

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-36A
Z.C. Case No. 05-36A
K Street Developers, LLC
(Second-Stage PUD – 250 K Street, N.E.)
July 28, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 19, 2008 to consider an application from K Street Developers, LLC (the "Applicant") for review and approval of the second stage of a two-stage planned unit development ("PUD") and related zoning map amendment pursuant to Chapters 24 and 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning (the "Zoning Regulations"). The proposed project is a mixed-use development containing residential uses and ground-floor retail uses. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On November 29, 2005, 200 K Street, L.P., the Applicant's predecessor-in-interest, filed an application requesting preliminary and consolidated approval of a PUD, as well as a related map amendment to the C-3-C Zone District for all of Lot 67 in Square 749 (the "Subject Property"). The original application sought to develop the proposed PUD in two phases. The first phase of the development (the "Phase I PUD") was to be located on the eastern portion of the Subject Property, which contains approximately 42,839 square feet of land area (the "Phase I Site"). The second phase of the development (the "Phase II PUD") was to be located on the western portion of the Subject Property, which contains approximately 58,263 square feet of land area (the "Phase II Site"). The Phase I PUD was to contain approximately 236,905 square feet of gross floor area, including 202 residential units and approximately 3,699 square feet of ground-floor retail space. The Phase I PUD was to be constructed to a maximum height of 90 feet and was to include 177 off-street parking spaces in an underground garage. The Phase II PUD was to contain approximately 612,433 square feet of gross floor area, including 500 residential units and approximately 13,798 square feet of residential use. The Phase II PUD was to be constructed to a maximum height of 130 feet from the measuring point on 3rd Street, N.E. and was to include 545 off-street parking spaces for use by the building's residents. The Phase I PUD and Phase II

PUD would surround an outdoor central plaza that would be available for use by the public between the hours of 11:00 a.m. and 7:00 p.m.

2. Pursuant to Z.C. Corrected Order No. 05-36 (effective October 13, 2006) (“First Stage Order”), the Commission granted consolidated approval for the first phase of the proposed development and preliminary approval for the second phase of the project. That order required the Applicant to file an application for second-stage approval of the Phase II PUD within one year of the effective date of the order.
3. The Applicant is the owner of the Subject Property.
4. On October 4, 2007, the Applicant filed an application for second-stage approval of the Phase II PUD.
5. The Office of Planning (“OP”) filed a preliminary report dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for a public hearing.
6. At its public meeting on December 10, 2007, the Commission voted to schedule a public hearing on the application.
7. On March 7, 2007, the Applicant filed a prehearing statement and revised architectural plans and elevations, dated January 11, 2007. The Applicant's prehearing statement addressed a number of issues raised by OP and the Commission at the public meeting on December 10, 2007.
8. Advisory Neighborhood Commission ("ANC") 6C voted to approve the Phase II PUD at its regularly scheduled meeting on February 13, 2008. The ANC submitted a letter to the Commission, dated May 21, 2008 (Exhibit 36), recommending approval of the application.
9. On April 29, 2008, the Applicant filed supplemental materials in support of the application, including a revised set of architectural plans and elevations, dated April 29, 2008 (Exhibit 26). These revised plans responded to a number of comments received from OP following the submission of the Applicant's prehearing statement.
10. On May 9, 2008, OP filed a report (Exhibit 27) recommending approval of the second-stage PUD, subject to the Applicant's resolution of certain outstanding issues.
11. On May 19, 2008, the District Department of Transportation ("DDOT") filed a report, dated May 14, 2008 (Exhibit 29). In its report, DDOT requested that the Applicant be granted the flexibility to modify the landscaping and other streetscape improvements located in public space in coordination with DDOT. The report stated that DDOT had no objections to the site access or proposed circulation system.

12. After proper notice, the Commission held a public hearing on May 19, 2008. The parties to the case were the Applicant and ANC 6C.
13. The Applicant submitted a number of exhibits at the public hearing on May 19, 2008. These exhibits included revised architectural sheets, a letter from Smart Start, Inc. expressing its continued interest in operating the proposed daycare facility in the new development, written testimony prepared by the Applicant's land use expert, and a document demonstrating that the amount of affordable housing provided in the proposed development would be the same regardless of whether that requirement is calculated on a net-to-net basis or on a gross-to-gross basis. The Applicant also submitted an affidavit demonstrating compliance with the posting requirements of 11 DCMR § 3015.4.
14. The Applicant presented eight witnesses at the Commission's hearing on May 19, 2008, including Alan D. Cohen of ADC Builders on behalf of the Applicant; Richard Conrath, Colline Hernandez-Ayala, and Kimberly Lee of GTM Architects (architecture); Jonathan Fitch and Curt Millay of LAB (landscape architecture); Iain Banks of O.R. George & Associates, Inc. (transportation); and Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight LLP (zoning and land use planning). Based upon their professional experience, as evidenced by the resumes submitted for the record and prior appearances before the Commission, Messrs. Conrath, Fitch, Banks, and Sher were qualified by the Commission as experts in their respective fields. At the conclusion of the public hearing, the Commission requested additional materials from the Applicant and scheduled a special public meeting on the application for June 16, 2008 to decide the case.
15. At the Commission's request, the Applicant submitted supplemental materials in support of the application on June 2, 2008. These materials included a revised set of architectural plans and elevations, dated June 2, 2008 (Exhibit 38) (the "Final Plans"). The Final Plans addressed a number of issues raised by the Commission during the public hearing on May 19, 2008. The Applicant also submitted a supplemental transportation memorandum prepared by O.R. George & Associates, Inc., which indicated that any parking demand generated by the retail uses in the proposed project can be adequately accommodated by on-street parking spaces adjacent to the site. In addition, the Applicant submitted materials boards for the Commission's use during the special public meeting on the application. Finally, the Applicant submitted a revised Leadership in Energy and Environmental Design ("LEED") checklist, which indicated that the proposed project would qualify for nineteen points on the U.S. Green Building Council's LEED New Construction 2.2 ("LEED-NC") rating system.
16. At a special public meeting on June 16, 2008, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and the Final Plans.

17. On June 19, 2008, the Applicant submitted a request for modification to the First Stage Order regarding Condition No. 8. The Commission assigned the request Z.C. Case No. 05-36B. The Commission granted the modification request on July 14, 2008. The Commission's order granting the modification requested in Z.C. Case No. 05-36B is published separately. This Order describes the PUD as modified.
18. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by letter dated July 14, 2008, informed the Commission that it considered the Application and took no action on the proposal.
19. The Commission took final action to approve the application on July 28, 2008 by a vote of 3-0-2.

The Subject Property, the Surrounding Area, and the Proposed Project

20. The Subject Property includes all of Lot 67 in Square 749 and contains approximately 101,102 square feet of land area. Square 749 is bounded by 2nd Street to the west, L Street to the north, 3rd Street to the east, and K Street to the south, in Northeast Washington, D.C. The Subject Property is located within the C-3-C Zone District and falls within the jurisdiction of ANC 6C. The site slopes significantly from northeast to southwest. Ground elevations on the Subject Property range from approximately 54.65 feet at the northeast corner of the site to 35.20 feet at the southwest corner of the site.
21. The Subject Property is located within the North of Massachusetts ("NoMA") planning area. Most of the adjacent property to the east and south is occupied by rowhouses and other residential uses and is zoned C-2-B, while the area to the north is devoted primarily to light industrial uses and is zoned C-M-1 and C-M-3. The properties located further to the east are located within the R-4 Zone District. The Subject Property is located across 2nd Street, N.E. from the Metrorail right-of-way to the west and is located two blocks south of the New York Avenue-Florida Avenue-Gallaudet University Metrorail station and five blocks north of Union Station. Consistent with the District's policy objectives for the NoMA planning area, the surrounding area is currently experiencing significant residential and commercial office development. The Subject Property is located within one-half mile of two federal agency headquarter buildings: the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the north and the U.S. Security and Exchange Commission to the south.
22. The PUD is being developed in two separate phases, but will be constructed as a single building for zoning purposes. The Commission granted consolidated approval of the Phase I PUD in Z.C. Corrected Order No. 05-36. The Phase I PUD is located on the eastern portion of the Subject Property and contains 236,905 square feet of gross floor area, including 3,699 square feet of retail space. The Phase I PUD is currently under construction and includes 202 residential units and 177 off-street parking spaces in an

underground garage. This portion of the PUD has a maximum height of 90 feet as measured from 3rd Street, N.E. The Commission also granted preliminary approval of the Phase II PUD on the western portion of the site. As originally approved, the Phase II PUD contained 612,433 square feet of gross floor area and had a maximum height of 130 feet as measured from 3rd Street, N.E. As originally approved by the Commission, the PUD as a whole would contain 849,338 square feet of gross floor area, including 17,497 square feet devoted to retail uses.

23. In response to the Commission's concerns regarding the perceived height and massing of the Phase II PUD, the Applicant has eliminated one story from that portion of the building and reduced its maximum height from 130 feet to 121 feet. The building will be 12 stories above the measuring point on 3rd Street, N.E. and 14 stories above the sidewalk on 2nd Street, N.E. and K Street, N.E. Setbacks were also introduced on the upper stories. The reduction in the height of the building and the related setbacks have reduced the total gross floor area of the Phase II PUD from 612,433 square feet to 555,545 square feet. The Phase II PUD will include 415,307 square feet of gross floor contained in approximately 500 residential units, as well as 13,801 square feet of gross floor area devoted to retail uses (including a 3,446-square-foot daycare center). Additionally, the Phase II PUD will contain 13,328 square feet of gross floor area devoted to ancillary residential uses and 113,109 square feet of gross floor area devoted to core and service areas. The Phase II PUD will have a density of 5.49 FAR, resulting in an overall PUD density of 7.84 FAR, less than the 8.4 FAR originally approved.
24. The Phase II PUD has been designed to minimize the negative impacts of the building's height and mass as experienced from the pedestrian level and complement the character of the surrounding neighborhood. Drawing from the local vernacular, the brick veneer, double-story "warehouse" windows, stone cornice, headers, and sills are incorporated into the façade design to integrate the overall building within its surrounding context. The façade will read as separate buildings, rather than as a single, monolithic mass. At certain points along the façade, the massing at the building's upper levels steps back from the property line to reveal a glazed curtain wall system, which reduces the perceived height of the building from the pedestrian level. The building's contrasting exterior colors break up the building into smaller masses and soften the structure's appearance against the skyline. Both phases of the PUD have similar cornice and masonry detailing that will be repeated throughout the entire project.
25. The Phase II PUD will include a four-level underground garage containing 545 vehicle spaces and 55 bicycle spaces. The underground parking garage will be accessed from 2nd Street, N.E. The Phase II PUD will also contain two 55-foot loading berths, two 20-foot service/delivery spaces, and two 200-square-foot loading platforms. These loading facilities will also be accessed from 2nd Street, N.E. The Applicant intends to work with DDOT and Zipcar to establish car-sharing spaces on the streets surrounding Square 749.

26. The Phase II PUD will incorporate a number of sustainable design features, including a 16,000-square-foot green roof and stormwater management system that will increase the building's energy efficiency and reduce the volume of stormwater runoff from the site. The significant landscaping of the development's central plaza will also reduce runoff by minimizing the percentage of the site covered by impervious surfaces. The daycare center's outdoor play area will be surfaced with a recycled, poured-in-place material topped with a resilient layer. The Applicant intends to use low-emitting wall coverings, carpeting, and adhesives on the interior of the new building and will install low-flow plumbing fixtures in the residential units. Finally, the central plaza and building perimeter will be illuminated by energy-efficient LED lighting. Although the building will not be LEED certified, the Commission finds that the proposed project's sustainable design features are superior to what would be provided in a matter-of-right residential development at this location.
27. The Applicant will reserve 10% of the gross floor area devoted to residential units in the Phase II PUD, or approximately 41,558 square feet, for households earning no more than 80% of Area Median Income ("AMI") for the time periods set forth in Z.C. Corrected Order No. 05-36. These affordable housing units will be evenly distributed throughout all but the top four floors of the Phase II PUD and will be comparable in exterior design, materials, and finishes to the market-rate units in the building.
28. The PUD will surround an outdoor central plaza containing approximately 28,476 square feet of area. The elevated eastern portion of the plaza, which contains approximately 10,721 square feet, will be reserved for use by the residents of the Phase I PUD. Approximately 2,050 square feet of area in the southwest corner of the plaza will be used as an outdoor play area for the daycare center. The remaining portions of the western plaza, containing approximately 15,705 square feet, will be open to the public between the hours of 11:00 a.m. and 7:00 p.m. each day for passive recreational use. The central plaza will include significant landscaping, furniture, and public art displays. The central plaza will be accessed by the public through an arched gateway on 2nd Street, N.E.

Flexibility from the Zoning Regulations

29. The Applicant requests the following areas of flexibility from the requirements of the C-3-C Zone District and the corresponding PUD standards:
 - a. relief from the off-street parking requirements of 11 DCMR § 2101.1 for the retail uses in the proposed project;
 - b. relief from the prohibition on multiple roof structures set forth in 11 DCMR § 411.3; and
 - c. relief from the roof structure setback requirements of 11 DCMR § 770.6 for two of the four mechanical penthouses on the Phase II PUD.

30. In Z.C. Case No. 05-36, the Commission granted the Applicant flexibility to allow a five-percent increase in the gross floor area of the overall PUD to permit a maximum density of 8.4 FAR. The Commission notes that the overall density for the PUD as a whole has been reduced to 7.84 FAR, which is below the applicable PUD standards for the C-3-C Zone District. The Applicant no longer requires such flexibility.
31. Under 11 DCMR § 2101.1, the Applicant is required to provide 14 off-street parking spaces for the retail uses in the Phase II PUD. The supplemental memorandum submitted by the Applicant's transportation consultant, dated May 30, 2008 (Exhibit 37), indicates that any parking demand generated by the retail uses in the PUD can be fully accommodated by on-street parking spaces surrounding Square 749. The Applicant has presented evidence, moreover, that the provision of retail parking spaces in the underground garage would entail significant costs and would create serious security and safety risks for the building's residents. The Commission finds that the costs of strict compliance with the off-street parking requirements for the retail uses in the PUD would far exceed any likely benefits.
32. The Zoning Regulations provide that all penthouses and mechanical equipment on a building's roof must be placed within a single enclosure that harmonizes with the main structure in architectural character, material, and color. (11 DCMR § 411.3.) Although the Applicant may provide a separate enclosure for each of the building's two elevator cores, the Phase II PUD will include four separate mechanical penthouses. Multiple enclosures are necessary in this case due to the size of the building, the configuration of the building's mechanical equipment, and location of the planted green roof areas. The Commission further finds that compliance with the single-enclosure requirement in this case would only increase the visibility of the structure from the surrounding streets and would have an adverse visual impact on adjacent properties.
33. Within the C-3-C Zone District, any structure located on a building's roof must be set back from each of the building's exterior walls by a distance at least equal to the structure's height above the roof upon which it sits. (11 DCMR § 770.6.) Although the four mechanical penthouses on the roof of the Phase II PUD will be set back at least that distance from all of the building's street-facing walls, two of the penthouses will not be sufficiently set back from the walls of the building's interior courtyard. The Commission finds that the placement of these penthouses is dictated by the location of the Phase II PUD's stairway and elevator cores, and that it would be impractical to relocate these two enclosures to comply with the setback requirement.

Reports of the D.C. Office of Planning

34. OP filed a preliminary report on the application dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for public hearing

and requested that the Applicant provide additional information and materials on the proposed project prior to the hearing.

35. OP filed its final report on the application (Exhibit 27) on May 9, 2008. The report recommended that the Commission approve the application, subject to the resolution of the following issues:
- a. OP asked the Applicant to revise the architectural plans to more clearly illustrate the connections between the Phase I PUD and the Phase II PUD to ensure that the entire project would function as a single building for zoning purposes. As illustrated on Sheets A1.02a through A1.09a of the Final Plans, the first and second phases of the development will be connected at every floor. The Commission finds that the Phase I PUD and the Phase II PUD constitute a single building for zoning purposes.
 - b. OP asked the Applicant to discuss whether calculating the 10% affordable housing requirement on a net-to-net basis rather than on a gross-to-gross basis would result in less affordable housing. The Applicant's land use expert submitted written testimony, dated May 19, 2008 (Exhibit 31), at the Commission's public hearing. That testimony included an attachment demonstrating that the calculation of the affordable housing requirement on a net-to-net basis does not result in any diminution in the amount of affordable housing that is provided. The Commission finds that the provision of 41,558 square feet of affordable housing in the Phase II PUD satisfies the 10% affordable housing requirement set forth in Z.C. Corrected Order No. 05-36.
 - c. OP asked the Applicant to establish a minimum square footage for each type of affordable dwelling unit. Because the size and configuration of the market-rate dwelling units in the proposed development have not been finalized, the Commission will not establish a minimum requirement for the size of the affordable units in the Phase II PUD. During the public hearing on the application, the Applicant testified that the gross floor area of each affordable housing unit would be no less than 95% of the average gross floor area of market-rate units of the same type.
 - d. OP asked the Applicant to explain why the core and service areas represented such a high percentage of the development's gross floor area. According to the Final Plans, the building's core and service areas contain approximately 113,109 square feet of gross floor area, which represents approximately 20% of the project's total gross floor area. These areas include the building's elevators, stairs, corridors, administrative areas, loading areas, trash rooms, utility rooms, and storage areas. Although the core and service areas in other buildings typically represent approximately 15% of a building's gross floor area, the Applicant explained that the size and configuration of these areas is dictated by the need for multiple egress stairways and by the location of the central elevator and stair cores. The placement of these circulation cores, in turn, was made necessary by the location of the garage entry previously approved by the Commission

in Corrected Order No. 05-36. Furthermore, the covered arched walkway to the central plaza is included in the project's density, along with an indoor swimming pool and two sets of loading berths.

- e. OP asked the Applicant to explain why the eastern portion of the central plaza would not be open to the public and whether any other public benefits would be provided to justify this reduction in public access. The Applicant testified that the elevated eastern portion of the central plaza is surrounded by dwelling unit windows. Opening this portion of the central plaza to the public would compromise the privacy and safety of the Phase I PUD's residents.
- f. OP requested that the Applicant continue to work with DDOT to refine the design of the landscaping and other improvements located in public space, and recommended that the Commission grant the Applicant the flexibility to modify the design of the ground floor of the proposed project as well as improvements within the adjacent public space along K Street, N.E.

Report of the District Department of Transportation

- 36. DDOT filed a report dated May 14, 2008 (Exhibit 29), recommending approval of the application. In its report, DDOT requested that the Commission grant the Applicant the flexibility to work with DDOT on the final design of the landscaping and other streetscape improvements located in public space adjacent to the proposed project.

Reports of Advisory Neighborhood Commission 6C

- 37. ANC 6C submitted a letter to the Commission dated February 19, 2008 (Exhibit 13), reporting that the ANC voted to recommend approval of the proposed project at its regularly scheduled public meeting on February 13, 2008. Although the letter stated that all nine commissioners had participated in the ANC's consideration of the project, it did not indicate the number of commissioners who actually voted in support of the application. The Commission requested that ANC 6C submit an additional letter for the record providing such information.
- 38. ANC 6C submitted a supplemental letter to the Commission dated May 21, 2008 (Exhibit 36), indicating that the ANC had voted 8-1-0 to recommend approval of the proposed project at its public meeting on February 13, 2008.

Testimony in Support and Opposition

39. No other parties testified in support of or opposition to the application.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The proposed development carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable in a matter-of-right development.
4. The proposed PUD meets the minimum area requirements set forth in § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height and density standards approved by the Commission in Z.C. Corrected Order No. 05-36. Indeed, the Applicant has significantly reduced the height and density of the Phase II PUD below what was approved in Z.C. Corrected Order No. 05-36. The height and density of the proposed project will not cause an adverse impact on any nearby properties. The proposed mixed-use development is appropriate for this site, which is located in close proximity to public transportation and is adequately served by existing public services and facilities.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the present character of the surrounding area and are not inconsistent with the Comprehensive Plan. The Commission concludes that the project's benefits and amenities represent a reasonable tradeoff for the requested development flexibility.
7. Approval of this application is appropriate because the proposed development is consistent with the present character of the area and 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.

8. Approval of this application and the related map amendment is not inconsistent with the Comprehensive Plan or with the site's designation for medium-density residential land uses on the Future Land Use Map.
9. The Final Plans are consistent with the conditions set forth in the Z.C. Corrected Order No. 05-36, as modified by Z.C. Order No. 05-36B.
10. Pursuant to 11 DCMR § 2608.2, all other provisions of Chapter 26 of the Zoning Regulations, Inclusionary Zoning, do not apply to this application because it was set down for hearing prior to March 14, 2008.
11. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
12. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the issues and concerns raised by the affected ANC in its written report. The Commission has carefully considered the report submitted by ANC 6C and concurs in its recommendation of approval.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission orders **APPROVAL** of the application for second-stage review and approval of a Planned Unit Development on a portion of Lot 67 in Square 749. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the architectural plans and elevations dated June 2, 2008 and marked as Exhibit 38 of the record in this case (the "Final Plans"), and as modified by the guidelines, conditions, and standards of this Order. The Applicant shall have the flexibility to modify the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators and bathrooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;

- c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railing and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit;
 - d. To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation;
 - e. To increase or decrease the overall number of residential units by no more than five percent, provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Z.C. Corrected Order No. 05-36; and
 - f. To vary the number and location of parking spaces in the underground garage, provided that the total number of parking spaces is no less than 545 vehicle spaces and 55 bicycle spaces.
2. The Phase II PUD shall have an overall density of no more than 5.49 FAR. The development shall contain approximately 555,545 square feet of gross floor area, including 13,801 square feet devoted to retail uses. The retail uses in the building shall include a daycare center containing at least 3,446 square feet of gross floor area.
 3. The Phase II PUD shall have a total height of no more than 121 feet, as measured from the measuring point on 3rd Street, N.E. identified on Sheet C.6 of the Final Plans. Each floor in the Phase II PUD shall have a minimum floor-to-ceiling height of no less than eight feet, six inches.
 4. The Phase II PUD shall provide a green roof covering at least 16,000 square feet of surface area on the building's roof.
 5. The ground-floor retail space in the Phase II PUD shall have a clear floor-to-ceiling height of no less than 14 feet.
 6. No less than 10% of the gross floor area devoted to residential units in the Phase II PUD shall be reserved for households earning no more 80% of Area Median Income ("AMI") and for the time frames set forth in Z.C. Corrected Order No. 05-36.
 7. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve, at a minimum, the goal of 35% percent participation by local, small, and disadvantaged

business enterprises in the contracted development costs associated with the design, development, construction, and security for the PUD project.

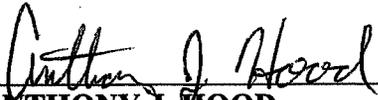
8. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD project.
9. The Owner is required to comply fully 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.*, (the“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 Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.
10. No building permit shall be issued for the construction of any improvements pursuant to this Phase II PUD until the owner of the Subject Property has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs.
11. The PUD approved by the Zoning 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 §§ 2408.8 and 2409.1. Construction shall begin within three (3) years of the effective date of this Order.

On June 16, 2008, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on July 28, 2008, 2008, by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to adopt; Gregory N. Jeffries and Curtis L. Etherly, Jr., not present, not voting).

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In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon its publication in the *D.C. Register*; that is on NOV 14 2008.



ANTHONY J. 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.: 05-36A

As Secretary to the Commission, I hereby certify that on NOV 13 2008 copies of this Z.C. Order No. 05-36A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
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