

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 06-34

Z.C. Case No. 06-34

**Consolidated Planned Unit Development and Related Zoning Map Amendment for
Comstock East Capitol, LLC
(1705-1729 East Capitol Street, S.E.)
September 10, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 18, 2007 to consider an application from Comstock East Capitol, L.L.C. (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment from R-4 to R-5-B. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On June 23, 2006, the Applicant filed an application with the Commission for consolidated review and approval of a planned unit development ("PUD") for property located at 1705-1729 East Capitol Street, S.E., consisting of Lots 51, 52, 53, 54, and 55 in Square 1096 (the "Property"), as well as a related amendment of the Zoning Map from the R-4 District to the R-5-B District for the site.
2. The Office of Planning ("OP") submitted a report, dated October 6, 2006 and marked as Exhibit 10 of the record, recommending that the application be set down for a public hearing. At its public meeting on October 16, 2006, the Commission directed the Applicant to further refine its plans in consultation with OP.
3. The Applicant submitted a revised set of architectural plans and elevations on October 31, 2006 (Exhibit 11A). These plans addressed the concerns previously raised by the Commission. OP submitted a second report on November 3, 2006 (Exhibit 12) and once again recommended that the Commission schedule a public hearing on the application. At its public meeting on November 13, 2006, the Commission voted to set down the application for a public hearing.

4. After proper notice, the Commission held a public hearing on the application on June 18, 2007.¹ The parties to the case were the Applicant, Advisory Neighborhood Commission (“ANC”) 6B (the ANC in which the subject property is located) and ANC 6A (the ANC that includes properties across East Capitol Street from the Property).
5. The Applicant presented four witnesses at the Commission's hearing on June 18, 2007, including Mark Beckett, Comstock East Capitol, L.L.C.; Jeff Goins, PGN Architects, PLLC, an expert in architecture; Chad Baird, Gorove/Slade Associates, Inc., an expert in transportation planning and management; and Steven E. Sher, Holland & Knight LLP, an expert in zoning and land planning.
6. The Applicant submitted supplemental information in a letter dated June 25, 2007 (Exhibit 52; “Applicant’s Post-Hearing Submission”) that clarified the commitments made by the Applicant at the hearing regarding the sustainable design features of the PUD, the Applicant’s commitments to plant and maintain landscaping, construct alley improvements and lighting, institute certain construction traffic management measures, and include certain commitments in the condominium documents.
7. At its public meeting held on July 9, 2007, the Commission took proposed action by a vote of 4-0-1 to approve with conditions the application and plans that were submitted for the record.
8. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) under the terms of the District of Columbia Home Rule Act. NCPC, by action dated July 26, 2007, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
9. The Commission took final action to approve the application on September 10, 2007 by a vote of 4-0-1.

PUD Project

10. The Property consists of Lots 51, 52, 53, 54, and 55 in Square 1096 and contains 42,629 square feet of land. The site has approximately 320 linear feet of frontage on the south side of East Capitol Street.
11. The Property is presently improved with a vacant apartment building that contains 81 units. The building was constructed in 1921 and is a nonconforming structure. The

¹ The application was initially scheduled for a public hearing on March 29, 2007. The Commission subsequently postponed the hearing until June 18, 2007.

Applicant intends to demolish the existing structure to allow the construction of a 133-unit apartment building containing approximately 112,599 square feet of gross floor area. The new building will have an overall density of 2.64 FAR and will rise to a maximum height of 49.9 feet. Eleven of the 133 units will be set aside for households earning not more than 80 percent of Metropolitan Washington, DC Area Median Income ("AMI"). The project will also include a below-grade garage containing approximately 113 parking spaces.

12. The Property is located in Ward 6 and is currently zoned R-4. The Property is bounded by East Capitol Street on the north and a twenty-foot public alley on the south. An apartment building owned by the Mt. Moriah Baptist Church is located directly to the west of the Property, and the Drummond Condominium is situated to its east. The Farthing Condominium is located to the immediate south of the Drummond. Rowhouses fronting on A Street, S.E. are located across the public alley to the south.

Matter-of-Right Development Under Existing Zoning

13. The Property is currently zoned R-4. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of those dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The R-4 District permits a maximum height of forty feet and three stories. (11 DCMR § 400.1.) A maximum density is not prescribed in the R-4 District. (11 DCMR § 402.4.) Parking is required at a rate of one space for every three dwelling units. (11 DCMR § 2101.1.) Under the PUD guidelines for the R-4 District, the maximum permitted height for a residential use is sixty feet, and the maximum density is 1.0 FAR. (11 DCMR §§ 2405.1-2405.2.)

Matter-of-Right Development Under the Proposed Zoning

14. Under the proposed PUD, the zoning of the Property would become R-5-B. The R-5 Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the established height, density, and area requirements. (11 DCMR § 350.1.) The R-5-B District is designed to permit developments of moderate height and density. (11 DCMR § 350.2.) The R-5-B District permits a maximum height of 50 feet and a maximum density of 1.8 FAR for all structures. (11 DCMR §§ 400.1, 402.4.) Parking in the R-5-B District is required at a rate of one space for every two dwelling units in an apartment house. (11 DCMR § 2101.1.) The PUD standards for the R-5-B District allow a maximum permissible height of sixty feet and a maximum density of 3.0 FAR for residential uses. (11 DCMR §§ 2405.1-2405.2.)

Development Incentives and Flexibility

15. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- a. *Flexibility from the Minimum Area Requirements.* Section 2401.1 of the Zoning Regulations provides that any PUD within the R-5-B District must have a minimum land area of one acre or 43,560 square feet. (11 DCMR § 2401.1(b).) The Property, however, contains 42,629 square feet of land. The Applicant, therefore, seeks a deviation of 931 square feet—representing a reduction of approximately two percent—from the area requirements of § 2401.1.

Section 2401.2 of the Zoning Regulations provides that the Commission may waive up to 50 percent of the minimum area requirement, provided the Commission finds that: (1) the development is of exceptional merit and in the best interest of the city or country; and (2) either (a) at least 80 percent of the development's gross floor area is devoted to residential uses if located outside of the Central Employment Area or (b) at least 2.0 FAR of the building is devoted to hotel or apartment house use if located within the HR Overlay District of the Central Employment Area. (11 DCMR § 2401.2.)

As set forth in more detail below, the Commission finds that the proposed project is indeed one of "exceptional merit" and is in the best interests of the city and country. The subject property is not located in the Central Employment Area and 100 percent of the building's gross floor area will be devoted to residential uses. The Commission is thus authorized to waive up to 50 percent of the minimum area requirements pursuant to § 2401.2.

- b. *Flexibility from the Lot Occupancy Requirements.* Section 403 of the Zoning Regulations provides that a building's lot occupancy may not exceed 60 percent in the R-5-B District. (11 DCMR § 403.2.) The proposed apartment building will cover approximately 66 percent of the subject property. The Applicant, therefore, seeks flexibility from the strict requirements of § 403.2.

Although the proposed project does not technically comply with the lot occupancy requirements of the R-5-B District, the building's design—which includes large side yards and four separate courtyards—will provide adequate light and ventilation for the building's occupants and for adjacent properties. The Commission finds that the requested flexibility is consistent with the underlying purposes of the lot occupancy requirement.

- c. *Flexibility from the Rear Yard Requirements.* Section 404.1 of the Zoning Regulations provides that any structure within the R-5-B District must provide a rear yard that has at least four inches of depth for each foot of vertical distance between

the mean finished grade at the middle of the building's rear wall and the top of the main roof or parapet wall. (11 DCMR § 404.1.) In this case, the proposed building would be required to provide a rear yard with a depth of 16 feet, seven-and-a-half inches. The proposed apartment building, however, will have a rear yard that is three feet deep. The Applicant thus seeks flexibility from the rear yard requirements of § 404.1.

As noted above, the proposed building will be set back significantly from the property line on its east and west sides. Although side yards are not required for an apartment house in the R-5-B District, the Applicant is providing a 21-foot side yard on the west side of the proposed building and a 29-foot side yard on its east side, a significant amount of light and air access for the building's occupants and for adjacent properties. Additionally, the rowhouses located across the public alley to the south of the Property will be separated from the rear wall of the proposed building by a distance of at least 120 feet. The nonconforming rear yard of the proposed building, moreover, will be landscaped to minimize the building's appearance from the rowhouses to the south. The new building's rear façade also will be finished with the same attractive masonry construction and architectural details that are being employed on the building's north façade. Finally, the Applicant will provide an additional landscape buffer for a number of rowhouses along A Street, S.E., by planting trees along an unpaved area off the public alley that is located to the north of the detached garages for those rowhouses.

- d. *Flexibility from the Loading Requirements.* Under § 2201.1 of the Zoning Regulations, the proposed building must provide one 55-foot loading berth, one 20-foot service/delivery space, and one 200-square-foot loading platform. (11 DCMR § 2201.1.) Although the proposed project will provide the required loading platform, it will include only one combined service and loading berth that is 45 feet deep.

As noted in the Applicant's Traffic Impact and Parking Study (part of Exhibit 13), the new building will be adequately served by the combined loading/service facility. Indeed, the provision of a separate 55-foot loading berth as required by § 2201.1 would result in no functional improvement over the facilities that are currently envisioned for the project. Because of the width of the public alley and the geometry of the alley's access points from 17th and 18th Streets, a tractor trailer—the only type of vehicle that would require a 55-foot loading berth—would be unable to enter the alley to access the building's loading facilities. The proposed loading berth will be more than sufficient to accommodate 34-foot garbage trucks and single-unit box trucks of almost any size. In the rare event that a tractor trailer needs to access the site, it may obtain a permit from the District Department of Transportation (“DDOT”) for a temporary loading zone on the street. In addition, the Applicant has committed to including within the condominium rules and regulations for the proposed building, where appropriate, language creating a schedule for resident moves and directing that

the maximum permissible size for delivery trucks to access the loading facilities is 34 feet in length and that a temporary permit will be needed to allow parking/loading from East Capitol Street for any vehicle exceeding the maximum length.

- e. *Flexibility from the Prohibition on Multiple Roof Structures.* Section 411.3 of the Zoning Regulations provides that all rooftop penthouses and mechanical equipment must be placed within a single enclosure. The Applicant seeks flexibility from this requirement to allow the use of three separate enclosures for the building's penthouses and mechanical equipment. The Commission finds that the use of superfluous screen walls to connect the three separate enclosures would only serve to increase the structure's mass and its visibility from the street. The strict application of the single-enclosure requirement in this case would undermine the very purposes it is designed to achieve.

Public Benefits and Amenities

16. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
 - a. *Housing and Affordable Housing.* The proposed development will provide a significant benefit to the surrounding community and the District as a whole through the provision of more than 112,500 gross square feet of new residential space. The creation of new housing furthers the goals of the Zoning Regulations and the Comprehensive Plan. Importantly, the Applicant has agreed to set aside 11 units—containing approximately 9,008 square feet of gross floor area—for households earning not more than 80 percent of Metropolitan Washington, DC AMI. These affordable units will be distributed vertically and horizontally throughout the building, with the exception of the top floor. The affordable units will be priced such that monthly housing costs for eligible households shall not exceed 30 percent of specified income limits by family size and unit type and will be subject to a 20-year control period. The affordable housing program will be administered per the program details submitted in the Applicant's Post-Hearing Submission.
 - b. *Urban Design, Architecture, and Landscaping.* The proposed building has been designed to reflect the architectural character of the neighborhood's historic rowhouses, while incorporating elements of the Eastern High School building across the street. The new building will become the architectural anchor of the Hill East neighborhood and will provide benefits to the surrounding area. The Applicant intends to provide attractive new landscaping on the subject property and in the adjacent public space along East Capitol Street. The Applicant also has committed to a series of public space landscaping installations along 17th and 18th Streets, S.E., within Square 1096.

- c. *Public Space and Alley Improvements.* The Applicant has agreed to make a number of significant public space improvements in connection with the proposed project. In consultation with DDOT, the Applicant will repair and provide an asphalt overlay of the 20-foot-wide public alley to the south in anticipation that the alley will be recirculated for one-directional vehicular traffic. The Applicant also will install alley lighting on the rear of the proposed building. The Applicant will install—and maintain in perpetuity—two trash receptacles in public space along East Capitol Street. These public space and alley improvements are described in further detail in the Applicant’s Post Hearing Submission.
- d. *Sustainable Design Elements.* The building will incorporate a number of environmentally-sustainable and energy-efficient design features, including a cool roof, on-site stormwater filtration system, low-flow plumbing fixtures, low-emissivity windows, Energy Star appliances, Energy Star lighting in public areas of the building, and a high-efficiency HVAC system. The Applicant also intends to employ low-impact demolition, waste disposal, and construction practices during the development of the project.
- e. *Local Business Opportunities.* The Applicant has executed a Memorandum of Understanding with the D.C. Department of Small and Local Business Development ("DSLBD") in order to achieve, at a minimum, the goal of 35 percent participation by small, local, and disadvantaged businesses in the contracted development costs related to the design, development, construction, maintenance, and security for the project. This memorandum contributes to the District's goal of ensuring adequate opportunities for small and local businesses to participate in development projects throughout the city.
- f. *First Source Employment Opportunities.* The Applicant also has executed a First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve the goal of utilizing District residents for at least 51 percent of the jobs created by the PUD project. The Applicant will use DOES as its first source for recruitment, referral, and placement of new hires for employees whose jobs are created by the PUD.
- g. *Other Public Benefits and Project Amenities.* The Applicant has agreed to provide a number of other public benefits and amenities in connection with the proposed project (the following is a summary of the PUD’s other public benefits and amenities, the complete proffer is contained in the Applicant’s Post-Hearing Submission):
 - 1. The Applicant will undertake the resurfacing and replacement of equipment for two community outdoor basketball courts at Eastern High School, in coordination with D.C. Public Schools.

2. The Applicant will sponsor the installation of up to \$500 of landscaping for each house located on the north side of A Street, S.E., between 17th and 18th Streets, S.E., up to a total contribution of \$11,000.
3. The Applicant will contribute \$15,000 for landscaping and exterior improvements to the proposed Mt. Moriah Baptist Church senior housing building to the west of the Property.
4. The Applicant will contribute \$15,000 for landscaping and exterior improvements to the Drummond Condominium building to the east of the Property.
5. The Applicant will contribute \$10,000 to the Brig Owens "Super Leaders" mentoring and youth leadership program at Eastern High School.
6. The Applicant will provide \$25,000 for renovations to the grounds and exterior playing fields of Eastern High School or Eliot Junior High School, subject to approval by the D.C. Public Schools.

Compliance with the Comprehensive Plan

17. The Framework Element of the District's recently enacted Comprehensive Plan sets forth five "Guiding Principles" for future development in the city. The Commission finds that the proposed PUD and related map amendment are consistent with each of those principles:
 - a. *Managing Growth and Change.* This principle provides, *inter alia*, that "[r]eddevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods." (10 DCMR § 217.6.) Such growth, however, "must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context." (10 DCMR § 217.6.) The proposed project will provide an important new residential development along a major transportation corridor and in close proximity to a Metrorail station. The project has been designed to respect the residential character of the surrounding neighborhood. The Commission finds that the project and map amendment are consistent with this principle of the Comprehensive Plan.
 - b. *Creating Successful Neighborhoods.* The Comprehensive Plan states that the "residential character of neighborhoods must be protected, maintained, and improved." (10 DCMR § 218.1.) The proposed redevelopment project will replace a vacant, nonconforming structure with a new residential development that is designed to complement the architecture of Capitol Hill's historic

rowhouses. This principle also emphasizes the importance of a diverse housing stock to the success of the District's neighborhoods and notes that "[a]ffordable renter- and owner-occupied housing production and preservation is central to the idea of growing more inclusively." (10 DCMR § 218.3.) The proposed project will include more than 9,000 square feet of housing reserved for families earning less than 80 percent of AMI. The Commission finds that the project is consistent with this principle of the Comprehensive Plan.

- c. *Increasing Access to Education and Employment.* This guiding principle provides that "[i]ncreasing access to jobs and education by District residents is fundamental to improving the lives and economic well-being of District residents." (10 DCMR § 219.1.) The proposed PUD is consistent with this principle and will further its objectives in a number of ways. First, the Applicant has executed a First Source Employment Agreement with DOES with a goal of using District residents for at least 51 percent of the new jobs created by the project. Second, the Applicant has executed a Memorandum of Understanding with the DSLBD for the purpose of achieving a minimum of 35 percent participation by small, local, and disadvantaged businesses in the contracted costs of the development. Finally, the Applicant has agreed to make a number of contributions that will benefit the local public schools, including a \$10,000 contribution to the Brig Owens "Super Leaders" program at Eastern High School, resurfacing and repairing equipment for two basketball courts at Eastern High School, and a \$25,000 contribution towards physical renovations at Eastern High School and/or Eliot Junior High School. These agreements and contributions will provide significant educational and employment benefits to District residents and are fully consistent with this guiding principle of the Comprehensive Plan.
- d. *Connecting the City.* This principle of the Comprehensive Plan reflects the District's goal of increasing connectivity between the city's neighborhoods, open spaces, commercial centers, and civic institutions. The Plan encourages increased investment in public transportation and economic development along major transportation corridors as the primary means of achieving that objective. The proposed PUD is located along a major transportation corridor that provides an important connection between Capitol Hill and the neighborhoods east of the Anacostia River. This connection will be strengthened by the replacement of a dilapidated apartment house with an attractive new residential development.
- e. *Building Green and Health Communities.* This principle provides that "construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment." (10 DCMR § 221.3.) As discussed above, the Applicant has incorporated a number of environmentally-sustainable and energy-efficient design features and construction materials into the proposed

development. Development on the site will also employ sustainable demolition, waste-disposal, and construction practices. The Commission finds that the proposed PUD will further the environmental objectives of the Framework Element.

18. The Future Land Use Map of the Comprehensive Plan designates the Property for moderate-density residential uses, which include "the District's row house neighborhoods, as well as its low-rise garden apartment complexes." (10 DCMR § 224.7.) The Plan further provides that the "R-3, R-4, R-5-A Zone districts are generally consistent with the Moderate Density Residential category [and that] the R-5-B district and other zones may also apply in some locations." (10 DCMR § 224.7.)

In this case, the Property is located along a heavily traveled transportation corridor in close proximity to a Metrorail station. Given the District's stated policy of channeling new growth into areas around transit stations and along bus routes, the Commission finds that the proposed project and map amendment are consistent with the property's moderate-density residential designation on the Future Land Use Map.

19. The Commission finds that the proposed PUD is also consistent with the major elements of the Comprehensive Plan:
 - a. *Land Use Element.* The proposed project will further the policies and objectives set forth in the Land Use Element of the Comprehensive Plan. The Land Use Element is designed to "[e]nsure the efficient use of land resources to meet long-term neighborhood, city-wide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries." (10 DCMR § 302.1.) The proposed PUD will help achieve these objectives by providing a significant new residential development that will be served by a nearby Metrorail station and multiple bus routes. This pedestrian-friendly project will have a catalytic effect on the surrounding neighborhood and will help achieve the District's policy of creating "transit villages" near Metrorail stations.
 - b. *Transportation Element.* The goal of the Transportation Element of the Comprehensive Plan is to "[c]reate a safe, sustainable, efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents." (10 DCMR § 401.1.) Development of the proposed project at the present site, which is proximate to the Stadium/Armory Metrorail Station and numerous bus routes, will promote and stimulate the use of existing mass transit service. Additionally, the provision of 113

parking spaces on a site that does not currently provide any parking will help reduce demand for on-street parking. Finally, the improvements to the public alley behind the proposed building—particularly its conversion to a one-way alley—will significantly improve traffic circulation in the surrounding area. All of these features will advance the objectives of the Transportation Element.

- c. *Housing Element.* The stated goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." (10 DCMR § 501.1.) The proposed project will help achieve this goal by providing 116,474 square feet of residential gross floor area located on an important transportation corridor. In providing more than 9,000 square feet of affordable housing, moreover, the proposed development will promote the Housing Element's policy of encouraging the production of housing targeted for low- and moderate-income households.
- d. *Environmental Protection Element.* The Environmental Protection Element is designed to "[p]rotect, restore, and enhance the natural and man-made environment in the District of Columbia, taking steps to improve environmental quality, prevent and reduce pollution, and conserve the values and functions of the District's natural resources and ecosystems." (10 DCMR § 601.1.) As set forth in detail in the Applicant's Post-Hearing Submission, the proposed project will incorporate a number of environmentally-sustainable and energy-efficient design features, building materials, and construction methods. These components will further the objectives of the Environmental Protection Element.
- e. *Urban Design Element.* The goal of the Urban Design Element is to "[e]nhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings, and the natural environment, and improving the vitality, appearance, and security of streets and public spaces." (10 DCMR § 901.1.) The proposed project has been designed to provide sizeable new residential development while respecting the historic architecture of neighborhood's existing rowhouses. The new building will enliven the streetscape, protect the natural environment, and have a positive effect on the vitality of the Hill East community.
- f. *Capitol Hill Area Element.* In addition to its consistency with the citywide elements of the Comprehensive Plan, the proposed project will further the policies set forth in the Capitol Hill Area Element. Many of the specific objectives contained in this element reflect the District's general policy of retaining and expanding the housing supply in the Capitol Hill neighborhood and protecting existing residential uses from incompatible commercial development. In accordance with the Capitol Hill Area Element, the proposed PUD will "[m]aintain the integrity and quality of Capitol Hill's residential uses, and recognize the importance of its historic architecture and housing

stock to the entire District of Columbia." (10 DCMR § 1608.2.) The Applicant seeks to demolish a dilapidated apartment house in order to construct a new residential development that is more compatible with the architectural character of the surrounding neighborhood. The Commission finds that the proposed PUD will advance the objectives of the Capitol Hill Area Element.

ANC Reports

20. By letter dated February 21, 2007 (Exhibit 26), ANC 6B noted its unanimous support for the PUD project and map amendment. The Commission affords the views of ANC 6B the "great weight" to which they are entitled.
21. By letter dated March 23, 2007 (Exhibit 37), ANC 6A requested to participate as a party in opposition to the PUD and map amendment. ANC 6A then submitted a letter dated June 18, 2007 (Exhibit 47), stating that it voted to authorize two of its commissioners to "negotiate the Commission's position" with the applicant, that the ANC "had a pending negotiated agreement with the applicant", and listed the general terms of that agreement. The listed terms of the agreement are that the applicant will: (1) enter into a construction traffic management plan with DDOT; (2) designate a representative to serve as a community contact regarding construction; (3) makes reasonable attempts to provide community representatives with information about large deliveries; (4) make reasonable attempts to implement an identification system for construction vehicles; (5) contribute \$25,000 to an organization for use in the repair and maintenance of athletic fields at Eastern Senior High School and Eliot Junior High School; and (6) revise the design of the building's balconies to include a plinth element. The Commission treats the list of general terms of the ANC's agreement with the applicant in its June 18, 2007 letter as its issues and concerns for purposes of giving it the "great weight" to which it is entitled, and notes that the Applicant informed the Commission that it agreed to all of the terms through the Applicant's Post-Hearing Submission. The Commission therefore affords the views of ANC 6A the "great weight" to which they are entitled.

Office of Planning Report

22. By report dated June 8, 2007 (Exhibit 44), OP noted that the proposed development was not inconsistent with the Comprehensive Plan and recommended approval of the PUD application and related map amendment, subject to certain conditions. The Commission finds that the Applicant has satisfied the conditions set forth in OP's report.

Other Agency Reports and Community Comments

23. DDOT submitted a report to the Commission (Exhibit 34), expressing no objections to the proposed project. DDOT's report noted that the proposed project would have no significant impacts on traffic conditions in the surrounding area, and further stated that

the proposed alley improvements would actually improve traffic circulation on adjacent streets. DDOT submitted a supplemental report dated September 10, 2007 (Exhibit 57). The DDOT supplemental report requested that the Applicant undertake additional alley light work and alley improvements in conjunction with the PUD. Rather than repair the alley surface, DDOT requested that the Applicant completely rebuild the alley. In response, the Applicant indicated that it would agree to this much more expensive activity, if necessary to gain final approval. The Commission however concluded that the amenities proffered by the Applicant were sufficient in view of the degree of zoning flexibility sought.

24. The Commission received a large number of letters and signed petitions from community members expressing support for the proposed project. Those letters are marked as Exhibits 24, 25, and 28. The Commission also received two letters from community members expressing opposition to the project (Exhibits 42 and 43), one of whom attended the public hearing and withdrew her opposition, testifying as a person in support of the application that her concerns had been satisfied by the Applicant.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that exceed or are less than the matter-of-right standards identified for the height, FAR, lot occupancy, off-street 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.
3. The proposed PUD project and related map amendment carry out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

The proposed PUD does not meet the minimum area requirements of § 2401.1 of the Zoning Regulations. As noted above, however, the Commission is authorized to reduce this requirement by up to 50 percent if the project meets the requirements set forth in § 2401.2. The Commission is persuaded that those requirements have been satisfied in

this case. The proposed project is one of exceptional merit, and the development is in the best interests of the city and country. The new apartment building is located outside of the Central Employment Area, and 100 percent of its gross floor area will be devoted to residential uses. Because the requirements of § 2401.2 have been satisfied in this case, the Commission is authorized to reduce the minimum area required under the PUD regulations. The Commission concludes that such a reduction is warranted in this case.

4. The PUD is within the applicable height and bulk standards of the Zoning Regulations and will not have any significant adverse effects on neighboring properties. On the contrary, the project will provide a number of benefits to the surrounding community. Approval of the PUD is appropriate, because the proposed development is compatible with the residential character of the neighborhood and is consistent with the policies and objectives of the Comprehensive Plan. In addition, the proposed project will promote the orderly development of the site in conformity with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
5. The proposed PUD is consistent with and fosters the goals and policies enumerated in the District of Columbia Comprehensive Plan.
6. The project benefits and amenities—particularly the community amenities package, affordable housing, sustainable design features, and public space improvements—are a reasonable tradeoff for the requested flexibility from the strict requirements of the Zoning Regulations.
7. The Commission is required to give "great weight" to the recommendation of the affected ANC. D.C. Official Code § 1-309.10(d) (3) (A). The Commission has carefully considered the views of ANC 6B expressed in its written report dated February 21, 2007 and concurs in its recommendation to approve the application. The Commission has also given great weight to the issues and concerns expressed by ANC 6A (as detailed above in Finding of Fact ¶ 21). The Commission notes that the Applicant agreed to all the terms expressed in the ANC 6A's written recommendation.
8. The Commission is required under Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations (as reflected in ¶ 21). The Commission has carefully considered the views of OP and concurs in its recommendation.
9. This PUD application is subject to compliance with the D.C. Human Rights Act of 1977 (D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development and a related amendment to the Zoning Map from the R-4 District to the R-5-B District for the Property. This approval is subject to the following conditions:

1. The PUD shall be developed substantially in accordance with the plans prepared by PGN Architects, dated June 21, 2006, and as amended or supplemented by drawings dated October 23, 2006, November 28, 2006, May 29, 2007, and June 25, 2007, marked as Exhibits 3, 11A, 13B, and 38A, respectively, in the record, the Applicant's written submissions to the record, including its post-hearing submission dated June 25, 2007, and as further modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a residential development consisting of no more than 112,599 square feet of gross floor area. The project shall not exceed an overall density of 2.64 FAR, nor shall it exceed a height of 49.9 feet, with setbacks as shown on the approved plans.
3. Approximately 9,008 square feet of the building shall be provided as affordable housing, to be administered as specified in the Affordable Housing Commitment Standards included as part of the Applicant's Post-Hearing Submission filed on June 25, 2007 and marked as Exhibit 52 of the record in this case.
4. The project shall include a minimum of 113 off-street parking spaces.
5. Landscaping and improvements in public space along East Capitol Street shall be installed in accordance with the plans submitted to the record and subject to approval by the Public Space Division of DDOT and the applicant must demonstrate Public Space approval to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") prior to the issuance of the Certificate of Occupancy. The Applicant or its successors shall maintain all landscaping located in the public space immediately adjacent to the subject property fronting along East Capitol Street. Other landscaping installed by the Applicant shall be maintained as provided as part of the Applicant's Post-Hearing Submission filed on June 25, 2007 (Exhibit 52).
6. The Applicant shall undertake or fund, as appropriate, the items identified in the community benefits package, included as part of its Post-Hearing Submission filed on June 25, 2007 (Exhibit 52), consistent with the terms entered into between the Applicant and the respective recipients thereunder. In addition, prior to issuance of the final certificate of occupancy for the building, the Applicant must demonstrate to the Zoning

Division of DCRA that the Applicant has purchased, or provided the funding to purchase, the items identified in the community benefits package, and has completed the work it has undertaken.

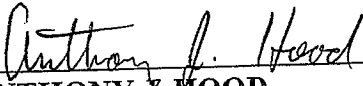
7. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - b. 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;
 - c. to make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified and the parking garage otherwise complies with the area standards of Chapter 21 of the Zoning Regulations;
 - d. to make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals. Only those exterior changes initiated by the Building and Land Regulation Administration (“BLRA”) will be permitted within the context of this element of design flexibility.
8. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA and no building permit shall be issued for this planned unit development until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use the Property in accordance with this Order or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
9. The change of zoning from the R-4 Zone District to the R-5-B Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 8, pursuant to 11 DCMR § 3028.9.

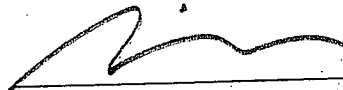
10. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended (D.C. Official Code § 2-1401.01 et seq. ("Act")), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 9, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007, by a vote of 4-0-1 (Carol J. Mitten, Michael G. Turnbull, and Anthony J. Hood to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon its publication in the D.C. Register; that is, on DEC 14 2007, 2007.


ANTHONY J. HOOD
Chairman
Zoning Commission


JERRILY R. KRESS, FAIA
Director
Office of Zoning

DISTRICT OF COLUMBIA GOVERNMENT OFFICE OF THE SURVEYOR

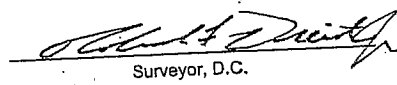
Washington, D.C., June 26, 2006

Plat for Building Permit of SQUARE 1096 LOTS 51-55

Scale: 1 Inch = 40 feet Recorded in Book 64 Page 90

Receipt No. 01227 & 01221

Furnished to: AMT


Surveyor, D.C.

By: L.M.A. 

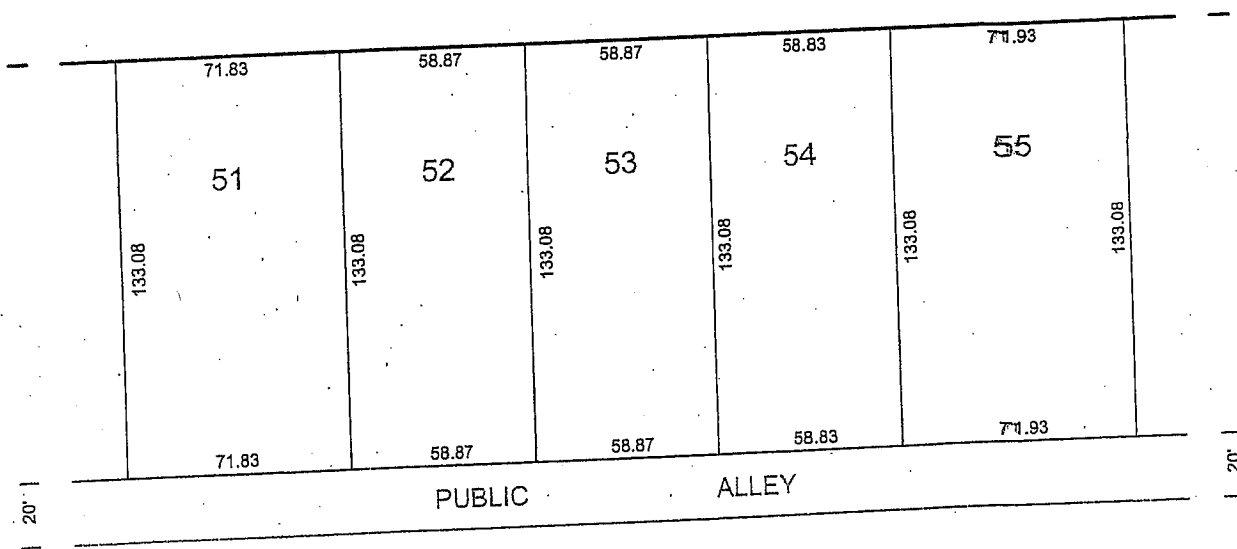
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that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

Date: _____

(Signature of owner or his authorized agent)

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

EAST CAPITOL STREET



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-34

DEC 6 2007

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 06-34 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Dennis Hughes, Esq.
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Washington, D.C. 20006
3. Julie Olson, Chair
ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003
4. Commissioner Francis Campbell
ANC/SMD 6B10
1805 Burke Street, S.E.
Washington, DC 20003
5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
6. Councilmember Tommy Wells
7. Office of Planning (Harriet Tregoning)
8. DDOT (Ken Laden)
9. Zoning Administrator (Matt LeGrant)
10. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002
11. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Sharon S. Schellin", is written over a horizontal line.

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

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