

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-10**

Z.C. Case No. 06-10

The Morris & Gwendolyn Cafritz Foundation

**(Consolidated and First-Stage Planned Unit Development & Related Zoning Map
Amendment for Squares 3765 and 3769 and Portions of Squares 3766, 3767, and 3768)**

December 14, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on July 2 and October 8, 2009, to consider applications from The Morris and Gwendolyn Cafritz Foundation (the "Applicant") for first-stage and consolidated review and approval of a planned unit development ("PUD"), and related Zoning Map amendment from the R-5-A and FT/C-3-A Zone Districts to the C-2-B and FT/C-2-B Zone Districts for properties in Squares 3765, 3766, 3767, 3768, and 3769. The Commission considered the applications pursuant to Chapters 24 and 30 of the 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

The Applications, Parties, and Public Hearing

1. On October 8, 2008, the Applicant, the owner of property in Square 3765 (all), Square 3766 (Lots 1, 2, 3, 4, 800), Square 3767 (Lots 1-5, 806), Square 3768 (Lots 1-2), and Square 3769 (all), measuring approximately 656,298 square feet (collectively, the "Property"), filed applications for first-stage and consolidated review and approval of a PUD and related Zoning Map amendment from R-5-A and FT/C-3-A to a combination of C-2-B and FT/C-2-B for the Property (collectively, the "Applications"). Consolidated PUD approval was requested for Square 3765 (portions of Lots 800 and 802), Square 3767 (portion of Lot 806), Square 3768 (Lots 1 and 2), and all of Square 3769 for the Property.¹

¹ The Applicant originally filed applications for first-stage and consolidated PUD review and a related Zoning Map amendment on February 15, 2006, on a slightly smaller portion of the Property (not including Lots 1 and 2 in Square 3766 and Lot 5 in Square 3767), which applications were scheduled for hearing action consideration by the Commission on July 24, 2006. On July 19, 2006, the Applicant submitted a letter request to the Commission to postpone hearing action consideration to allow the Applicant opportunity to study potential modifications to the first-stage and consolidated portions of the applications.

2. By Preliminary Report dated January 30, 2009, the District of Columbia Office of Planning ("OP") recommended that the Commission schedule a public hearing for the Applications.
3. At its February 9, 2009, public meeting, the Commission determined to schedule the Applications for public hearing.
4. The Applicant filed its supplemental statement and request for hearing date with the Office of Zoning on April 22, 2009.
5. The Commission held a public hearing for the Applications on July 2, 2009, which was continued to October 8, 2009. The Commission heard testimony from the Applicant, including its expert witnesses in architecture and urban design, land use and zoning, traffic analysis and management, civil engineering, and land economics. The Commission also heard testimony in support of the Applications from Advisory Neighborhood Commission ("ANC") 5A, the ANC within which the Property is located. The Commission granted party status and received testimony in conditional support from the Lamond-Riggs Citizens Association ("LRCA"), a community organization whose boundaries include the Property. ANC 4B, whose boundary abuts a portion of the Property, was granted party status *in absentia* but did not participate in the hearing nor submit a written report for the record. Testimony was also received from OP and from persons in support and in opposition to the Applications, including the President of the Riggs Plaza Apartments Tenants Association, a number of persons currently residing at the Property, the ANC 5A Single Member District representative whose district includes a portion of the Property, and a representative of the Food & Friends organization. Testimony was received on behalf of Ward 5 Councilmember Harry Thomas in support of the Applications and on behalf of Ward 4 Councilmember Muriel Bowser in conditional support of the Applications. The District of Columbia Department of Transportation ("DDOT") submitted memoranda in support of the Applications with conditions. Correspondence was received into the record from the Deputy Mayor for Planning and Economic Development in support of the Applications.
6. In anticipation of the October 8th continuation hearing, the Applicant filed its second supplemental filing with the Commission on September 18, 2009. This supplemental filing included refined architectural designs for Building A, the portion of the Property being requested for consolidated PUD approval. The filing also included a further clarified summary of the Applicant's affordable housing commitments and standards.
7. At the conclusion of the October 8th public hearing, the Commission closed the record except for certain materials that it requested the Applicant to provide with regard to further design refinements to Building A, additional perspective drawings of portions of Building A, and a further revised and clarified summary of the Applicant's proposed

package of project amenities and community benefits, including proposed timing. The Applicant provided this additional information to the Commission by submission dated October 22, 2009.

8. At its November 9, 2009, public meeting, the Commission took proposed action to approve the Applications with conditions. At the suggestion of the Office of the Attorney General ("OAG"), the Commission ordered the Applicant to submit a final list of the public benefits and amenities it was proffering for the consolidated PUD, along with a listing of the conditions it would agree to follow in order to make each and every proffer specific and enforceable by November 16, 2009 and serve that list on OAG, OP, and the parties. The Commission instructed OAG and OP to complete any dialogue they felt was necessary with respect to any perceived deficiencies in the Applicant's proposed conditions by November 23, 2009, and for the Applicant to serve OAG, OP, and the parties with a revised list of conditions by November 30, 2009. The Commission further instructed that by December 7, 2009, OAG, OP, and the affected parties must file any responses to the revised conditions, with OAG's response to be treated as a privileged attorney-client communication.
9. By letter dated November 16, 2009, the Applicant submitted a table identifying its final proffer of benefits and amenities, and the conditions it believed would make the proffer enforceable. OAG and OP discussed the proposed conditions with the Applicant, and on November 30, 2009, the Applicant submitted a revised list of conditions. On December 7, 2009, OP and OAG submitted their comments to the revised conditions.
10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated November 24, 2009, found that the Applications would not have any adverse impact on the federal interests.
11. The Commission took final action to approve the Applications at its public meeting on December 14, 2009.

The Property and Surrounding Area

12. The Property, which is roughly L-shaped, is located in Northeast Washington and is bounded generally on the south by Galloway Street, N.E., on the east by South Dakota Avenue, on the north by the Food & Friends operation and Riggs Road, N.E., and on the west by a 20-foot-wide public alley (located between 3rd and 4th Streets) and a WMATA right-of-way.
13. The Property consists of Lots 1, 2, 3, 4, 800, and 802 in Square 3765, Lots 1, 2, 3, 4, and 800 in Square 3766, Lots 1, 2, 3, 4, 5, and 806 in Square 3767, Lots 1 and 2 in Square 3768, and Lots 1, 2, 3, and 804 in Square 3769. The total land area for the Property, excluding abutting public rights-of-way proposed to be closed and dedicated, is

approximately 656,298 square feet (15 acres). This land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-2-B Zone District established in § 2401.1(a) of the Zoning Regulations (11 DCMR), does not include approximately 153,000 square feet (3.5 acres) of portions of Hamilton, Kennedy, and 4th Streets, N.E., and public alleys in Squares 3765 and 3769 proposed to be closed. The Applicant, in turn, proposes to dedicate new public street portions for Kennedy and Ingraham Streets, N.E., running east-west through the site, measuring a total of approximately 63,415 square feet (1.45 acres).

14. The Property has been improved with a complex of 15 aging low-rise, walk-up multifamily residential buildings constructed by Morris Cafritz in the 1950s, known as the Riggs Plaza Apartments, focused primarily along 4th Street, N.E., and consisting of approximately 233 residential units. A number of these buildings are now vacant, and only approximately half of the units are currently occupied. There is no community, cultural, retail, or enclosed recreational space currently provided at the complex. The Property also includes three small warehouse buildings adjacent to the WMATA right-of-way that are currently used for food catering operations. All of the existing structures would be demolished in phases to allow for construction of the PUD.
15. The Fort Totten Metrorail Station, serving trains on three transit lines (Red, Green, and Yellow) is located a few hundred feet to the southwest of the Property.
16. South of the Property, across Galloway Street, N.E., (60 feet wide) is Fort Totten Park, part of the National Park Service's Fort Circle Parks system.
17. To the west of the Property, across a 20-foot-wide public alley, is the recently-completed Fort Totten Station Apartments, which was constructed as a matter-of-right as a complex of four- and five-story buildings devoted to multi-family residential uses, including very minimal retail uses.
18. Bounding the property to the east is South Dakota Avenue, measuring 120 feet in width, and which to the immediate north of the site intersects Riggs Road by means of an extensive connecting road network. Across South Dakota Avenue from the site is the former Bertie Backus School, which is in process of being reprogrammed for use by the University of the District of Columbia, a number of detached dwellings, the Lamond-Riggs Branch Library, a gas station, and a convenience store.
19. Along the north edge of the Property, there is a steep drop off in grade to the neighboring development, which has recently undergone redevelopment by the Food & Friends organization. The northern portion of the Property is also bounded by the WMATA right-of-way.

Existing and Proposed Zoning

20. The Property is split-zoned, with portions of the site located in the R-5-A and FT/C-3-A Zone Districts, respectively. Approximately 450,750 square feet of land is located in the R-5-A Zone District, and approximately 110,991 square feet, in portions of Squares 3766 and 3767, is located in the FT/C-3-A Zone District, not including public rights-of-way.
21. The R-5 Zone Districts are general residential districts designed to allow flexibility of design by permitting in a single district all types of urban residential development, including single family dwellings, semi-detached houses, row dwellings, and apartments, if they conform to certain established height, density, and area requirements. The R-5 Zone Districts also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from more restrictive residential districts.
22. The maximum height permitted in the R-5-A Zone District is 40 feet and three stories. Residential development may achieve a maximum density of 0.9 floor area ratio ("FAR"). Lot occupancy is restricted to 40%.
23. The C-3-A Zone Districts permit medium-density development, with a density incentive for residential development within a general pattern of mixed-use development. Height in the C-3-A Zone Districts is permitted to a maximum of 65 feet with no limit on the number of stories. A total building density of 4.0 FAR is permitted, however not more than 2.5 of that amount may be devoted to uses other than residential uses.
24. The Fort Totten Overlay ("FT") provides a mechanism to protect existing industrial uses while at the same time promoting and protecting surrounding residential and non-residential uses consistent with the Comprehensive Plan.
25. The Applicant requests rezoning of the Property to the C-2-B Zone District, with the FT Overlay to remain applicable to that portion of the Property where it currently applies, namely Lots 1 and 2 in Square 3766 and Lot 5 in Square 3767. The C-2-B Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core, and permits high-density residential and mixed-use development. The C-2-B Zone District is a general commercial district, permitting a broad range of retail, service and office uses, hotels, residential uses (single- and multi-family), and many institutional uses. The maximum permitted height in the C-2-B Zone District is 65 feet. The maximum density is 3.5 FAR, not more than 1.5 FAR of which may be devoted to non-residential uses. Maximum permitted lot occupancy in the C-2-B Zone District is 80%.
26. The Applicant proposes the rezoning of the Property to C-2-B and FT/C-2-B in combination with the PUD. Pursuant to the PUD development standards set forth in Chapter 24 of the Zoning Regulations, development in the C-2-B Zone Districts is

permitted to a maximum of 90 feet and 6.0 FAR, and not more than 2.0 FAR may be for non-residential uses. The PUD proposes an FAR substantially below what would be permitted under the new zoning.

Nature of Consolidated and First-Stage PUD

27. The Applications before the Commission are for both first-stage and consolidated review of a PUD, which, once constructed, promise to revitalize the Applicant's 15-acre property with a dramatic mixture of residential, commercial, and arts and cultural uses, as well as to bring significant economic, social, and cultural investment to a community in northeast Washington that has seen little such investment in more than a generation. The proposed redevelopment project involves the phased replacement and reprogramming of property that has been owned by the Applicant for decades, and which is currently improved with an aging complex of low-rise multifamily residential buildings and three small warehouse buildings, through the construction of a new mixed-use complex of four buildings, complete with more than 900 residential rental units and amenities, a full-service grocery store, significant community-serving retail and cultural uses, a state-of-the-art children's museum, and other significant amenities and community benefits. In addition to these significant benefits, the proposed redevelopment fulfills the District's transit-oriented development objectives for increased residential opportunities near Metrorail and ready access to public transportation.
28. To accomplish this program, the Applicant seeks first-stage PUD review and approval for the entire Property, consolidated PUD review and approval for the southernmost portion of the Property (that portion located south of, and including, the proposed extension of Ingraham Street, N.E.), and a related Zoning Map amendment from the existing R-5-A and FT/C-3-A zoning to C-2-B zoning. The portion of the Property currently subject to the FT Overlay is proposed to remain subject to the FT Overlay.
29. The Applicant proposes to demolish the aging Riggs Plaza Apartments complex in phases without displacing current residents and to construct on the Property a mixed-use project of four buildings - referenced in the Applicant's materials as Buildings A, B, C, and D. Building A is the only building presented for consolidated PUD review in the Applications. Upon completion, the PUD will consist of approximately 929 units of multi-family rental housing, including approximately 171 income-restricted units (of which, 98 units will serve as dedicated seniors' residences). With regard to income restrictions, the Applicant has identified eligible households as follows: (1) *relocating Riggs Plaza Tenants* – approximately 115 units in Building A (including 72 of which will be seniors units) serving household income not to exceed 60% of the Area Median Income ("AMI") of the Washington, DC, Metropolitan Statistical Area, adjusted for family size; (2) *remaining seniors' units* – approximately 26 units total, all in Building A, six of which will serve household income not exceeding 60% of AMI and 20 of which will serve household income not exceeding 80% of AMI; and (3) Building C affordable

units – approximately 30 units, all of which will serve household income not exceeding 80% of AMI.

30. The PUD will also include approximately 315,000 square feet of retail uses, including a grocery and anchor retail use, and approximately 300,000 square feet devoted to cultural, arts, and community uses. Throughout the PUD, approximately 2,361 parking spaces will be provided in a combination of structured parking and underground parking.
31. After completion of the proposed street and alley closings and the dedication of new public rights of way, the Property will contain approximately 656,298 square feet of land area and approximately 2,018,880 gross square feet of construction, resulting in a total building density of approximately 3.08 FAR. Of that amount, approximately 873,400 square feet (1.33 FAR) will be devoted to non-residential uses, including non-residential parking. Overall, approximately 461,270 square feet (0.70 FAR) of the total gross square footage will be devoted to above-grade structured parking. Excluding the portion of above-grade parking dedicated to non-residential uses, only approximately 0.91 FAR (595,305 square feet) of the total construction on the Property will be devoted to non-residential uses. Pursuant to the development standards of Chapter 24 of the Zoning Regulations, a maximum of 6.0 FAR, including 2.0 FAR non-residential, is permitted in the C-2-B Zone Districts. Total lot occupancy for the PUD will not exceed 73%.
32. Building heights are proposed to range from 60 feet (Building B) up to 90 feet (Buildings C and D), the permitted maximum for a PUD in the C-2-B Zone District.
33. The residential components of the PUD are proposed to be located in two separate buildings on the Property, with approximately 529 units to be provided in Building A at the southernmost portion of the Property, atop a new grocery store, additional ground floor retail uses, and structured parking. Not fewer than 141 of these units will be income-restricted units, and 98 of the 141 units will be reserved for senior citizens aged 62 years or older, as detailed below. Tenants of the Riggs Plaza Apartments will have priority to relocate to Building A, as discussed below. The Applicant has requested flexibility to vary the total number of residential units in Building A between 510 and 550 units so long as a total of approximately 526,930 gross square feet of residential uses is provided.
34. Building A will have a total gross floor area of 804,880 square feet (3.72 FAR) on its own site, of which not more than 150,205 gross square feet will be devoted to non-residential uses, including accessory parking. Non-residential uses will include a grocery store of approximately 59,000 square feet, ground floor retail totaling approximately 53,000 square feet, approximately 19,210 square feet of flexible commercial space, and a 7,250 square foot child care center. Building heights will range from 55 feet (at the corner of South Dakota Avenue and the newly-extended Ingraham Street) up to a maximum of approximately 74 feet. A total of 681 parking spaces will be provided in a

- combination of underground and structured parking, 344 of which will be devoted to residential uses. Building A will have a maximum lot occupancy of approximately 87%.
35. Building B is located at the center of the Property, fronting South Dakota Avenue and bounded to the south and north, respectively, by the proposed extensions of Ingraham Street and Kennedy Street, with Building A to its south and Buildings C and D to its north. This three-story building is planned to include significant anchor retail and supporting retail uses. This building will also include a children's museum (approximately 47,000 square feet) as well as recreational and meeting space for resident and community seniors, with a total gross floor area of 456,000 square feet, all of which would be for non-residential uses. A total of approximately 1,100 parking spaces in structured parking is proposed for Building B. Building B will have a maximum lot occupancy of approximately 76%.
 36. Another 400 residential units, including not fewer than 30 income-restricted units, will be provided in Building C, an eight-story, 90 foot-tall building located at the north end of the Property. This apartment building will have a total building density of approximately 3.46 FAR (520,000 gross square feet) on its own site, all devoted to residential uses. The planned income-restricted units in Building C will be rented to tenants qualified by the Applicant as having a total household income not exceeding 80% of AMI as of the date of occupancy of Building C, with an affordability control period of 20 years from initial occupancy. Building C, which will have a roughly H-shaped footprint, will contain approximately 420 parking spaces provided in structured parking wrapped by residential uses. The Applicant is designing Building C to span a private drive to end in a cul-de-sac in anticipation of a possible connection of 3rd Street, N.E., to Riggs Road should the Food & Friends property undergo redevelopment in the future. Building C will have a maximum lot occupancy of approximately 48%.
 37. Building D, which will be located along South Dakota Avenue at its intersection with the reconfigured Kennedy Street, N.E., will contain rehearsal and support space for Washington-area performing arts institutions, will serve as a location for community-gatherings and performances, and is planned to include space for a state of the art branch library. This building will measure seven stories and 90 feet, with a total density of approximately 3.25 FAR (238,000 gross square feet) on its own site, all of which will be devoted to non-residential uses. Approximately 160 parking spaces will be provided in Building D, with additional parking for Building D users anticipated to be shared with Building B. Building D will have a maximum lot occupancy of approximately 71%.
 38. The PUD also includes a number of ground level open spaces, including: Morris Square, immediately abutting Building D at the corner of South Dakota Avenue and Kennedy Street; the Plaza, running along South Dakota Avenue in front of Building B; the retail streetscape along both sides of the proposed Ingraham Street extension; Art Point, adjacent to Building A at the corner of South Dakota Avenue and Galloway Street;

Totten Place, the vest pocket park along Galloway immediately adjacent to the private driveway; and the courtyards and other open space adjacent to Building C. In addition to the many and varied ground level open spaces, Building A contains a series of above-grade courtyards, serving as green roofs above the retail base of Building A, to be used by residents of Building A as well as a playground for children at the child care center.

39. The Applicant also proposes to construct a third southbound traffic lane in that portion of the public space running adjacent to the Property along South Dakota Avenue. As recommended by DDOT, the Applicant anticipates that this additional lane will provide a traffic-calming effect by allowing parallel on-street parking at all hours.
40. The Applicant has indicated that it intends to pursue sustainability certification for the entire PUD under the United States Green Building Council's LEED Neighborhood Development (ND) rating system once that program takes effect. The Applicant will also pursue certification for Building A under the LEED New Construction (NC) rating standard, and has committed to achieving not fewer than 26 points under that system. Finally, the Applicant has committed to pursuing certification for Building A under the Green Communities 2008 criteria.

Description of Consolidated PUD

41. The Applicant will initiate its redevelopment at the southernmost portion of the Property, bordered by Galloway Street on the south, South Dakota Avenue on the east, a service alley on the west, and newly-extended Ingraham Street on the north. Here, the Applicant envisions a mixture of residential, retail, and service uses - a level of investment not seen in the area in decades, including a full service grocery store, community-serving ground-level retail, a child care center for Building A and neighborhood residents, an office for use by ANC 5A - all in a building constructed of high-grade materials and designed to minimize its massing and to maximize views and open spaces. Building A is proposed for consolidated PUD review.
42. Given the significant slope of this portion of the Property, from the Metrorail Station and points west, Building A reads as three separate five- to six-story apartment buildings separated by a courtyard in one instance and a private drive in another instance. These "buildings", which are actually a single building for zoning purposes given their above-grade connections, are drawn together by a central pavilion, which serves as a primary entrance to the residential building. A 7,250 square foot child care center, with adjoining tot lot, is located on the first residential level of Building A, with drop-off and pick-up to occur by virtue of a lay-by lane created along Galloway Street.
43. As viewed from South Dakota Avenue, the residential "buildings" comprising Building A are actually located atop a two-story commercial base, which includes a grocery store (approximately 60,000 square feet), multi-level retail spaces along a newly-extended Ingraham Street, as well as along South Dakota Avenue, and Galloway Street, and an

internalized loading and delivery corridor with entrance from Galloway Street and exit to South Dakota Avenue. The height of Building A measures approximately 55 feet along South Dakota Avenue between Hamilton and Ingraham Streets.

44. The Applicant is proposing to provide approximately 527,000 square feet of residential rental units in Building A. So long as the total square footage remains unchanged, the Applicant has requested flexibility to provide between 510 and 550 residential units in Building A. These rental units will include a mixture of market-rate units, income-restricted units, age-restricted units, and units reserved for relocated Riggs Plaza Apartments tenants, with general allocation of units as shown on Sheet 2.00g of the Applicant's drawings submitted on September 18, 2009. (Exhibit 71.) The residential units will be operated as follows:
- a. Of the 141 income-restricted rental units reserved in Building A, all tenants in good standing of Riggs Plaza Apartments at the time of the completion of Building A who wish to relocate to Building A will be provided a comparable dwelling unit in Building A subject to local and federal regulations pertaining to unit size and type;
 - b. The Applicant's current anticipation is that approximately 72 households relocating from Riggs Plaza Apartments at the time of completion of Building A will qualify as seniors' households (62+ years) and will be offered comparable units in the 98-unit seniors housing portion of Building A. Approximately 43 additional Riggs Plaza Apartments households not meeting the seniors' criteria are also anticipated to be eligible to relocate to Building A. Those households will be offered comparable units in Building A, again subject to applicable rules and regulations pertaining to unit size and type;
 - c. All of these relocating Riggs Plaza Apartments households (approximately 115 households) will be eligible to move into rental units in Building A that will remain income-restricted for so long as that household remains a tenant or for 20 years, whichever is longer. The maximum household income for these units will be not more than 60% of then-applicable Metropolitan AMI. In actuality, the Applicant is working with these households, many of which have incomes far below this threshold level, to ensure that during their tenancies, their rents in the future will remain consistent with their current rent levels, subject to CPI; and
 - d. For the approximately 26 income-restricted units remaining in Building A ($141 - 115 = 26$), should all the anticipated Riggs Plaza Apartments tenants elect to relocate to Building A, all of these units are anticipated to be reserved as affordable seniors' units, which would be available to qualified area residents aged 62+ years to be determined by lottery system to be administered by the Applicant. These units would be income-restricted for a period of 20 years. Six of the 26 units are proposed to be restricted to households whose total income

does not exceed 60% of Metropolitan AMI. The remaining 20 units will be restricted to incomes not exceeding 80% of Metropolitan AMI.

45. A total of 681 parking spaces will be provided in Building A, 344 spaces of which will be devoted for residential use, and the remaining 337 spaces will be utilized for non-residential uses on the lower floors. The 344 residential parking spaces will be located in six levels of structured parking along the western edge of Building A, wrapped by residential uses on three sides and a green screen. The 337 spaces devoted to non-residential uses will be located on the lowest two levels, in a garage spanning the breadth of the Property.

Development Incentives and Flexibility Requested

46. The Applicant requests the following areas of flexibility from the C-2-B requirements and PUD standards to facilitate development of Building A:
- a. To provide multiple roof structures, not all of which meet the 1:1 setback requirement from the exterior walls of the building;
 - b. To provide less than the minimum required side yard on the west side of Building A;
 - c. To vary the total number of residential units provided in Building A between 510 and 550 units, so long as the total residential square footage is not diminished, and further, so long as not fewer than 141 such units are income-restricted as provided herein, and 98 of said 141 units are further restricted for rental by qualifying senior households, with relocating residents of the Riggs Plaza Apartments to have priority for relocation to Building A;
 - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - e. 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 materials;
 - f. To make minor refinements to exterior 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; and

- g. To determine the use of the approximately 19,000 square feet identified in the Applicant's plans as "flex space" between retail, service, office, and residential uses, according to market demands.

Public Benefits and PUD Amenities

47. The Commission finds that the following superior benefits and amenities will be created as a result of the PUD:

- a. *Housing and Affordable Housing.* The production of housing is a public benefit that the PUD process is designed to encourage. To that end, the single greatest benefit of the PUD is the approximately 929 new residential units that will be constructed to replace the approximately 233 aging rental units on the Property, all without dislocation of existing residents. Furthermore, a significant portion of these units, approximately 171 units, more than 18% of the total, will be income-restricted and heavily subsidized by the Applicant. A significant portion of these income-restricted units will be further restricted to provide opportunities for senior citizens, those currently residing on site as well as others in the community. Finally, through the Applicant's phased approach to the redevelopment of the Property, impacts upon existing residents will be minimized and will allow interested Riggs Plaza tenants to relocate during the first phase of redevelopment to Building A.

- b. *Urban Design and Architecture.* The PUD follows the transit-oriented development ("TOD") model, which stresses six design principles, namely: (1) orientation and connectivity; (2) quality public realm and amenities; (3) pedestrian-friendly, safe environment; (4) attractive architecture and design; (5) a mixture of uses; and (6) creative parking management. The PUD satisfies these criteria in the context of the surrounding area. Among the benefits attributed to TOD are increased neighborhood livability, reduction in automobile traffic, flexibility in housing offerings, maximization of past municipal investments and related reduction in additional infrastructure costs, improved air and water quality, and increased property values. The demonstrated results of successful TOD include increased property values, tax base, and economic strength throughout a neighborhood as well as protection of the existing neighborhood character by focusing development nearest transit.

As exemplified by the refined designs and materials proposed for Building A, the PUD offers a level of site planning and architectural design that exceeds most matter of right projects anywhere in the District.

Another aspect of the PUD that is of special urban design value to the neighborhood is the concept of Morris Square as a community focal point. Morris Square will mark the intersection of various exciting uses proposed for the

PUD—desirable retail space, children's museum, seniors' center, public library, performing arts spaces, and restaurants – forming, in conjunction with the Plaza running in front of Building B along South Dakota Avenue, a lively and diverse streetscape, a true destination for the neighborhood and the region.

- c. *Site Planning and Efficient Land Utilization.* The PUD makes very efficient use of its shape and topography. The PUD is also an efficient and economical use of land in that it will generate a significant amount of revenue for the District in the form of vastly increased property and sales taxes as well as income taxes payable by new residents. According to the Applicant, once completed, the PUD will generate annual tax revenue of approximately \$18,500,000. More than 2,000 permanent jobs are anticipated to be created as part of the development of the PUD. The Applicant's investment in the PUD likely will attract other investments in the Fort Totten neighborhood, resulting in benefits to the larger community.
- d. *Transportation.* Off-street parking and loading provided in the PUD meets or exceeds requirements set forth in the Zoning Regulations. The PUD includes a total of 929 dwelling units in Buildings A and C; a total of 764 parking spaces will be supplied for those units, all in structured parking. In addition, a total of approximately 1,597 parking spaces will be provided for the 668,620 square feet of non-residential uses included in the PUD. Loading facilities will be included for all residential and non-residential uses proposed for the PUD. With regards to Building A, loading functions are provided by means of an enclosed tunnel with ingress from Galloway Street and egress to South Dakota Avenue, with additional loading capacity within the underground parking area. In either event, loading is provided in a front-in/front-out fashion. The PUD also provides connectivity throughout the site, allowing for pedestrian and vehicular circulation opportunities and access to the Fort Totten Metrorail Station not currently available.

Several new roadway features are also proposed, including the extension of Ingraham Street to the west, from South Dakota Avenue, across the Property, connecting to the Hamilton Street right of way provided as part of the neighboring Fort Totten Station apartments project. This block of Ingraham Street is proposed to serve as a retail boulevard, marked at its east by the entrance to Building B's major retail at the intersection with South Dakota Avenue and by the grocery store proposed for Building A. At the same time, the Applicant proposes the relocation and reconfiguration of Kennedy Street, with a right of way width of approximately 70 feet. As with Ingraham Street, Kennedy Street will intersect with a right of way for 3rd Street, N.E., to be provided as part of the neighboring Fort Totten Station apartments project. In addition, first-stage plans for the PUD extend this 3rd Street right of way north to the Property's boundary with Food & Friends, offering a potential future connection with Riggs Road, N.E., should the

adjacent property be redeveloped in the future. The Applicant likewise proposes to reconstruct the curb and a new southbound lane for South Dakota Avenue along the Property's frontage. Pursuant to consultation between the Applicant and DDOT, this land would be utilized for parking during peak and non-peak hours.

Finally, the Applicant has established a transportation demand management plan in coordination with DDOT.

- e. *Employment and Training Opportunities.* The PUD will provide a number of employment and training opportunities. Approximately 3,500 construction and related jobs are contemplated to be generated over the course of construction of the PUD. At build-out, more than 2,100 permanent jobs in the retail, residential, and cultural sectors are anticipated at the site. To that end, the Applicant has entered into a First Source Employment Agreement with the District's Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for a significant percentage of the jobs created by the PUD.
 - f. *Uses of Special Value to the Neighborhood or the District as a Whole.* The PUD offers a host of uses not currently available to the Fort Totten community. In addition to significant new retail and residential opportunities, including a full-service grocery, the PUD offers such unprecedented cultural opportunities in the community as a sizeable children's museum, a daycare facility, practice, relief and support space for major regional performing arts companies, and potentially a new library.
48. The Commission finds that the PUD is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities related to housing and affordable housing, urban design and architecture, uses of special value to the neighborhood, job training and employment opportunities, and transportation measures.

Compliance with Comprehensive Plan

49. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan, as follows:
- a. *Land Use and Policy Maps.* The Applicant's proposal to construct a mixed used development that includes residential, retail, community and arts uses not to exceed eight stories on the Property is consistent with the Future Land Use Map and Generalized Policy Map. The Future Land Use Map designates the Property

for Medium Density Commercial and Medium Density Residential land uses. The Medium Density Commercial designation defines shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas and generally do not exceed eight stories in height. Retail, office, and service businesses are the predominant uses. The Medium Density Residential designation defines neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use, but also applies to taller residential buildings. The Generalized Policy Map designates the Property partially as a Neighborhood Conservation Area and partially as a Land Use Change Area.

- b. *Land Use Element.* The PUD is consistent with the policy of concentrating redevelopment efforts near Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. The project is a five minute walk from the Fort Totten Metrorail Station, which will support transit and reduce reliance on automobile use while respecting the character and needs of the surrounding area. The proposed development includes approximately 929 residential rental units, including 98 units devoted to seniors' housing, supporting the policy of establishing housing adjacent to Metrorail stations. The PUD has been designed to encourage transit use and helps to enhance the safety, comfort, and convenience of passengers walking to the Fort Totten Metrorail Station or transferring to and from local buses.
- c. *Transportation Element.* The PUD is an example of transit-oriented development, providing a mix of uses in a location that is a five minute walk from a Metrorail Station. Residents will be able to live, shop, and participate in cultural and recreational activities on-site.
- d. *Housing Element.* The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." (10 DCMR § 501.1.) The PUD helps to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. The development replaces approximately 233 aging dwelling units with approximately 929 new residential units, including not fewer than 171 income-restricted units, of which 98 units will also be restricted for occupancy by senior citizens. The PUD includes both market-rate and affordable housing units. Thus, the PUD will further the District's policy of dispersing affordable housing throughout the city in mixed-income communities, rather than concentrating such units in economically depressed neighborhoods. The development provides affordable housing choices

for the District's seniors within the Fort Totten community, including current residents of the Riggs Plaza complex, where many already reside.

- e. *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality. The PUD includes street tree planting and maintenance, landscaping, energy efficiency, methods to reduce stormwater runoff, and green engineering practices, and is therefore fully consistent with the Environmental Protection Element.
- f. *Economic Development Element.* The PUD furthers the policies of this element in its proposal to include approximately 310,000 square feet of retail uses, including a full-service grocery store, destination anchor retail and community-serving ground level retail uses. The retail uses will increase access to basic goods and services for the Fort Totten and surrounding neighborhoods and create new and unique shopping experiences, including along the newly-created retail corridor of Ingraham Street. The Applicant has indicated that it intends to market the proposed retail areas to a mix of nationally-recognized chains as well as locally-based chains and smaller specialty stores, which will help to reinforce existing and encourage new retail districts in the immediate neighborhood and help to improve the mix of goods and services available to residents.
- g. *Urban Design Element.* The goal of the Urban Design Element is to "[e]nhance the beauty and livability of the District by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces." (10 DCMR § 901.1.) The PUD has been designed with a keen sense of its place, utilizing contextual architectural design, an appropriate mix of building heights and densities to ensure compatibility with neighboring properties and the topography of the Property, and extensive pedestrian-focus and amenities, including an enlivened streetscape along South Dakota Avenue and the newly-created Ingraham Street retail corridor, Morris Square, and the Plaza.
- h. *Arts and Culture Element.* This element sets forth the goal of expanding neighborhood arts and cultural facilities in order to foster a more stable arts community. The PUD supports the underlying policies of this element, including development of new cultural facilities, and improved distribution and siting of such facilities. The PUD offers rehearsal and support space for prominent Washington-area performing arts institutions and will serve as a location for community-gatherings and performances. In addition, it will include a groundbreaking children's museum. These new arts and cultural facilities will be of

significant value to the Fort Totten community and the city as a whole. The Fort Totten area is one in which cultural facilities have not traditionally been established. The proposed development offers substantial cultural opportunities that will benefit the surrounding community. The proposed development is in close proximity to Metrorail and Metrobus stations that will support visits to the performance space and children's museum.

- i. *Upper Northeast Area Element.* The PUD is consistent with and will help to implement a number of the policy goals identified in the Upper Northeast Area Element, which encourages new transit-oriented housing, community services, and jobs around the Fort Totten Metrorail Station and retail development along South Dakota Avenue and the area's Metro stations. The PUD provides substantial retail uses, including a grocery store, destination anchor retail, and community-serving retail uses that directly support these policies.
- j. *Area Development Plan.* The PUD is also consistent with the Riggs Road/South Dakota Avenue Area Development Plan approved by the District of Columbia Council on March 3, 2009, including a maximum building height of 90 feet for the PUD.

Office of Planning Report

50. By final report dated June 22, 2009, and supplemental report dated September 28, 2009, and through testimony presented at the public hearing, OP expressed its support for the Applications, noting that the PUD has the capability of transforming the area around the Fort Totten Metrorail Station into a model mixed-use transit oriented development. The PUD would provide District-wide public benefits in the form of additional tax revenues and 171 units of affordable housing. It would provide superior amenities for its residents, and would provide floor space for very significant retail services, shops and cultural uses for an underserved area of the District.
51. OP recommended approval of the Applications, while expressing certain continuing reservations regarding the amount of parking proposed as part of the PUD, particularly the amount of parking reserved for residential uses and need for the Applicant to de-link the leasing of the dwelling units from the parking spaces on the Property. In response to concerns raised by OP as part of its final report, the Applicant agreed to reduce by 10% the amount of parking provided as part of Building A and to consider OP's requested parking reduction for the first-stage PUD based upon the Applicant's experiences with Building A, once it is constructed. The Applicant further agreed to lease dwelling units and parking spaces independently from one another.
52. In its supplemental report, OP requested that the Applicant provide certain additional information to the Commission on such issues as the requested flexibility regarding

Building A's roof structures and side yard, First Source Employment Agreement status, updated list valuing the PUD's benefits and amenities, among others. The Applicant responded to the issues raised in OP's supplemental report in the Applicant's written submissions to the Record and by testimony at the public hearings.

53. The Commission concurs with OP's findings in support of the Applications and further finds that the Applicant has adequately addressed the list of requested additional information in OP's September 28th supplemental report.

Other District Agencies

54. By memorandum dated June 29, 2009, DDOT recommended support for the Applications, indicating that it had worked with the Applicant to address transportation-related concerns and that the Applicant would need to follow DDOT's policy for a transportation demand management ("TDM") program. DDOT recommended that parking be allowed at all times along the third southbound lane along South Dakota Avenue that the Applicant proposes to construct, suggested the Applicant continue to study the amount of parking needed to be provided, and recommended that signage be installed in all garages to direct drivers to signalized intersections. By memorandum dated October 6, 2009, DDOT confirmed to the Commission that the Applicant had agreed to a TDM plan with DDOT, including the following commitments: provision of bicycle parking equal to five percent of the number of vehicle parking spaces provided, employment of a freight operations manager, provision of a one-time car-sharing membership for tenants upon request, and provision of a one-time SmarTrip fare card for each residential unit in Building A upon initial occupancy. The Commission concurs with DDOT's recommendation in support of the Applications.
55. The District of Columbia Department of the Environment ("DDOE") submitted a memorandum to the Commission dated June 24, 2009, wherein DDOE noted that the Property contains approximately 0.46 acres that are identified as jurisdictional wetlands on the District of Columbia Wetland Conservation Plan. DDOE acknowledged that it was working with the Applicant to resolve issues relating to redevelopment of this particular portion of the Property and that the Commission need not delay its decision awaiting full resolution of this issue.

ANC 5A

56. By resolution dated June 26, 2009, and through testimony at the public hearing from ANC 5A Chairman Angel Alston, ANC 5A indicated its support for the Applications and chronicled the many meetings, discussions, and presentations held by the Applicant with ANC 5A and the community over the course of many months and years, including meetings and discussions with the ANC 5A Single Member District representatives whose boundaries include the Property.

57. The ANC resolution and testimony noted the importance of the PUD as a dynamic neighborhood revitalization project that will offer many public benefits, including new affordable, senior, and market-rate housing units, much needed services, new permanent jobs, new grocery and retail offerings, and facilities for arts, cultural, recreational, and entertainment purposes. The ANC further noted that the project will generate significant tax revenue for the District of Columbia. Finally, the ANC was impressed that the Applicant was committed to a phased relocation plan for existing tenants that would result in minimal inconvenience and no dislocation.

Lamond-Riggs Citizens Association

58. The Lamond-Riggs Citizens Association ("LRCA") submitted a party status application in opposition to the Applications on June 12, 2009, indicating that its boundaries included the Property and that redevelopment of the site as proposed by the Applicant would impact its constituents. Concerns raised in the party status application included: (a) potential negative effects of increased population in the area as a result of the PUD; (b) building height out of character with the neighborhood; (c) increased demands on parking in the neighborhood; and (d) increased traffic. LRCA was granted party status at the July 2, 2009, public hearing.
59. At the conclusion of the July 2nd public hearing session, the Commission suggested that the Applicant and LRCA representatives should meet to identify issues of agreement and narrow issues of disagreement and concern. The Applicant and LRCA held a meeting on July 15, 2009, and a number of issues regarding parking and traffic management, architecture and design, nature of retail uses, affordable housing, and community involvement were resolved with general agreement by the parties. At the same time, certain other issues could not be agreed upon - such as building heights, density and number of residential units, limits on the number and operating hours of retail uses, and ability of the Applicant to fund a financial package to support certain identified community amenities and programs.
60. At the October 9, 2009, continuation hearing, the LRCA representatives indicated to the Commission that LRCA had revised its position to a party in support of the Applications with conditions. These proposed conditions include the following:
- a. Limit the maximum height of all buildings to no more than five or six stories;
 - b. Limit the number of total residential units to between 750-825;
 - c. Require that the control period for the 171 income-restricted units be perpetual; and
 - d. Require the Applicant to establish a fund in the amount of \$95,000 to fund community programs in the Lamond-Riggs neighborhood.

61. Through its testimony at the hearing and in its submissions to the Record, the Applicant responded to the proposed conditions as follows:
- a. With respect to limited building height, the Applicant noted that its proposal is consistent with the limits of the Riggs Road Area Development Plan. Building A has been refined to break up its massing and to have lowered building height in those portions closest to neighboring residential uses.
 - b. With respect to the number of residential units provided, the Applicant noted that the number requested is a matter of project economics, in order to provide the extensive amount of income-restricted units (approximately 18% of total number of units provided), to off-set the heavy subsidy necessary to provide nearly 100 units of dedicated affordable seniors units and to relocate all of the interested existing Riggs Plaza Apartments tenants. The Applicant further noted that the District's transit-oriented development policy encourages increased residential density near transit corridors. Finally, a significant number of residential units is necessary in order to provide a critical mass for the mixture of non-residential retail, arts, and cultural uses included in the PUD.
 - c. With respect to the affordability control period, the Applicant noted that with regard to the approximately 115 relocating Riggs Plaza Apartment households, the control period is for the term of that tenancy, which may be significantly longer than 20 years. Moreover, the Applicant noted that it is providing nearly 175 income-restricted units, approximately 18% of all residential units in the PUD, and at a significant subsidy.
 - d. With regard to the proposed community fund, the Applicant advised that, as a result of its non-profit foundation status, it is not authorized to offer the sort of financial proffer that a for-profit developer may offer. The Applicant further notes that it is a long-standing property owner and member of the community with no intentions to sell or otherwise dispose of the Property.
62. The Commission appreciates the concerns raised by LRCA on behalf of its membership and is encouraged that LRCA and the Applicant have continued a dialogue and reached a number of points of agreement to allow LRCA to participate as a supporting party to the Applications, with conditions. With respect to the conditions raised by LRCA above, the Commission concurs with the Applicant and finds that such proposed conditions are not appropriate or necessary.

CONCLUSIONS OF LAW

1. Pursuant to § 2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided

that a 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. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
3. The PUD meets the contiguity requirements of § 2401.3 of the Zoning Regulations.
4. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project. (11 DCMR § 2403.3.)
5. The development of this PUD carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
6. The PUD's benefits and amenities are reasonable for the development proposed on the Property. The impact of the PUD on the surrounding area is not unacceptable. Accordingly, the Applications should be approved.
7. Evaluating the PUD according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the Applications qualify for approval. Judging, balancing, and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits herein, in conjunction with the amenities discussed above, are appropriate in this case.
8. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
9. Approval of this PUD and change of zoning is not inconsistent with the purposes and objectives of zoning as set forth in the § 2 of the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.02), including as follows:
 - a. The proposed rezoning is not inconsistent with the Comprehensive Plan;

- b. The proposed rezoning will not produce objectionable traffic conditions;
 - c. The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land; and
 - d. Approval of this PUD will promote general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services.
10. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
11. The Commission may impose development conditions, guidelines, and standards which 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.
12. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 5A's recommendations for approval and concurs in its recommendation. The Commission affords the views of ANC 5A the great weight to which they are entitled. The Commission also qualified ANC 4B as a party to the Applications; however, ANC 4B did not participate in the proceedings before the Commission.
13. 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's recommendations. For the reasons stated above, the Commission agrees with OP's recommendation for approval, and believes the Applicant has addressed all of OP's concerns through revisions to its Applications.
14. The Applications for a PUD and related Zoning Map amendment will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
15. The Applications for a PUD and related Zoning Map amendment are 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 first-stage and consolidated review of a planned unit development and for a related Zoning Map amendment from R-5-A and FT/C-3-A to C-2-B and FT/C-2-B for the Property, located in Squares 3765, 3766, 3767, 3768, and 3769, and public rights of way to be closed. This approval is subject to the following guidelines, conditions, and standards:

1. The first-stage PUD approval shall apply to the following properties: Square 3765, Lots 1, 2, 3, 4, 800, and 802; Square 3766, Lots 1, 2, 3, 4, and 800; Square 3767, Lots 1, 2, 3, 4, 5, and 806; Square 3768, Lots 1 and 2; Square 3769, Lots 1, 2, 3, and 804.
2. The consolidated PUD approval shall apply to that portion of the Property as dimensioned on Sheet 2.09 of the drawings dated October 22, 2009 and included in the Applicant's post-hearing submission dated October 22, 2009. (Exhibit 89.)
3. The following properties shall be rezoned from R-5-A to C-2-B: Square 3765, Lots 1-4, 800, 802; Square 3766, Lots 3, 4, 800; Square 3767, Lots 1-4, 806; Square 3768, Lots 1 and 2; and Square 3769, Lots 1-3, 804.
4. The following properties shall be rezoned from FT/C-3-A to FT/C-2-B: Square 3766, Lots 1, 2, and 5; and Square 3767, Lot 5.
5. The rezoning of the properties included in the first-stage PUD shall not become effective unless a second-stage PUD application is approved for the particular property and the Applicant subsequently records the covenant required by 11 DCMR § 2409.3.
6. The consolidated portion of the PUD shall be developed in accordance with the plans submitted to the Commission on September 18, 2009, as amended and supplemented by the plans submitted on October 22, 2009, located, respectively, at Exhibits 71 and 89 of the record (collectively, the "Plans"), and the guidelines, conditions, and standards herein.
7. The PUD, upon completion, shall include a maximum of 2,018,880 gross square feet. The distribution of uses and densities, and the amount of parking and loading, shall be as shown on Sheet 8 (Development Data) of the Plans, as follows:
 - a. Building A shall have a maximum total gross floor area of 804,880 square feet (3.72 FAR) on its own site, of which not more than 150,205 gross square feet shall be devoted to non-residential uses, including accessory parking. Non-residential uses shall include a grocery store of approximately 59,350 square feet, ground floor retail totaling approximately 53,000 square feet, approximately 19,210 square feet of flexible commercial space, and a 7,250 square foot child

care center. Building heights shall range from 55 feet (at the corner of South Dakota Avenue and the newly-extended Ingraham Street) up to a maximum of approximately 74 feet. A total of approximately 681 parking spaces shall be provided in a combination of underground and structured parking, approximately 344 of which shall be devoted to residential uses. Building A shall have a maximum lot occupancy of approximately 87%;

- b. Building B shall be constructed as a three-story building not to exceed 60 feet in height and shall include approximately 203,000 square feet of anchor retail and supporting retail uses, an approximately 47,000 square foot children's museum, as well as recreational and meeting space for resident and community seniors, with a total gross floor area not to exceed 456,000 square feet, all of which would be for non-residential uses. Building B shall have a maximum lot occupancy of approximately 76% and contain approximately 1,100 parking spaces;
- c. Building C shall measure eight stories and a maximum height of 90 feet and contain approximately 400 residential units, including not fewer than 30 income-restricted units. This building shall have a total building density of approximately 3.46 FAR (not to exceed 520,000 gross square feet) on its own site, all devoted to residential uses, and shall contain approximately 420 parking spaces. Building C shall have a maximum lot occupancy of approximately 48%; and
- d. Building D shall have seven stories and a maximum height of 90 feet, with a total density of approximately 3.25 FAR (not to exceed 238,000 gross square feet) on its own site, all of which shall be devoted to non-residential uses including rehearsal and support space for Washington-area performing arts institutions, with a reservation of approximately 20,000 square feet space for a new branch library. Building D shall have a maximum lot occupancy of approximately 71%. Approximately 160 parking spaces shall be provided in Building D.

The Commission directs the Applicant to review its proposed parking numbers as it proceeds with second-stage PUD review of Buildings B, C, and D, to study the feasibility of reducing parking counts and/or sharing parking among uses and users.

- 8. The Applicant shall provide not fewer than 171 income- and age-restricted residential rental units pursuant to the development standards set forth at Exhibit C of the Applicant's September 18, 2009, supplemental filing, included as Exhibit 70 of the record.
- 9. The Applicant shall demolish existing portions of Hamilton Street, N.E., and public alleys, and construct at its own expense an extension of Ingraham Street, N.E., as generally shown on Sheet C-10 of the Plans, which right of way will be dedicated to the District of Columbia upon District of Columbia Council approval (and subject to DDOT

and DC Water and Sewer Authority review, as applicable) of street and alley closing applications and a new street dedication application. Such construction shall include installation of brick sidewalks, storm drains, LID tree pits, curbs and gutters, relocation of water and sanitary sewer, and relocation of dry utilities underground.

10. The Applicant shall construct, furnish, and maintain/operate in Building A community spaces for use by residents, as shown generally on Sheet 2.03 of the Plans, totaling approximately 20,835 square feet.
11. The Applicant shall construct and outfit approximately 7,250 square feet of space in Building A, as generally shown on Sheet 2.02 of the Plans, for market lease to a qualified child care center operator, including access to a tot lot.
12. The Applicant shall construct approximately 112,000 square feet of retail space in Building A, as generally shown on Sheet 2.02 of the Plans, including approximately 59,350 square feet of space to be constructed and reserved to be leased as a grocery store.
13. The Applicant shall construct, at its own expense, on the Applicant's property and in public space, public plazas and spaces, as generally shown on Sheets 2.22 through 2.26 of the Plans, to include a hardscaped triangular plaza at the Galloway and South Dakota Avenue intersection, the private drive across Building A from Galloway Street to Ingraham Street, and the hardscaped plaza at the intersection of Ingraham with the public alley along the west of the site.
14. The Applicant shall construct and install, at its own expense, on the Applicant's property and in adjacent public space, landscaping, hardscaping, lighting, and art, as generally shown on Sheets 2.22 through 2.26 of the Plans, to include hardscape along the new extension of Ingraham Street and along South Dakota Avenue, alley hardscape, installation of street trees, shrubs, and groundcover.
15. The Applicant shall construct and install, at its own expense, at Building A rooftop terrace landscaping and hardscaping, as generally shown on Sheets 2.22, 2.25, 2.25a and 2.26 of the Plans, to include hardscape, lightweight soil, plantings, furnishings, and a day-care playground.
16. The Applicant shall construct, outfit, and furnish in Building A approximately 600 square feet of space as generally shown on Sheet 2.02 of the Plans, to be utilized by ANC 5A for its office rent-free for the duration of the life of Building A.
17. The Applicant commits to pursuing certification for the entire project, once completed, under the LEED Neighborhood Development (ND) rating standard, or other equivalent standard then in effect.

18. The Applicant commits to pursuing certification for Building A under the LEED New Construction (NC) rating standard and to achieve not fewer than 26 points under that system.
19. The Applicant commits to pursuing certification for Building A under the Green Communities 2008 criteria.
20. The Applicant shall establish a transportation demand management plan with the following components:
 - a. Bicycle parking in each garage in an amount equal to five percent of the vehicle parking. In addition, the Applicant shall provide a minimum of 35 "U" shaped bicycle racks in public space adjacent to the entrances to the proposed development;
 - b. A member of the Applicant's on-site management shall serve as freight operation manager. Freight duties may be part of other duties assigned to that individual;
 - c. A member of the Applicant's on-site management shall serve as the Transportation Coordinator. Associated duties may be part of other duties assigned to that individual;
 - d. The Applicant shall provide, upon request, a one-time membership fee to a car-sharing program for each new residential unit upon initial occupancy. Information regarding car-sharing shall be included in new residents' welcome packages;
 - e. The Applicant shall provide \$25 SmarTrip card (including cost of card) to each new residential unit upon initial occupancy; and
 - f. The Applicant shall include bicycle information in welcome packages for new residents.
21. The Applicant shall have flexibility with the design of Building A in the following areas:
 - a. To provide multiple roof structures, not all of which meet the 1:1 setback requirement from the exterior walls of the building, as generally identified on Sheet 2.09a of the Plans;
 - b. To provide less than the minimum required side yard on the west side of Building A, as generally identified on Sheet 2.09a of the Plans;

- c. To vary the total number of residential units provided in Building A between 510 and 550 units, so long as the total residential square footage is not diminished, and further, so long as not fewer than 141 such units are income-restricted as provided herein, and 98 of said 141 units are further restricted for rental by qualifying senior households, with relocating residents of the Riggs Plaza Apartments to have priority for relocation to Building A;
 - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - e. 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 materials;
 - f. To make minor refinements to exterior 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; and.
 - g. To determine the use of the approximately 19,000 square feet identified in the Applicant's plans as "flex space" between retail, service, office, and residential uses, according to market demands.
22. No building permit shall be issued for the consolidated portion of the PUD nor shall the rezoning for properties included within that portion become effective until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner 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 ("DCRA") (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors in title to construct on and use the consolidated PUD property in accordance with this Order or amendment thereof by the Commission.
23. The Office of Zoning shall not release the record of this case with respect to the consolidated portion of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Commission.
24. The consolidated PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction of Building A shall begin within three years of the effective date of this Order.

25. Second-stage PUD approval for the remainder of the Property may be requested in one or more applications. If there is to be only one second-stage application, that application shall be filed within two years of the effective date of this Order. If there is to be more than one second-stage application, the first second-stage application shall be filed within two years of the effective date of this Order, and that application shall include a phasing plan for the remaining applications.
26. No application for second-stage approval shall be filed until the Applicant has recorded the covenant required by the Zoning Regulations and Condition 22 of this Order for the consolidated PUD.
27. This first-stage approval is predicated, in part, upon the Applicant's proffer to relocate Kennedy Street and to extend Third Street. In order to assure that this proffer comes to fruition:
 - a. The application for the second-stage approval involving Building C must indicate whether the extended Third Street will be a public street or a private street.
 - (1) If Third Street is to be private, the application for second-stage approval for Building C shall include a specific proffer that Third Street will be constructed by the Applicant in accordance with DDOT's standards.
 - (2) If Third Street is to be public, the application for second-stage approval for Building C shall include a proffer that the Applicant will dedicate the land to the District for street purposes.
 - (3) In addition, the Applicant shall proffer that it will construct Third Street in accordance with DDOT's standards, or that DDOT has committed to constructing Third Street itself.
 - (4) The proffer shall also indicate that a certificate of occupancy for Building C shall not issue until DDOT confirms that Third Street has been constructed to its satisfaction.
 - b. A similar proffer of land dedication and street construction shall be made as to the relocation of Kennedy Street in the second-stage application to which it is germane. The proffer must include a proposed enforcement mechanism for assuring that this public benefit will be provided.

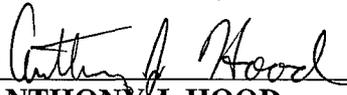
If these proffers are not made, the Commission will assume that the streets will not be constructed. In that event, a request to modify this first-stage approval to exclude the proffered benefit must accompany the applicable second-stage application.

28. 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 November 9, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** these Applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

On December 14, 2009, upon the motion of Commissioner Schlater, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

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 January 15, 2010.



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.: 06-10

JAN 14 2010

As Secretary to the Commission, I hereby certify that on JAN 14 2010 copies of this Z.C. Order No. 06-10 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 7. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Wayne S. Quin, Esq.
Dennis R. Hughes, Esq.
Holland + Knight, LLP
2099 Pennsylvania, Avenue, N.W.
Washington, D.C. 20006 | 8. Councilmember Harry Thomas, Jr. |
| 3. Angel Alston, Chair
ANC 5A
1322 Irving Street, N.E.
Washington, DC 20017 | 9. Councilmember Muriel Bowser |
| 4. Commissioner Sandi Washington
ANC/SMD 5A01
32 Buchanan St., N.E.
Washington, DC 20011 | 10. DDOT (Karina Ricks) |
| 5. Commissioner Douglass Sloan, Chair
ANC 4B
6856 Eastern Avenue, N.E., # 314
Washington, D.C. 20012 | 11. Melinda Bolling, Acting General Counsel
DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 6. Commissioner Douglass Sloan
ANC/SMD 4B09
313 Nicholson Avenue, N.E.
Washington, D.C. 20011 | 12. Office of the Attorney General (Alan Bergstein) |
| | 13. Lamond Riggs Citizens Association
c/o Charon P.W. President
P.O. Box 60272
Washington, D.C. 20039 |

ATTESTED BY:

A handwritten signature in cursive script that reads "Sharon S. Schellin".

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

DISTRICT OF COLUMBIA GOVERNMENT
 OFFICE OF THE SURVEYOR

Washington, D.C. September 15, 2008

Plot for Building Permit of SQUARE 3765 LOTS 1, 2, 3, 4, 800 & 802
 SQUARE 3766 LOTS 1, 2, 3, 4 & 800
 SQUARE 3767 LOTS 1, 2, 3, 4, 5 & 806
 SQUARE 3768 LOTS 1 & 2
 SQUARE 3769 LOTS 1, 2, 3 & 804

Scale: 1 inch = 120 feet

SQUARE 3765 - Recorded in Book 136 Page 160 (Lots 1 thru 4);
 A & T Book Page 3378-P (Lots 800 & 802)

SQUARE 3766 - Recorded in Book 138 Page 114 (Lots 1 & 2); Book 138 Page 115 (Lots 3 & 4)
 A & T Book Page 3433-K (Lot 800)

SQUARE 3767 - Recorded in Book 136 Page 160 (Lots 1 thru 4); Book 138 Page 58 (Lot 5);
 A & T Book Page 3375-P (Lot 806)

SQUARE 3768 - Recorded in Book 136 Page 160 (Lots 1 & 2)

SQUARE 3769 - Recorded in Book 136 Page 160 (Lots 1 thru 3);
 A & T Book Page 3376-S (Lot 804)

Receipt No. 16490

Furnished to: HOLLAND & KNIGHT

[Signature]
 Surveyor, D.C.

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

I hereby certify that all existing improvements shown hereon are completely dimensioned, and are correctly placed; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and placed, and align with points accompanying the appraisement; that the dimensions shown as shown hereon, if drawn, and dimensioned accurately to the same scale as the property lines shown on this plan and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and if it is further certified and agreed that access to parking area when required by the Zoning Regulations, will be reserved, in accordance with the Zoning Regulations, and that the area has been correctly drawn and dimensioned hereon, it is further agreed that the location of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a ratio of grade along entrance of driveway at any point on private property in excess of 20% for single-family dwellings or lots of an excess of 15% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 15% across the public parking and the private restricted property.)

Date: _____

 (Signature of owner or his authorized agent)

NOTE: This plan shown for Assessment and Taxation Lots or Pieces are in accordance with the interests of the Department of Finance and Revenue, Assessment Administrator, and do not necessarily agree with deed description.

