

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 850
Case No. 95-16P
(First Stage PUD & Map Amendment @ 100 Potomac Avenue, S.E. -
Florida Rock Properties)

June 8, 1998

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on June 23, July 7, September 23, and November 3, 1997, to consider the application of Florida Rock Properties, Inc. The application requested preliminary (first-stage) review and approval of a Planned Unit Development (PUD) and related map amendment pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The hearings were conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The original application, which was filed on December 1, 1995, requested preliminary (first-stage) approval of a PUD and Zoning Map amendment from M to C-3-C for Lots 800, 801 and 802 in Square 707, Lot 809 in Square 708, Lots 807 and 808 in Square 708E, and Lot 809 in Square 708S (PUD site). (Exhibits 1 and 2) On April 22, 1996 and February 7, 1997, the application was amended by revised filing materials. (Exhibits 15, 28 and 31)
2. The PUD site contains approximately 253,613 square feet of land area and is bounded by Potomac Avenue, S.E. to the north, 1st Street, S.E. to the east, the Anacostia River to the south, and the Frederick Douglass Bridge access ramp to the west. (Exhibits 1, 2, 15 and 31) It contains approximately 850 linear feet of waterfront. (Transcript, hereafter "Tr.," at 32)
3. The PUD site is currently used for industrial purposes for the operation of a concrete mixing, batching and storage facility, including the open storage of sand, gravel and other aggregate materials used in the production of concrete.
4. Square 664E was identified in a subsequent amendment to the PUD application as a receiving site for certain hotel/residential uses. The Square 664E site contains approximately 91,000 square feet of land area and is bounded by S Street, S.E., T Street, S.E., Water Street, S.E., and the Anacostia River. (Exhibit 64) It contains approximately 500 linear feet of waterfront. (Tr. at 32)

5. The Square 664E site is currently used for industrial purposes for the batching and open storage of sand, gravel and other aggregate materials used in the production and distribution of concrete.
6. Applicant owns the PUD site and the Square 664E site. (Exhibits 1 and 64, and 11/3/97 Tr. at 49)
7. The District of Columbia Generalized Land Use Map Element of the Comprehensive Plan for the National Capital identifies the PUD site as being in the high density residential, medium high density commercial, and production and technical employment land use category. The Comprehensive Plan also designates the PUD site as a Development Opportunity Area. The PUD site is also within the boundaries of the Central Employment Area and the District of Columbia Enterprise Zone recently established by the United States Congress under Title VII - Incentives for Revitalization of the District of Columbia of the Taxpayer Relief Act of 1997. This Title provides certain tax benefits to encourage economic development in the District of Columbia.
8. The PUD site and the Square 664E site are located within the Capitol Gateway/Buzzard Point area. The Capitol Gateway/Buzzard Point area, including the PUD site and Square 664E site, represents a unique waterfront development opportunity and valuable land resource for future development in the City.
9. The Capitol Gateway/Buzzard Point area is generally zoned C-M-1, C-M-2 and M, and is characterized by industrial uses. The area has been the subject of several land use and planning studies, including Anacostia Waterfront Concept Master Plan prepared for the Federal City Council and the D.C. Government by Wallace Roberts and Todd in 1988, a petition by the Buzzard Point Planning Association, Inc. (BPPA) submitted to the Zoning Commission in 1989, and a zoning proposal and geometric plan submitted by the Capitol Gateway group in 1991 and a Buzzard Point/Near Southeast Vision 2020 Background Report by the District of Columbia Office of Planning in 1992. The Zoning Commission has not acted on the BPPA or the Capitol Gateway Group petitions.
10. The PUD site and the Square 664E site are located within the boundaries of the recently proposed Buzzard Point-Capitol Gateway Overlay District (Z.C. Case No. 96-3/89-1) (BP Overlay), in which the District of Columbia Office of Planning recommended split zoning for the PUD site and the Square 664E site, with W-2 zoning to a depth of 110 feet from the waterfront and CR zoning on the remainder of the sites.
11. The BP Overlay as proposed mandates a 50-foot building setback from the waterfront to be maintained as public open space. It also provides for bonus density for developing residential space, for complying with the waterfront setback, and for complying with the

lower W-2 density and height standards along the waterfront. Combined lot development is also permitted within the proposed BP Overlay area.

12. The C-3-C Zone District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing and mixed uses to a maximum height of 90 feet, a maximum FAR of 6.5 for residential and other permitted uses, and a maximum lot occupancy of 100%.
13. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as the first-stage of a two-stage PUD. Under the PUD guidelines for the C-3-C Zone District, the Zoning Commission may increase the height to the height of building permitted by the Height of Buildings Act of 1910 and increase the FAR to 8.0 for commercial uses. The Zoning Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for the height, FAR, lot occupancy, parking, loading, yards or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
14. The PUD application, as amended during the course of the proceedings before the Zoning Commission, initially provided for development of the PUD site with one office building (at 6.0 FAR), a 200-room hotel (at 1.0 FAR), building height of 130 feet, lot occupancy of 63%, a waterfront esplanade, open courtyard and cascading steps to the waterfront, and the designation of Square 664E for 1.0 FAR of off-site residential development and waterfront park.
15. In response to concerns expressed by the Zoning Commission during the public hearings, the applicant proposed certain further modifications to the project and amenities. The revised proposal included the following:
 - a. The PUD Site
 - i. a two-building commercial development on the PUD site, including a total of approximately 1,521,678 square feet of gross floor area devoted to a mix of office, retail, and service commercial uses;
 - ii. a 118.5 foot "pull back" of the building facade facing the east side of the courtyard to open the vista to the waterfront;
 - iii. a maximum building height of 109 and 130 feet (excluding penthouses), with the lower building height on Potomac Avenue,

and "steps down" in building height to 60 feet along the river frontage;

- iv. a minimum set back of 50 feet of the building facades from the waterfront, as measured from the seawall (as existing and permitted by the U.S. Corps of Engineers and the District of Columbia);
- v. a maximum FAR of 6.0 for commercial uses;
- vi. a maximum overall lot occupancy of 58%;
- vii. a waterfront esplanade with retail pavilions and small watercraft docking facilities;
- viii. an open courtyard and cascading steps to the waterfront; and,
- ix. a "hop on/hop off" shuttle bus system along Half Street from the Navy Yard Metrorail Station to the PUD site.

b. The Square 664E site

- i. donation and dedication of the Square 664E site to the Earth Conservation Corps for the phased development and use as a maritime education center, with public access rights to a landscaped waterfront park area at the terminus of South Capitol Street on the western bank of the Anacostia River;
- ii. an FAR not to exceed .33 for the maritime education center;
- iii. a building height not to exceed 60 feet for the maritime education center;
- iv. an overall lot occupancy not to exceed 25% for the maritime education center;
- v. the creation of a visual and physical terminus of South Capitol Street, including a park, fountain and open vista to the Anacostia River;
- vi. a waterfront esplanade and small craft facility; and

- vii. reversionary rights for open space use and enjoyment by the public, with full waterfront access, as an appropriate terminus to South Capitol Street, if the Earth Conservation Corps is unable to develop the maritime education center within defined time frames.

16. The applicant's economic development expert testified that:

- a. the size of the PUD site offers the potential for the construction of large, flexible floor plates to make it competitive with suburban developments and use by large GSA-type and corporate headquarters users (Exhibits 61 and 62);
- b. a pioneering commercial project will bring thousands of people to the area and spur additional development of residential-oriented and commercial mixed-uses, and provide the infrastructure necessary to support future, more permanent residential development (Exhibits 61 and 62);
- c. the alternative to applicant's redevelopment of the site is continuation of the current industrial use, extending the lifetime of that use in the Capitol Gateway/Buzzard Point area for as many as 40 years or more (Exhibits 61 and 62);
- d. the PUD project will be developed upon the securing of an economically viable tenant or tenants, whether the tenant is the United States Department of Transportation or other public or private sector tenant(s) (11/3/97 Tr. at 40 et seq.).

17. The applicant's economic development expert testified that direct on-site benefits during the proposed PUD project construction period would include:

- a. District of Columbia tax revenues of \$6.5 million, in current 1997 dollars;
- b. creation of over 3,000,000 hours of construction employment, equivalent to 1,500 person years; and
- c. payroll of \$48.8 million, in current 1997 dollars.

The applicant's economic development expert also testified that development of the PUD site in the post-construction period would provide:

- d. permanent on-site direct annual employment of 5,663 jobs;
- e. on-site direct annual payroll of \$201 million; and

- f. direct annual District of Columbia tax revenue of \$15 million, having a capitalized value of \$188 million.
18. Finally the applicant's economic development expert noted that residential development is not marketable at this time nor is it currently financially viable. The applicant's economic development expert noted that the site is more ideally suited for large government office or private headquarters type office development. (Exhibits 61 and 62).
19. The applicant's transportation expert testified that:
 - a. additional traffic generated by the PUD site would not require significant improvements to the roadway network in the vicinity of the project;
 - b. the intersections of South Capitol Street and M Street, and I Street in the vicinity of the PUD site which currently operate at level "F" would continue to operate at such level with or without the project; and
 - c. the proposed "hop on/hop off" shuttle service between the Navy Yard Metrorail Station and the PUD site, with intermediate pick up/drop off points on the route, would operate to ensure an adequate transit mode split and result in additional usage of the Navy Yard Metrorail Station. (Exhibit 65)
20. The applicant's city planning expert testified that:
 - a. the Comprehensive Plan is a long range plan for as much as 20-years;
 - b. the Elements of the Comprehensive Plan should be interpreted in concert with each other and should be interpreted broadly; and,
 - c. while the Land Use Element of the Comprehensive Plan is to be given greater weight than the other Elements, the Land Use Element does not identify, fix or specify every use, height, and density on every block in the District of Columbia. (Exhibit 88)
21. The applicant's city planning expert also testified that:
 - a. residential development of the PUD site or the Square 664E site is not economically feasible at the present time given existing market conditions;
 - b. the modified PUD proposal is not inconsistent with the mixed-use goals of the generalized land use map which designates the site and a large surrounding area as

high density residential, medium high density commercial, and PTE (commonly referred to as industrial), in that the project will facilitate future development of a mix of uses, including residential uses which are not feasible until the existing industrial uses are phased out; and

- c. the modified PUD proposal is consistent with the long-range, mixed-use goals of the Land Use Element of the Comprehensive Plan and with the provisions of the Economic Development, Transportation, Urban Design and Human Services Elements of the Comprehensive Plan. (Exhibit 88)

Specifically, the project brings new development to an area identified in the Comprehensive Plan as a Development Opportunity Area, increases employment opportunities, promotes the City's natural amenities (the Anacostia River), improves the physical characteristics of the City ("gateway" redevelopment of an underdeveloped/industrial site), preserves and insures community input (through the PUD process), and provides for diversity and overall social responsibility (through the Earth Conservation Corps maritime education center). (Exhibit 88 and Tr. at 261 et seq)

22. The applicant's city planning expert testified that the PUD project supports provisions of the Ward 2 and Ward 6 elements of the Comprehensive Plan in that it:
 - a. provides jobs in the Central Employment Area and the Buzzard Point/Near Southeast Development Opportunity Area;
 - b. promotes water-oriented public spaces and provides a water recreation center on the west bank of the Anacostia River;
 - c. will help meet the human (e.g., vocational, educational and recreational) needs of the City's youth;
 - d. will serve as a catalyst for other development in the area; and
 - e. will enhance Metrorail ridership of the underutilized Navy Yard Metrorail Station as a result of additional permanent jobs and the applicant's proposed shuttle. (Exhibit 88 and Tr. at 261 et seq)
23. The applicant's expert witness on U. S. General Services Administration (GSA) procurement testified that without preliminary (first-stage) approval of the PUD with 6.0 FAR of commercial space, applicant will not be able to compete as an eligible site as GSA considers the placement and/or relocation of large-block federal agencies, including the

relocation of the U.S. Department of Transportation. GSA is expected to issue a solicitation for offer in the near future in connection with the relocation of the U.S. Department of Transportation from its current location at 400 7th Street, S.W. (the Nassif Building) (11/3/97 Tr. at 40 et seq). Applicant's GSA expert also noted that District of Columbia has expressed as one of its predominant objectives the retention of federal agencies and departments within the boundaries of the District of Columbia.

24. The modified PUD application as proposed by the applicant provides the following project amenities and benefits (Exhibits 64 and 65):
- a. the donation and dedication of the Square 664E site to the Earth Conservation Corps (ECC) for phased development and use as a maritime education center, with reversionary rights for open space use and enjoyment by the public, with full waterfront access, as an appropriate terminus to South Capitol Street, if ECC is unable to develop the maritime education center within appropriate time frames;
 - b. the elimination of a heavy industrial use along the waterfront, including the elimination of the truck traffic, noise, concrete detritus on the streets, and the visual impact of the industrial use on the area;
 - c. superior architectural and urban design features and elements, with the project being the "gateway" to the Capitol Gateway/Buzzard Point area and potential pioneer and catalyst to the redevelopment of a portion of the city which is otherwise unlikely to realize any of its development potential for the next 20 to 30 years or more;
 - d. the creation of a publicly accessible waterfront plaza and retail pavilions providing public access to and enjoyment of the Anacostia River waterfront;
 - e. substantial tax revenues to the city;
 - f. substantial new job opportunities in the city;
 - g. minority business opportunity and first-source employment commitments;
 - h. the provision of a "hop on/hop off" shuttle bus system along Half Street from the Navy Yard Metrorail Station to the PUD site; and
 - i. transportation improvements to better traffic circulation at the intersection of South Capitol and M Streets.

25. The applicant testified that control of the Square 664E site would be transferred to ECC in two phases: approximately one-half of the site would be transferred to ECC at a point following the Zoning Commission's approval of second-stage of the PUD application when there is reasonable economic certainty that development will occur on the PUD site pursuant to the application; the remaining portion of the site would be transferred to ECC no later than ten (10) years following the initial transfer, during which 10-year period applicant would begin to phase out and ultimately eliminate the industrial uses on Square 664E and the PUD site. The details of these transfers would be developed during second-stage processing, with the intent being that legal title to Square 664E would ultimately be vested in ECC, subject to its satisfaction of certain performance milestones occurring prior to such conveyance. (11/3/97 Tr. at 30 et seq.)
26. ECC is a non-profit organization based in Southeast Washington. Since 1989, the ECC has worked to educate and train disadvantaged youth in projects helping to restore the environment, and, at the same time, to strengthen local communities by improving economic opportunity, increasing civic awareness and restoring pride. Since 1989, ECC members have removed up to 5,000 discarded tires from lower Beaver Dam Creek on the Anacostia River, have worked to restore the bald eagle to Washington, D.C., re-vegetated native grasses and trees on miles of riverfront property, and raised and released millions of salmon, in conjunction with five Indian reservations in the Pacific Northwest. In Washington, D.C., ECC has worked with 18-25 year old youths from public housing communities of Arthur Kapper, Carrollsburg, Hopkins, Potomac Gardens, Barry Farms and Valley Green. The District of Columbia effort, through ECC's Eagle Corps, has received funding through partnerships with various environmental, social service and governmental agencies, including AmeriCorps and the D.C. Housing Authority. Sixty District of Columbia at-risk youths have participated in ECC's programs to date. (Exhibit 64 and 96).
27. Since 1992, ECC has had substantial success in supporting its programs. It has raised over \$9 million, with donations and grants from AmeriCorps, the U.S. Department of Energy, the D.C. Housing Authority, the National Fish and Wildlife Foundation, and very substantial private and foundation donations. It is supported by a large number of corporations, foundations and individuals, and has the benefit of a strong, committed board of directors. (Exhibits 92 and 115).
28. ECC will make use of Square 664E to build a maritime park and education facility for the community. The conceptual design of the facility calls for a four-phase construction process. Phase one is to be a vocational training facility comprised of a building with approximately 7,700 square feet, which will have facilities for woodworking, carpentry, ship restoration, classroom, office, dry storage and equipment. Phase two is to be an education and research facility comprising approximately 10,750 square feet, including facilities for computer labs, classrooms, aquaculture, water and air quality labs and storage.

Phase three is to be a facility comprising approximately 8,125 square feet of office, library, conference and board rooms, kitchen facilities, reception and assembly area, and the like. Phases 1, 2 and 3 will be constructed on the portion of Square 664E which will be first available to ECC. (Tr. at 271-277)

29. The fourth phase consists of a boat storage and meeting room facility to be constructed on the portion of the site which would be turned over to ECC no later than 10 years after turnover of the first portion of the site. This will consist of an approximately 4,455 square foot facility for boat storage, meeting room, observation tower and the like. During construction of the fourth phase, the park and fountain depicted on the conceptual plan marked as Exhibit 93 in the record will be constructed.
30. ECC plans to operate a number of programs on the Square 664E site. Soon after the first portion of the site is made available to ECC, ECC would commence a marine science program, which would target school students from kindergarten through twelfth grade. This program would involve conducting research boat field trips on the Anacostia and Potomac Rivers. Subsequently, ECC would pursue a plan to obtain the use of a sailing ship, which would be available for trips with students. A second program would be a sailing program involving upwards of 200 participants a year. As facilities are constructed, a boat-building component would be implemented for work on boats donated to ECC. This program would be designed for young adults, in the model of the current Eagle Corps program partnered with AmeriCorps. (Tr. 273-277).
31. When fully completed, the ECC maritime education center would conduct a wide range of programs on the Square 664E site, entailing boat building, a sailing center, marine science aquaculture and maritime park management. The maritime education center is modeled to a degree on the living classroom facilities and programs which operate successfully in Baltimore, Maryland. (Exhibit 95).
32. Over a period of five years since 1992, ECC's program funding has increased from a single \$50,000 grant to more than \$9.5 million raised for programs which put youth to work in and for the environment. The ECC has expressed its strong commitment to and confidence in its ability to see the maritime education project through to completion. ECC recently received the Peter F. Drucker Award for non-profit management and will be recognized by D.C. Council Resolution for its accomplishments. (Exhibit 115).
33. As part of the first-stage approval, applicant has requested flexibility during second-stage processing of the PUD application (i) to allow for the design and implementation of an appropriate phasing plan for the development of the maritime education center and for the creation of appropriate reversionary rights to the Square 664E site as open space for use and enjoyment by the public, with full waterfront access, as an appropriate terminus to South

Capitol Street, if ECC should fail to develop the maritime education center, and (ii) to allow for the structuring and conditioning of the transfer of the Square 664E site to ECC to accommodate applicant's need to (a) relocate and phase out the existing industrial uses on the PUD site and the Square 664E site, and (b) ensure that applicant has some reasonable economic certainty that development of the project on the PUD site will occur before it transfers the first portion of Square 664E to ECC.

34. The District Of Columbia Office of Planning (OP), by memoranda dated March 26, 1997 and September 17, 1997 (Exhibits 37 and 82), and by testimony presented at public hearing (11/3/97 Tr. at 81 *et seq*), recommended first-stage approval of the project. OP supported the project's role as a potential pioneer development -- jump starting redevelopment of a mix of uses in the area, setting high standards for building design, providing transportation access and waterfront treatment -- with the potential for triggering additional redevelopment in the area. OP also found the project, with its proffered amenities and public benefits, to be generally consistent with the site's mixed-use designation in the Comprehensive Plan. OP noted that not every square within the designated area needs to be developed with all mixed-use components, so long as the uses provided have a salutary effect on the mix of uses in the general area. OP also concluded that the PUD project is generally consistent with the proposed BP Overlay as to matters of height, bulk and setbacks. OP further concluded that development of the PUD site and the Square 664E site, would serve as a catalyst for the redevelopment of other uses, including a mix of residential and commercial uses. OP also stressed that the PUD site's alternative use -- continuation of the existing industrial activities -- would act as an impediment to redevelopment of the Capitol Gateway area.
35. The Assistant City Administrator for Economic Development, by letter dated July 3, 1997, supported the project (Exhibit 68). He recognized the designation of the area as a Development Opportunity Area under the Comprehensive Plan and the potential pioneering role the project could play in the redevelopment of the area. He further recognized the significant economic impacts attributable to the development, including the generation of tax revenues and new jobs.
36. OP testified that it had not referred the PUD application to the District of Columbia Department of Public Works, the Metropolitan Police Department, or the Department of Finance and Revenue, but agreed to refer the project to such agencies if the first-stage of the PUD is approved. (Exhibit 37)
37. Advisory Neighborhood Commission 6B (ANC 6B), by letter dated March 26, 1997 (Exhibit 38), opposed the PUD project as originally submitted by the applicant for the following reasons:

- a. the 14 stories and 130-foot height were too tall for the site and diminished the South Capitol Street vista, with the Potomac Avenue and Frederick Douglass Bridge facades presenting an unbroken, 130-foot wall impeding public access to the waterfront;
 - b. the development included too little actual residential use on site, while the off-site residential was ill-defined and uncertain;
 - c. the proposed amenities were undistinguished and not commensurate with the private gains derived from the PUD;
 - d. the project had provided for no community involvement;
 - e. the application took no notice of the area being designated an "enterprise community" area;
 - f. more emphasis on jobs was needed; and
 - g. the adequacy of the public benefits of the PUD.
38. Advisory Neighborhood Commission 2D (ANC 2D), by letter dated March 27, 1997 (Exhibit 106), opposed the PUD project as originally submitted by the applicant and stated that it was concerned about the following:
- a. the size and siting of the proposed development and its general impact upon the ANC 2D area, particularly with regard to transportation;
 - b. the timeliness of the proposed zoning change;
 - c. alternative developmental strategies; and
 - d. the adequacy of the public benefits of the PUD.
39. At the July 7, 1997 hearing, the Zoning Commission requested that the applicant undertake additional urban design studies and consider development alternatives to reduce the height and bulk of the project and to open the vista to the waterfront. The Zoning Commission scheduled the next hearing for September 23, 1997. This date was selected in order to allow ANC 6B and ANC 2D an opportunity to consider the modified proposal (Tr. at 213 et seq).

40. On August 18, 1997, the applicant submitted to the Zoning Commission and ANC 2D and ANC 6B the additional urban design studies and development alternatives requested by the Zoning Commission at the July 7, 1997 hearing (Exhibit 78).
41. At the November 3, 1997 hearing, the applicant presented evidence that it made several requests to have the modified project placed on the agenda for the ANC's September and October 1997 meetings (Exhibit 102), yet neither ANC 6B nor 2D placed the modified project on its agenda. Thus, neither of the affected ANC's took a formal position on the modified PUD proposal.
42. Sharon Ambrose, City Councilmember for Ward 6, testified in support of the modified PUD application stating that the proposed PUD provided for a higher and better use of an undeveloped site, with uses that would dramatically increase public access to an improved waterfront. She further testified that the modified PUD proposal thoughtfully addressed neighborhood concerns regarding the project's mass, urban design, public access to the waterfront, and river vistas. Councilmember Ambrose also stated that the PUD project achieved the Ward 6 goal of enhancing economic development opportunities in Ward 6. She also stated that she believed that residential uses in the Buzzard Point-Capitol Gateway area, which includes the PUD site and the Square 664E site, are not economically viable at this point in time (Tr. at 235-246).
43. Juanita Smallwood, Advisory Neighborhood Commissioner 6B02, testified in support of the modified PUD application and stated that she was unsuccessful in her attempts to have the PUD application placed on Advisory Neighborhood Commission 6B's agenda. (11/3/97 Tr. at 152).
44. Two residents of the District of Columbia testified in support of the modified PUD application citing the PUD project's potential for stimulating economic development and beautification in the surrounding area and the ECC Maritime Center's potential for providing services and educational opportunities for the City's youth. (11/3/97 Tr. at 143-151). One of the residents asked the Zoning Commission to consider how the PUD application might be modified to provide economic benefits in the Anacostia area of the City.
45. The Honorable Marion Barry, Mayor of the District of Columbia, by letter dated October 29, 1997 (Exhibit 97), expressed support for the PUD application stating that the project offered substantial economic benefits for the City and Ward 6, including substantial increased tax revenues and job opportunities. He also stated that the PUD project has the potential to "jump start" an area to which the City has struggled to attract redevelopment.

46. Albrette "Gigi" Ransom, Advisory Neighborhood Commissioner 6B10, by letter dated September 23, 1997 (Exhibit 94), expressed her support for the PUD application indicating that the modified proposal had made significant changes to address issues relating to the height and density of the project, the river vista, and the retail pavilion. She further stated that she felt the project would have a significant impact on the revitalization of the community which has been economically depressed for some time. She requested that the applicant provide additional information regarding the maritime center and the community benefits and amenities.
47. Several other persons submitted written evidence of their support for the modified PUD application, including but not limited to, the Anacostia Watershed Society, Anacostia/Congress Heights Association, Capitol Hill Group Ministry, Women Like Us, Barry Farms Resident Council, Potomac Gardens Resident Council, Hopkins Apartments Resident Council, Valley Green Resident Council, and James Creek Resident Council. Persons in support of the modified PUD project generally noted the opportunity for redevelopment of the area offered by the PUD project and its amenities and benefits, including the improvement of and access to the Anacostia River waterfront and the ECC maritime education center proposal for the Square 664E site.
48. There were no parties in opposition to the PUD application other than ANC 6B and ANC 2D.
49. The Committee of 100 on the Federal City was the only organization to express opposition to the PUD application, which opposition was based on a vote of the Board of Trustees at its April 10, 1997 meeting. Referring generally to modifications made to the application, the Committee of 100 saw the reduced bulk and heights as going in a positive direction; appeared to acknowledge that given the current state of the neighborhood it would be difficult to locate any residential uses on the site; and viewed the plans of the ECC as a wonderful project. Noting that the Committee of 100 would normally reject the application "out of hand," the Committee of 100 acknowledged that the application should be given serious consideration due to the challenge of jump-starting development in an area as difficult as the PUD site. The Committee of 100 spoke generally of an overall need for a major planning effort to be undertaken for the entire Buzzard Point area, suggesting that the applicant's proposal be tabled in the meantime; was skeptical as to whether the proposed project would spur economic development and argued generally for a smaller scale development on the waterfront. While it acknowledged that the 664E site has "great potential," the Committee of 100 took the position generally that the proffered amenities are "too small in scale." (Exhibit 112)

50. The Zoning Commission concurs that the Capitol Gateway/Buzzard Point area is, in fact, a development opportunity area for housing, commercial, and public and recreation uses in the District of Columbia.
51. The Zoning Commission further finds that the proposed PUD project is located and designed in such a way that it serves as a "gateway" for those crossing the Frederick Douglass Bridge into the City. The project is sited between North Capitol and First Streets, S.E., and acts as an important visual terminus to Half Street, the primary north-south street moving south from M Street, S.E., through Capitol Gateway into Buzzard Point. Its height, massing, varied waterfront facade and waterfront pavilion and park will all contribute to a significant portal or gateway feature.
52. The Zoning Commission concurs with the applicant and the Office of Planning and finds that the proposed PUD project is not inconsistent with the long range goals and guidelines of the Comprehensive Plan, and that the project is generally consistent with the Comprehensive Plan Land Use Map designation of the site in that not every square within the designated area need be developed with all mixed-use components so long as the uses provided have a salutary effect on the mix of uses in the general area.
53. The Zoning Commission concurs with OP and finds that the proposed PUD project is generally consistent with the height, bulk and setback requirements of the BP Overlay.
54. The Zoning Commission finds that this project is important in encouraging federal agencies to locate in the Southeast Federal Center and remain in the District of Columbia, and in inducing private sector companies to relocate from competing suburban markets to the District of Columbia;
55. The Zoning Commission concurs with the recommendations of OP and the Assistant City Administrator for Economic Development and believes that first-stage PUD approval, with conditions, is appropriate, and finds that the applicant has satisfied the requirements of 11 DCMR 2405.
56. The Zoning Commission finds that the amenity package offered by applicant is sufficient to support the first-stage approval of this PUD application, subject to the conditions and guidelines set forth in this Order and further refinement during second-stage processing of the PUD.
57. The Zoning Commission finds that the concerns of ANC 6B and ANC 2D are entitled to "great weight" as provided by applicable law. The Zoning Commission finds that the opposition of each of the affected ANCs was related to and based solely upon their respective reviews of the original PUD proposal only, and neither ANC addressed the

subsequent modifications made by the applicant during the course of the hearings, which modifications the Zoning Commission finds to be significant, substantial and favorable in nature. The Zoning Commission further finds that the ANC's rejected applicant's attempts to present the modified proposal to the full ANC at its meetings in September and October 1997. The Zoning Commission further finds, however, that the PUD proposal as modified by the applicant during the course of the hearings, adequately and appropriately responds to the concerns of ANC 6B and ANC-2D regarding the scale, height, and mix of uses of the original proposal. The Zoning Commission is also mindful that the purpose of first-stage PUD review is to set a conceptual framework within which a more detailed second-stage PUD review can be considered, and that ANC 6B and ANC 2D will have the opportunity to participate in the second-stage PUD process.

58. As to the concerns expressed by the Committee of 100, the Zoning Commission concurs with the applicant and OP and finds that the project is appropriate for first-stage approval.
59. The Zoning Commission concludes that the redevelopment opportunity provided by the PUD application should not be deferred pending additional planning efforts. The Zoning Commission further concludes that the project promises to spur economic development in a Development Opportunity Area and the Central Employment Area as identified in the Comprehensive Plan. The Zoning Commission finds this development is in scale and keeping with the site's "gateway" location, and that the preliminary design for height, bulk and mass of the project fully complements and supports the "gateway" concept. The Zoning Commission also concludes that the proffers related to the PUD site, including Square 664E are significant amenities. The Zoning Commission finds that goals of the Comprehensive Plan to introduce residential activity to this "gateway" area of the city are important. The Zoning Commission thus concludes that the applicant include some amount of residential development on Square 664E as a condition to second-stage approval of the proposed PUD.
60. The proposed action of the Zoning Commission to approve the application for first-stage approval with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated April 2, 1998, found (a) that the preliminary PUD would not adversely affect views to the Capitol Dome, (b) that review of design details generally included in a second-stage PUD application would be necessary before it could make a determination about the impact of the proposed PUD on other identified federal interests, and (c) that providing a residential component is vital to establishing the mixed-use, living city character that is desired in the gateway area covered by the proposed PUD and its amenity package. NCPC recommended that the Zoning Commission require the applicant to maintain a portion of Square 664E reserved for residential development in a park-like condition for use by the public until such time as

residential development is feasible. NCPC also recommended that, during the second-stage PUD proceedings, the Zoning Commission establish a proceeding for periodic review as to the economic feasibility of the proposed residential component of the applicant's amenity package. NCPC also requested the Zoning Commission to require the applicant to submit, as part of any application for second-stage PUD approval: detailed plans for Square 664E including site development plans, building plans, elevations, cross-sections and sight-line studies from various locations across the river (including but not limited to I-295); a plan and description of the amount and type of ground floor uses that will be provided to encourage pedestrian activity along both Potomac Avenue and the waterfront; and a property line survey for the PUD site, recorded with the District of Columbia Office of the Surveyor that reflects the land between the existing property line and the bulkhead.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the Capitol Gateway/Buzzard Point area and the District of Columbia.
2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned residential, commercial and mixed-use 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.
3. The development of the project is compatible with District-wide and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The approval of this application is not inconsistent with the Comprehensive Plan of the National Capital because it will produce a "gateway" project for the Capitol Gateway/Buzzard Point area, act as a pioneer and catalyst for mixed-use redevelopment of the area, strengthen the distinguishing physical waterfront qualities of the area, and increase employment opportunities.
5. The approval of the application is consistent with the purposes of the Zoning Act and the Zoning Map of the District of Columbia, which include stabilizing land values and improving mixed use areas.
6. The application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community or the District. The project will enhance and promote the revitalization of the area.

7. The approval of this application will promote orderly development 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.
8. The Zoning Commission has accorded to ANC 6B and ANC 2D the "great weight" to which each is entitled under law.
9. The approval of this application for first-stage approval is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.
10. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission hereby orders that this application for first-stage review of a PUD for Lots 800, 801 and 802 in Square 707, Lot 809 in Square 708, Lots 807 and 808 in Square 708E, and Lot 809 in Square 708S, with zoning pursuant to the C-3-C Zone District, be APPROVED. This approval is subject to the following guidelines, conditions and standards.

1. The PUD shall be developed in accordance with the modified plans prepared by the architectural firm of Davis Buckley (Exhibit 78, site Plan Variation 3A), as modified by the guidelines, conditions and standards of this order.
2. The maximum building height of the portion of the project located 110 feet or less from the seawall along the waterfront of the Anacostia River shall not exceed 109 feet, and the maximum building height of the portion of the project located more than 110 feet from the portion of the seawall along the waterfront of the Anacostia River shall not exceed 130 feet, all in accordance with the schematic site plan studies developed and submitted to the record of the case on August 18, 1997 and identified at the September 23, 1997 hearing as applicant's preferred site and massing of the project.
3. The floor area ratio (FAR) of the project shall not exceed 6.0, all of which may be developed to commercial uses, including ground floor retail uses to enliven the waterfront esplanade area. The applicant shall supply as part of the second-stage application a plan and description to encourage pedestrian activity along both Potomac Avenue and the waterfront esplanade.
4. The overall lot occupancy of the project shall not exceed fifty-eight percent (58%).

5. The project shall be developed as two (2) separate buildings, sited so as to substantially maintain and preserve the vista along Half Street, S.E. to the waterfront of the Anacostia River, and with the building on the east side of the proposed courtyard pulled back to open the vista to the Anacostia River, all in accordance with the schematic site plan studies developed and submitted to the record of this case on August 18, 1997, and identified at the September 23, 1997 hearing as the applicant's preferred site and massing of the project.
6. Landscaping of the project site shall be consistent with the site plan submitted by the applicant, with such landscaping to be further refined during second-stage processing of this PUD application. Such landscaping shall include, at a minimum, the following features:
 - a. Open courtyard and cascading steps down to the Anacostia River front with appropriate and necessary accommodations in accordance with the Americans With Disabilities Act of 1992; and,
 - b. Waterfront esplanade along the shore of the Anacostia River with waterfront retail pavilions and a small watercraft marina.
7. The applicant shall supply as part of any second-stage application a property line survey for the PUD site, recorded with the District of Columbia Office of the Surveyor which reflects the land between the existing private property line and the bulkhead.
8. Antennas shall be submitted on the various roofs of the buildings of the project, subject to the applicable Zoning Regulations for review.
9. The applicant shall submit with the second-stage application detailed plans and elevations indicating the design treatment of the proposed PUD project, including, but not limited to, building and landscape materials, color and architectural and landscape details.
10. During second-stage processing of the PUD application, the applicant shall develop and submit details concerning implementation and continuation thereafter of the proposed shuttle bus service between the PUD site and the Navy Yard Metrorail station to ensure that the transportation service becomes a viable component of the project.
11. During second-stage processing of the PUD application, OP shall submit the PUD application to the District of Columbia Department of Public Works, Metropolitan Police Department, and the Office of Tax and Revenue for review and comment. The applicant shall make a bona fide effort to resolve the concerns, if any, such agencies may have regarding the PUD application.

12. During the second-stage processing of the PUD application, the applicant shall submit to the Zoning Commission the details relating to the development of Square 664E as a maritime education center and residential development, as well as for a waterfront park at the terminus of South Capitol Street as shown in the plans submitted to the Zoning Commission. The applicant should address, among others, the following matters:
 - a. The timing of the conveyance or other transfer of Square 664E from applicant to ECC and other approved entities, and the timing of the elimination of the existing industrial use;
 - b. The mechanism(s) to accomplish the conveyance or other transfer of Square 664E from applicant to ECC and other approved entities;
 - c. The phasing of development of Square 664E, including implementation of a design plan for ECC's maritime education center and waterfront park for the terminus of South Capitol Street, and the development of a residential component containing 1.0 FAR of space as calculated from the PUD site;
 - d. Detailed plans for Square 664E showing the residential component, the ECC maritime education center and the waterfront park at the terminus of the extended right of way of South Capitol Street, which plans should include site development plans, building plans, elevations and cross-sections, and sight line studies from various locations across the Anacostia River (including, but not limited to, I-295).
 - e. The mechanism for fixing and enforcing the design plan and development guidelines for Square 664E (such as, but not limited to, appropriate deed restrictions, the recordation of private covenants, and conditions and development restrictions);
 - f. In the event that development of the ECC maritime education center does not occur by the date(s) or within the phasing plan specified in any final order issued by the Zoning Commission at the conclusion of the second-stage processing of this PUD application, the applicant shall propose a mechanism for fixing and enforcing a design plan for the development of a visual design terminus for South Capitol Street, assuring that Square 664E will be open space used by the public with full waterfront access.
 - g. A mechanism by which the applicant will be required at the time that the industrial use of Square 664E presently operating on this Square is terminated to maintain the portion of Square 664E, reserved for residential development, in a park-like

condition for use by the public until such time as residential development is economically feasible;

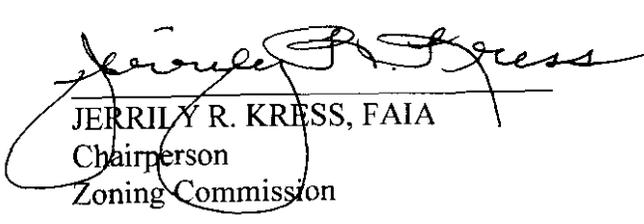
- h. A mechanism be proposed by the applicant which will give the Zoning Commission the opportunity, after second-stage PUD approval is given and after any building permit for the PUD site is issued, to review on a periodic basis the economic feasibility of development at that time of the residential component of the applicant's amenity package for Square 664E, if construction of that residential component has not then been commenced.
13. The applicant shall have entered into a First-Source Employment Agreement with the Department of Employment Services to promote and encourage the hiring of District of Columbia residents.
14. The applicant shall have entered into a Memorandum of Understanding with the Local Business Opportunity Commission (LBOC) to use the resources of the LBOC to utilize minority business enterprises in the development of this project.
15. The first-stage PUD approval by the Zoning Commission shall be valid for a period of one year from the effective date of this order. Within such time, the applicant shall file a second-stage PUD application in order for this first-stage approval to remain in effect.
16. Pursuant to D.C. Code, Section 1-2531, Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of Law 2-38, as amended as codified as D.C. Code, Title 1, Chapter 25. The Commission's approval is conditioned upon full compliance with those provisions.

Vote of the Zoning Commission taken at the regular monthly meeting on February 9, 1998: 3-1 (Maybelle Taylor Bennett, Herbert M. Franklin and Jerrily R. Kress to grant first-stage approval; John G. Parsons not to grant first-stage approval).

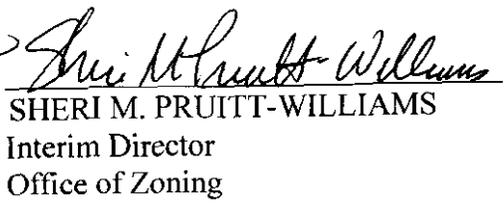
This order was adopted by the Zoning Commission at its public meeting on June 8, 1998 by a vote of 3-1: (Jerrily R. Kress, Herbert M. Franklin, Anthony J. Hood, to adopt John G. Parsons opposed Angel F. Clarens not present ,not voting).

In accordance with provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on JUL 3 1998.

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JERRILY R. KRESS, FAIA
Chairperson
Zoning Commission



SHERI M. PRUITT-WILLIAMS
Interim Director
Office of Zoning

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