § 2201

32. The loading provisions of the Zoning Regulations require that the Applicant provide three 30-foot loading berths, one 20-foot loading space, and three 100-square-foot loading platforms for the office use; one 55-foot loading berth, one 30-foot loading berth, one 20-foot loading space, and one 200-square-foot and one 100-square-foot loading platform for the grocery store use; one 30-foot loading berth and one 100-square-foot loading platform for the retail space; and, finally, one 55-foot loading berth, one 200-square-foot loading platform, and one 20-foot loading space for the residential use. The proposed development provides two 55-foot loading berths, four 30-foot loading berths, and three 20-foot loading spaces, as well as two 200-square foot loading platforms and four 100-square-foot loading platforms. In total, the Applicant will provide nine of the 10 loading berths and spaces required by the Zoning Regulations and six of the seven required loading platforms.
33. The design and footprint of the building on the Property make strict compliance with the loading provisions of the Zoning Regulations a practical difficulty. Given the building’s design, the maximum number of loading facilities that could practicably fit has been provided.
34. The building on the Property contains four distinct uses, each with its own individual loading requirements, but these individual loading requirements do not take into account the possibility of sharing the loading facilities provided, therefore, the total of the four individual requirements ends up being potentially excessive.
35. The record establishes that the number of loading berths and spaces required by the Zoning Regulations does not correspond with the potential demand in the mixed-use development. The Applicant submitted a traffic impact study with its pre-hearing filing that concluded that the Applicant’s proposed loading berths and spaces should adequately meet the needs of the proposed uses. The Applicant also stated that DDOT had no objection to this relief. Thus, the modest variance relief requested from the loading requirements will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

Office of Planning Report

36. By a report dated April 14, 2008, OP recommended approval of the proposed design, subject to: (i) approval by the Zoning Administrator of the permitted combined lot allocation of residential and non-residential uses needed to facilitate the use mix associated with this development; (ii) provision of additional detail and assurances regarding green building initiatives; and (iii) provision of design and material details for the loading entrance from 4th Street, S.E., to ensure its potentially negative visual impacts are minimized.
37. In response to OP's first recommendation, the Applicant will file with the Zoning Administrator an instrument for the combined lot development associated with the proposed development pursuant to § 1810 prior to the issuance of a building permit.
38. At the hearing, the Applicant responded to OP's second recommendation by providing a summary of the sustainable design features based on LEED certification categories which will likely be incorporated into the proposed development (Exhibit 35). The Applicant also committed to creating green roofs on the third floor of the proposed development above the loading area between the North and South Towers and on the fourth floor above the grocery store.
39. As to OP's third recommendation, the Applicant provided plans at the public hearing of the loading entrance from 4th Street, S.E. including design and material details. The plans showed that any potential negative visual impacts are minimized with the loading dock door being set back approximately 80 feet from 4th Street and by the use of translucent glass panels in the overhead door. As well, the use of enhanced pavers along the sidewalk in front of the loading entrance addresses any potential safety issues for pedestrians. Finally, a pedestrian refuge area was created between the loading dock entrance and the parking entrance.

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11 DCMR §§ 1803.8 and 1809, for review and approval by the Commission. The application, pursuant to 11 DCMR § 1809.1, requested special exception and variance relief for the proposed development.
2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and to owners of property within 200 feet of the property.
3. Pursuant to 11 DCMR § 1803.8, the Commission required the Applicant to satisfy the burden of proving the elements that are necessary to approve the overall project under § 1808 and to establish the case for Commission approval of a maximum building height of 110 feet under § 1803.6. Pursuant to 11 DCMR §§ 1809.1 and 3104, the Commission required the Applicant to establish the case for special exception relief from the roof

structure requirements of §§ 639.1 and 411.11. Lastly, pursuant to 11 DCMR §§ 1809.1 and 3103, the Commission required the Applicant to satisfy the requirements for variance relief from the rear yard requirements of § 636.1 and from the loading provisions of § 2201.

4. The Commission concludes that the Applicant has satisfied all the necessary elements for all the relief requested.
5. The proposed development is within allowable height, bulk, and density standards of the Zoning Regulations and the height and density will not cause a significant adverse effect on any nearby properties. The residential, office, grocery, and retail uses are appropriate for the site and furthers the purposes of the SEFC/CR District. The impact of the project on the surrounding area is negligible and any potential adverse impacts have been ameliorated. The proposed development has been appropriately designed to complement existing and proposed buildings adjacent to the Subject Property with respect to height and mass.
6. No person or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
7. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
8. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give “great weight” to the issues and concerns of the affected ANC. As reflected in the Findings of Fact, at its duly noticed meeting held on January 8, 2007, ANC 6D, the ANC within which the Subject Property is located, voted 4-2-0 in support of the application for SEFC Overlay District review.
9. Based upon the record before the Commission, having given great weight to the views of the ANC, and having considered the report and testimony OP provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR § 1808, as well as the burdens of proof for the requested special exception and variances.
10. The project that is the subject of this application for SEFC Overlay District Review will promote the development of the SEFC Site into a viable mixed-use neighborhood which is sensitive to the site’s historic resources and the Navy Yard, and which is in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the application

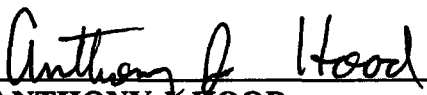
for SEFC Overlay District review, including **APPROVAL** of all special exception and variance relief requested. This approval is subject to the following guidelines, conditions, and standards:

1. The approval of the proposed development shall apply to Lot 800 in Square 826.
2. The project shall be built in accordance with the Architectural Plans and Elevations, included in the pre-hearing filing, dated April 4, 2008, and marked Exhibit 28 in the record of the case, as modified by the guidelines, conditions, and standards below.
3. The project in its entirety shall include approximately 336,700 square feet of gross floor area of office space, approximately 51,300 square feet of gross floor area of grocery store space, approximately 5,400 square feet of gross floor area of other retail space, and approximately 211,600 square feet of gross floor area of residential space.
4. The maximum non-residential density of the proposed development may be 3.88 FAR. The additional 0.88 FAR of non-residential development rights will not become available and cannot be utilized unless and until a combined lot development covenant is executed and recorded in accordance with the provisions of 11 DCMR § 1810.
5. Except for roof structures, the maximum permitted building heights of the North and South Towers shall be 110 feet. Roof structures shall be as shown on Sheet A21 of the Architectural Plans and Elevations. (Exhibit 28.)
6. The project shall include a minimum of 325 off-street parking spaces for office, grocery, retail, and residential use.
7. The project shall provide two 55-foot loading berths, four 30-foot loading berths, and three 20-foot service/delivery spaces.
8. The treatment of the loading dock entrance shall be as shown on the PowerPoint presentation submitted by the Applicant at the public hearing (Exhibit 38).
9. A minimum floor-to-ceiling clear height of 13 feet shall be provided in those areas designated for ground floor preferred uses in the South Tower and a minimum floor-to-ceiling height of 14 feet shall be provided in those areas designated for ground floor preferred uses in the North Tower.
10. The Applicant shall provide sustainable building design features as set forth in the Applicant's PowerPoint presentation submitted by the Applicant at the public hearing (Exhibit 38).
11. The Applicant is authorized to phase the construction of the South Tower for a period of five (5) years from the date of substantial completion of the North Tower.

12. The owner 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. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of 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. Violations will be subject to disciplinary action. The failure or refusal of the owner to comply with the Act shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

At the close of the public hearing on April 24, 2008, the Zoning Commission **APPROVED** the application by a vote of **5-0-0** (Peter G. May, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and Curtis L. Etherly, Jr. to approve).

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 **OCT 3 2008**.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING