

Tummonds, Paul

From: Beeton, Kathleen (DOB) <kathleen.beeton@dc.gov>
Sent: Monday, July 15, 2024 10:02 AM
To: Tummonds, Paul
Cc: Vitale, Elisa (DOB); DOB Kustomer CRM
Subject: Re: APFT - ZA Confirmation Memo - Charter School Use 4894-2957-1277 v.1
Attachments: Scan - 2024-07-01 15.33.05.pdf

Good morning Paul:

By means of this email, I hereby confirm the that the Morris & Gwendolyn Cafritz Foundation and the Social Justice School can renovate an existing warehouse on the property known as 301 Kennedy Street, NE1 (Lot 5 in Square 3567) and use that property as a charter school as a matter-of-right, provided all development standards of Subtitle G, Chapter 49 are satisfied. The 301 Kennedy Street, NE property is the subject of a First-Stage PUD approval pursuant to ZC Order No. 06-10.

I also confirm that the Morris & Gwendolyn Cafritz Foundation and the Social Justice School will be able to utilize six temporary trailers for charter school use on a portion of Lot 11 in Square 3765 while construction of the permanent charter school facility is taking place. Lot 11 in Square 3765 is the subject of a Second-Stage PUD approval pursuant to ZC Order Nos. 06-10D, 06-10E, 06-10G, and 06-10H.

When we met on June 25, 2024, you provided the following background information relative to the proposed use of an existing warehouse as a public charter school and the location of temporary trailers to facilitate the relocation of the school to trailers while the warehouse building is undergoing renovation:

Background of PUD Approval and Current Conditions

In ZC Order No. 06-10, effective as of January 15, 2010, the Zoning Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (“APFT”). The APFT project included development of four blocks, Blocks A-D, with Consolidated PUD approval for Block A, and First-Stage PUD approval for Blocks B, C, D. That approval was subsequently modified in Order 06-10A (which was a modification to shift the grocery store use from Building A to Building B) and 06-10C (which reduced the amount of parking provided in Building A), (collectively, the “First Stage Order”).

The Block B PUD Project, which was granted Second-Stage PUD approval by ZC Order No. 06-10D (effective March 20, 2020), consists of a mixed-use building with two primary components – the Family Entertainment Zone (“FEZ”) and a residential component. The FEZ fronts on South Dakota Avenue and included the following uses: retail space/food hall; theatre/interactive space; gala/events space; Meow Wolf (an innovative arts collective); Explore! Children’s Museum; and an Aldi grocery store. Since the approval of ZC Order No. 06-10D, the Zoning Commission has approved three modifications of the Block B PUD Project (ZC Order Nos. 06-10E, 06-10G, and 06-10H). Construction activity for the Block B PUD Project began in 2022 and the Aldi grocery store is expected to open in October/November of 2024.

A site plan that shows the APFT PUD properties (both First-Stage and Second-Stage approvals) is attached as Exhibit A.

Approval of Charter School Use on Property that is Subject to First-Stage PUD Approval

On February 15, 2018, the Office of the Zoning Administrator determined that a charter school could operate as a matter-of-right on the portion of the APFT PUD Property that was only subject to First-Stage PUD approval (the letter is attached as Exhibit B). In that letter, the Zoning Administrator concluded that the property's inclusion within the First-Stage PUD approved in ZC Order No. 06-10 does not bar the owner or tenant of the property from operating a charter school on the property as a matter-of-right under its MU-28 Zone. As a result of this approval, the Rocketship Infinity Charter School and the Social Justice School began charter school operations on this property in 2021.

Since their opening, these schools have been very successful. So much so that the Social Justice School is now in need of its own space across the street at 301 Kennedy Street, NE. The 301 Kennedy Street, NE property is located within the MU-7B/FT Zone (which is the Zone that was formerly identified as the MU-28 Zone). The MU-7B/FT Zone allows charter school use as a matter-of-right, pursuant to Subtitle U, Section 515.1. Consistent with the Zoning Administrator's determination of February 15, 2018, we seek your confirmation that the Social Justice School is able to operate in the building located at 301 Kennedy Street, NE as a matter-of-right, provided all development standards of Subtitle G, Chapter 49 are satisfied.

Approval of Temporary Trailer Use on Property that is Subject to Second-Stage PUD Approval

We further discussed that, in order to minimize the disruption to Social Justice School students and families while construction of the permanent facility is taking place, the Morris & Gwendolyn Cafritz Foundation requests approval to locate six temporary trailers on a portion of the Block B property (which is located in the MU-5A Zone which allows charter school use as a matter-of-right, pursuant to Subtitle U, Section 512.1) for a period of approximately 12 months. The proposed location of the temporary trailers is depicted in the attached Exhibit C.

The Morris & Gwendolyn Cafritz Foundation believes this temporary use of a portion of the Block B property is entirely appropriate and consistent with the arts and education uses that have been approved in the Block B PUD Project. The location of these temporary trailers will not impede the construction of the residential uses approved in the Block B PUD Project consistent with the Zoning Commission's approval in ZC Order No. 06-10H.

We discussed, and I determined, that this temporary use is consistent with the Zoning Commission's determination in ZC Case No. 02-38A (in which the Zoning Commission determined that it was not necessary for the ZA to send approval to the ZC of a temporary trailer for the Southwest DC Public Library located at 425 M Street, SW). I also confirm that the use of temporary trailers as proposed on a portion of the Block B property is permitted without going through the modification process outlined in Subtitle A Section 304 et seq. of the Zoning Regulations.

Please feel free to contact me if you have any additional questions or comments.

Best regards,
Kathleen

DISCLAIMER: This email is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this email are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this email. Changes in the applicable laws, regulations, or policy, or new information or

evidence, may result in a different determination. This email is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this email based on the information submitted for the Zoning Administrator’s review. Therefore this email does **NOT** vest an application for zoning or other DOB approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DOB.

EXHIBIT A

APFT PROPERTIES (FIRST-STAGE AND SECOND-STAGE APPROVALS)

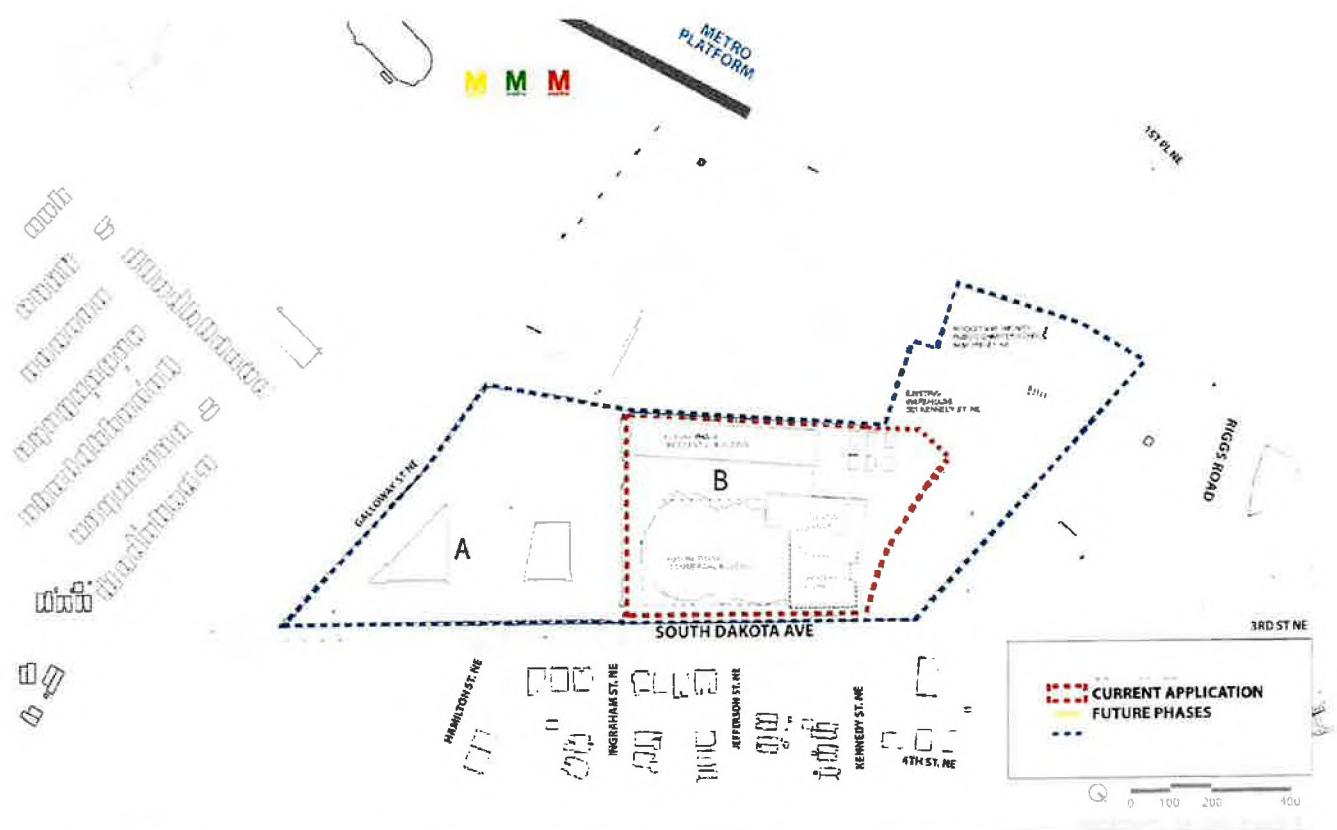


EXHIBIT B

ZONING ADMINISTRATOR DETERMINATION DATED FEBRUARY 15,
2018



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

February 15, 2018

Kyrus Freeman
Holland & Knight LLP
800 17th Street N.W., Suite 1100
Washington, D.C. 20006

Re: Request to confirm new matter-of-right charter school use on Lots 1 & 2 in Square 3766 (the "Property") with first- stage PUD approval (Case No. 06-10)

Dear Mr. Freeman,

This letter responds to your February 14 request to confirm that (i) the Property's inclusion in a first-stage Planned Unit Development ("PUD") approval in Case No. 06-10 does not bar the owner or tenant of the Property from renovating two existing warehouses and constructing a connection between them; and (ii) a charter school use is a matter-of-right under the current Zoning Regulations.

I agree that the Property is not subject to Section 2408.16 of the 1958 Zoning Regulations under which the first-stage PUD approval was granted, because Section 2408.16's prohibition on any construction on a PUD site that does not conform to the PUD approval only applies to second-stage PUDs, as Section 2408 is entitled "Processing of Second-Stage PUD Applications". Furthermore in Condition 5 of Order No. 06-10 that granted first-stage PUD approval to the Property, the Zoning Commission also specified that "the rezoning of the properties included in the first-stage PUD shall not become effective unless a second-stage PUD application is approved for the particular property" Under Condition 25, the Commission specified that only one-second-stage PUD application needed to be submitted to vest the first-stage PUD approval, provided a phasing plan for the remaining second-stage PUD applications was included in the first second-stage PUD application. At the July 10, 2017 hearing on the second-stage PUD application for Building B of the PUD (Case No. 06-10B), the Zoning Commission required that the first-stage PUD approval in Case No. 06-10 will expire unless a revised second-stage PUD application for Building B, together with a "realistic phasing plan" that would include projected submission dates for a subsequent second-stage PUD application for the Property, is submitted by September 4, 2018 (Transcript at p. 10).

As a result, the Property will not be subject to a second-stage PUD application, let alone approval, in the near future, and so the Property will remain classified in the current MU-28 zone until a second-stage PUD for the Property is approved, at which point the Property will be rezoned as authorized by the first-stage PUD approval. In the meantime, I agree that the Property may continue to be used in conformance with the provisions of the current Zoning Regulations for the current MU-28 zoning of the Property. I note that your attached February 14 email specifically states that the owner confirms that it will ensure the compliance of the Property with the Zoning Regulations – whether by terminating the lease of the charter school prior to the effective rezoning of the Property under a future a second-stage PUD is approval, by amending the first-stage PUD approval for the Property to include the school, or by terminating the first-stage PUD approval for the Property. In light of the extended timeframe for the first-stage PUD

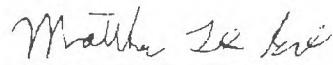
ZONING COMMITTEE
District of Columbia

approval for the Property, I am providing a copy of this letter to the Zoning Commission for its use.

I also agree the MU-28 zone currently allows a public charter school use, subject to compliance with the development standards of Chapter 16 of Subtitle C, as follows. The MU-28 zone falls in the MU-Use Group F per Table U-500.2. Section U-515.1(a) allows as matter-of-right uses those permitted as such in the R, RF and RA zones (and in the MU-Use Group E, which allows matter-of-right uses that are permitted as such in the R, RF, and RA zones, per Section U-512.1(a)). Section U-202.1(m) authorizes as a matter-of-right use for the R-Use Groups A, B, and C "public education buildings ... subject to the development standards of Subtitle C, Chapter 16". The definition of "public school" in Section B-100.2 specifically includes the educational use as a school "chartered by the District of Columbia Board of Education or the District of Columbia Public Charter School Board", while the definition of the "Public Education" use-category in Section B-200.2(m) specifically includes "public or public charter schools". Therefore to the extent the proposed renovation for a charter school is for a public charter school and conforms with the development standards of Subtitle C, Chapter 16, as well as all other relevant requirements in the Zoning Regulations and Construction Codes, I would classify such use as a matter-of-right in the MU-28 zone.

This letter is issued in reliance upon, and therefore limited to, the questions asked, and documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is NOT a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor does it constitute a "first writing" under Section Y-302.5, but instead is an advisory statement of how the Zoning Administrator would rule on an application consistent with the information provided if reviewed as of the date of this letter. Therefore this letter does NOT vest an application for zoning or other DCRA approval process, which may only occur as part of the review of a permit application submitted to DCRA.

Sincerely,



Matthew Le Grant
Zoning Administrator

Cc: Sharon Schelling, Secretary to the Zoning Commission

Attachments: February 14, 2018 email from Kyrus Freeman to Matthew LeGrant, with attached Z.C. Case 06-10 Order and excerpt of Approved Plans.

File: Letter to Freeman re PUD 06-10 on 2-15-18

-----Original Message-----

From: Kyrus.Freeman@hklaw.com [mailto:Kyrus.Freeman@hklaw.com]

Sent: Wednesday, February 14, 2018 9:50 AM

To: LeGrant, Matt (DCRA)

Cc: Tondro, Maximilian (DCRA); Kyrus.Freeman@hklaw.com

Subject: Charter School use of Square 3766, Lots 1 and 2

Importance: High

Mr. LeGrant:

The purpose of this email is to confirm the substance of our discussions regarding the proposed renovation of two existing warehouse buildings at Square 3766, Lots 1 and 2 (the "Subject Property") and conversion of the buildings for use as a charter school by City Arts + Prep Public Charter School.

The underlying zoning of the Subject Property at the time the PUD was approved was FT/C-3-A, which converts to MU-28 under the current, 2016 Zoning Regulations ("ZR 16").

The Subject Property is included in a First-Stage PUD and Related Zoning Map Amendment approved pursuant to Z.C. Order No. 06-10, which became final and effective on January 15, 2010. A copy of Z.C. Order No. 06-10 is attached. As shown on the attached excerpts of the First-Stage Plans, the First-Stage PUD granted preliminary approval to redevelop the Subject Property and adjacent land into a residential building identified as "Building C," measuring eight stories, having a maximum height of 90 feet, and including approximately 400 residential units. (See Z.C. Order No. 06-10, Finding of Fact 7.c. and Attached Plan Sheets).

Z.C. Order No. 06-10 includes the following relevant provisions:

. The First-Stage PUD approval includes the Subject Property (Finding of Fact No. 1).

. The Subject Property shall be rezoned from FT/C-3-A to FT/C-2-B (Finding of Fact No. 4).

. However, the rezoning of the properties included in the First-Stage PUD, including the Subject Property, does not become effective unless/until a Second-Stage PUD is approved for the particular property and the owner subsequently records the covenant required by 11 DCMR 2409.3. (Finding of Fact No. 5).

Finding of Fact 25 states that "[s]econd-stage PUD approval for the remainder of the Property may be requested in one or more applications. If there is to be only one second-stage application, that application shall be filed within two years of the effective date of this Order. If there is to be more than one second-stage application, the first second-stage application shall be filed within two years of the effective date of this Order, and that application shall include a phasing plan for the remaining applications."

. There is no timeframe or phasing plan in Z.C. Order No. 06-10 indicating when a second-stage application has to be filed for the Subject Property, nor is there an order specifying the sequencing of the second stage applications for the remaining buildings.

As outlined in my correspondence below with the Office of the Attorney General ("OAG"), and as reconfirmed by OAG on February 8, 2018, OAG agreed that there is nothing in Z.C. Order 06-10 or the 1958 Zoning Regulations that precludes the owner of the Subject Property from being able to use, operate, and/or renovate the existing buildings on the Subject Property as a

matter-of-right (and without requiring a PUD amendment to do so) in accordance with the underlying zoning and uses permitted in the underlying zoning for those buildings, and that the prohibition against construction on a PUD Site stated in 2408.16 is limited to situations where a second stage (or consolidated) PUD has been approved.

I cited the 1958 Zoning Regulations in my correspondence with OAG since the project was approved under the 1958 Zoning Regulations; however, the analysis under ZR 16 is similar. Specifically, Subtitle X, Section 310.2 states: "The grant of a PUD prohibits any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter-of-right standards, until: (a) The validity of the PUD order expires; or (b) The Zoning Commission issues an order granting the applicant's motion to extinguish the PUD."

However, similar to the analysis regarding the same provision in the 1958 Zoning Regulations (11 DCMR 2408.16) as outlined in the correspondence below with OAG, I read this provision as only applying to property that has received consolidated or second-stage approval since:

.A First-Stage PUD does not result in approved plans, but rather sets forth guidelines for future second-stage applications. (See Subtitle X, Sections 302.2(a) and 309.1). The owner still has to go back to get second-stage approvals for each site, and those second-stage orders will approve plans that specify the construction to occur on a particular site.

.A First-Stage PUD does not approve specific plans or construction on a site.

.First-stage approvals are "conditional" and require further processing to become final and vested. (See Subtitle X, Section 309.1). As such, a conditional approval cannot take away an property owner's right to use their property in accordance with the underlying zoning regulations.

.Pursuant to Subtitle X, Section 300.4, a PUD-related zoning map amendment is valid only in combination with and is contingent upon a project being built and operated under the conditions of a PUD approval. Thus, the Subject Property is still subject to and can used in accordance with the underlying zone regulations since the zoning map amendment is a contingent approval and has not vested.

.A PUD Covenant is not required for the portions of the site that only received first-stage approval. The PUD Covenant is what binds development of a site to a particular, approved plan. Moreover, as indicated in Finding of Fact No. 5 of Z.C. Order No. 06-10, the rezoning of the Subject Property only become effective once a Second-Stage PUD is approved for the Subject Property and the owner subsequently records a PUD Covenant for the Subject Property.

Also, please note that the owner will be submitting a second-stage application in September 2018 in Case No. 06-10B for one of the other properties included in the overall PUD (i.e., "Building B"), and as part of that application the owner will include a phasing plan indicating when second-stage applications will be filed for the remaining sites, including Square 3766, Lots 1 and 2 (the "Subject Property"). However, as of now there is no established deadline regarding when a second-stage application has to be filed for the Subject Property. The owner hereby confirms that when a second-stage application is filed for the Subject Property, such application will either include the school use, or will otherwise modify or amend the first-stage PUD uses and/or boundaries as necessary to allow for the school use to continue on the Subject Property and, if necessary, to distribute the approved density and uses for Building C elsewhere in the project.

Based on the above, can you please confirm by counter-email that:

1. The owner of the Subject Property and/or its tenant, may use, operate, renovate, and construct a connection between the existing buildings on the Subject Property as a matter-of-right and without requiring an amendment of the First-Stage PUD approval.
2. A charter school is a matter-of-right use for the Subject Property based on Subtitle U, Sections 202.1(m), 512.1(e), and 515.1(a) as follows. MU-28 is within MU-Use Group F.
 - i. Subtitle U, Sec. 202.1(m) - "Public education buildings and structures" are permitted as a matter of right in R-Use Groups A, B and C.
 - ii. Subtitle U, Sec. 512.1(e) - "Education uses, private" are permitted as a matter of right in MU-Use Group E.
 - iii. Subtitle U, Section 515.1(a) - Uses permitted as a matter of right in any R, RF and RA zones, and all uses permitted as a matter of right for MU-Use Group E are permitted as a matter of right in MU-Use Group F.
3. This determination only applies to the matter-of-right use permitted for the Subject Property. The design and any addition(s) to the existing buildings will have to comply with any applicable Zoning Regulations and Building Code provisions governing such design and any addition(s).

Thank you for your review of this matter, and please let me know if you have any questions or need any additional information to confirm the above.

As discussed during our meeting, the owner is in the process of negotiating a lease with City Arts + Prep Public Charter School for use of the Subject Property, and thus we seek your confirmation as soon as possible.

Kyrus Freeman | Holland & Knight
Partner
Holland & Knight LLP
800 17th Street N.W., Suite 1100 | Washington DC 20006 Phone 202.862.5978 , Fax 202.955.5564 kyrus.freeman@hklaw.com | www.hklaw.com

SECTION 10 STAGE ACT

FOR TOTTEN METRO

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Mr. Johnson
Station Apartments
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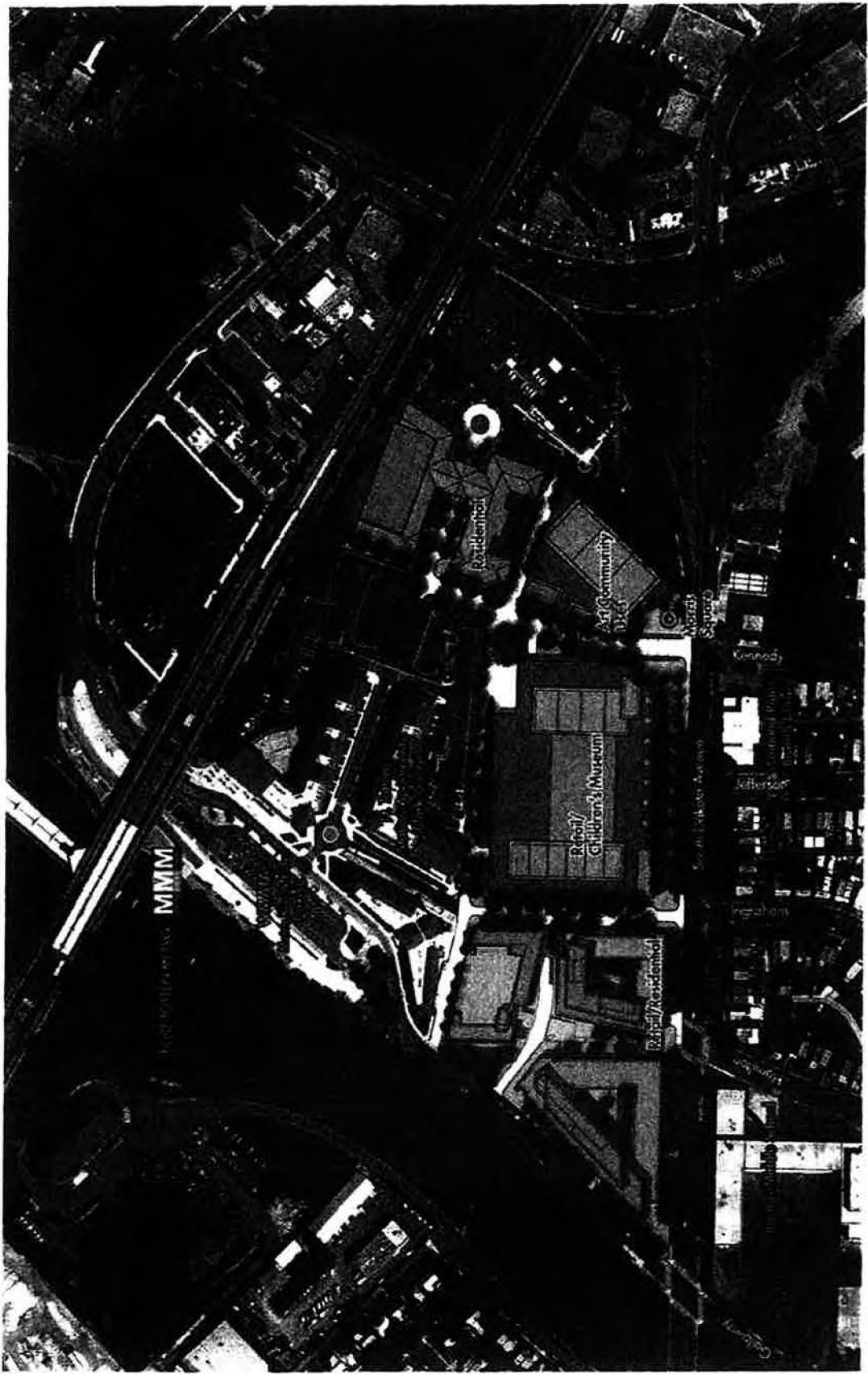
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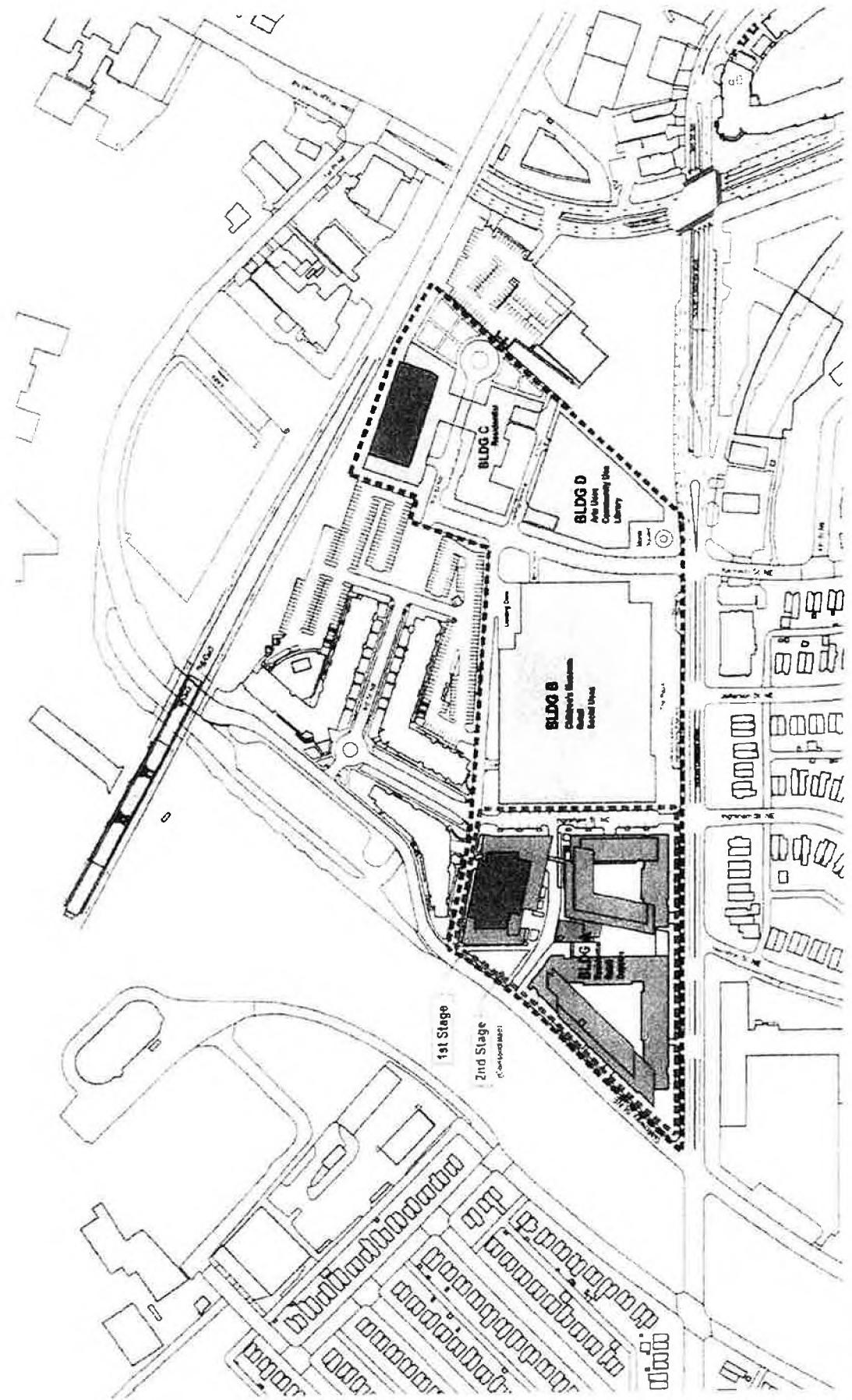
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WOMEN TOTTEN, *WANTATION* 25

Illustrative Site Plan

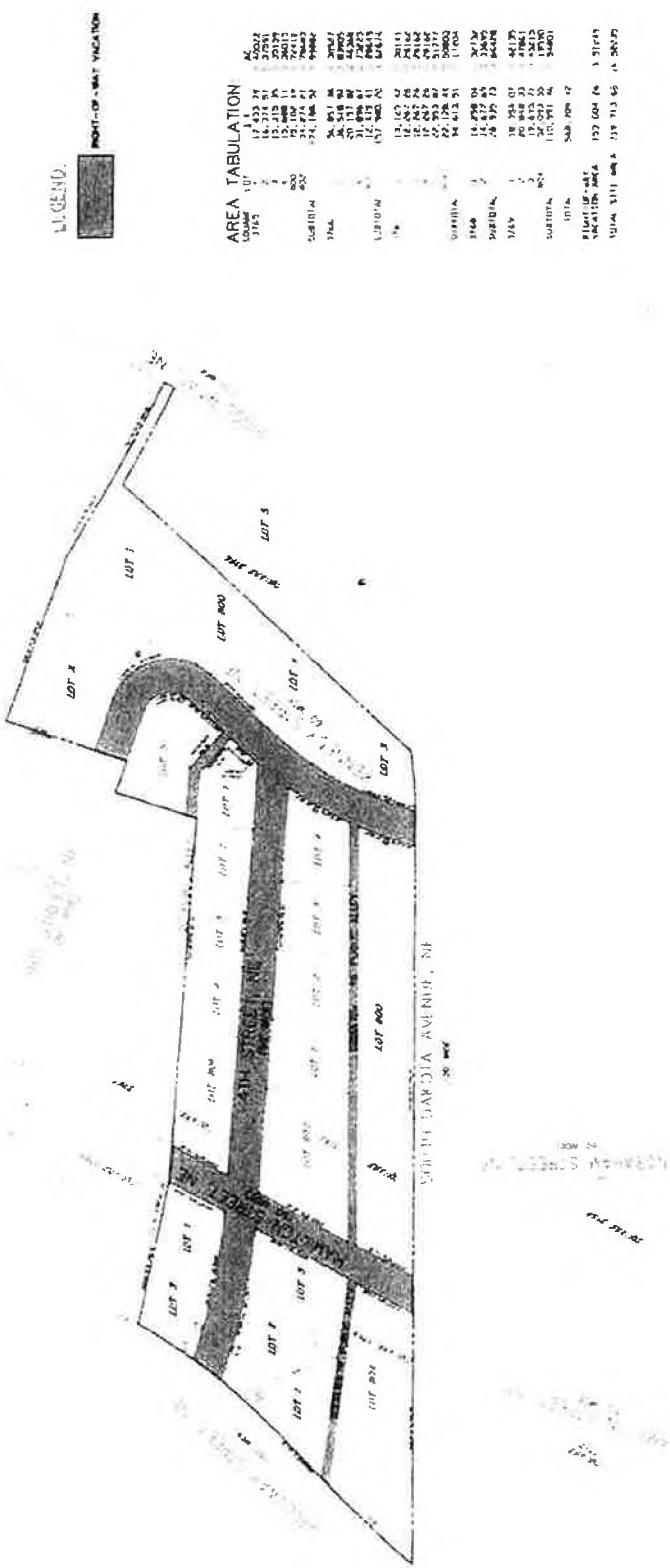


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ART

1st & 2nd Stage PUD Identification

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FOR TOTTEN, WASHINGTON & CO.

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Existing Site Tabulations / Street & Alley Closings

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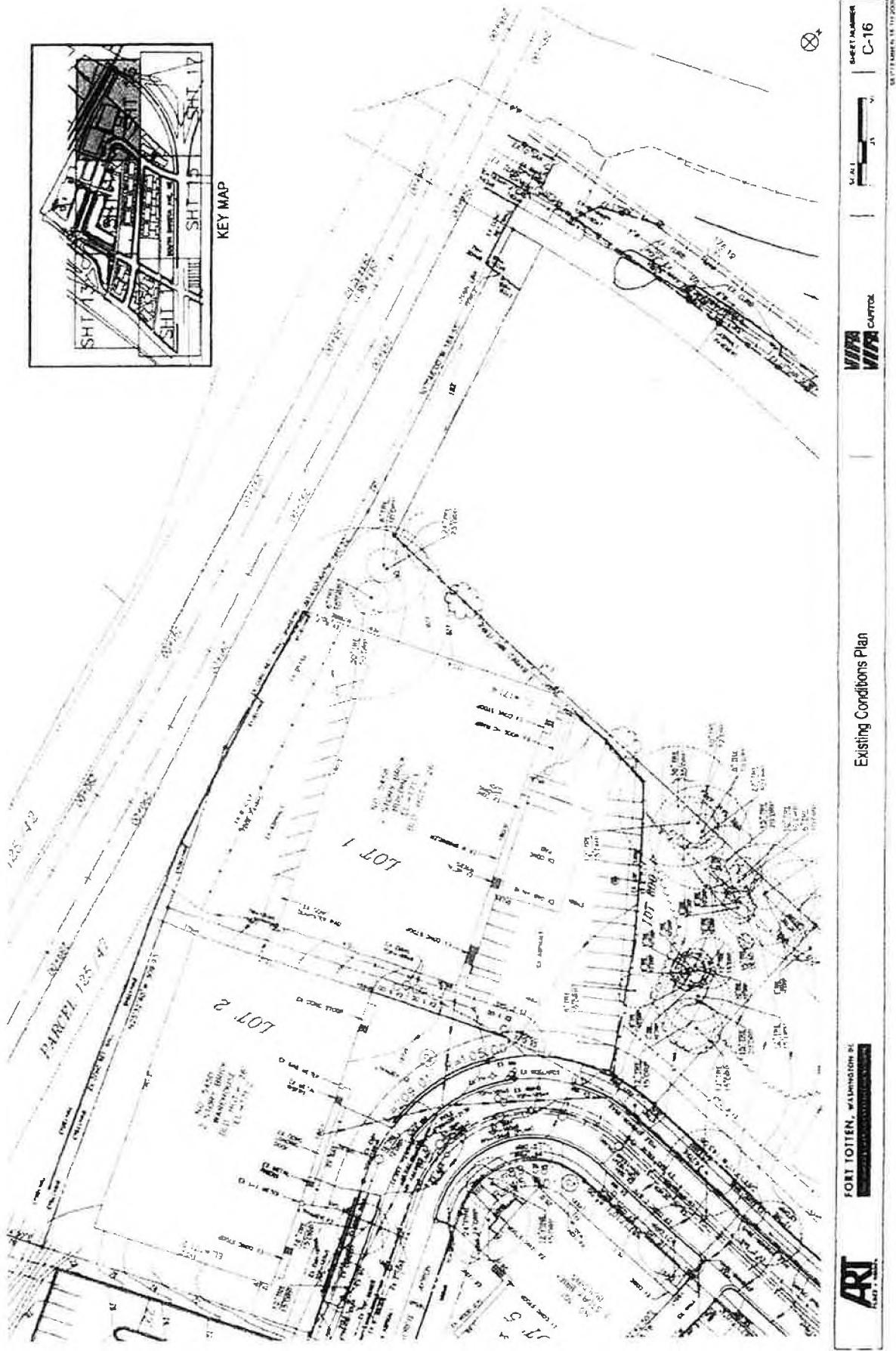


EXHIBIT C

LOCATION OF TEMPORARY TRAILERS

