

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-40**

Z.C. Case No. 06-40

**Consolidated PUD & Related Map Amendment-Gateway Market Center Inc.,
Gateway Market and Residences – 340 Florida Avenue N.E.
November 10, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on June 5 and July 24, 2008, to consider applications from Gateway Market Center, Inc. (the “Applicant”) for consolidated review and approval of a planned unit development (“PUD”) for Lots 5, 800, 802, and 809 and Parcels 129/9 and 129/32 in Square 3587 (the “PUD site”), and a related map amendment to rezone the PUD Site from C-M-1 to C-3-C. The applications propose a mixed-use development incorporating retail, office, and residential uses. The Commission considered the applications pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications with conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On August 25, 2006, the Applicant filed an application with the Commission for consolidated review and approval of a PUD and related map amendment for property consisting of 38,452 square feet located in the Northeast quadrant of the District of Columbia between Morse Street, 4th Street, and Florida Avenue. The application requested a map amendment from the C-M-1 Zone District to the C-3-C Zone District. (Exhibits 1-3, 5, 7-22.)
2. At its public meeting on January 8, 2007, the Commission considered the applications and acted by consensus to defer setting the case down for a hearing pending completion of the Small Area Plan (“SAP”) for the Capital City Market. The PUD Site lies within the footprint of the Capital City Market. During the proceedings, the Office of Planning (“OP”) stated that the SAP would be concluded by April 2007.

3. At the Applicant's request, OP asked the Commission at its public meeting on March 10, 2008, to reconsider setting the case down for a hearing because, even though the SAP had not been completed, the District Elements of the Comprehensive Plan for the National Capital: ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300) and Future Land Use Map had taken effect and designated the PUD Site for mixed-use development. The Commission agreed to do so upon receipt of revised and updated plans from the Applicant.
4. The Applicant submitted revised and updated plans to the Commission on March 14, 2008. (Exhibits 33, 34A, 34B.)
5. At a special public meeting on March 24, 2008, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding pedestrian circulation, rooftop structures, the second-floor retail space, and the building elevations.
6. On May 16, 2008, the Applicant filed a Final Pre-Hearing Supplemental Submission (Exhibits 43-45) responding to the Commission's request and reflecting the following:
 - (a) Redesigned roof structures so as to eliminate the need for relief pursuant to 11 DCMR §411;
 - (b) Redesign of the multipurpose pavilion on the fifth level plaza, so as to eliminate a "court" condition, as defined by 11 DCMR §199.1;
 - (c) Relocation of the Community Meeting Room, Advisory Neighborhood Commission ("ANC") office and related amenities from the third to the first level, together with a street-level entrance;
 - (d) Enhanced separate residential and office entrances to the building;
 - (e) Replacement of the escalator between the first and second levels with a Grand Staircase; and
 - (f) Inclusion of 44 bicycle parking spaces in the parking garage.
7. The Applicant filed a Pre-Hearing Submission in response to OP requests on June 4, 2008. (Exhibits 52-53.)
8. After proper notice, the Commission held a public hearing on the applications on June 5, 2008, at which time it agreed to recess after the Applicant's presentation and continue the

hearing on July 24, 2008, to allow additional time for the ANC's accepted as parties to the case to prepare their presentations.

9. During the June 5, 2008, portion of the hearing, the Commission voted to approve the request by ANC 6C for party status because its boundaries are adjacent to the PUD Site, denied the ANC 6C request to delay consideration of the case until completion of the SAP, and acknowledged ANC 5B as an automatic party to the case because the PUD Site lies within its boundaries.
10. The Applicant presented testimony during the June 5 and July 24, 2008 hearings from the following witnesses: Fred Greene of FGLA Associates, the project manager; Craig Wright of McKissack and McKissack, the project architect; Scott Delgado of the Bowman Consulting Group, the engineering and environmental consultant; Martin J. Wells of Wells & Associates, the traffic consultant; and William G. Miller of the Retail Services Group of Transwestern, the retail consultant. The Commission accepted Mr. Delgado and Mr. Wells as expert witnesses.
11. On July 14 and July 24, 2008, the Applicant submitted additional materials requested by the Commission at the June 5, 2008 hearing (Exhibits 66-71, 75, 75A, 76), including:
 - (a) The Design Inspiration & Theme, and the Retail Vision & Strategy;
 - (b) A Transportation Management Plan;
 - (c) A Loading & Service Vehicle Analysis;
 - (d) A LEED Project Checklist;
 - (e) Revised architectural plans, building elevations, and turning diagrams; and
 - (f) Project renderings.
12. OP, the District Department of Transportation ("DDOT"), Ward 5 Councilmember Harry Thomas Jr., and the properly-authorized representatives of ANC's 5B and 6C presented testimony in support of the applications. Testifying as an individual, ANC 5B06 Commissioner Wilhelmina Lawson, whose single-member district includes the PUD Site, testified in support.
13. Richard Layman, a member of the public, testified July 24, 2008, in opposition to the application.

14. As requested by the Commission, the Applicant filed a Post-Hearing Submission on August 21, 2008 (Exhibits 80-81), providing the following:
 - (a) Retail Strategy and Contingency Plan;
 - (b) Delineation of the Capital City Market Area as a Retail Demand Generator;
 - (c) Redesign of the West Elevation;
 - (d) Redesign of the rooftop to ensure that all 18-foot high rooftop structures are set back by 18 feet from the adjacent roof; and
 - (e) Updated building area calculations.
15. At the request of the National Capital Planning Commission ("NCPC") staff, the Applicant on September 17, 2008, filed a revised building section drawing to clarify that the building parapet complies with the An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 601.01 to 601.09) ("Height Act"). (Exhibit 84.)
16. The Zoning Commission at its special public meeting on September 29, 2008 took proposed action to approve the applications, subject to conditions.
17. The proposed action of the Commission was referred to NCPC as required by the District of Columbia Home Rule Act. NCPC, by action dated October 31, 2008, found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

The PUD Site, Area, and History

18. The PUD Site is in Square 3587 and consists of Lots 5, 800, and 802 and Parcel 129/32 ("Washington Beef properties"); Lot 809 ("Ironworks property"); and Parcel 129/9 ("Bank of America property"), which were most recently occupied, respectively, by the vacant and boarded-up Washington Beef warehouses, a small welding shop, and a Bank of America branch.
19. The PUD Site is in ANC Single-Member-District 5B06 in Ward 5. It is bounded by Florida Avenue on the south, 4th Street on the east, Morse Street on the north, and the southwest portion of the Capital City Market on the west. It is less than 350 yards from the entrance to the New York Avenue-Florida Avenue-Gallaudet University Metrorail station, just across Florida Avenue on the southwest.

20. The PUD Site lies within the Capital City Market, an area of approximately 24 acres which is occupied by wholesalers and retailers of foodstuffs, dry goods, jewelry, tourist souvenir items, hair care products, and general merchandise; two nightclubs, a liquor store, an insurance company office, and a small, low-budget hotel. The Capital City Market has been designated by the District Council for mixed-use redevelopment in accordance with the New Town at the Capital City Market Revitalization and Public/Private Partnership Act of 2006, effective March 14, 2007 (Title II of D.C. Law 16-278; D.C. Official Code § 6-1062.01, *et seq.*)
21. The Capital City Market, which includes the PUD Site, is bordered on the west and south by the NoMA (North of Massachusetts Avenue) district, designated by the District Government for high-density mixed-use redevelopment.
22. The Gateway project originated with a Request for Proposals (“RFP”) issued by the Department of Housing and Community Development (“DHCD”) on June 11, 2002, inviting proposals to acquire and develop the Washington Beef properties. To develop a more cohesive project, the Applicant purchased the Bank of America and Ironworks properties. DHCD accepted the Applicant’s proposal for a matter-of-right three-story office, retail, and warehouse building and awarded the Applicant exclusive development rights on February 3, 2003. The Applicant and DHCD entered into a Land Disposition Agreement (“LDA”) for the Washington Beef and Ironworks properties on February 26, 2003.
23. After the opening of the New York Avenue-Florida Avenue-Gallaudet University Metrorail station in November 2004, the Applicant and DHCD agreed that the proposal should incorporate a residential component. On February 15, 2006, the Applicant submitted an amended development proposal, with plans to substantially enlarge the project, add a residential component with an affordable housing commitment, and eliminate warehouse use. DHCD approved the amended proposal. Because the amended proposal added the residential component and increased the project’s height and density, the Applicant was required to seek Commission approval through the PUD process and related map amendment.
24. Pursuant to the Applicant’s agreements with DHCD, the Applicant must set aside 20% of the residential units as affordable housing, must give existing Capitol City Market retailers first rights to lease retail space in the PUD project, and must comply with DHCD’s development timetables.

Existing and Proposed Zoning

25. The PUD Site is zoned C-M-1 which permits “low bulk commercial and light manufacturing uses” with a maximum FAR of 3.0, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted. (11 DCMR §§800.1, 800.4, 840.1, and 841.1.)
26. Within the immediate vicinity of the PUD Site, the Gallaudet Campus and nearby residential properties to the east are in the R-4 Zone District; properties south of Florida Avenue to H Street, from the railroad tracks on the west through 3rd Street on the east, are zoned in a mixture of C-M-1, C-M-3, C-2-B, C-3-A, C-3-B, and C-3-C Zone Districts. From 3rd Street moving east, most properties are in the R-4 and R-5 Zone Districts.
27. In 2003, the Commission rezoned property near the New York Avenue-Florida Avenue intersection (Lots 23 and 809 in Square 3584) from M to C-3-C to accommodate the New York Avenue-Florida Avenue-Gallaudet University Metrorail station and transit-oriented development objectives. (*ZC Order No. 970*, effective May 23, 2003)
28. The Applicant requests a PUD-related map amendment to rezone the PUD Site to C-3-C. The C-3-C Zone District permits residential use in addition to office and retail uses. Pursuant to 11 DCMR §§ 2405.1, 2405.2, and 2405.6, the Applicant also requests application of the PUD standards for C-3-C which allow a maximum height of 130 feet, rather than the C-3-C matter-of-right maximum of 90 feet, and a maximum density of 8.0 FAR, rather than the C-3-C matter-of-right maximum density of 6.5 FAR, and flexibility from the loading berth requirements set forth at 11 DCMR § 2201.

The PUD Project

Overview

29. The PUD project is proposed as a retail, office and residential development, named the Gateway Market and Residences (“Gateway”), with a total building area of 416,188 gross square feet (“gsf”), including three below-grade parking levels covering 111,451 gsf. The effective building area is 294,092 square feet, apportioned as 21,836 gsf for retail use, 61,399 gsf for office use, 111,721 gsf for residential use, 4,056 gsf for the ANC office and community meeting space, 443 gsf for the Metropolitan Police Department Work Station or other security/information services, and 102,997 gsf for support and circulation. (Exhibit 80, Attachment 2.)
30. The density is 7.65 FAR on a PUD Site land area of 38,452 square feet with 93% lot occupancy.

31. Gateway will have a maximum height of 119 feet and six inches from the Florida Avenue measuring point. The building reaches its maximum height with the 10-story residential tower fronting on Florida Avenue and 4th Street, and steps down to a height of 71 feet above the measuring point at the rooftop of the fifth-level multipurpose pavilion.
32. The Gateway design was inspired by the location of the site at the entrance to the Capital City Market and the nature and design of the Market's existing structures, and by the generally accepted vision of the Market area redevelopment over the next decade. The base is earth-toned brick with cast stone, to complement the original Market buildings that surround it. Large bay windows extend down from the top through the third level, enhancing the building's vertical rhythm. Residential balconies on the upper levels animate the façade. On the west façade, floor to ceiling windows on the third through tenth levels, as well as scoring in the masonry, brighten the building face.
33. The building is accented by a pedestrian-friendly streetscape, with sidewalk seating areas. Streetscape features adhere to NoMA streetscape standards, employing warm-toned concrete with aggregate as sidewalk pavers.
34. The project includes a three-level underground garage with 188 vehicle parking spaces and 44 bicycle parking spaces.
35. One 30-foot loading berth, one 55-foot loading berth, and one 20-foot delivery vehicle space will be provided. All access to garage and docks will be provided from Morse Street.

The Retail Component

36. The project proposes retail uses on the first level, entered from Florida Avenue, and the second level, entered from Morse Street and via the Grand Staircase from the first level. The multilevel entrances accommodate the substantial grade change between these two streets. Both retail levels will have slab-to-slab heights of 16 feet.
37. In response to Commission concerns as to the viability of the Applicant's retail strategy, the Applicant provided two retail strategies.
38. In Plan A, the Applicant's preferred plan, both levels are designed as a food-themed emporium. On both levels, the food retail areas are designed to be open, with individual retailers serving customers over chest-high glass cases and smaller kiosks. A centrally-located atrium brings light and a sense of openness to the shopping area. The first level's east and west corner retail spaces are envisioned as, respectively, a café restaurant and a specialty market. On the second level, a street-facing window-walled interior corridor extends along the Fourth Street and the Florida Avenue sides. The approximately 9,000

square foot space in the southwest corner is designed to accommodate additional food-stands and kiosks. The retail levels have, in effect, two “front doors” – an approximately 50-foot-wide Florida Avenue entrance to the first level, and a Morse Street entrance to the second level. In the interior, a centrally-located Grand Staircase links the two levels.

The Applicant offered Plan B as the contingency plan requested by the Commission if it becomes clear after a reasonable period of time that Plan A is not working. Under Plan B, the Applicant would revisit the retail space plan in light of market conditions existing at that time and develop recommendations for retail space changes within the scope of the three uses – retail, office, and residential – approved for the PUD. Any such changes may be subject to approval by the Commission as a modification of the PUD and subject to the approval of DHCD, pursuant to the Applicant’s development agreement(s) with DHCD.

The Office Component

39. The entrance to the office lobby is immediately adjacent to the retail entrance arch on Florida Avenue. This office lobby is completely separated from retail and residential functions.
40. Levels three and four are designed as office space, with floor-to-floor heights of 12 feet and 14 feet, respectively. The 14 foot height at the fourth floor allows ceiling plenum space to collect and distribute water and waste lines for the residential block above. The depth of the floors is mitigated by the skylit atrium passing through them, providing substantial window space.

The Residential Component

41. The residential tower is arranged as an L-shaped element, with principal façades on Florida Avenue and 4th Street. The two wings of the L-shaped tower frame an outdoor terrace occupied by a multi-purpose pavilion over the office fourth floor below. This terrace and multipurpose pavilion provide a setting for meetings and social gatherings by Gateway residents. The surface of the terrace and the roof of the multipurpose pavilion are part of the project’s green roof program. The glass roof of the atrium provides a design element within this space.
42. The project provides approximately 116 residential units on floors five through 10.
43. In response to Commission concerns, the Applicant added a second freight elevator, which will allow residents to have their furniture and other truck-delivered items moved to and from the residential units without crossing the first and second level retail spaces.

Building Height

44. From the Florida Avenue measuring point, the PUD will have a maximum height of 119.5 feet and 10 stories on the Florida Avenue side, stepping down to 71 feet and four stories on the Morse Street side.
45. In response to Commission concerns, the Applicant redesigned the layout of the roof to ensure that the rooftop structures comply with the setback requirements of the Height Act. The Height Act requires that rooftop structures shall be set back from exterior walls distances equal to their respective heights above the adjacent roof.
46. The top level of the roof is L-shaped. The north and west sides of the "L" overlook the fifth-level roof. On those sides, the Applicant repositioned the balconies so that they overhang the fifth-level roof, rather than jutting inward at the tenth level and decreasing the space available for the rooftop structures. With this redesign, all the 18-foot high rooftop structures are clearly set back by 18 feet from the adjacent roof, as required by the Height Act, obviating the need for a variance.
47. The stair towers and penthouse screen wall are also set back at a 1:1 ratio, as required by the Height Act.

Energy and Environmental Design

48. The project qualifies for 20 credits on the LEED (Leadership in Energy and Environmental Design) for New Construction v 2.2 Project Checklist, as follows:
 - (a) Site Selection: The PUD Site is not located on a site considered inappropriate for development, such as farmland or wetlands.
 - (b) Development Density and Community Connectivity: The PUD Site is located within one-half mile of at least 10 basic services, and within one-half mile of a residential zone or neighborhood with an average density of 10 units per acre.
 - (c) Brownfield Redevelopment: The PUD Site qualifies because it was documented as contaminated by means of a Phase II Environmental Site Assessment.
 - (d) Alternative Transportation / Public Transportation: The PUD Site is located within one-half mile of a subway station.
 - (e) Site Development/Maximize Open Space: The PUD Site contains vegetated open space equal to 20% of the project's site area of 38,452 square feet. The 18,788 square foot green roof exceeds this amount.

- (f) Stormwater Design/Quality Control: The green roof absorption of stormwater and the use of a stormwater management plan will reduce runoff.
- (g) Heat Island Effect/Non-Roof: All of the parking spaces are underground, which exceeds the 50% LEED requirement.
- (h) Heat Island Effect/Roof: The PUD Site qualifies due to the extensive green roof.
- (i) Water Efficient Landscaping/Reduce by 50%: High efficiency irrigation will achieve a 50% reduction in the use of potable water.
- (j) Construction Waste Management/Divert 50% From Disposal: Anticipated.
- (k) Construction Waste Management/Divert 75% From Disposal: Anticipated.
- (l) Regional Materials /10% Extracted, Processed & Manufactured: At least 10% of the building materials will be obtained from sources within 500 miles of the PUD Site.
- (m) Certified Wood: At least 50% of wood-based materials and products will be certified in accordance with the Forest Stewardship Council's Principles & Criteria as coming from responsibly-managed forests.
- (n) Outdoor Air Delivery Monitoring: The project's outside air units and air monitoring system comply with this requirement.
- (o) Low-Emitting Materials/Adhesives & Sealants: To be used in compliance with this specification.
- (p) Low-Emitting Materials/Paints & Coatings: To be used in compliance with this specification.
- (q) Low-Emitting Materials/Carpet Systems: To be used in compliance with this specification.
- (r) Low-Emitting Materials/Composite Wood & Agrifiber Products: To be used in compliance with this specification.
- (s) Innovation In Design/100% Underground Parking: By having all parking underground, the project exceeds LEED requirements and thereby delivers exceptional performance.

- (t) LEED Accredited Professional: In compliance with this requirement, at least one principal participant of the project team is a LEED Accredited Professional.
- 49. The project incorporates an extensive green roof, covering approximately 18,000 square feet of rooftop over the tenth level floor and approximately 788 square feet of the rooftop over the fifth level floor. Altogether, the green roof extends over approximately 53% of the total rooftop area. The planted area is confined by a washed gravel border, and roof drains are located at various points under the soil medium in the containers holding the plants. The green roof over the fifth level extends over the fifth level multipurpose pavilion and related facilities. The green roof will reduce storm water runoff by temporarily storing rainwater within the growing medium and then slowly discharging it into the on-site collection system, thereby reducing the load during peak flows of a major storm. The plants will trap airborne pollutants. The thickness of the growing media/soil mix insulates the building from heat and cold, thereby providing energy savings.
- 50. The Commission finds that the project's energy and environmental design features are superior to what would be provided in a matter-of-right development at the PUD Site.

Development Incentives and Flexibility

- 51. In addition to the map amendment, the Applicant requests relief from 11 DCMR § 2201 to allow a combined loading area for all three uses, rather than providing separate loading facilities for each use.

Public Benefits and Project Amenities

- 52. In addition to the sustainability features discussed in paragraph 48 above, the following benefits and amenities will be created as a result of the PUD project:
 - (a) Affordable Housing (§2403.9(f)) – The Applicant has set aside 20% of the residential area, totaling 24 units, as affordable housing. These units will be made affordable to households earning no more than 80% of the AMI. The units will be distributed evenly throughout the fifth through eighth floors and in sizes proportional to the building as a whole. The Commission finds that the provision of affordable housing is a valuable community benefit of the PUD that should be recognized.
 - (b) ANC Office, Community Meeting Facilities, MPD Work Station (§2403.9(g)) – The Applicant will provide a Community Meeting Room of 1,869 square feet, which will seat approximately 100 people, with adjacent storage space, restrooms, pantry, and a breakout area. This space will be provided to the community

without charge in perpetuity. The Applicant has also agreed to provide office space for ANC 5B, which represents the area, without charge and in perpetuity. Finally, the Applicant has agreed to provide space for a Metropolitan Police Department work station, in perpetuity and without charge.

- (c) First-Source Employment Agreement (§2403.9(e)) – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services on May 30, 2008. (*Exhibit 55*)
- (d) CBE Contracting Commitment – The Applicant has made a commitment to enter into a Certified Business Enterprise (“CBE”) Agreement with the Department of Small and Local Business Development.

53. The Commission finds that the Applicant’s public benefits and project amenities provide value to the District and the community surrounding the PUD Site and are sufficient to justify the relief requested.

Office of Planning Reports

54. In reports dated February 29 and May 26, 2008 (Exhibits 31, 48), OP did not object to the project’s height, density, or use mix. In the May 26, 2008 report, OP said it could not make a recommendation until receiving information regarding the life span of the affordable units, additional data demonstrating that the proposed loading facilities will be sufficient to accommodate project needs, clarification of the public space design including the tree planting strip and sidewalk pavers, and detail on how the appearance of retail windows will be protected.
55. The Applicant responded to the OP requests in a pre-hearing submission filed June 4, 2008 (Exhibit 52) and also filed a Loading and Service Vehicle Analysis prepared by Wells & Associates on July 14, 2008 (Exhibit 68). The Applicant stated:
- (a) The affordable units will be set aside in perpetuity, subject to any changes proposed or allowed by DHCD or D.C. law in accordance with the Applicant’s development agreement(s) with DHCD;
 - (b) The Applicant will implement a management and scheduling system assuring that the loading berth facilities will adequately serve the project’s retail, office, and residential loading needs. Based on a field survey of similar buildings, the Wells & Associates analysis concluded that such a system will result in efficient use of the loading facilities and will avoid the construction of unnecessary and unused loading space;

- (c) Regarding public space, the Applicant will use evergreen groundcovers as a design feature in the tree planting strip and tree boxes and a combination of brick and concrete pavers in varying shades of neutral colors in the sidewalks; and
 - (d) The exterior appearance of the retail windows will be protected by means of the Applicant's retail lease agreements that require Gateway building management approval of tenant window displays and prohibit displays that would, in the opinion of the management, detract from the attractive appearance of the building, undermine its marketability as a setting of superior quality, or offend neighborhood tastes.
56. In testimony at the July 24, 2008 hearing, OP recommended approval of the applications and stated that the Applicant's responses satisfied OP's requests and resolved OP's questions and concerns regarding the life span of the affordable units, the adequacy of the loading facilities, the public space design, and the retail window appearance. OP stated that it has no objection to the Applicant's request for zoning relief for the loading facilities.
57. In the written reports and testimony, OP stated that the PUD and related map amendment to rezone the site to C-3-C is not inconsistent with the Comprehensive Plan and its Generalized Policy Map and Future Land Use Map. OP concluded that the proposal is consistent with the Comprehensive Plan's Land Use, Transportation, Housing, and Urban Design Citywide Elements and the Upper Northeast Area Element and that it would further the Comprehensive Plan's Guiding Principles through the beneficial management of inevitable change, creation of jobs and opportunities for less affluent residents, effective in-fill and transit-oriented development, neighborhood and "great streets" revitalization, expansion of affordable housing, and enhancement of public safety.
58. OP determined that the project will have an overall positive impact on the neighborhood and the District, and that the project's impact on city services will not be unacceptable.
59. OP accepted the Applicant's proffer of affordable housing, community space, a First Source Employment Agreement, and a Local, Small or Disadvantaged Business Enterprises commitment as public benefits and amenities which are acceptable in all proffered categories and superior in many in accordance with 11 DCMR § 2403.9. OP concluded that the public benefits and amenities are commensurate with the amount of relief the Applicant seeks. However, OP disagreed with the Applicant's proffer of environmental design on grounds that the project will not achieve a level of LEED compliance sufficient to qualify as a public benefit or amenity.

Other Government Agency Reports

60. The Deputy Mayor for Planning and Economic Development, Neil Albert, expressed support for the applications in a letter to the Commission on May 22, 2008. (Exhibit 50.) Mr. Albert stated that the project would serve as a catalyst for development in the area, and would bring needed jobs, services, revenue, and affordable housing to the community. He said the project promotes the policy objectives of expanding the supply of affordable housing and encouraging transit-oriented development.
61. DHCD expressed support for the project in a letter to the Commission on December 1, 2006. (Exhibit 29.) The DHCD letter called the project an important initiative to continue revitalization of the area, bring new affordable housing and other services to the neighborhood, and increase the District's tax revenues. DHCD said the project resulted from collaborative efforts by the District, the Applicant, ANC 5B, and the Ward 5 community.
62. DDOT submitted a report (Exhibit 57) on June 4, 2008, stating that it has no objection to the application and that the project will not have a significant traffic impact on the neighborhood. DDOT requested that the Applicant submit a Transportation Management Plan ("TMA") describing incentives to reduce motor vehicle trips to the property.
63. On July 14, 2008, the Applicant submitted a TMA (Exhibit 67) with the following incentives:
 - (a) Garage parking for 44 bicycle spaces;
 - (b) Providing a one-time-only car-sharing membership fee subsidy of \$40 per residential unit to the initial residential occupants upon move-in and encouraging DDOT to designate two street parking spaces adjacent to the Gateway building for car-sharing services;
 - (c) Providing complementary SmarTrip cards with a Metro fare value of \$20 per person to the initial residential occupants upon move-in;
 - (d) Providing links to CommuterConnections.com and goDCgo.com websites on the property management and developer websites;
 - (e) Designating a member of the building management team as Property Transportation Coordinator; and
 - (f) Developing an employer outreach program to encourage the use of alternative means of transportation by employees of Gateway's retail and office tenants, and

providing information about alternative transportation options via lobby kiosks, welcome packets, and bulletin boards.

70. DDOT stated in testimony at the July 24, 2008 hearing that Applicant's Transportation Management Plan is acceptable and that DDOT has no objection to the Applicant's loading-berth plan.
71. The District of Columbia Water and Sewer Authority ("DCWASA") submitted a memorandum to OP dated May 20, 2008, stating that the capacity of existing combined sewers in the area is adequate to handle the expected sanitary flows and expected storm flows from the proposed project.
72. Ward 5 Councilmember Harry Thomas provided a letter (Exhibit 51) in support of the applications, which was presented at the June 5, 2008 hearing. Councilmember Thomas stated that the project would help jump-start development of the Capital City Market; would bring much-needed development to the Trinidad-Ivy City community; has broad support within the Ward 5 community, and provides numerous and invaluable public benefits and amenities.

ANC Reports

73. ANC 5B submitted a resolution in support of the project (Exhibit 74) and testimony by its duly-authorized representative, Chairman William Shelton, at the July 24, 2008 hearing. Commissioner Shelton testified that ANC 5B voted repeatedly to support the project during the six years it has been pending. The ANC 5B resolution expressed support for the employment opportunities provided by the project, the affordable housing commitment, and the community meeting space and ANC office facilities.
74. ANC 6C submitted letters dated June 4 and July 14, 2008 (Exhibits 58, 72), a written statement (Exhibit 78) and testimony by its duly-authorized representative, ANC 6C04 Commissioner Anne Phelps. In the June 4, 2008 letter, ANC 6C expressed opposition to the application on grounds that the ANC 6C had not received notice of the hearing and had not had sufficient time to review the proposed project. After the Applicant participated in ANC 6C meetings on June 25, July 2, and July 9, 2008, ANC 6C voted to support the project concept with six recommendations for improvements, as stated in its July 14, 2008 letter and July 24, 2008 written statement and testimony. (Exhibit 78.)
75. The Applicant addressed the ANC 6C recommendations in its July 14, 2008 submission (Exhibit 78) and in testimony at the July 24, 2008 hearing, as follows:

- (a) The Applicant agreed with the recommended emphasis on market-oriented space, with a market-type environment and outreach to local, small, entrepreneurial businesses as tenants;
- (b) The Applicant agreed with the recommended incorporation of the better elements of the Capital City Market into the Gateway retail plan and encouragement of outdoor cafes;
- (c) With regard to the ANC's request for a retail rental plan supportive of merchants with limited capital, the Applicant pledged to work with DHCD, the Office of the Deputy Mayor for Planning and Economic Development, and the Department of Small and Local Business Development to assist prospective small-business retail tenants;
- (d) The Applicant affirmed that its retail design and strategy will promote the recommendation for a deliberate effort to encourage people walking along 4th Street and Florida Avenue to visit the Gateway retail establishments;
- (e) With regard to the recommendation for neighborhood-serving retail elements, and a long-term commitment to local owners and operators, the Applicant affirmed that all Gateway retail elements are intended to serve the local neighborhood as well as visitors to the area and pledged to work with District Government agencies to help Gateway retailers attain long-term stability and profitability; and
- (f) With regard to the request for exploration of a greater diversity in AMI with respect to eligibility for the affordable housing units, the Applicant stated that the AMI eligibility level resulted from the Applicant's agreement(s) with DHCD, taking into account the facts that the units will be set aside as affordable units in perpetuity and that the Gateway project is receiving no public subsidy at this time. The Applicant pointed out that developments with a lower AMI threshold typically receive governmental financial assistance through one or more defined governmental programs or through the government's contribution of publicly-owned land at no cost.

76. The Commission finds that ANC 6C's recommendations have been reasonably and adequately addressed.

Compliance with the Comprehensive Plan

77. The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.

78. The project carries out Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment bring growth and revitalization to a long-vacant and underutilized industrial site.
79. The project carries out Transportation Element policies that promote transit-oriented development and urban design improvements to major thoroughfares such as Florida Avenue. The PUD brings new housing, retail, and office uses within walking distance of the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.
80. The project carries out Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing. The PUD brings 116 new residential units to an underserved neighborhood, with a 20% of the total, or approximately 24 units, set aside as affordable units in perpetuity.
81. The project carries out Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a once-blighted site bordering Florida Avenue.
82. The project carries out Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing, office, and retail uses.

CONCLUSIONS OF LAW

1. Pursuant to 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, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or 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. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential, retail, and office uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is acceptable given the quality of the public benefits of the project, and the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's public benefits and amenities strike a reasonable balance with the requested development flexibility.
7. Approval of this PUD and related map amendment is appropriate because the proposed development is consistent with the present and future character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the project will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
8. The PUD-related rezoning of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01).
9. The Commission is required under § 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. The Commission carefully considered the OP report and found OP's reasoning persuasive in recommending approval of the application.
10. The Commission is required under D.C. Official Code §1-309.10(d) to give great weight to the issues and concerns expressed in the written report by the affected ANC. The Commission carefully considered the ANC 5B position supporting approval of the application and concurred in its recommendation of approval. The Commission also gave careful consideration to the ANC 6C position supporting approval of the project concept with recommendations for project improvements, and the Applicant's response thereto.

The Commission concluded that the Applicant's response satisfactorily addressed the ANC 6C recommendations.

11. Notice was provided in accordance with the Zoning Regulations and applicable case law.
12. The application for a PUD 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 Applications for consolidated review of a Planned Unit Development and for a related Zoning Map amendment from C-M-1 to C-3-C for the PUD Site. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by McKissack & McKissack, dated May 15, 2008, in the record as Exhibit 45, as modified by the plans prepared by McKissack & McKissack, dated July 14, August 21, and September 17, 2008, in the record as Exhibits 71, 81, and 85, respectively, as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The PUD shall be a mixed-use residential, retail, and office project, containing a maximum of 294,092 square feet of gross floor area and including approximately 116 residential units. Approximately 21,836 square feet of gross floor area, located on the first and second levels, shall be devoted to retail; approximately 61,399 square feet of gross floor area, located on the third and fourth levels, shall be devoted to office space; and approximately 111,721 square feet of gross floor area, located on the fifth through tenth levels, inclusive, shall be devoted to residential use. The maximum density of the project shall be 7.65 FAR.
3. The maximum height of the building shall be 119.5 feet with steps in heights and setbacks as shown on the Plans.
4. The project shall include a minimum of 188 vehicle parking spaces and 44 bicycle parking spaces in the below-grade parking garage. The project shall provide one 30-foot loading berth, one 55-foot loading berth, and one 20-foot delivery vehicle space, as shown on the Plans.
5. The Applicant shall set aside 20% of the residential units as affordable housing in perpetuity. The affordable units shall be equitably dispersed among the market-rate units

on the fifth, sixth, seventh, and eighth floors, and shall be of a size and type comparable to the market-rate units.

6. The affordable housing units shall be available to households with an annual income of no more than 80% of the Area Median Income as adjusted for household size.
7. The Applicant shall have flexibility to implement the Plan B retail space contingency plan described in Finding 38 of this Order if it becomes necessary in order to assure the viability of the project. In such case, the Applicant may present recommendations to the Zoning Administrator for retail space changes within the scope of the three uses – retail, office, and residential – approved for the PUD. The Zoning Administrator shall determine whether any such changes are allowed within the scope of this Order or require review and approve by the Commission a modification to this Order. Any such changes also may be subject to approval by DHCD, pursuant to the Applicant's development agreement(s) with DHCD.
8. The Applicant shall incorporate the environmental and energy conservation features set forth in Finding 48 of this Order as qualifying for 20 LEED credits.
9. The Applicant shall provide, at no cost and in perpetuity, a community meeting room and related amenities, an ANC office, and a Metropolitan Police work station comprising a total of approximately 4,500 square feet of gross floor area, as shown on the Plans. If the Metropolitan Police Department chooses not to use the work station, the Applicant may use the space for building security purposes.
10. The ANC office shall be assigned to ANC 5B, or any successor ANC which may be designated to represent the PUD Site by redistricting legislation enacted by the Council of the District of Columbia and signed by the Mayor.
11. The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Management Plan.
12. The Applicant shall enter into and abide by the terms of a Certified Business Enterprise ("CBE") Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in order to achieve the goal of 35% participation by D.C.-certified local, small, and disadvantaged businesses in the project development and construction contracts. No building permit may be issued for this project until the Applicant and DSLBD have executed the CBE Agreement.

13. The Applicant shall abide by the terms of its First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project.
14. 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 but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - (b) To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;
 - (c) To vary the final selection of the exterior materials within the color ranges and material types as proposed, without a reduction in quality, based on availability at the time of construction;
 - (d) To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other 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; and
 - (e) To make refinements to the garage configuration, including layout, location, and design of parking spaces and/or other elements, so long as the total number of vehicle and bicycle parking spaces provided complies with the PUD approval.
15. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the PUD Site and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.
16. Pursuant to 11 DCMR § 3028.9, the Zoning Map Amendment approved by the Commission, rezoning the PUD Site to C-3-C, shall take effect upon the recordation of the covenant described in Condition No. 15 of this Order.
17. The PUD and Zoning Map Amendment approved by the Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an

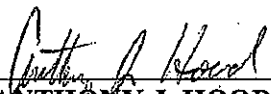
application must be filed for a building permit as specified in 11 DCMR §2409.1. Construction shall begin within three (3) years of the effective date of this Order.

18. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. 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 September 29, 2008, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** these applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr., Peter G. May and Michael G. Turnbull to approve; Gregory N. Jeffries to approve by absentee ballot).

On November 10, 2008, upon the motion of Chairman Hood, as seconded by Commissioner May, the Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot; third Mayoral appointee position vacant, 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*; that is on APR 24 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



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

OFFICE OF THE SURVEYOR

Washington, D.C., February 3, 2008

plat for Building Permit of SQUARE 3587 LOTS 5, 800, 802, 809, 129/9 & 129/32

scale: 1 inch = 30 feet

Recorded in Book 155 Page 38 (Lot 5); A & T Book
Page 3560-K (Lot 800) 3660-K (Lot 802); 1688 (129/9);
1709 (129/32) & Microfilm (Lot 809)

receipt No. 25577

furnished to: MARGARET GENTRY

[Signature]
Surveyor, D.C.

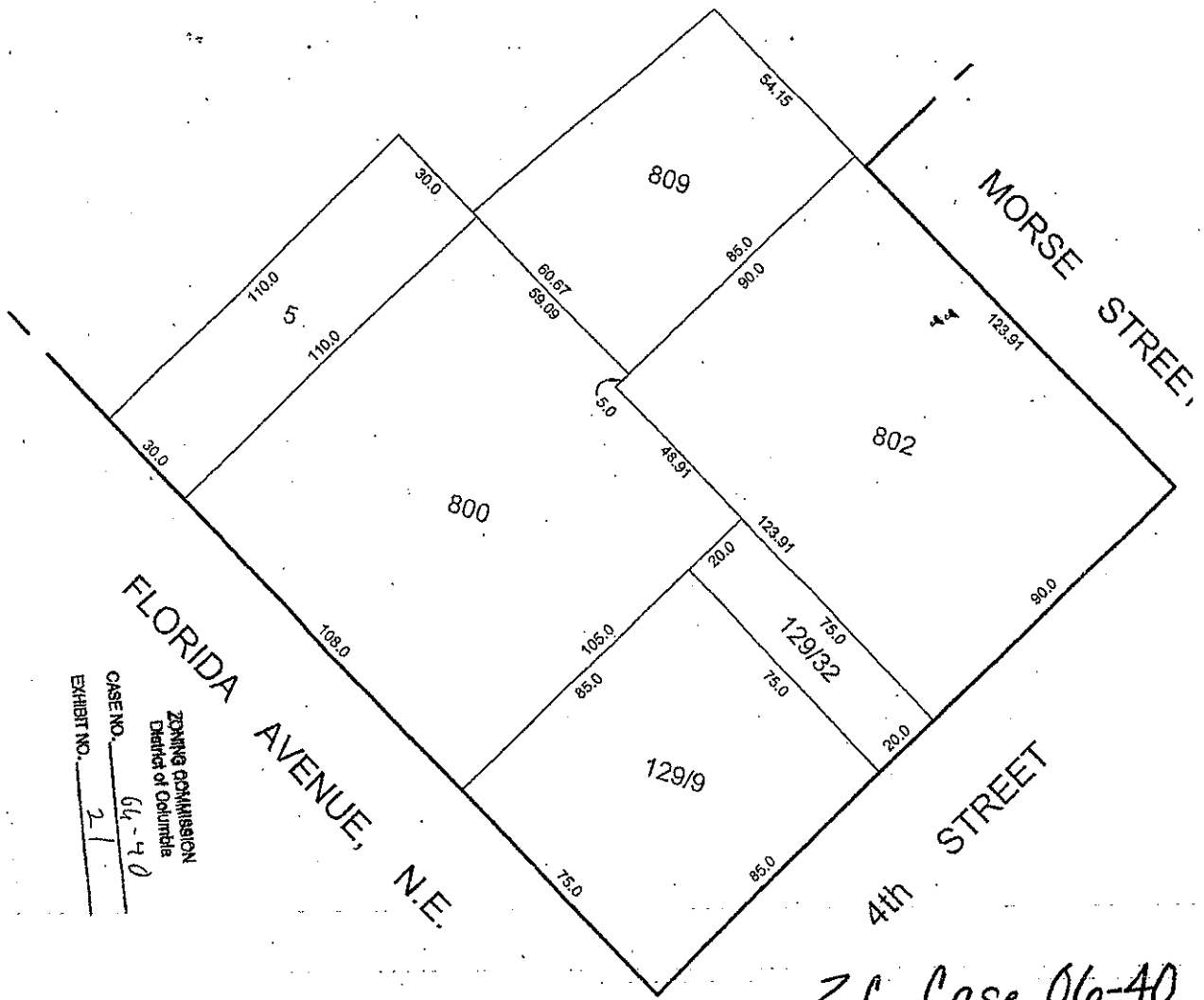
By: L.E.S. *[Signature]*

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted 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 thereon 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 lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

(Signature of owner or his authorized agent)

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



ZONING COMMISSION
District of Columbia
CASE NO. 06-40
EXHIBIT NO. 21

Z.C. Case 06-40

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-40

As Secretary to the Commission, I hereby certify that on APR 28 2009, copies of this Z.C. Order No. 06-40 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Commissioner Anne Phelps
ANC/SMD 6C04
1150 5 th Street, N.E.
Washington, D.C. 20002 |
| 2. John Ray, Esq.
Manatt Phelps & Phillips
700 12 th Street, N.W.
Washington, D.C. 20005 | 7. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 3. William C. Shelton, Chair
ANC 5B
2100 New York Avenue, N.E.
Washington, DC 20002 | 8. Councilmember Harry Thomas, Jr. |
| 4. Commissioner David L. Hooper
5B07
1324 Queen Street NE
Washington, DC 20002 | 9. DDOT (Karina Ricks) |
| 5. Karen Wirt, Chair
ANC 6C
P.O. Box 77876
Washington, D.C. 20013 | 10. 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 "S. Schellin", is written over a horizontal line.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-40A

Z.C. Case No. 06-40A

Gateway Market Center, Inc.

(Two-Year Time Extension for PUD

@ Square 3587, Lots 5, 800, 802, and 809 and Parcels 129/9 and 129/32)

May 23, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on May 23, 2011. At the meeting, the Commission approved a request from Gateway Market Center, Inc. (the "Applicant") for a time extension for the consolidated planned unit development ("PUD") for the property consisting of Lots 5, 800, 802, and 809 in Square 3587 and Parcels 129/9 and 129/32, pursuant to Chapters 1 and 24 of the Zoning Regulations (11 DCMR).

FINDINGS OF FACT

1. By Z.C. Order No. 06-40 (the "PUD Order") dated April 24, 2009 and effective April 28, 2009, the Commission approved a PUD for Lots 5, 800, 802, and 809 in Square 3587 and Parcels 129/9 and 129/32 (the "Property"). The PUD Order approved a mixed-use, residential, retail, and office development containing a maximum of 294,092 square feet of gross floor area and constructed to a height of 119 feet. The PUD Order also approved a related map amendment to rezone the PUD site from C-M-1 to C-3-C. Pursuant to Condition No. 17 of the PUD Order, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2011.
2. By letter dated and received by the Commission on April 7, 2011, the Applicant requested to extend the validity period of the PUD approval by two years. The request, if approved, would require that an application for building permit be filed no later than April 28, 2013 and that construction must be started no later than April 28, 2014.
3. The Applicant submitted evidence that the project has experienced delays beyond the reasonable control of the Applicant as a result of the nationwide financial crisis and lack of liquidity in the financial markets. The evidence included an affidavit explaining that although the Applicant had financing commitments in place prior to approval of the PUD, those commitments were withdrawn in late 2008 and early 2009, prior to issuance of the PUD Order. The affidavit also detailed the Applicant's efforts since the PUD Order was issued to find sources of financing for the project.

4. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 5B and ANC 6C, the only two parties in the case. ANC 6C submitted a letter in support of the requested two-year time extension on May 16, 2011. (Exhibit 6.) ANC 5B did not submit a written response.
5. The Office of Planning ("OP") submitted a report dated May 13, 2011, indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension. (Exhibit 5.)
6. The Commission finds that there has not been a substantial change in the material facts upon which the initial PUD approval was based, and finds that the essential elements of the PUD have not changed. The Applicant has provided substantial evidence that there is good cause for the extension, pursuant to 11 DCMR § 2408.11(a), and the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided for in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by the Applicant serving ANC 5B and ANC 6C with a copy of the application and allowing 30 days for a response by the ANCs.

The Commission concludes that there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the

Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC's recommendations. ANC 6C submitted a letter in support of the requested extension. (Exhibit 6.) The Commission has given ANC 6C's recommendation great weight in approving this application.

The Commission is required under § 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. OP submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.

Section 2408.12 of the Zoning Regulations provides that a public hearing must be held by the Commission only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The Commission concludes that a hearing is not necessary for this request since there are no material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the time in which to file a building permit for the construction of a new mixed-use development in Square 3587, which was initially approved in Z.C. Order No. 06-40. The approval of the two-year extension shall be valid until April 28, 2013, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 28, 2014.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by

Z.C. ORDER NO. 06-40A
Z.C. CASE NO. 06-40A
PAGE 4

the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On May 23, 2010, upon the motion made by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 22, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-40A

As Secretary to the Commission, I hereby certify that on JUL 20 2011 copies of this Z.C. Order No. 06-40A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Kinley Bray, Esq.
Arent Fox
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
3. ANC 5B
2100 New York Avenue, N.E.
Washington, DC 20002
4. Commissioner William Shelton
ANC/SMD 5B01
1437 Montana Avenue, N.E. #5
Washington, D.C. 20018
5. Commissioner David Hooper
ANC/SMD 5B07
1324 Queen Street, N.E.
Washington, DC 20002
6. ANC 6C
P.O. Box 77876
Washington, D.C. 20013
7. Commissioner Anne Phelps
ANC/SMD 6C04
1150 5th Street, N.E.
Washington, D.C. 20002
8. Councilmember Tommy Wells
9. Councilmember Harry Thomas, Jr.
10. DDOT (Martin Parker)
11. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
12. Office of the Attorney General (Alan Bergstein)

ATTESTED BY:

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