

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**

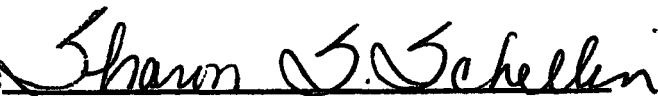


**Z.C. CASE NO.: 06-26**

As Secretary to the Commission, I hereby certify that on OCT - 4 2007 copies of this Z.C. Order No. 06-26 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |                                                                                                                                  |                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| 1. <i>D.C. Register</i>                                                                                                          | 6. Councilmember Harry Thomas, Jr.                                                                                |
| 2. Wayne S. Quin, Esq.<br>Dennis Hughes, Esq.<br>Holland & Knight, LLP<br>2099 Pennsylvania Ave., N.W.<br>Washington, D.C. 20006 | 7. Office of Planning (Harriet Tregoning)                                                                         |
| 3. William Boston, Chair<br>ANC 5A<br>1322 Irving Street, NE<br>Washington, DC 20017                                             | 8. DDOT (Ken Laden)                                                                                               |
| 4. Commissioner Angel Sherri Alston<br>ANC/SMD 5A03<br>4707 6th PI NE<br>Washington, DC 20017                                    | 9. Acting Zoning Administrator (Matt LeGrant)                                                                     |
| 5. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                                             | 10. Jill Stern, Esq.<br>General Counsel<br>941 North Capitol Street, N.E.<br>Suite 9400<br>Washington, D.C. 20002 |
|                                                                                                                                  | 11. Office of the Attorney General<br>(Alan Bergstein)                                                            |

ATTESTED BY:

  
Sharon S. Schellin

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**ZONING COMMISSION**  
District of Columbia  
CASE NO.15-04  
EXHIBIT NO.29B

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 06-26**

**Z.C. Case No. 06-26**

**Consolidated Planned Unit Development and Related Zoning  
Map Amendment for Rocky Gorge Development, LLC  
(Square 3788, Lot 814)  
February 12, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 21, 2006 to consider an application from Rocky Gorge Development, LLC, for consolidated review and approval of a planned unit development and related Zoning Map amendment from the R-2 and FT/C-M-1 Districts to the R-4 District. The Commission considered the application pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application, subject to the specified conditions.

**FINDINGS OF FACT**

**Application, Parties, and Public Hearing**

1. On May 26, 2006, Rocky Gorge Development, LLC (the "Applicant"), contract purchaser from Thos. Somerville Co. of Square 3788, Lot 814 (the "Property"), filed an application for the consolidated review and approval of a planned unit development ("PUD") and a related Zoning Map amendment for the Property.
2. At its July 24, 2006 public meeting, the Commission determined to set the application for public hearing.
3. The Commission held a public hearing on the application on December 21, 2006. The Commission heard testimony from the Applicant and from Advisory Neighborhood Commission ("ANC") 5A, the ANC within which the Property is located. The Applicant and ANC 5A were the only parties to the case.
4. At the end of the public hearing, the Commission took proposed action by a vote of 5-0-0 to approve the application with conditions.

5. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated January 26, 2007, found that the proposed PUD and map amendment would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.
6. The Commission took final action by a vote of 5-0-0 to approve the application at its public meeting on February 12, 2007.

**Property and Surrounding Area**

7. The Property is located in Square 3788. The total land area for the Property is approximately 182,600 square feet (4.19 acres), which exceeds the minimum area requirement of two acres for a PUD in the R-4 District established in § 2401.1(a) of the Zoning Regulations (11 DCMR).
8. The Property is currently occupied by an abandoned metal shed. Much of the Property is covered by a concrete slab, which was used to accommodate its previous outside storage use. The Property is otherwise vacant.
9. The Property is largely rectangular in shape and is roughly bounded on the north by the property approved for PUD development as the Rocky Gorge at Fort Totten Emerson Park Townhomes ("Emerson Park Phase I"), on the west by Lot 813 in Square 3788 (former Thos. Somerville Co. site), on the south by a number of detached dwellings fronting on 6<sup>th</sup> Place, N.E., and on the east by a strip of properties fronting on 7<sup>th</sup> Street, N.E., which have recently been developed as duplexes. The Property sits approximately 30 feet in elevation above both 7<sup>th</sup> Street, N.E. and Emerson Park Phase I.
10. The Fort Totten Metrorail Station is located approximately 1,700 feet (approximately one-quarter mile) to the northwest of the Property. The Comprehensive Plan's Generalized Land Use Map identifies mixed-use medium-density commercial and production and technical employment uses as appropriate on portions of the Property; low-density residential is indicated on other portions. The Comprehensive Plan's Generalized Land Use Policies Map includes the entire Property within both the Fort Totten Housing Opportunity Area and the Fort Totten Metrorail Station Development Opportunity Area.
11. To the northeast, east, and southeast of the PUD site, the immediately surrounding area is zoned R-2 and improved with a mixture of detached and semi-detached single-family residences.

**Existing and Proposed Zoning**

12. The Property is split-zoned, with portions of the site located in the R-2 and FT/C-M-1 Districts. Residential uses are not permitted in the C-M District. Rowhouse development is not permitted in the R-2 District. A rezoning of the Property is necessary to permit the residential use proposed in the application.
13. The maximum permitted height in the R-2 District is 40 feet (within three stories). There is no prescribed floor area ratio ("FAR"), although the 40 percent lot occupancy allowed in the R-2 District yields a maximum potential density of 1.2 FAR. Calculated at a permitted density of 1.2 FAR, the R-2 portion of the Property alone would permit a development of approximately 144,364 square feet of gross floor area.
14. The maximum permitted height in the C-M-1 District for commercial and light manufacturing uses is also 40 feet (within three stories). New construction and redevelopment up to 3.0 FAR is permitted in the C-M-1 District. Overall, the C-M-1 portion of the Property alone allows for approximately 218,796 square feet (3.0 FAR x 72,392 square feet) of matter-of-right non-residential gross floor area.
15. The Applicant requested rezoning of the Property to R-4. The maximum permitted height in the R-4 District is 40 feet (within three stories). There is no maximum density in the R-4 District. The Applicant proposed the rezoning of the Property to R-4 in combination with the PUD in order to permit the development of multi-family housing on the site, which is not permitted under the existing zoning for the Property.

**PUD Project**

16. The Applicant proposed to redevelop the vacant site into 35 units of individually-owned townhouses (the "Project"). The townhouse units will be arranged around a landscaped common space in six buildings containing from five to eight dwelling units. The Project was designed to follow neo-traditional design principles, including rear-loaded garages accessed through an alley system and a coordinated internal sidewalk system that will allow for a high level of neighborhood walkability and easy connections to both nearby transit and other uses in the surrounding community. Vehicular access to the Project will be from 6<sup>th</sup> Street, N.E., and Emerson Street, N.E., through a road to be constructed as part of the Project and Emerson Park Phase I.
17. Two townhouse configurations will be constructed in the Project: (1) an 18-foot by 36-foot footprint with a rear-loaded large one-car garage integrated into the building, containing two or three bedrooms and approximately 1,950 gross square feet (including garage); and (2) a 20-foot by 40-foot footprint with a rear-loaded two-car garage integrated into the unit, containing two to four bedrooms and approximately 2,400 square feet (including garage). Each unit will have a rear deck.

18. The units will be three stories in height, slab on grade or perhaps with partial basements, with attic space hidden behind a variety of rooflines including gables, hipped roofs, and dormers. Typical units will measure approximately 30 feet in height from finished grade to the ceiling of the unit's third story.
19. Twenty-four surface parallel parking spaces were proposed on the northern, southern, and eastern perimeters of the development, in addition to the 53 garage spaces that will be provided throughout the Property, which will be accessible in accordance with the Zoning Regulations.
20. Consistent with Emerson Park Phase I, the architectural treatment chosen for the Project, particularly the elevations of the townhouses, was inspired by the Federal-style townhouse design built throughout Washington in the late nineteenth and early twentieth centuries. Varied exterior elevations utilizing maintenance-free materials will provide a diverse streetscape throughout the Project. Some front elevations will be full-brick with intricate brick details, including header soldier courses, jack arches, and continuous rowlock sills. Other elevations will include a brick water table, with a combination of double five-inch and triple three-inch beaded horizontal vinyl lap siding with accent details such as vinyl accent strips and window header trim. The use of brick and vinyl will ensure that the exteriors of the townhouses maintain a fresh appearance. Roofing material will consist of self-sealing, asphalt shingles.
21. The Project will include a small central green that will serve as the focal point of the Project. The central green will be an elongated oval and will provide direct frontage for more than 50 percent of the units. In addition to, and connected with, this central green will be an eastern "pocket" green, a landscaped semi-circular area with lawn furniture and space for passive recreation. These greens will be connected by a landscaped walk that will run between Buildings 4 and 5. Both greens will be extensively landscaped using a variety of coordinated trees, shrubs, and groundcover. There will be landscaped seating areas with benches designated by elegant concrete pavers with parquet banding and running bond field for the eastern green. The central green was also designed to serve as a low impact "bio-retention" basin.. Both greens will be accessible to all units in the Project.
22. The Project as a whole will include approximately 81,576 square of development, all of it residential, and measuring approximately 30 feet in height. Overall lot occupancy will total approximately 16 percent, less than the 60 percent permitted in the R-4 District as a matter-of-right.
23. The Project was intended to supplement the housing stock in an area of the District that historically has been underserved.

24. No increase in building density was requested as part of the Project. Rather, only a fraction of the building density currently permitted on the site as a matter-of-right was proposed to be developed under the Project. Whereas more than 363,000 square feet could conceivably be developed on the site consistent with its existing zoning, less than 82,000 square feet will be developed through the PUD.
25. The Project includes a commitment by the Applicant to restrict the sale of two of the 18-foot by 36-foot townhouse units within the Project, for a period of 20 years, to those households that are qualified and determined by the District's Department of Housing and Community Development to be qualifying households with incomes not to exceed 85 percent of the Metropolitan Washington, D.C. Area Median Income.

**Public Benefits and Project Amenities**

26. The Commission finds that the following public benefits and project amenities will be created as a result of the Project:
  - a. *Housing.* The Project will convert an underutilized, vacant site into 35 residential units. This provision is especially important given that the site is located within the Fort Totten Housing Opportunity Area, and, as such, non-residential property is encouraged to be converted into residential property. In addition, two of the residential units will be dedicated as affordable housing for qualifying District residents with incomes not to exceed 85 percent of the Metropolitan Washington, D.C. Area Median Income.
  - b. *Urban Design and Architecture.* The Project will satisfy the criteria of transit-oriented development ("TOD"): (1) orientation and connectivity; (2) quality public realm and amenities; (3) pedestrian-friendly, safe environment; (4) attractive architecture and design; (5) mix of uses; and (6) creative parking management. The demonstrated results of successful TOD include increased property values, tax base, and economic strength throughout a neighborhood, as well as protection of the existing neighborhood character by focusing development nearest transit.
  - c. *Site Planning and Efficient Land Utilization.* The Project will make efficient use of the property, consistent with its shape and topography. The Project also represents an efficient and economical use of land in that it will generate revenue for the District in the form of increased property taxes and income taxes payable by new residents. The new occupants of the approximately 35 units will add to the market demand for existing neighboring retail uses and amenities, further invigorating the neighborhood.

- d. *Transportation.* The Project will have an inconsequential impact on vehicular traffic. The Project will provide ample on-site parking to ensure that the Project does not increase the pressure on limited street parking in the neighborhood. The Property is well located within walking distance of a Metrorail station and several Metrobus routes. In addition, as part of the circulation plan for the Project, the Applicant proposed the construction and maintenance of a private road to connect 6<sup>th</sup> Street, N.E., which terminates at the southern boundary of the Property, with Emerson Street, N.E., to the north. This private connection, which will be paved in compliance with District Department of Transportation ("DDOT") requirements regarding pavement design and travel lane widths, will extend north along the western boundary of the Property from the terminus of 6<sup>th</sup> Street, N.E., and connect to the private drive extending south from Emerson Street, N.E., that was approved as part of the Emerson Park Phase I PUD.
- e. *Open Space and Landscaping.* The Project will include adequate open space through the landscaped areas provided. The planting of exotic ornamental species will be kept to a minimum.
- f. *Uses of Special Value to the Neighborhood or the District as a Whole.* The Project involves removing the Property from its longstanding underutilized and abandoned storage use and developing residential use consistent with the Comprehensive Plan, the District's stated TOD goals, and the indicated preferences of the neighboring community.
- g. *Other Public Benefits and Project Amenities.* The Applicant worked with ANC 5A, various community organizations, interested neighbors, and the District of Columbia's Office of Planning ("OP") and DDOT to arrive at a package of community benefits that will enhance the surrounding neighborhood. In addition to the dedication of two townhouse units to affordable housing, this package includes a financial contribution of \$75,000, payable to the Friends of North Michigan Park Civic Association ("FNMPCA"), a registered not-for-profit organization. In turn, the FNMPCA agreed to manage these funds for community enhancement programs and events within the North Michigan Park neighborhood. These programs may include: (a) improvements to the North Michigan Park Recreation Center; (b) a contribution to Food and Friends; (c) a contribution to the North Michigan Park Beautification Fund to address landscaping and maintenance issues; (d) sponsorship of community education seminars; (e) community-based agency donations; (f) sponsorship of the annual North Michigan Park Family Day at North Michigan Park Recreation Center, free to the community; (g) sponsorship of a back-to-school program for neighborhood children (including gifts of backpacks and school supplies); (h) sponsorship of the NMPCA annual awards dinner (for approximately 1,000 people); and (i) sponsorship of community Mothers Day/Fathers Day luncheons. The Applicant

agreed to provide the funding in full to the FNMPCA within 30 days of the issuance of the building permit on the initial unit within the Project.

27. The Commission finds that the Project is consistent with many of the Comprehensive Plan's major themes, as follows:
  - a. *Respecting and Improving the Physical Character of the District.* The PUD will ensure the development of an exceptional design and appropriate density in this established community. The Project will not only replace a vacant storage site with a residential development, but will accomplish this transformation in a manner that is consistent and complementary to the density and layout of the immediately surrounding neighborhood.
  - b. *Stabilizing and Improving the District's Neighborhoods.* Promoting and ensuring good quality neighborhoods is of utmost importance to the District. To that end, included among the District Elements of the Comprehensive Plan are policies and strategies for increasing housing opportunities and improving transportation in some neighborhoods. The Project will help fulfill these important policy and strategic objectives.
  - c. *Reaffirming and Strengthening the District's Role as the Economic Hub of the National Capital Region.* The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The Project will take advantage of this asset by its proximity to the Fort Totten Metrorail Station, as well as numerous routes of Metrobus. It will be consistent with the tenets of TOD and will further the efforts to create housing needed to bring additional residents to the District, especially within designated housing priority areas.
  - d. *Preserving and Ensuring Community Input.* Community concerns as to density, parking, traffic, and community benefits issues were reviewed by the Applicant and incorporated into the application.
28. The Commission finds that the Project furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
  - a. *Economic Development Element.* According to the Economic Development Element of the Comprehensive Plan, the District places a high priority on stimulating and facilitating a variety of commercial, retail, and residential developments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use Element and ward plans, with sensitivity to the surrounding areas. (10 DCMR § 204.2(m).) The Project will

serve to attract and retain residents, which will increase the tax base and create revenue for the District of Columbia.

- b. *Housing Element.* According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. (10 DCMR § 300.4.) A policy of the Comprehensive Plan is to designate, as residential development opportunity areas, sites where significant housing development can appropriately occur. (10 DCMR § 302.2(d).) The Property is located within a designated Housing Opportunity Area, is located in close proximity to the Fort Totten Metrorail Station and Metrobus routes, and will further the total urban living system with its access to public transportation.
- c. *Transportation Element.* One underlying objective of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. (10 DCMR § 500.2.) The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. (10 DCMR § 502.1(a).) The location of the Project near the Fort Totten Metrorail Station and Metrobus routes, as well as its location within a larger mixed-use area is appropriate and furthers this goal. The Commission accepts the conclusion of the Applicant's Traffic Impact Analysis that the Project will have no significant impact on vehicular traffic. The Commission further accepts the conclusion of DDOT that the proposed roadway to be constructed as part of the Project will serve as an asset to the existing street grid in the community.
- d. *Urban Design Element.* The Urban Design Element states that it is the District's goal to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. (10 DCMR § 701.1.) The Project was designed to improve the existing condition of the site, to enhance the physical character of the area, and to complement the materials, height, scale, and massing of the surrounding land uses. (10 DCMR § 708.2.) The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. (10 DCMR § 709.1.) The Project will provide efficient pedestrian connections both within and outside of the Property.

- e. *Land Use Element.* The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. (10 DCMR § 1100.2(b).) The Land Use Element includes the Property within a Housing Opportunity Area, where the District expects and encourages either new housing or rehabilitated housing. Housing Opportunity Areas are not the only areas where new housing units will become available, but represent locations of significant potential concentrations. The conversion to residential uses of land in a Housing Opportunity Area that is currently zoned commercial-light manufacturing is consistent with this policy.
29. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 5, as follows:
- a. *Ward 5 Economic Development Element.* Development is sought in Ward 5 that will enhance and expand existing businesses, create new ownership opportunities, increase retail services and opportunities for ward residents, and promote the vitality of ward neighborhoods. Economic development potential in Ward 5 is perceived as particularly high in and around Ward 5's three Metrorail stations.
  - b. *Ward 5 Housing Element.* Primary housing objectives in Ward 5 include the protection and preservation of the Ward's housing stock, the production of new housing, and the provision of incentives for housing at desired locations such as the Fort Totten Metrorail Station Special Treatment Area. (10 DCMR §§ 1608.1(a)(b)(c).) The Project, which is adjacent to the Fort Totten Metrorail Special Treatment Area, responds to these important objectives through its contribution to the housing stock.
  - c. *Ward 5 Transportation Element.* Two of the primary objectives for transportation in Ward 5 are to increase the use of mass transit and to improve the pedestrian environment on major streets and roadways. (10 DCMR §§ 1614.1(a)(e).) The residents of the Project will be able to take advantage of the Property's proximity to the Fort Totten Metrorail Station and Metrobus routes, as well as the connection of the street grid provided by construction of the private road.
  - d. *Ward 5 Urban Design Element.* The Project addresses objectives in the Ward 5 Urban Design Element, including: the promotion of a physical environment that upgrades the ward's aesthetic qualities, enhances neighborhood stability, emphasizes neighborhood identity and function, and physically enhances the gateways and entrance ways into the District (10 DCMR § 1620.1(a)) and the provision of special design attention to those areas in the ward that maintain a poor physical image, where new development can improve the neighborhood's

visual qualities while providing needed services (10 DCMR § 1620.1(b)). The Project provides a well-designed residential development that will contribute to the physical revitalization of the Fort Totten area while creating a sense of community through its design.

- e. *Ward 5 Land Use/Zoning Element.* Important among the Ward 5 actions in support of land use and zoning is determining the appropriate mix of uses, scale, density, and design of development in the Fort Totten Special Treatment Area in order to fully realize the area's potential for development and to serve the Ward 5 community and District, and to protect and preserve the surrounding residential areas. (10 DCMR § 1630.1(b).) The Project will provide much needed residential development that will revitalize the neighborhood surrounding the Fort Totten Special Treatment Area.

#### **Office of Planning Report**

- 30. By final report dated December 11, 2006, and through testimony presented at the public hearing, OP recommended approval of the application with the Applicant's proposed amenities package: (1) two affordable housing units marketed at 85 percent of the metropolitan Washington area median income for a period of 20 years and (2) a contribution to FNMPCA in the amount of \$75,000 to support enumerated community activities. OP requested that the Applicant provide more detail about what amount of funding would be allocated to each program by FNMPCA. Prior to the public hearing, the Applicant submitted correspondence from FNMPCA dated December 19, 2006, providing additional details regarding the programs to which the funds would be directed.
- 31. OP also recommended that the Applicant provide protective fencing around all trees to be retained on the Property and that no fences be erected that would give the appearance of a "gated" community.

#### **Other District Agencies**

- 32. By memorandum dated December 21, 2006, DDOT supported the findings of the Applicant's Traffic Impact Analysis and recommended approval of the application. DDOT noted that the roadway proposed to be constructed as part of the Project will be an asset to the existing street grid in the community. The Commission concurs with DDOT's recommendation in support of the application.
- 33. By memorandum dated November 27, 2006, the Metropolitan Police Department indicated no objection to the application, provided that the Project would provide acceptable access for fire and emergency medical services vehicles and that new construction would comply with the construction codes. The memorandum noted that truck access to the private road connecting Emerson Street to 6<sup>th</sup> Street, N.E., will be

limited due to the weight restrictions currently posted along Emerson, 8<sup>th</sup> Street, and 6<sup>th</sup> Place, N.E. Weight limits will be enforced by the Metropolitan Police Department.

**ANC 5A**

34. By letter dated November 29, 2006 and through testimony at the public hearing from ANC 5A Chair Franklyn Malone, ANC 5A indicated its support for the application.
35. At its September 27, 2006 monthly public meeting, with a quorum present, ANC 5A voted unanimously to support the application and directed that a task force meeting be held between the Applicant and interested community stakeholders to determine how the proposed community benefits funds should be directed, which meeting was held on November 28, 2006.

**Development Flexibility**

36. The Applicant requested approval of flexibility with respect to the following project features:
  - a. § 2516.5(b) requires that theoretical building lots maintain open space (front yard) in front of the building entrance equivalent to the required rear yard. While all of the buildings in the Project will provide more than 20 feet of open space in their respective fronts (20 feet is the minimum required rear yard in the R-4 district), the open space in front of a number of the theoretical lots will include area reserved for the private drive areas within the Project.
  - b. Extension of second floor decks into required rear yard setback, per § 2503.2.
37. Subsection 2405.7 of the Zoning Regulations provides, "notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment." Further, § 2405.8 of the Zoning Regulations provides, "Approval of the Board shall not be required for any such use approved by the Commission under § 2405.7, and the Commission shall not be required to apply the special exception standards normally applied by the Board." Accordingly, the Applicant requested approval of certain project features pursuant to 11 DCMR § 2405.7, namely:
  - a. Approval of multiple buildings on a single record lot, pursuant to § 2516.1. Consistent with § 2516, the Project will involve the siting of multiple buildings on a single record lot. Because the buildings in the Project will have no public street frontage, the Applicant requested permission to divide the lots into theoretical building sites.

- b. Minimum lot area for certain theoretical building sites, but not for the overall Project. As noted by OP, the Project as a whole will provide a significant amount of community common area for use by residents of the Project that typically would not be available in a matter-of-right R-4 development.

### **CONCLUSIONS OF LAW**

1. Pursuant to § 2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a 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. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project. (11 DCMR §2403.3.)
3. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
4. The development of this Project advances the purposes of Chapter 24 of the Zoning Regulations to encourage the construction of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than that achievable under matter-of-right development.
5. The Project meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
6. The Project is within the applicable height, bulk, and density standards of the Zoning Regulations. The Project involves extensive improvement to an underutilized and largely unimproved storage site with a 35-unit, pedestrian-oriented townhouse development in a

designated housing priority area, in keeping with the relative density of surrounding residential development. Accordingly, the Project should be approved. The impact of the Project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the neighboring residential properties in terms of height and mass and is complementary to adjacent buildings.

7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
8. The Project's benefits and amenities are reasonable for the development proposed on the site.
9. Evaluating the Project according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the application qualifies for approval. Judging, balancing, and reconciling the relative value of amenities and benefits in the application against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits, in conjunction with the amenities discussed above, are appropriate in this case.
10. Approval of this Project is appropriate, because the proposed development is consistent with the present character of the area.
11. Approval of this Project and change of zoning are not inconsistent with the Comprehensive Plan.
12. Approval of this Project and change of zoning are not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code § 6-641.02, including as follows:
  - a. The proposed zone is not inconsistent with the Comprehensive Plan;
  - b. The proposed zone will not produce objectionable traffic conditions;
  - c. The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land;
  - d. The Project will promote health and general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and would tend to further economy and efficiency in the supply of public services.

13. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered the ANC 5A's recommendation for approval and concurs in its recommendation. The Commission affords the views of ANC 5A the great weight to which they are entitled.
14. The application for a PUD and map amendment 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.
15. The application for a PUD and map amendment 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 of a planned unit development and for a related Zoning Map amendment from R-2, FT/C-M-1 to R-4 for the Property, located in Square 3788, Lot 814. This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Bowman Consulting and Cubellis DCA and submitted to the Commission on May 26 and August 14, 2006 (respectively, Exhibits 5 and 14), as modified by the materials submitted by the Applicant at the public hearing, and the guidelines, conditions, and standards herein.
2. The Project shall be a multi-family residential development consisting of not more than 35 townhouse units, 85,736 square feet of gross floor area, and approximately 0.47 FAR. The maximum lot occupancy shall be 16 percent. Approximately 16 percent overall lot occupancy shall be provided. Building heights shall measure no more than 30 feet from the finished grade of the building to the ceiling of the unit's third story. A minimum of 77 parking spaces shall be provided throughout the Project. No fences shall be erected that appear to create a "gated" community.
3. The Applicant shall have flexibility with the design of the Project in the following areas:
  - a. to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided the variations do not change the exterior configuration of the buildings;
  - b. to vary the location and arrangement of parking spaces;

- c. 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;
  - d. to make minor refinements to exterior details and dimensions, including cornices, railings, and trim, or any other changes to comply with the D.C. construction codes or that are otherwise necessary to obtain a final building permit; and
  - e. to vary the final selection of landscaping materials to provide equivalent plant material dependent on market availability.
- 4. In coordination with OP, the Applicant shall make available and restrict the sale of two 18-foot by 36-foot townhouse units for a period of 20 years, as affordable housing to qualifying households not exceeding 85 percent Metropolitan Washington D.C. Area Median Income.
- 5. The Applicant shall agree to make the following contribution: \$75,000, payable to the Friends of North Michigan Park Civic Association (FNMPCA), a registered not-for-profit organization, to pay for community enhancement programs and events within the North Michigan Park neighborhood, such as (a) improvements to the North Michigan Park Recreation Center; (b) a contribution to Food and Friends; (c) a contribution to the North Michigan Park beautification fund to address landscaping and maintenance issues; (d) sponsorship of community education seminars; (e) community-based agency donations; (f) sponsorship of annual North Michigan Park Family Day at North Michigan Park Recreation Center, free to the community; (g) sponsorship of a back-to-school program for neighborhood children (including gifts of backpacks and school supplies); (h) sponsorship of NMPCA annual awards dinner (for approximately 1,000 people); and (i) sponsorship of community Mothers Day/Fathers Day luncheons. The Applicant shall provide the funding in full to the FNMPCA prior to the issuance of the building permit for the initial unit within the Project.
- 6. The Applicant shall grant an easement, in coordination with DDOT, to ensure public access to the private road to be constructed as part of the Project prior to the issuance of the first certificate of occupancy for the for the initial unit within the Project .
- 7. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors

in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

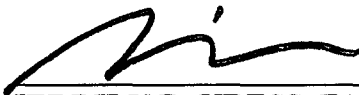
8. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the PUD covenant with the records of the Zoning Commission.
9. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective 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 years of the effective date of this Order.
10. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On December 21, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007 by a vote of 5-0-0 (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons 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 12 2007.

  
CAROL J. MITTEN  
Chairman  
Zoning Commission

  
JERRILY R. KRESS, FAIA  
Director  
Office of Zoning

DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., April 25, 2008

Plat for Building Permits of SQUARE 3788 LOT 814

Scale: 1 inch = 60 feet

Recorded in A & T Book Page 3822-H

Receipt No. 27481

Furnished to: HOLLAND & KNIGHT

*[Signature]*  
Surveyor, D.C.

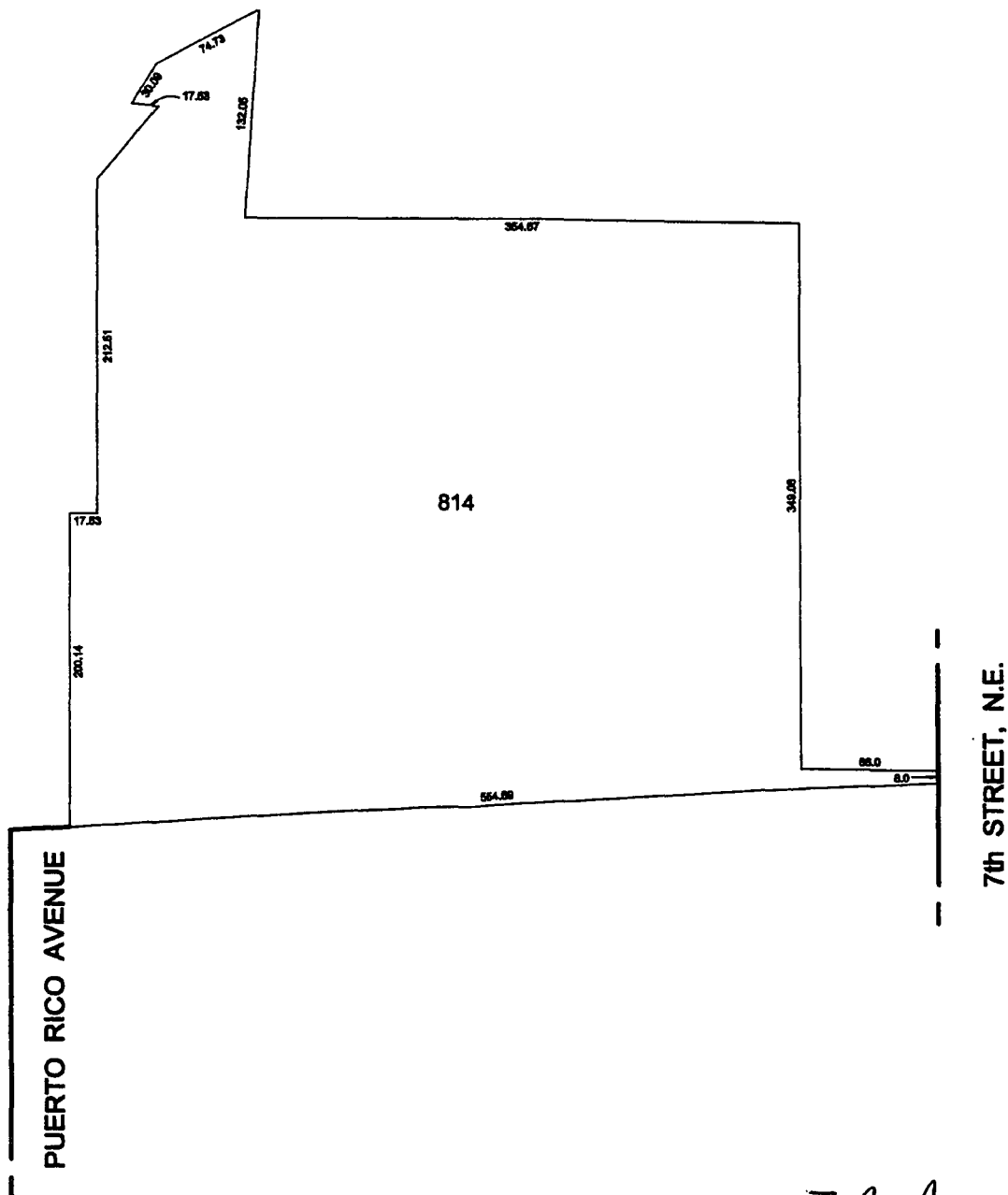
By: L.E.S. *[Signature]*

I hereby certify that all existing improvements shown herein, are completely dimensioned, and are correctly plotted; that all proposed buildings or constructions, or parts thereof, including covered porches, are correctly dimensioned and plotted, and agree with plans accompanying the application; that the foundation plans as shown herein is shown, and dimensioned accurately to the same scale as the property from shown on this plat; that by reason of the proposed improvements to be erected on claim herein the area of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for type and use; and it is further certified and agreed that accessible parking areas as required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned herein. 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 rate of grade along carterway 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 descriptions.



Z.C. Case # 06-26