

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 06-41
Z.C. Case No. 06-41
(Planned Unit Development and Related Map Amendment,
Camden Development, Inc.)
September 10, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on May 31, 2007, to consider an application for Camden Development, Inc. (Applicant) for consolidated review and approval of a planned unit development and related map amendment for Lot 111, Square 653, pursuant to Chapters 16 and 24 and § 102 of the District of Columbia Municipal Regulations (“DCMR”) Title 11. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its special public meeting on July 9, 2007, the Commission deferred taking action, and instead rescheduled its consideration of the case for its Special Public Meeting of July 30, 2007. At that time, it took proposed action by a vote of 3-0-2 to approve the application and plans that were submitted into the record.

The Office of Zoning referred the case to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated July 26, 2007, found that the project would not be inconsistent with the Comprehensive Plan for the National Capital, nor have an adverse impact on any federal interests.

The Commission took final action to approve the application on September 10, 2007 by a vote of 3-0-2.

FINDINGS OF FACT

1. The property that is the subject of this application is located in Lot 111, Square 653 (the “Subject Property” or “Property”). According to tax records, the Property consists of approximately 41,019 square feet of land area and is known as 1345 South Capitol Street, SW. It is located in Southwest D.C. in Ward 6. (Exhibit 4, p. 1; Exhibit 48, p. 3.)
2. The Subject Property is owned by South Capitol Acquisition LLC through Camden Development, Inc. (Exhibit 4, p. 1.).

3. The Property was located in the C-2-C Zone District at the time it was purchased by the Applicant. The Office of Planning (“OP”) subsequently filed a report on May 19, 2006, proposing to expand the boundaries of the Capital Gateway (“CG”) Overlay District to the west side of South Capitol Street to include the Subject Property. The proposal, Z.C. Case No. 06-25, was set down for a public hearing on May 25, 2006. (Exhibit 25, p. 1.)
4. As a result of the Commission’s decision to hold a hearing on Z.C. Case No. 06-25, the property became subject to the existing provisions of the Capital Gateway Overlay pursuant to 11 DCMR § 3202.5, which provides that a building permit filed for a property that the Commission is considering rezoning must comply with the most restrictive provisions of the current or proposed zone. At this same time, the Commission was considering text amendments that would require the Commission to review all new buildings located on the portions of South Capitol Street included within the Overlay (Z.C. Case 05-10). Although these proposed provisions would not apply to the subject property until the text became effective, the Applicant filed its initial application for such a review in anticipation of the rule becoming final. The Applicant’s initial application also included requests for variance and special exception relief. (Exhibit 4, p.1; Exhibit 20, p. 1.)
5. The Commission scheduled a public hearing for this application for February 1, 2007. The date was subsequently changed to February 22, 2007, to ensure that final action would have already been taken on Z.C. Case No. 05-10. (Exhibit 20, p. 1.) The text proposed in Z.C. Case No. 05-10 became final on February 16, 2007.
6. At the February 22, 2007, public hearing, John Epting of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted Eric Liebmann of WDG Architecture as an expert in architecture. (Tr. February 22, 2007, p. 15.) At the close of the hearing, the Commission requested additional information from the Applicant, including a detailed roof plan or section, additional green design information or a LEED scorecard; ground floor elevations or perspectives to demonstrate level of activity from retail or amenity space; further analysis of the western façade; photographs of other buildings using similar materials; and clarification of vents in the courtyard.
7. The Applicant timely submitted its post-hearing submission on March 12, 2007.
8. At its April 9, 2007, meeting date, the Commission proposed that the Applicant re-submit the project without any changes as a planned unit development (“PUD”) and related map amendment to the C-3-C Zone District. The Commission waived the requirement that the application be set down at a public meeting for a hearing and authorized the Office of Zoning to immediately provide thirty days notice of a hearing once a PUD and map amendment application were received. (Exhibit 43.)

9. On April 13, 2007, the Applicant submitted an application for a consolidated PUD and a related map amendment to the C-3-C Zone District. (Exhibit 42.)
10. A hearing was scheduled for the PUD and map amendment application for May 31, 2007. (Exhibit 43.)
11. At the public hearing on May 31, 2007, John Epting represented the Applicant and Eric Liebmann was again accepted as an expert in architecture.
12. At the close of the hearing, the Commission requested additional information regarding the distribution of affordable units and asked the Applicant to study the presentation of the western façade. (Tr. May 31, 2007, pp. 29, 30.)
13. The Applicant timely filed its post-hearing submission on June 14, 2007. (Exhibit 56.)
14. At its July 9, 2007, public meeting, the Commission postponed proposed action until July 30, 2007, and requested further information from the Applicant. The Applicant made new submissions to the Commission (Exhibit 58) and, at its July 30, 2007 Special Public Meeting, the Commission voted 3-0-2 to approve the application as proposed.

PROJECT SITE

15. According to tax records, the Property consists of 41,019 square feet of vacant land in Ward 6 at the northwest corner of the intersection of O Street, S.W. and South Capitol Street. According to a recent survey-to-mark, the site measures 41,092 square feet in size. The Applicant erred on the conservative side in its application and used the smaller lot area for the purposes of calculating lot occupancy and the floor area ratio of the project. The Applicant, however, intends to use the measured survey square footage for its building permit plans, thus somewhat reducing the actual lot occupancy and density of the Building. (Exhibit 4, Exhibit D; Exhibit 48, p. 3.)
16. The area to the west of the Property is located in the R-4 Zone District and consists of two-story rowhouses. Immediately to the east of South Capitol Street is the site of the new baseball stadium for the Washington Nationals. It is located in the CG/CR Zone District. North of the Property is a CG/C-2-C Zone District and south of the Property is a CG/R-5-E Zone District. (Exhibit 24, pp.1, 2, Exhibit D.)
17. The Property is located between the Navy Yard and the Waterfront-Southeastern University Metrorail stations. (Exhibit 4, p. 3.)
18. The Generalized Land Use Map includes the Subject Property in the Medium-Density Residential and Moderate-Density Commercial categories. (Exhibit 25, p. 4; Exhibit 48, p. 3.)

PROJECT DESCRIPTION

19. The Applicant seeks to construct a residential building with the possibility of ground floor retail on the Subject Property (the “Building”). (Exhibit 4, Exhibit A; Exhibit 48, p. 3.)
20. The actual measured height cannot be known at this time due to the work the District Department of Transportation (“DDOT”) is performing on South Capitol Street. As a result, two feet of height flexibility is being requested and is granted. The Applicant will construct the Building to a measured height of between 110 and 112 feet along South Capitol Street, but it will gradually step down to 70 feet 8 inches along its western façade, closest to the row dwellings. The Building will have three levels of below-grade parking. (Exhibit 4, Exhibit F; Exhibit 24, Exhibit E; Exhibit 48, p. 3.)
21. The gross floor area of the entire project is approximately 268,628 square feet. There will be 265,998 square feet of residential use and approximately 2,988 square feet of potential retail use. The floor area ratio (“FAR”) of the Building will not exceed 6.6 and its lot occupancy will not exceed 66%. (Exhibit 48, Exhibit C at A4.02.)
22. The Building will include approximately 263 parking spaces as well as one loading dock and one service delivery space. (Exhibit 48, Exhibit C at A4.02.)
23. The Applicant will dedicate 11,250 square feet of the gross floor area to affordable housing. The Applicant submitted floor plans on June 14, 2007, demonstrating that the affordable units will be distributed throughout the Building. The Applicant reserves the flexibility to vary the distribution as necessary, but commits that the affordable units will be distributed throughout the first five floors of the Building and that at least one of those units will be located on South Capitol Street.
24. The Building’s façade presents a modern asymmetric frontage above South Capitol Street, which honors, in its distribution of architectural elements, the historic Washington division of building base, middle, and top. The single level building base, which encloses residential amenity spaces and potential retail space at the southwest corner, maintains the designated setback line, and is sheathed in a combination of oversized masonry units, glass, and metal, with cast stone accents. The setback line is held above by the full height entry bay, as well as projecting bays and balconies at floors three through ten. The top floor and the second floor are set back to provide clarity, rhythm, and hierarchy to overall façade composition. The building enclosures at these planes consist of a variety of sizes and colors of masonry units, in concert with glass, metal, and cast stone.
25. The Applicant seeks flexibility from the following sections of the Zoning Regulations:
 - Section 411: to allow four roof structures, one of which is not uniform in height;

- Section 776: to allow the northern court, which is smaller than permitted under the Zoning Regulations;
- Section 774: to allow a 15-foot rear yard rather than a 23-foot, 7 inches rear yard that would otherwise be required;
- Section 1605: to allow 59% of the façade to meet the setback line rather than the required 60% and to allow balconies to project into the fifteen foot required setback area;
- Pending Section 2603: to allow 11,250 square feet of the project to be dedicated to affordable units. (Exhibit 48, pp. 5, 6.)

26. The Building will incorporate a number of low-impact development features that will result in the attainment of at least 16 LEED-NC v2.2 points for the project. These points may be achieved through the following project features: (Exhibit 34, Exhibit B; Exhibit 48, Exhibit D.)

- Reduction of pollution from construction activities by controlling soil erosion, waterway sedimentation, and airborne dust generation;
- Avoidance of development of an inappropriate Greenfield site and reduction of the environmental impact from the location of the Building on the site;
- Development of the density of the residential use in an urban area with existing infrastructure and not disturbing existing Greenfield or habitats and natural resources;
- Reduction of pollution and land development impacts from automobile use by taking advantage of alternative transportation by locating the project in close proximity to public transportation, by providing bicycle storage to encourage bicycle use by tenants and visitors, and by providing parking for fuel efficient single occupancy vehicles to encourage their use as well;
- Limitation of the disruption of natural hydrology by consideration of impervious coverage, increasing on-site infiltration, and managing storm water runoff;
- Reduction of water pollution by increasing on-site filtration, eliminating sources of contaminates, and removing pollutants from storm water runoff;
- Reduction of heat island effect (thermal gradient differences between developed and undeveloped areas) to minimize impact on microclimate and human and

wildlife habitats through a combination of vegetation at the roof, reflective roof, and at-grade landscape features;

- Limitations on the use of potable water for landscape irrigation, enhancing water efficiency;
- Reduction of the burden on municipal water supply and waste water system by reducing water use;
- Use of building components to prescribed levels of energy efficiency performance in the design of the building envelope and building systems;
- Use of at least 10%, and possibly 20%, recycled content materials, thereby reducing the impacts resulting from extraction and processing of virgin resources;
- Use of at least 10%, and possibly 20%, regional extracted, processed, and manufactured materials and resources, thereby reducing the impacts resulting from extraction and processing of virgin resources;
- Reduction in the quantity of indoor air contaminates by limiting the amount of Volatile Organic Compounds (“VOCs”) from adhesives & sealants, carpet systems, and possibly paints and coatings that are odorous, irritating, and/or harmful to the comfort and well being of installers and occupants;
- Minimization of the exposure of building occupants to potentially hazardous indoor particulates and chemical pollutants by source control;
- Provision of a high level of lighting system and thermal comfort control by individual occupants or by specific groups in multi-occupant spaces while still promoting the productivity, comfort, and well-being of building occupants;
- Provision for the building occupants of a connection between indoor spaces and the outdoors through the introduction of daylight and views into the regularly-occupied areas of the Building; and
- Participation by LEED Accredited Professional on Architect’s staff.

CAPITAL GATEWAY OVERLAY STANDARDS

27. Each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet, with the exception of buildings within Squares 649 and 651: The Building is set back from the property line 15 feet. Six tiers of balconies composed of an aluminum rail system with wire mesh project 3'-5" beyond

the setback line and the Applicant is requesting flexibility to permit this encroachment into the setback area. (Exhibit 4; Exhibit 24; Exhibit 48.) *(See Finding of Fact No. 25.)*

28. For each new building or structure located on South Capitol Street, a minimum of 60% of the street-wall shall be constructed on the setback line: Approximately 16,752 feet, or 59.43%, of the South Capitol Street façade meets or exceeds the setback line, which meets the intent of the Zoning Regulations. *Id.* *(See Finding of Fact No. 25.)*
29. Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one step back from the building line along South Capitol Street, with the exception of buildings within Square 649: The Building is no taller than 110 feet. *Id.*
30. No private driveway may be constructed or used from South Capitol to any parking or loading berth areas in or adjacent to a building or structure constructed after the effective date of this section: Access to and from the Building is via O Street. *Id.*

PUBLIC BENEFITS AND PROJECT AMENITIES

31. The Project will provide the following public benefits and project amenities:
 - Housing and affordable housing: This project will create approximately 276 new residential units in Southwest D.C. In addition, approximately 11,250 square feet of residential space will be dedicated to workforce affordable housing units.
 - Urban design and architecture: The proposed project exhibits all of the characteristics of exemplary urban design and architecture. The project has been thoughtfully designed to interact with the surrounding neighborhood and its mix of uses, including the rowhouses and the baseball stadium. The design of the ground floor engages pedestrians and activates the streetscape, adding to what will be a lively section of the city. The Applicant added additional articulation to the western façade to enhance the view of the Building from the adjacent rowhouses. The height, massing, and articulation of the structure's facade will emphasize the monumental character of South Capitol Street, which is consistent with the objectives of the Capital Gateway Overlay District.
 - Site planning: The proposed project has been designed to respect the monumental boulevard of South Capitol Street by concentrating its greatest height along South Capitol Street. The Applicant is able to successfully balance competing neighboring uses by stepping the height of the Building down as it extends toward the rowhouses, massing the Building on South Capitol Street, and having the majority of the western portion of the property lined with landscaped courtyards.
 - Effective and safe vehicular and pedestrian traffic: The project will provide vehicular access to parking from O Street, pursuant to the Capital Gateway

Overlay regulations. Access to parking from O Street will avoid conflicts with pedestrians along South Capitol as the area continues to grow and become a popular pedestrian destination.

- Provision of parking for specific neighbors and local community: Upon completion of the Building, current residents of 2, 4, 6, and 8 O Street, S.W., will be given an opportunity to lease a parking space in the Building at 50% of the market rate for a 20-year period, and within six months of stabilization of the property, defined as being 94% occupied, the Applicant will make available any surplus parking spaces to the community at market rate.
- Uses of Special Value: The addition of approximately 276 new residential units will result in the generation of significant additional tax revenues for the District. Because the project will be built on a largely vacant site, all of these taxes represent new revenues for the District.
- Comprehensive Plan: The PUD is not inconsistent with the Comprehensive Plan.

(Exhibit 48, pp. 8, 9).

COMPREHENSIVE PLAN

32. The PUD is not inconsistent with the Comprehensive Plan. It is consistent with several area elements delineated for the South Capitol Street and Buzzard Point areas:

- South Capitol Street Urban Boulevard: The project highlights the grandeur of South Capitol Street as it is set back from the street and the Building's greatest height is along the major boulevard. The Capitol Gateway Overlay was established to preserve the importance of South Capitol Street and this project is consistent with the intent of the Overlay.
- Ballpark Entertainment District: The Comprehensive Plan calls for higher density residential uses in the vicinity of the ballpark. This residential high-rise Building is consistent with the District's effort to revive this area.
- South Capitol Neighborhood Buffers: The bulk and height of the Building scale down as it extends toward the adjacent rowhouses. The Building serves as an appropriate buffer between the stadium and the residential uses to the west.

33. The Generalized Land Use Map designates this site for moderate-density commercial and medium-density residential uses, which is consistent with a C-3-C Zoning Designation.

GOVERNMENT REPORTS

34. In its February 12, 2007, report, OP noted that “[t]he proposed development will help establish South Capitol Street as a monumental civic boulevard. The 110 foot height is appropriate for a major avenue in the city and is consistent with recent South Capitol Street corridor planning studies. The Building will help frame the street by matching the height of the baseball stadium on the east side of South Capitol. Redevelopment of the previously industrial site with a more aesthetically pleasing building will enhance this major city street and increase pedestrian movement in the area. The view north towards the Capitol or south towards the Anacostia River will be improved.” (Exhibit 25, p.10.)
35. OP submitted a subsequent report on May 21, 2007, in support of the PUD application. OP recommended approval of the PUD and related map amendment and opined that it was not inconsistent with the Comprehensive Plan. It also determined that the application will further the objectives of the Capital Gateway Overlay by helping to recreate South Capitol Street as a monumental civic boulevard with an active pedestrian streetscape.
36. At the May 31, 2007 hearing, OP stood on the record but reiterated its strong support for the PUD and related map amendment applications.
37. DDOT filed a report on February 22, 2007, and stated that it had no objection to the project provided the Applicant coordinate with DDOT to ensure that their project plans reflect DDOT’s roadway improvement plans and other streetscape plans for the area. (Exhibit 32, p. 1.) DDOT did not submit a report for the May hearing.

ADVISORY NEIGHBORHOOD COMMISSION REPORT

38. Advisory Neighborhood Commission (“ANC”) 6D submitted letters into the record on February 22, 2007 and May 30, 2007 stating that it believes the project meets the criteria of height massing and setback from South Capitol Street imposed by the Capital Gateway Overlay, and provides a suitable step-down and courtyard space on the rear side of the Building to mitigate the height of the Building on South Capitol Street. (Exhibit 29, p. 1.) No representative from the ANC was present at the May 31, 2007 hearing to testify in support.
39. The ANC’s support was contingent on the following conditions:
 - The Applicant will abide by the Development and Construction Management Plan as submitted into the record for this case. This Development and Construction Management Plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.

- The project will reserve 11,250 square feet of gross floor area as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant will work with the Department of Housing and Community Development (“DHCD”) to make such changes comply with the same.
- Within six months of stabilization of the property as defined as being 94% occupied, the Applicant shall contact the ANC Single Member District representative to make any surplus spaces in the garage available to the community at market-rate.
- Current residents of 2, 4, 6, and 8 O Street, S.W. shall be provided the opportunity to lease a parking space in the parking garage of the Building at 50% of the market rate for a period of 25 years upon completion of the residential Building.
- Not less than 30 days before securing construction permits for this project, the Applicant shall provide the ANC Single Member District representative an anticipated schedule of construction, including use of heavy machinery, such as pile drivers.
- The Applicant shall coordinate with the adjacent property owners regarding the provision of a decorative fence identical to that lining the Applicant’s property line from the Applicant’s property and continuing north to N Street, at the Applicant’s expense.
- The Applicant will give preference to existing residents living within the jurisdiction of ANC 6D when reviewing applications for tenancy. The Applicant will present its program implementing this preference to the ANC within 18 months of the Commission’s issuance of an order approving the proposed Building.

PARTIES AND PERSONS IN OPPOSITION

40. On February 1, 2007 and May 11, 2007, Karl Fraser submitted into the record a request for party status. He stated he would appear as an opponent of the application unless he was provided parking in the Building. (Exhibit 23, pp. 1, 2.)
41. Fraser failed to appear at the public hearing held on February 22, 2007, as well as the hearing held on May 31, 2007, thus, the Zoning Commission denied his request for party status.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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 which may exceed or be less than the matter-of-right standards. The Commission concludes that the requested flexibility from the roof structure, courtyard, inclusionary zoning, rear yard, and Capital Gateway requirements, as set forth in Finding of Fact No. 25, can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the amount of affordable housing provided in this project is a significant amenity that will be available for “workforce” DC residents. The Commission also finds that the design and site planning of the project effectively integrates the property with the surrounding neighborhood by concentrating the Building’s height along South Capitol Street and stepping it down as it approaches the rowhouses to the west.
6. Approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan, which calls for medium- density residential and moderate-density commercial uses on this site.
7. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the

Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9), the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. The Commission might grant PUD-related Zoning Map amendments in circumstances where it might reject permanent rezoning. In this case, the Commission concludes that the proposed rezoning of the Property to the C-3-C District is appropriate given the superior features of the PUD project.

8. The Commission finds that the Development and Construction Management Plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community.
9. In accordance with D.C. Official Code § 1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. ANC 5C did not submit a formal resolution in this case.
10. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
11. Notice of the public hearing was provided in accordance with the Zoning Regulations.
12. The Applicant 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 Zoning Map amendment application from the CG/C-2-C Zone District to the CG/C-3-C Zone District for Lot 111 in Square 653. The approval of this PUD and Zoning Map amendment is subject to the following guidelines, conditions, and standards:

1. The project shall be developed in accordance with the plans and materials submitted by the Applicant, marked as Exhibits 4, 24, 26, 35, 42, 48, 56, and 58 of the record, and with the testimony at the hearing, as modified by the guidelines, conditions, and standards of this Order, including the proposal outlined above to implement green design features and DDOT's plans for South Capitol Street. In order to develop the project in accordance with the plans submitted, the Applicant is granted the flexibility from the strict

application of the Zoning Regulations as requested and set forth in Finding of Fact No. 25.

2. The Applicant shall abide by the Development and Construction Management Plan as submitted into the record for this case. This Development and Construction Management Plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.
3. The project shall reserve 11,250 square feet of gross floor area as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant will work with the Department of Housing and Community Development (“DHCD”) to make such changes comply with the same. The affordable units shall be located on the first five floors of the Building and the Applicant shall have flexibility in determining the precise location of the units; however, the units must be distributed throughout the first five floors and at least one unit must be located on South Capitol Street.
4. Within six months of stabilization of the property, defined as being 94% occupied, the Applicant shall contact the ANC Single Member District representative to make any surplus spaces in the garage available to the community at market-rate.
5. Upon completion of the residential Building, current residents of 2, 4, 6, and 8 O Street, S.W. shall be provided the opportunity to lease a parking space in the parking garage of the Building at 50% of the market rate for a period of 20 years.
6. Not less than 30 days before securing construction permits for this project, the Applicant shall provide the ANC Single Member District representative with an anticipated schedule of construction, including use of heavy machinery, such as pile drivers.
7. The Applicant shall coordinate with the adjacent property owners regarding the provision of a decorative fence identical to that lining the Applicant’s property line from the Applicant’s property and continuing north to N Street, at the Applicant’s expense.
8. The Applicant shall give preference to existing residents living within the jurisdiction of ANC 6D when reviewing applications for tenancy. The Applicant shall present its program implementing this preference to the ANC within 18 months of the Commission’s issuance of this Order approving the proposed Building.
9. The Applicant shall have flexibility with the design of the Building in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, affordable units (provided they are distributed throughout the first five floors and at least one unit is located along South Capitol Street), and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
- 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;
- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and
- To alter the landscaping plans and height of the Building to make them consistent with DDOT's streetscape plans for South Capitol Street.

10. The Applicant shall coordinate with DDOT to ensure that the project plans reflect DDOT's roadway improvement plans and other streetscape plans for the area. The plans submitted into the record during the course of the case may be modified to comport with DDOT's plans for the South Capitol streetscape.

11. The Applicant shall have the flexibility to provide retail use in the ground floor of the Building.

12. A parapet of three feet, six inches shall be permitted around the perimeter of the roof.

13. All applications for building permits authorized by this Order may be processed in accordance with the Zoning Regulations in effect on the date this Order is published in the *D.C. Register*.

14. The PUD 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 for the construction of the residential Building.

15. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant 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 and use the Property in accordance with this Order, or

amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant in the records of the Office of Zoning.

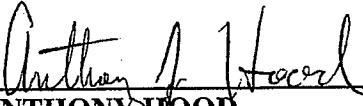
16. The change of zoning from the CG/C-2-C Zone District to the CG/C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 21, pursuant to 11 DCMR § 3028.9.
17. The Applicant is required to comply fully with the provisions of the Human Rights 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.

For the reasons stated above, the Commission concludes that the Applicant has met its burden of proof, and it is hereby **ORDERED** that the application be **GRANTED**.

On July 30, 2007, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (John G. Parsons, Michael G. Turnbull, and Anthony J. Hood to approve; Carol J. Mitten and Gregory N. Jeffries not having participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007 by a vote of 3-0-2 (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to adopt; Carol J. Mitten and Gregory N. Jeffries not having participated, not voting).

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the *D.C. Register* on NOV 23 2007.



ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-41

As Secretary to the Commission, I hereby certify that on NOV 19 2007 copies of this Z.C. Order No. 06-41 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. <i>D.C. Register</i>	6. Councilmember Tommy Wells
2. John Epting, Esq. Pillsbury Winthrop Shaw Pittman LLP 2300 N Street, N.W. Washington, D.C. 20037-1128	7. Office of Planning (Harriet Tregoning)
3. Robert Moffatt, Chair ANC 6D 25 M Street, SW Washington, DC 20024	8. DDOT (Ken Laden)
4. Commissioner Rhonda N. Hamilton ANC/SMD 6D06 44 O Street SW # 12 Washington, DC 20024	9. Zoning Administrator (Matt LeGrant)
5. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004	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 black ink that appears to read "Sharon S. Schellin".

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