

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 07-26D**  
**Z.C. Case No. 07-26D**  
**O Street Roadside, LLC**  
**(Modifications to the Approved PUD at Square 398, Lots 829 and 830)**  
**January 30, 2012**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on January 30, 2012. At the meeting, the Commission approved an application from the O Street Roadside, LLC for modifications to an approved planned unit development (“PUD”) for property identified as Lots 829 and 830 in Square 398, located in the Shaw neighborhood of Northwest Washington, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations (“Modification Application”). The Commission determined that the Modification Application was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

**FINDINGS OF FACT**

1. By Z.C. Order No. 07-26, the Commission approved a consolidated PUD and related zoning map amendment from the C-2-A Zone District to the C-3-C Zone District for the Property. The property includes all of the area bounded by 7<sup>th</sup>, 9<sup>th</sup>, O, and P Streets, N.W. The approved PUD authorized construction of a mixed use development that includes affordable residential units for rent to senior citizens, homeownership and rental residential units, and a hotel with 210 rooms (or additional residential units in the space reserved for the hotel use). The project also includes retail and services uses including a 65,000 square foot grocery store, 10,000 square feet of additional retail space, and an 8,000 square foot restaurant. The existing historic O Street Market will be rehabilitated and incorporated into the new grocery store. The project will have an overall floor area ratio (“FAR”) of 5.15 and a total gross floor area of approximately 770,780 square feet. Z.C. Order No. 07-26 became effective upon its publication in the *D.C. Register* on July 18, 2008.
2. By Z.C. Order No. 07-26A, the Commission approved a two-year extension of the validity of the PUD. The final PUD and map amendment are valid until July 18, 2012, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than July 18, 2013. Z.C. Order No. 07-26A became effective upon its publication in the *D.C. Register* on August 27, 2010.

3. By Z.C. Order No. 07-26B, the Commission approved minor modifications to the PUD to change the rooftop configuration and certain other aspects of the approved facades. Z.C. Order No. 07-26B became effective upon its publication in the *D.C. Register* on August 27, 2010.
4. By Z.C. Order No. 07-26C, the Commission approved a minor modification to eliminate 80 parking spaces proposed to be located in the vaults in public space. Z.C. Order No. 07-27C became effective upon its publication in the *DC Register* on August 5, 2011.
5. By letter dated December 15, 2011 (“December 15 letter”), the Applicant requested that the Commission modify the Commission’s approval of the PUD to allow for a change in certain vendors and beneficiaries of three of the public benefits being provided
6. The first proposed change would modify condition 8 of Z.C. Order No. 07-26. As presently written, the condition requires that during construction of the new grocery store and until it is open the Applicant must provide free "Peapod" delivery service in partnership with Emmaus Services for the Aging (“Emmaus”) in the Shaw neighborhood. The Applicant is seeking to modify that condition to allow Emmaus to run its own shuttles instead of relying on the Peapod delivery service. Following the August closing of the Giant Pharmacy and the sale of the prescriptions to the Safeway pharmacy at CityVista, Emmaus began running shuttles of Shaw residents to CityVista for their prescriptions. The proposed change allows Emmaus the flexibility to run its own shuttles in order to satisfy the schedule and needs of residents that Peapod would not provide.
7. The second proposed change would modify condition 9a of Z.C. Order No. 07-26 to allow the Applicant to change the vendor providing clean and safe services between K and Florida and 7<sup>th</sup> and 9<sup>th</sup> Streets from the Columbia Heights/Shaw Family Support Collaborative Green Team (“Green Team”) to the Career Path DC’s Clean Team. The Applicant states that the Green Team had significantly higher costs than the current vendor and associated administrative issues. The new vendor will provide the required services at a cost that can be covered by the private and public funds received by Shaw Main Streets.
8. The third proposed change would modify condition 9g of Z.C. Order No. 07-26 to alter the beneficiary of the Applicant’s \$25,000 contribution for the development of the girls’ softball field[s] at Bundy Recreation Center from the D.C. Department of Parks and Recreation (“Department of Recreation”) to the KIPP DC Bundy Field Project. The Department of Recreation no longer has jurisdiction over the Bundy facility. Instead, that jurisdiction was transferred to the Department of General Services in order to facilitate the KIPP DC<sup>1</sup> lease of Bundy Field and KIPP’s \$500,000 improvement project for the field. In fact, the Applicant noted that a state-of-the art girls' softball field is already

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<sup>1</sup> KIPP DC is a network of public, college-preparatory charter schools in Washington, D.C.

included in the KIPP DC Bundy Field project currently underway at Bundy Field, but indicated that the additional \$25,000 in funding could be used to provide such items as bleachers, a scoreboard, and lighting for the renovated Bundy Field. In addition to noting the change in beneficiary, the Commission has modified the condition to allow for this flexibility.

9. The amendment requests are intended to reflect current conditions that were not anticipated at the time of approval. In all other respects, including height, gross floor area, number of units, yards, courts, parking, and loading, the PUD will remain as approved by the Commission.
10. Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for modifications on the Commission's consent calendar for its public meeting on January 30, 2012. At that meeting, the Commission voted to approve the application for modifications to Z.C. Order No. 07-26.
11. There was no opposition to the modification request. Advisory Neighborhood Commission ("ANC") 2C was served by the Applicant with the requested modifications. The ANC submitted a report to the Commission, received January 27, 2012, recommending that the Commission approve the modification.
12. The Office of Planning ("OP") submitted a report, dated January 23, 2012, recommending approval of the proposed modifications. The report stated that the proposed changes do not materially affect the facts upon which approval of the PUD was granted, including the building's height, loading, number of units, courts, yards, and gross floor area.

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this case, the Commission concludes that the proposed modification is of little or no importance or consequence and is consistent with the intent of the Commission in approving the original project in Z.C. Case No. 07-26. The subject request does not affect the essential elements of the approval given by the Commission for this project, such as use, height, gross floor area, lot occupancy, or setbacks. These proposed changes are only minor changes to the vendor and beneficiaries of the public amenities. Accordingly, the request falls within the scope of § 3030.

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

The approval of this modification is not inconsistent with the Comprehensive Plan.

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 (2001)) to give great weight to OP recommendations. In addition, the Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 2C. The Commission carefully considered the OP and ANC reports and, finds the recommendations to grant the modification to be persuasive.

The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of this application for a minor modification of an approved PUD. Conditions No. 8, 9a, and 9g are hereby amended as follows (language to be deleted ~~struck through~~; language to be added underlined):

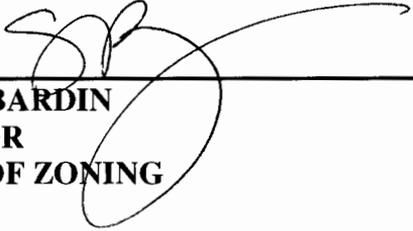
8. At the time the existing grocery store on the project site is closed to allow construction to proceed on the PUD project until the new grocery store is opened, the Applicant shall provide a minibus shuttle service from the PUD site of adjacent apartment buildings to the Tivoli and/or Brentwood Giant Food Stores, twice a week for two years, based on usage. During construction of the new grocery store and until it is open, the Applicant shall provide free ~~peaped~~ grocery and pharmacy delivery service in partnership with Emmaus Services for the Aging in the Shaw neighborhood.
9. Prior to issuance of any Certificate of Occupancy for the PUD project, the Applicant shall:
  - a. Contribute a total of \$75,000 to ~~the Green Team~~, Career Path DC in annual increments of \$25,000 during construction of the PUD;
  - g. Contribute an additional \$25,000 to the KIPP DC Bundy Field Project ~~the D.C. Department of Parks and Recreation Enterprise Fund for development enhancements~~ (such as bleachers, a scoreboard, and field, lighting) at Bundy Field located at the 400 block of P Street, N.W. ~~Recreation Center.~~

On January 30, 2012, upon the motion of Vice Chairman Schlater, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this application at its public meeting by a vote

of 4-0-1 (Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; Anthony J. Hood not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 23, 2012.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 07-26D

MAR 16 2012

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 07-26D were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|----|---|----|--|
| 1. | <i>D.C. Register</i>  | 5. | Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                              |
| 2. | Susan Vener Linsky<br>Roadside Development, LLC<br>1730 Rhode Island, N.W. #512<br>Washington, D.C. 20036   | 6. | Councilmember Jack Evans   |
| 3. | ANC 2C<br>P.O. Box 26182<br>Washington, D.C. 20001  | 7. | DDOT (Martin Parker)   |
| 4. | Commissioner Alexander Padro<br>ANC/SMD 2C01<br>1519 8 <sup>th</sup> Street, N.W.<br>Washington, D.C. 20001 | 8. | Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, D.C. 20024 |
|    |   | 9. | Office of the Attorney General (Alan Bergstein)  |

ATTESTED BY:

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

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