

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The following is a listing of raze permit applications filed with the Permit Operations Division of the Department of Consumer and Regulatory Affairs:

Application Date	Address	Lot	Square	Use
April 13, 2009	1024 Kenyon Street, NW	820	2846	2 story single family development
April 13, 2009	115 Riggs Road, NE	85	3741	1 story
April 20, 2009	200 E Street, SW	820	820	1 story restaurant

For further information, please contact Mr. Joseph Bembry at the Permit Operations Division via email at Joseph.Bembry@dcra.gov or Ms. Cheryl Randall Thomas, Manager of the Permit Center, at (202) 442-4534.

D.C. CHILDREN AND YOUTH INVESTMENT TRUST CORPORATION**NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2010 Out of School Time Programs**

Notice: ATTENDANCE AT A GRANT TECHNICAL ASSISTANCE SESSION AND SUBMISSION OF A NOTICE OF INTENT TO APPLY IS REQUIRED IN ORDER TO BE ELIGIBLE TO APPLY FOR THIS GRANT.

Summary: The DC Children and Youth Investment Trust Corporation (The Trust) is a public-private partnership chartered by the District to help a wide variety of organizations improve the quality, quantity and accessibility of services and opportunities for every child in the city. The Trust works to increase resources and invest in the people, programs, and systems that serve children, youth, and their families in the District of Columbia.

The Trust announces the availability of a funding opportunity and invites qualified applicants to submit proposals to provide high quality out-of-school time programs to children and youth ages 5 – 24 in the District of Columbia during Fiscal Year 2010. Specifically, the Trust seeks to support the delivery of a variety of high quality out-of-school time programs during the school year that will provide purposeful and developmentally appropriate programs to help the District's children and youth meet developmental outcomes. Applicant organizations must employ the youth development philosophy in its approach and program design. **Proposals will be funded in two categories: Out of School Time in DCPS Facilities and OST in Community-Based Facilities.** Applicants are allowed to submit no more than two (2) proposals in response to this RFP. The total amount available for granting is \$4.0 million.

Criteria for eligible applicants: Eligible applicants must have 501(c) (3) tax-exempt status, been incorporated to operate in the District of Columbia, and providing direct services since no later than October 1, 2007; must be organized under the District of Columbia Non-profit Corporation Act (DC Code, sec.29-501 et seq.); must be a community-based organization, defined as: non-profit agency with a board of directors that is reflective of the community of population served; organization's primary vision and program focus must be on serving children, youth, and/or families within the District of Columbia; and, organization must be in good financial standing with the DC Office of Tax and Revenue and the Internal Revenue Service as well as follow all appropriate charitable financial reporting standards. For collaborative applications, one organization must act as the lead agency. That organization must meet all criteria listed and accept fiduciary, reporting and programming oversight responsibility for the application and grant. For programming in a DC Public School, organizations must be approved by DCPS through the vetting process described on the DCPS website.

An organization described in Section 501(c) (4) of the Internal Revenue Code, 26 U.S.C. 501(c) (4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.**

All eligible applicants must meet all of the applicable requirements contained in the proposal guidelines and instructions. The Request for Proposal (RFP) will be released on April 21, 2009 at 9:00am. The RFP will be available for download on the Trust's website at www.cyitc.org. **The deadline for submission to the Trust is May 29, 2009 at 4:00pm.**

The Trust will hold three Grant Technical Assistance (GTA) Sessions (formerly known as Bidder's Conferences). **In order to be eligible for this grant, attendance at one of the GTA sessions is mandatory for all applicants.** The sessions will convene on the following dates at these locations:

Monday, April 27, 2009 from 10:00 a.m. – 12:00 noon

Community Preservation Development Corporation – Crawford Hall
635 Edgewood Street, NE, 9th Floor

Monday, May 4, 2009 from 10:00 a.m. – 12:00 noon

THEARC – Community Room
1901 Mississippi Avenue, SE

Monday, May 18, 2009 from 6:00 p.m. – 8:00 pm

Columbia Heights Youth Club
1480 Girard Street, NW

To RSVP for a training session, contact Amy Dziekonski, Program Officer, at (202) 478-3886 or via email at rfp@cyitc.org.

Prospective applicants must submit a Notice of Intent to Apply to the Trust. **The Notice of Intent to Apply form should be returned to the Trust by Monday, May 4, 2009.** Submittal of the Notice of Intent to Apply does not commit an agency to apply. However, failure to submit a Notice of Intent to Apply in a timely manner will disqualify an applicant. Any supplemental written information related to this RFP will be provided only to those organizations that have filed a Notice of Intent to Apply. Notice of Intent to Apply should be submitted via mail or e-mail to:

D.C. Children & Youth Investment Trust Corp.
1400 16th Street, NW, Suite 500
Washington, DC 20036
Attn: RFP - OST
E-mail: rfp@cyitc.org

Questions must be submitted in person at the Grant Technical Assistance Session or via e-mail at rfp@cyitc.org on or before Tuesday, May 19, 2009 at 4:00 p.m. All written questions concerning this RFP will be posted on the Trust's website at www.cyitc.org. If you have any additional inquiries, please contact Amy Dziekonski, Program Officer, at (202) 478-3886 or via email at rfp@cyitc.org.

D.C. CHILDREN AND YOUTH INVESTMENT TRUST CORPORATION**NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2010 Parent Center Programs**

Notice: ATTENDANCE AT A GRANT TECHNICAL ASSISTANCE SESSION AND SUBMISSION OF A NOTICE OF INTENT TO APPLY IS REQUIRED IN ORDER TO BE ELIGIBLE TO APPLY FOR THIS GRANT.

Summary: The DC Children and Youth Investment Trust Corporation (The Trust) is a public-private partnership chartered by the District to help a wide variety of organizations improve the quality, quantity and accessibility of services and opportunities for every child in the city. The Trust works to increase resources and invest in the people, programs, and systems that serve children, youth, and their families in the District of Columbia.

The Trust announces the availability of a funding opportunity and invites qualified applicants to submit proposals to provide high quality programs to parents of young children and adolescents in the District of Columbia during Fiscal Year 2010. Specifically, the Trust seeks to support the delivery of a variety of high quality parent center programs throughout the fiscal year that will strengthen and empower families and communities and foster the optimal development of children, youth and adult family members. Applicant organizations must employ youth development based parenting practices. **Proposals will be funded in three categories: Family Wellness, Parenting, and School and Community Involvement.** Applicants may only apply in two categories. The total amount available for granting is \$750,000.

Criteria for eligible applicants: Eligible applicants must have 501(c) (3) tax-exempt status, been incorporated to operate in the District of Columbia, and providing direct services since no later than October 1, 2007; must be organized under the District of Columbia Non-profit Corporation Act (DC Code, sec.29-501 et seq.); must be a community-based organization, defined as: non-profit agency with a board of directors that is reflective of the community of population served; organization's primary vision and program focus must be on serving children, youth, and/or families within the District of Columbia; and, organization must be in good financial standing with the DC Office of Tax and Revenue and the Internal Revenue Service as well as follow all appropriate charitable financial reporting standards. For collaborative applications, one organization must act as the lead agency. That organization must meet all criteria listed and accept fiduciary, reporting and programming oversight responsibility for the application and grant. For programming in a DC Public School, organizations must be approved by DCPS through the vetting process described on the DCPS website.

An organization described in Section 501 (c) (4) of the Internal Revenue Code, 26 U.S.C. 501 (c) (4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.**

All eligible applicants must meet all of the applicable requirements contained in the proposal guidelines and instructions. The Request for Proposal (RFP) will be released on April 21, 2009 at 9:00am. The RFP will be available for download on the Trust's website at www.cyitc.org. **The deadline for submission to the Trust is June 29, 2009 at 4:00pm.**

The Trust will hold two Grant Technical Assistance (GTA) Sessions (formerly known as Bidder's Conferences). **In order to be eligible for this grant, attendance at one of the GTA sessions is mandatory for all applicants.** The sessions will convene on the following dates at these locations:

Thursday, June 4, 2009 from 10:00 a.m. – 12:00 noon

Charles Sumner School - Gallery G-3
1201 17th Street, NW

Tuesday, June 16, 2009 from 6:00 p.m. – 8:00 p.m.

Pennsylvania Avenue Baptist Church – Chapel
3000 Pennsylvania Avenue, SE

To RSVP for a training session, contact Jeffrey Richardson, Program Officer, at (202) 478-3873 or via email at rfp@cyitc.org.

Prospective applicants must submit a Notice of Intent to Apply to the Trust. **The Notice of Intent to Apply form should be returned to the Trust by Thursday, June 4, 2009.** Submittal of the Notice of Intent to Apply does not commit an agency to apply. However, failure to submit a Notice of Intent to Apply in a timely manner will disqualify an applicant. Any supplemental written information related to this RFP will be provided only to those organizations that have filed a Notice of Intent to Apply. Notice of Intent to Apply should be submitted via mail or e-mail to:

D.C. Children & Youth Investment Trust Corp.
1400 16th Street, NW, Suite 500
Washington, DC 20036
Attn: RFP – Parent Center
E-mail: rfp@cyitc.org

Questions must be submitted in person at the Grant Technical Assistance Session or via e-mail at rfp@cyitc.org on or before Wednesday, June 17th at 4:00 p.m. All written questions concerning this RFP will be posted on the Trust's website at www.cyitc.org. If you have any additional inquiries, please contact Jeffrey Richardson, Program Officer, at (202) 478-3873 or via email at rfp@cyitc.org.

BOARD OF ELECTIONS AND ETHICS**Certification of Filling Vacancies**
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Willie H. Ross
Single-Member District 7D03

DISTRICT DEPARTMENT OF THE ENVIRONMENT**NOTICE OF FILING OF
VOLUNTARY CLEANUP COMPLETION REPORT**

Pursuant to § 601 (b) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code § 8-636.01(b) (2008), the “Act”, the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Development and Remediation Branch (LDRB), is informing the public that the applicant, L.G. Takoma Park L.P., 8280 Greensboro Drive, Suite 605 Mclean, Virginia 22102, has submitted a Cleanup Completion Report for the remediation and redevelopment of the 4-story apartment building with a one level below-grade parking structure located at 7035 Blair Road, N.W. in case number VCP2007-013. Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission for the subject area.

The DDOE is required to consider all public comments it receives before issuing a Certificate of Completion. Interested persons may submit written comments on the issuance of a Certificate of Completion to the Voluntary Cleanup Program at the address listed below. The Cleanup Completion Report will be available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
51 N Street, N.E., Room 6011
Washington, DC 20002

Interested parties may also request a copy of the report for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-1337.

Written comments on the proposed approval of the Cleanup Completion Report and subsequent issuance of a Certificate of Completion must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DDOE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion for a Voluntary Cleanup project.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2009

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, NE., Washington, D.C., intends to issue a permit to operate one (1) 1500 kW diesel emergency generator in the Smithsonian Institution's Museum of American History, located at 12th & Constitution Avenue NW, Washington D.C. 20560.

The application to construct/operate the generator and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
51 N Street, NE, 5th Floor
Washington D.C. 20002

No written comments postmarked after May 25, 2009 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

The Excel Academy Public Charter School (“Excel”) is soliciting proposals from vendors to provide the following Services:

- I. Food Services**
- II. Financial Services**
- III. Cleaning Services**

To obtain an electronic copy of the full Request for Proposal (RFP), please send e-mail to Philip Fick, Acting Operations Director, at the following e-mail address: pfick@excelpcs.org. Be sure to include “Food Services RFP,” “Financial Services RFP,” or “Cleaning Services RFP” in the subject line.

No phone calls regarding this RFP will be accepted. No proposals submitted by facsimile or e-mail will be accepted. **All questions** should be in writing by e-mail to pfick@excelpcs.org; please put “Food Services RFP” in the subject heading if you have questions about food services; “Financial Services RFP” for questions on financial services and “Cleaning Services” for questions on Cleaning Services.

Prospective vendors must submit one (1) original proposal signed in ink and three (3) copies delivered to the school at the following address:

Excel Academy Public Charter School
3845 South Capitol Street, SW
Washington, DC 20032

All proposals must be received no later than 5 p.m. on Friday, May 8, 2009. Any proposal or modification received after this time shall not be considered.

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****Computers, IT equipment and Software Contract**

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for procurement of computer systems, IT equipment, and software for 2009-10. Proposals are to be received by Mosaica Education, 42 Broadway, Suite 1039, New York, NY 10004, on **May 11th** and not later than **2:00 pm**. Bid specifications may be obtained at the school, at www.mosaicaeducation.com, or by contacting Adam Boudreaux tel. 404.841.2305 ext. 104. Any technical questions regarding this bid must be submitted in writing to aboudreaux@mosaicaeducation.com before the RFP deadline.

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****Paragon Consumables Kits Contract**

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for procurement of Paragon consumables kits for 2009-10. Proposals are to be received by Mosaica Education, 42 Broadway, Suite 1039, New York, NY 10004, on **May 11th** and not later than **2:00 pm**. Bid specifications may be obtained at the school, at www.mosaicaeducation.com, or by contacting Carla Holder tel. 212.232.0305 ext. 228. Any questions regarding this bid must be submitted in writing to cholder@mosaicaeducation.com before the RFP deadline.

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****Furniture, Fixtures, and Equipment Contract**

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for procurement of furniture, fixtures, and equipment for 2009-10. Proposals are to be received by Mosaica Education, 42 Broadway, Suite 1039, New York, NY 10004, on **May 11th** and not later than **2:00 pm**. Bid specifications may be obtained at the school, at www.mosaicaeducation.com, or by contacting Carla Holder tel. 212.232.0305 ext. 228. Any questions regarding this bid must be submitted in writing to cholder@mosaicaeducation.com before the RFP deadline.

HOWARD ROAD ACADEMY**REQUEST FOR PROPOSALS****Office and Instructional Supplies Contract**

The Howard Road Academy and its management firm, Mosaica Education, Inc., invite proposals for procurement of office and instructional supplies for 2009-10. Proposals are to be received by Mosaica Education, 42 Broadway, Suite 1039, New York, NY 10004, on **May 11th** and not later than **2:00 pm**. Bid specifications may be obtained at the school, at www.mosaicaeducation.com, or by contacting Carla Holder tel. 212.232.0305 ext. 228. Any questions regarding this bid must be submitted in writing to cholder@mosaicaeducation.com before the RFP deadline.

LATIN AMERICAN YOUTH CENTER YOUTHBUILD PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Building Cleaning Services

The Latin American Youth Center YouthBuild Public Charter School hereby gives notice of publication of a Request for Proposals (RFP) for building cleaning services.

To submit a proposal, contact YouthBuild Public Charter School, Attention: Gina Kelley at ginak@layc-dc.org or (202) 518-0601.

The last day on which a proposal may be received and considered is May 8, 2009.

NATIONAL COLLEGIATE PREPARATORY PUBLIC CHARTER HIGH SCHOOL**NOTICE OF REQUEST FOR PROPOSALS****Curriculum Development & Assessment Services Project**

National Collegiate Preparatory Public Charter High School seeks a qualified individual and/or nonprofit organization to develop curriculum maps for four content areas (history, mathematics, French and science) for grades nine and ten. In addition, the contractor would assist with the In addition, the contractor will provide planning assistance in the development of a professional development strategy that builds a professional learning community around curriculum development, instruction and assessment (e.g., monitor and evaluate progress, refine units, and/or facilitate an extended mapping process for additional performance levels).

The objective of the Curriculum Development & Assessment Services Project is to create curriculum maps for each of the core content areas, to include the following: 1) prioritization of ninth grade standards; 2) clustering 'supporting' or connecting standards with corresponding power standards; (3) developing and/or identifying one-two instructional activities (for each instructional unit that include suggestions for differentiating instruction; (4) developing summative assessment activities for each instructional unit that represents an authentic assessment of the clustered standards and (5) identify resources for teachers use to implement each instructional unit.

The Request for Proposals (RFP) will be released on April 24, 2009.

The RFP package may be obtained the from National Collegiate Preparatory Public Charter High School main office, 2703 12th Street, N.E., Suite #1, Washington, DC 20018.

The deadline for submission is Monday, May 4, 2009 at 5:00p.m. E.S.T. No proposals will be accepted after the deadline

Mail application or submit electronically to:

Attn: L. Crowder
Staff Associate
National Collegiate Preparatory PCHS
2703 12th Street, N.E., Suite #1
Washington, D.C. 20018
lcrowder@nationalprep-pchs.or

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDING AVAILABILITY****FY 2009 Charter Schools Program Dissemination Grant****RFA RELEASE DATE: April 24, 2009****APPLICATION SUBMISSION DEADLINE: Rolling applications until May 31, 2009**

The Office of the State Superintendent of Education is soliciting grant proposals from qualified applicants for the Charter Schools Program Dissemination Grant. The purpose of the Charter Schools Program Dissemination Grant is to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school, through such activities as:

1. Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;
2. Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;
3. Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and
4. Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools.

Eligible Organizations/Entities

An eligible applicant is a charter school that has been in operation for at least three (3) consecutive years and has demonstrated overall success as defined by the No Child Left Behind Act, which states:

1. Substantial progress in improving student academic achievement;
2. High levels of parent satisfaction; and
3. The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

To receive more information, please contact

Steph Cheng
Office of the State Superintendent of Education
441 4th Street, N.W., Suite 350N
Washington, D.C. 20001
Telephone: 202-724-1513
Email: stephanie.cheng@dc.gov

Please visit www.osse.dc.gov or contact Steph Cheng to receive a copy of the RFA.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17509-A of Bernard L. Renard, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the court area and width requirements under section 406, a variance from the nonconforming structure provisions under subsection 2001.3, and a variance from the accessory structure alley setback requirements under subsection 2300.2(b), to allow an addition to one of two row dwellings sharing the same lot proposed for subdivision in the R-4 District at premises 521-523 11th Street, S.E. (Square 973, Lot 67).

Hearing Dates: September 19, 2006, January 30, 2007,
and May 22, 2007
Decision Date: May 22, 2007
Final Date of Order: June 11, 2007
Decision on Motion to Extend Order: March 24, 2009

**ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER 17509**

The Underlying BZA Order

On May 22, 2007, the Board approved the Applicant's request for a variance from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the court area and width requirements under section 406, a variance from the nonconforming structure provisions under subsection 2001.3, and a variance from the accessory structure alley setback requirements under subsection 2300.2(b) of the Zoning Regulations. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on June 11, 2007 (BZA Order 17509).

Under the Summary Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until June 11, 2009.

Section 3130.1 states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

(11 DCMR § 3130.1)

BZA APPLICATION NO. 17509-A**PAGE NO. 2****Motion to Extend**

On March 13, 2009, the Board received a letter from the Applicant indicating that it had not yet applied for a building permit, and that it would not be able to do so prior to June 11, 2009 when the Order was set to expire. According to the Applicant, the extension is sought because, despite numerous efforts, he has not been able to secure sufficient project financing which would allow the preparation of construction plans and the filing of the building permit application. The Applicant pointed out that the circumstances that he faces result from the current economic and market conditions which are beyond his control. The Applicant noted how the financing rules have changed, creating an economic crisis at this time. He stated that he would continue his efforts to finance his project and file for permits by the expiration of the extended term.

The Applicant served his request for an extension on the Office of Planning (OP) and Advisory Neighborhood Commission (ANC) 6B, the only party to the application. Neither OP nor the ANC submitted comments related to the request.

Criteria for Evaluating Motion to Extend

Section 3100.5 of the Regulations states in full:

Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

(11 DCMR § 3100.5)

The Board finds that the Applicant has met the criteria set forth in this provision. The Applicant's inability to secure financing and the poor economic conditions in the District constitutes the "good cause" required under § 3100.5. The Board also finds that a waiver in this case would not prejudice the rights of any party and is not otherwise prohibited by law. Neither the ANC nor any nearby property owners objected to an extension of the Order; and as noted above, there were no opposing parties at the time the underlying Order was decided. Since granting the initial request for relief did not prejudice the rights of any party, the Board concludes that the extension of that relief, likewise, will not be prejudicial.

Accordingly, the Board hereby waives the limitation in § 3130.1 of the Regulations and extends the validity of the underlying Order for a period not to exceed two years from the current expiration date, thereby establishing a new expiration date of June 11, 2011.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions

BZA APPLICATION NO. 17509-A
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of law. It is therefore **ORDERED** that this request for extension of time be **GRANTED** until June 11, 2011.

VOTE: **3-0-2** (Ruthanne G. Miller, Marc D. Loud, and Shane L. Dettman to approve;
Mary Oates Walker not participating, not voting; no member of the Zoning
Commission participating or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: APRIL 8, 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

SG/TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17886-A of the Republic of South Africa, pursuant to 11 DCMR §§ 201.1 and 1001, and § 206 of the Foreign Missions Act, to permit the renovation and expansion of an existing chancery use in the D/NOPD/TSP/R-1-A District, at premises 3101 Massachusetts Avenue, N.W. (Square 2145, Lot 826).

HEARING DATE: January 13, 2009
DECISION DATE: February 10, 2009

REVISED NOTICE OF FINAL RULEMAKING
AND
DETERMINATION AND ORDER

The Board of Zoning Adjustment (“BZA” or “Board”), pursuant to the authority set forth in § 206 of the Foreign Missions Act (“FMA”), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306),¹ and Chapter 10 of the Zoning Regulations of the District of Columbia (11 DCMR), hereby gives notice of the adoption of its determination not to disapprove the application of the Republic of South Africa (“Applicant”) to renovate, partially replace, and expand its existing chancery, located at premises 3101 Massachusetts Avenue, N.W. (Square 2145, Lot 826) (“subject property”).

The Board’s original Notice and Order was published in the March 20, 2009 edition of the District of Columbia Register. The Board subsequently became aware that the Notice and Order did not fully describe the scope of the public space improvements requested by the Applicant, all of which the Board intended to not disapprove. In order to ensure that there is no ambiguity concerning the extent of the authorization intended, the Board is issuing this revised order. No other changes have been made to the original Notice and Order.

Procedural Background

On September 15, 2008, the Applicant filed a chancery application with the Board, requesting that the Board not disapprove the proposed renovation, partial replacement, and expansion of its existing chancery. Pursuant to 11 DCMR § 3134.7, the application was supported by a letter

¹Section 206 of the FMA is codified at both 22 U.S.C. § 4306 and D.C. Official Code § 6-1306. For ease of reference, the D.C. Code section will be cited herein.

BZA APPLICATION NO. 17886-A**PAGE NO. 2**

from the United States Department of State, also dated September 15, 2008, certifying that the Applicant had complied with § 205 of the FMA (D.C. Official Code § 6-1305) and that the application could be submitted to the Board.

In accordance with the Zoning Regulations, the Board provided written notice to the public more than 40 days in advance of the public hearing. 11 DCMR §§ 3113.13 and 3134.9(c). The Board also published a notice of proposed rulemaking in the September 26, 2008 edition of the *D.C. Register* at 55 DCR 10029.

On September 16, 2008, the Office of Zoning sent a copy of the Applicant's filings to the U.S. Department of State. On September 24, 2008, the Office of Zoning provided notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3C, the ANC within which the subject property is located, the member for Single Member District 3C08, and the Council Member for Ward 3.

The Office of Zoning subsequently scheduled a hearing on the application for January 13, 2009, and on October 24, 2008, mailed a copy of the notice of hearing to the Applicant, ANC 3C, and all property owners within 200 feet of the subject property. Notice of the hearing was also published in the *D.C. Register* on October 31, 2008, at 55 DCR 11312, and posted in the Office of Zoning. In addition, on December 22, 2008, the Applicant posted on the subject property a zoning placard, in plain view of the public, affording notice of the hearing, in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

The Subject Property

The property that is the subject of this application is located at 3101 Massachusetts Avenue, N.W., in an R-1-A zone district. The subject property is also located within three zoning overlay districts – the Diplomatic Overlay, the Naval Observatory Precinct Overlay, and the Tree and Slope Protection Overlay – as well as within the Massachusetts Avenue Historic District. To the north and west, the property is bounded by Normanstone Park. To the east of the property is the now-vacant former Iranian Embassy, and to the south of the property is Massachusetts Avenue.

On the subject property is one building, which fronts on Massachusetts Avenue and presents as one long limestone façade. The building appears as two wings joined together by a central connecting bridge. This bridge area is smaller than the two wings and is recessed from their facades. It has a second and third story, but an open archway in what would be its first story, through which is provided vehicular access to the rear of the building. The western wing of the building was constructed in 1935 and is a contributing resource to the Massachusetts Avenue Historic District. Until June, 2007, it contained the South African Embassy, *i.e.*, the ambassador's residence, and now contains rooms used for entertainment and official programs. The eastern wing of the building and the connecting bridge were both constructed in 1964, and

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are not contributing resources to the Massachusetts Avenue Historic District. These two latter sections of the building currently house chancery uses.

All three sections of the building have a similar appearance, with a rusticated first floor on both wings, and a series of vertically-oriented windows running the length of all three sections on the second and third floors. Both the western and eastern wings also have mansard roofs with three dormers containing fourth floor windows. The western wing is somewhat more architecturally detailed than the eastern wing, presenting a more refined appearance.

The subject property contains approximately 24,600 square feet of land area and the building currently has approximately 36,074 square feet of gross floor area. The building is approximately 49 feet high, with four stories and a cellar, and provides nine surface parking spaces in its rear and 21 parking spaces in a garage at the cellar level.

The Applicant's Proposal

The Applicant proposes to renovate the entire building, both its interior and exterior, replace the bridge with new infill construction, and add an addition to the rear of the building. The Applicant proposes to remove any residential use from the western wing and expand chancery uses into this area, so as to obviate the need for a chancery annex it currently maintains at a different site, at 4301 Connecticut Avenue, N.W. It is contemplated that once all proposed construction is complete, the building will have approximately 40,480 square feet of gross floor area, all devoted to chancery and chancery-support uses, 4,398 square feet of which will be new floor space.² The new floor space will be contained in the new infill portion of the building replacing the bridge, and in a fourth floor addition at the rear of the western wing. Limited demolition of an elevated terrace in the eastern side yard is also proposed to provide access to the rear parking area from the below-grade garage. The only addition to the building which will be visible from Massachusetts Avenue will be the infill construction replacing the connector bridge.

The Applicant proposes to retain the nine rear surface parking spaces and to increase the number of parking spaces in the below-grade garage from 21 to 27, for a total of 36 parking spaces on site.

Improvements to the public space in front of the buildings will include the installation of a new security fence, a flagpole, new paving for the entry court, plus stairways, steps and architectural plinth walls, with recessed light fixtures, and landscaping, all as shown on the plans submitted to the record. One of the three existing curb cuts will be eliminated. This former driveway area will be reconstructed as a pedestrian entrance to the chancery.

²These two gross floor area numbers were taken from Applicant's Prehearing Submission, Exhibit No. 29. The Office of Planning Report of January 13, 2009, Exhibit No. 31, has slightly different numbers – total floor area after addition of 40,755 sq. ft., with new floor area of 4,681 sq. ft. – but these numerical differences are irrelevant for the purposes of the Board's decision on this application.

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The new fence will run along the Massachusetts Avenue frontage of the building and wrap around the corners of the site, continuing partially along its sides. The rear of the property is already enclosed by a fence 8 feet tall. All the improvements to the public space proposed by the Applicant are referred to collectively in this order as the “public space improvements” and are depicted in the Applicant’s plans at Exhibit No. 36, Sheet A-3, and Exhibit No. 29, Sheets L-1, L-2, L-5, L-6, and C-2.

The Hearing

At the hearing on the application, held on January 13, 2009, and by a report of the same date, OP recommended partial non-disapproval and partial disapproval of the application. OP recommended non-disapproval of all aspects of the application except the erection of the fence, subject to the condition that the Applicant continue to work with the Historic Preservation Office (“HPO”), particularly on the design of the infill addition. OP’s recommendation of disapproval of the fence was, in reality, a recommendation to defer a decision with regard to the fence until a security assessment was presented to the Board to justify the proposed height of the fence. Near the conclusion of the proceedings in this case, OP filed a Supplemental Report, dated February 5, 2009, reiterating its overall recommendation of non-disapproval, but strengthening its condition to require the Applicant to implement the changes deemed necessary by HPO. In its Supplemental Report, OP takes no position on the fence, but by the time of the submission of that report, a security assessment had already been done and submitted to the Board by the State Department.

ANC 3C filed a resolution with the Board on December 17, 2008 also recommending non-disapproval of the application, without any conditions.

At the hearing, the Applicant’s representative, architect, and architectural historian testified on behalf of the application.³ These individuals discussed the actual operations of the chancery use, for example, the hours of operation, the number of visitors to the chancery and how they arrive there, and the number of special events and how transportation issues are handled for such events. The architect walked the Board through the plans and explained the project in some detail. The architectural historian also explained at length the history and varying architectural relevance of the three sections of the building. Both the architectural historian and the South African representative repeatedly emphasized that the infill replacement of the current bridge area represented the “new” South Africa. They stressed that much thought had gone into designing the infill replacement in a more modern vein than the two wings, in an attempt to symbolize that South Africa, while respecting the past, is moving on to a bright future free of the political strife that characterized the country’s recent history.

Both the design of the infill replacement of the bridge and the height and location of the security fence were contentious issues during the hearing. Because the fence and all of the other public space improvements proposed will be located in public space, they would normally fall within

³The Applicant’s traffic engineer was also present at the hearing, but did not testify.

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the jurisdiction of the D.C. Department of Transportation, with permission to construct them given by DDOT's Public Space Committee. This application, however, proposes the expansion and partial replacement of a chancery in which the public space improvement will play an integral role. DDOT did not object to the Board's consideration of these public space improvements and the Board concludes that it has the jurisdiction to consider all the proposed improvements to, and uses of, public space that are intrinsically related to other aspects of a chancery application pursuant to the FMA, D.C. Official Code §§ 6-1306(a), (e)(1), and (j). Therefore, the Board received and considered evidence on the public space improvements proposed, particularly on the need for the fence at the requested 8-foot, 10-inch height.

The design and materials of the infill replacement are much more modern than those of the two building wings, and could appear inconsistent or disharmonious with the two wings. At the time of the public hearing, the D.C. Historic Preservation Office was strongly opposed to the infill addition, calling its proposed glass curtain and mesh screen "a sharply discordant element" that would "disrupt the harmony of the complex." Exhibit No. 31, at 5. HPO went so far as to opine that the façade treatment of the infill addition was "[n]either successful [n]or appropriate to the historic context." *Id.*

This Board is the ultimate arbiter of whether an addition to a chancery is compatible with a historic district and whether such addition substantially complies with applicable historic preservation regulations. *See*, D.C. Official Code § 6-1306(d)(2). But the Board can be guided by the expert advice provided by HPO. Board members also expressed their own misgivings concerning the compatibility of the infill addition. Therefore, the Board did not decide this application at the conclusion of the hearing, but instead, requested that the Applicant work further with HPO to achieve a more acceptable and harmonious design for the infill addition. The Board requested further filings concerning any changes made to the design of the infill addition, as well as new plans depicting such changes, and set a decision date of February 10, 2009.

The Applicant worked with HPO and made significant changes to the infill addition, including, in the words of the Applicant's architect:

[t]he vertical band [on either side of the addition] was proposed to be new stone; instead two and a half feet in width of the existing masonry wall of the hyphen [i.e., the existing bridge area] will be retained at HPO's request. To create a more prominent entry and stronger focal point, the entry vestibule has been deleted and the first floor entry recessed. The first floor of the infill addition will be structural glazed to achieve an ultra clear look at the ground level and recall the void of the existing arch. In addition, a metal panel has been added at the infill addition to align with an existing masonry band at the top of the rusticated base. The sunscreen has also been lowered to the height of the existing cornice, will turn under, and continue through the lobby to create a more volumetric appearance and further reinforce the entry.

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Exhibit No. 36, Attachment B. The only significant request of HPO that the Applicant's new design did not comply with was retention of the existing cornice across the infill addition. The Applicant's architect explained why retention of this cornice would be aesthetically unsuitable and technically very difficult. *See*, Exhibit No. 36, Attachment B. The architect concluded that "[t]he placement of the contemporary intervention" between the two wings of the building "is subtle and respectful to the existing buildings and the [historic] district." *Id.* The HPO agreed to a certain point, stating that the changes made subsequent to the hearing, "are clear improvements." Exhibit No. 39, incorporated HPO recommendation.

Moreover, the Applicant's expert in historic preservation discussed, in the context of this application, each of the 12 District of Columbia Historic Preservation Guidelines prepared by the HPO and adopted by the D.C. Historic Preservation Review Board, which appear in the HPO publication "Additions to Historic Buildings." The expert's analysis specifically addressed the features of the infill addition in the context of the guidelines that were developed by HPO itself, and explained why the addition satisfied each of these guidelines. After setting forth the analysis for each guideline, the expert drew the conclusion that the Applicant's project was, in each case, compatible with the Massachusetts Avenue Historic District. Overall, the expert opined that the design as a whole met the FMA's test of substantial compliance with applicable historic preservation regulations. *See*, Exhibit No. 36, Attachment C.

Evaluation of the Application

Subsection 406 (d) of the FMA, D. C. Official Code § 6-1306 (d) directs the Board to consider six factors when analyzing a chancery application. For certain of these factors, the provision also indicates who is to make the relevant finding. These six factors are:

- (1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital;
- (2) Historic preservation, *as determined by the Board of Zoning Adjustment* in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks;
- (3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements *as may be determined by the Secretary*, after consultation with federal agencies authorized to perform protective services;
- (4) The extent to which the area is capable of being adequately protected, *as determined by the Secretary*, after consultation with federal agencies authorized to perform protective services;

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(5) The municipal interest, *as determined by the Mayor* of the District of Columbia; and

(6) The federal interest, *as determined by the Secretary*.
(Emphasis added).

Factor 1 -- International Obligation of the United States

The Board agrees with the Secretary of State and the Office of Planning that favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure facilities by the Republic of South Africa for its diplomatic mission in the United States. The Secretary's representative testified in favor of various aspects of the application during the hearing, including the height of the proposed fence.

Factor 2 -- Historic Preservation (as determined by the BZA)

The Board must determine whether this addition "substantially complies" with applicable historic preservation regulations in order to ensure compatibility with the Massachusetts Avenue Historic District. While "substantial compliance" is not defined in the FMA or the Zoning Regulations, in *Sheridan-Kalorama Historical Ass'n. v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16 (D.C. Cir. 1995), the United States Court of Appeals for the District of Columbia Circuit noted that "'compliance' with these laws, in this case at least, is not as much a matter of meeting any specific standard as it is of submitting the proposal to the appropriate regulatory body or bodies for review and comment," 49 F.3d at 759, 311 U.S. App. D.C. at 25. In that case, the court found substantial compliance through the referral of the application to the Mayor's Agent for Historic Preservation. At present, the Mayor has made the Director of the Office of Planning his agent for carrying out his historic preservation responsibilities and, as noted, notice of this Application was provided to that Office. In addition, at the conclusion of the hearing, the Board invited further filings from the HPO. Therefore, substantial compliance has occurred.

In terms of the substantive preservation issues raised in the Application, the Board notes that the Applicant substantially revised the design of the infill addition to accommodate HPO's requests, and made essentially all the modifications requested except one – retention of the existing limestone cornice. The Board concludes that this redesign is consistent with the relevant purpose stated in the District's historic preservation law relating to properties located in historic districts; namely the revised design will "assure that alterations of [the] structure are compatible with the character of the historic district." D.C. Official Code § 6-1101(b)(1)(B) (2001). While the term "compatible" is also not defined in the FMA or the Zoning Regulations, Webster's Unabridged Dictionary defines "compatible" as "capable of existing together without discord or disharmony."⁴ The Board notes that other nearby chanceries in the historic district, such as the Brazilian chancery, have modern features distinct to their national character. The South African

⁴ Section 199.2(g) of the Zoning Regulations states that "[w]ords not defined in this section shall have the meaning given in Webster's Unabridged Dictionary."

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chancery's expression of its break with the past through its architectural design is tempered by the accommodations the Applicant made to the HPO and is compatible with the diverse chanceries in the historic district. Finally, HPO does not anywhere cite a specific historic preservation regulation or guideline with which the Applicant's final design does not comply.

Factor 3 -- Adequacy of Parking (subject to such special security requirements as may be determined by the Secretary)

The chancery use will have adequate parking on-site and is served by several major bus routes. The Secretary of State has determined that there are no special security requirements related to parking at the subject property.

Factor 4 -- The Extent to which the Area is Capable of being adequately Protected (as determined by the Secretary)

After consultation with federal agencies authorized to perform protective services, the Secretary of State has determined that the subject property and the area are capable of being adequately protected. Personnel from the State Department's Bureau of Diplomatic Service performed a security survey of the chancery site at the subject property and recommended that the Applicant be permitted to construct the requested fence at the requested height for security purposes. Moreover, the height of the proposed security fence has been mandated by the South African government for all its embassies/chanceries and is lower than the 9-foot high security fences constructed for all U.S. Embassies. *See*, Hearing Transcript at 122, lines 9-13. In fact, the State Department representative acknowledged that the U.S. had recently been granted permission by the South African authorities to construct a 9-foot fence, higher than usually permitted, around the newly-constructed U.S. Consulate General Building in Cape Town. *Id.* at 122-123, lines 19-22 and 1-5. The Board concludes that the erection of the proposed fence, at the requested height, and at the requested location, is appropriate and necessary.

Factor 5 -- The Municipal Interest (as Determined by the Mayor)

The Director of the Office of Planning, on behalf of the Mayor of the District of Columbia, has determined that favorable action on this application is in the municipal interest and is generally consistent with the Comprehensive Plan for the Nation's Capital and the Zoning Regulations. OP's first requested condition – that the Applicant implement the changes deemed necessary by HPO – has been met by the Applicant's revised design of the infill addition and substantial compliance with historic preservation guidelines and regulations.

OP's second condition/recommendation was that the Board should defer its decision with regard to the fence until it received a security assessment. The Board received such an assessment and has determined that the fence is permissible, appropriate and necessary.

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PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

LM

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 09-008
(Consolidated PUD, First-Stage PUD, and Related Map Amendment
@ Squares 3831 & 3832
April 20, 2009

THIS CASE IS OF INTEREST TO ANC 5C

On April 20, 2009, the Office of Zoning received an application from Brookland Artspace Lofts, LLC (the "Applicant") for approval of a consolidated PUD, first-stage PUD, and related map amendment for the above-referenced property.

The property that is the subject of this application is located at 3225 and 3305-3313 8th Street, N.E. in Northeast Washington (Ward 5). The property is located on the east side of 8th Street, N.E., immediately north and south of Kearny Street, approximately two blocks south of Monroe Street. The property is bisected by Kearny Street, which does not function as a roadway since it dead-ends on this block and does not connect with Kearny Street to its west. Train tracks serving Union Station run along the eastern boundary of the property.

The property is currently zone C-M-1. The Applicant also proposes a related map amendment to rezone the property to C-2-B.

The Applicant proposes to construct 41 affordable (at 60% of the Area Median Income) artist studios and apartments as well as a dance studio. The Applicant will close Kearny Street for use as an outdoor plaza connecting the two buildings and providing outdoor space for performances or community gatherings. The Applicant will provide 22 parking spaces; the building will have a height of 50 feet; lot occupancy of 74%; and density of 2.7 FAR for residential and .8 FAR for commercial.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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

Z.C. Case No. 06-40

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

November 10, 2008

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

FINDINGS OF FACT

Application, Parties, and Hearing

1. On August 25, 2006, the Applicant filed an application with the Commission for consolidated review and approval of a PUD and related map amendment for property consisting of 38,452 square feet located in the Northeast quadrant of the District of Columbia between Morse Street, 4th Street, and Florida Avenue. The application requested a map amendment from the C-M-1 Zone District to the C-3-C Zone District. (Exhibits 1-3, 5, 7-22.)
2. At its public meeting on January 8, 2007, the Commission considered the applications and acted by consensus to defer setting the case down for a hearing pending completion of the Small Area Plan (“SAP”) for the Capital City Market. The PUD Site lies within the footprint of the Capital City Market. During the proceedings, the Office of Planning (“OP”) stated that the SAP would be concluded by April 2007.
3. At the Applicant’s request, OP asked the Commission at its public meeting on March 10, 2008, to reconsider setting the case down for a hearing because, even though the SAP had not been completed, the District Elements of the Comprehensive Plan for the National Capital: (“Comprehensive Plan”), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300) and Future Land Use Map had taken effect and designated the PUD Site for mixed-use development. The Commission agreed to do so upon receipt of revised and updated plans from the Applicant.

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4. The Applicant submitted revised and updated plans to the Commission on March 14, 2008. (Exhibits 33, 34A, 34B.)
5. At a special public meeting on March 24, 2008, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding pedestrian circulation, rooftop structures, the second-floor retail space, and the building elevations.
6. On May 16, 2008, the Applicant filed a Final Pre-Hearing Supplemental Submission (Exhibits 43-45) responding to the Commission's request and reflecting the following:
 - (a) Redesigned roof structures so as to eliminate the need for relief pursuant to 11 DCMR §411;
 - (b) Redesign of the multipurpose pavilion on the fifth level plaza, so as to eliminate a "court" condition, as defined by 11 DCMR §199.1;
 - (c) Relocation of the Community Meeting Room, Advisory Neighborhood Commission ("ANC") office and related amenities from the third to the first level, together with a street-level entrance;
 - (d) Enhanced separate residential and office entrances to the building;
 - (e) Replacement of the escalator between the first and second levels with a Grand Staircase; and
 - (f) Inclusion of 44 bicycle parking spaces in the parking garage.
7. The Applicant filed a Pre-Hearing Submission in response to OP requests on June 4, 2008. (Exhibits 52-53.)
8. After proper notice, the Commission held a public hearing on the applications on June 5, 2008, at which time it agreed to recess after the Applicant's presentation and continue the hearing on July 24, 2008, to allow additional time for the ANCs accepted as parties to the case to prepare their presentations.
9. During the June 5, 2008, portion of the hearing, the Commission voted to approve the request by ANC 6C for party status because its boundaries are adjacent to the PUD Site, denied the ANC 6C request to delay consideration of the case until completion of the SAP, and acknowledged ANC 5B as an automatic party to the case because the PUD Site lies within its boundaries.

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10. The Applicant presented testimony during the June 5 and July 24, 2008 hearings from the following witnesses: Fred Greene of FGLA Associates, the project manager; Craig Wright of McKissack and McKissack, the project architect; Scott Delgado of the Bowman Consulting Group, the engineering and environmental consultant; Martin J. Wells of Wells & Associates, the traffic consultant; and William G. Miller of the Retail Services Group of Transwestern, the retail consultant. The Commission accepted Mr. Delgado and Mr. Wells as expert witnesses.
11. On July 14 and July 24, 2008, the Applicant submitted additional materials requested by the Commission at the June 5, 2008 hearing (Exhibits 66-71, 75, 75A, 76), including:
 - (a) The Design Inspiration & Theme, and the Retail Vision & Strategy;
 - (b) A Transportation Management Plan;
 - (c) A Loading & Service Vehicle Analysis;
 - (d) A LEED Project Checklist;
 - (e) Revised architectural plans, building elevations, and turning diagrams; and
 - (f) Project renderings.
12. OP, the District Department of Transportation (“DDOT”), Ward 5 Councilmember Harry Thomas Jr., and the properly-authorized representatives of ANCs 5B and 6C presented testimony in support of the applications. Testifying as an individual, ANC 5B06 Commissioner Wilhelmina Lawson, whose single-member district includes the PUD Site, testified in support.
13. Richard Layman, a member of the public, testified July 24, 2008, in opposition to the application.
14. As requested by the Commission, the Applicant filed a Post-Hearing Submission on August 21, 2008 (Exhibits 80-81), providing the following:
 - (a) Retail Strategy and Contingency Plan;
 - (b) Delineation of the Capital City Market Area as a Retail Demand Generator;
 - (c) Redesign of the West Elevation;

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

The PUD Site, Area, and History

18. The PUD Site is in Square 3587 and consists of Lots 5, 800, and 802 and Parcel 129/32 (“Washington Beef properties”); Lot 809 (“Ironworks property”); and Parcel 129/9 (“Bank of America property”), which were most recently occupied, respectively, by the vacant and boarded-up Washington Beef warehouses, a small welding shop, and a Bank of America branch.
19. The PUD Site is in ANC Single-Member-District 5B06 in Ward 5. It is bounded by Florida Avenue on the south, 4th Street on the east, Morse Street on the north, and the southwest portion of the Capital City Market on the west. It is less than 350 yards from the entrance to the New York Avenue-Florida Avenue-Gallaudet University Metrorail station, just across Florida Avenue on the southwest.
20. The PUD Site lies within the Capital City Market, an area of approximately 24 acres which is occupied by wholesalers and retailers of foodstuffs, dry goods, jewelry, tourist souvenir items, hair care products, and general merchandise; two nightclubs, a liquor store, an insurance company office, and a small, low-budget hotel. The Capital City Market has been designated by the District Council for mixed-use redevelopment in accordance with the New Town at the Capital City Market Revitalization and Public/Private Partnership Act of 2006, effective March 14, 2007 (Title II of D.C. Law 16-278; D.C. Official Code § 6-1062.01, *et seq.*)

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21. The Capital City Market, which includes the PUD Site, is bordered on the west and south by the NoMA (North of Massachusetts Avenue) district, designated by the District Government for high-density mixed-use redevelopment.
22. The Gateway project originated with a Request for Proposals (“RFP”) issued by the Department of Housing and Community Development (“DHCD”) on June 11, 2002, inviting proposals to acquire and develop the Washington Beef properties. To develop a more cohesive project, the Applicant purchased the Bank of America and Ironworks properties. DHCD accepted the Applicant’s proposal for a matter-of-right three-story office, retail, and warehouse building and awarded the Applicant exclusive development rights on February 3, 2003. The Applicant and DHCD entered into a Land Disposition Agreement (“LDA”) for the Washington Beef and Ironworks properties on February 26, 2003.
23. After the opening of the New York Avenue-Florida Avenue-Gallaudet University Metrorail station in November 2004, the Applicant and DHCD agreed that the proposal should incorporate a residential component. On February 15, 2006, the Applicant submitted an amended development proposal, with plans to substantially enlarge the project, add a residential component with an affordable housing commitment, and eliminate warehouse use. DHCD approved the amended proposal. Because the amended proposal added the residential component and increased the project’s height and density, the Applicant was required to seek Commission approval through the PUD process and related map amendment.
24. Pursuant to the Applicant’s agreements with DHCD, the Applicant must set aside 20% of the residential units as affordable housing, must give existing Capitol City Market retailers first rights to lease retail space in the PUD project, and must comply with DHCD’s development timetables.

Existing and Proposed Zoning

25. The PUD Site is zoned C-M-1 which permits “low bulk commercial and light manufacturing uses” with a maximum FAR of 3.0, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted. (11 DCMR §§800.1, 800.4, 840.1, and 841.1.)
26. Within the immediate vicinity of the PUD Site, the Gallaudet Campus and nearby residential properties to the east are in the R-4 Zone District; properties south of Florida Avenue to H Street, from the railroad tracks on the west through 3rd Street on the east, are zoned in a mixture of C-M-1, C-M-3, C-2-B, C-3-A, C-3-B, and C-3-C Zone Districts. From 3rd Street moving east, most properties are in the R-4 and R-5 Zone Districts.

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27. In 2003, the Commission rezoned property near the New York Avenue-Florida Avenue intersection (Lots 23 and 809 in Square 3584) from M to C-3-C to accommodate the New York Avenue-Florida Avenue-Gallaudet University Metrorail station and transit-oriented development objectives. (*ZC Order No. 970*, effective May 23, 2003)
28. The Applicant requests a PUD-related map amendment to rezone the PUD Site to C-3-C. The C-3-C Zone District permits residential use in addition to office and retail uses. Pursuant to 11 DCMR §§ 2405.1, 2405.2, and 2405.6, the Applicant also requests application of the PUD standards for C-3-C which allow a maximum height of 130 feet, rather than the C-3-C matter-of-right maximum of 90 feet, and a maximum density of 8.0 FAR, rather than the C-3-C matter-of-right maximum density of 6.5 FAR, and flexibility from the loading berth requirements set forth at 11 DCMR § 2201.

The PUD Project

Overview

29. The PUD project is proposed as a retail, office and residential development, named the Gateway Market and Residences (“Gateway”), with a total building area of 416,188 gross square feet (“gsf”), including three below-grade parking levels covering 111,451 gsf. The effective building area is 294,092 square feet, apportioned as 21,836 gsf for retail use, 61,399 gsf for office use, 111,721 gsf for residential use, 4,056 gsf for the ANC office and community meeting space, 443 gsf for the Metropolitan Police Department Work Station or other security/information services, and 102,997 gsf for support and circulation. (Exhibit 80, Attachment 2.)
30. The density is 7.65 FAR on a PUD Site land area of 38,452 square feet with 93% lot occupancy.
31. Gateway will have a maximum height of 119 feet and six inches from the Florida Avenue measuring point. The building reaches its maximum height with the 10-story residential tower fronting on Florida Avenue and 4th Street, and steps down to a height of 71 feet above the measuring point at the rooftop of the fifth-level multipurpose pavilion.
32. The Gateway design was inspired by the location of the site at the entrance to the Capital City Market and the nature and design of the Market’s existing structures, and by the generally accepted vision of the Market area redevelopment over the next decade. The base is earth-toned brick with cast stone, to complement the original Market buildings that surround it. Large bay windows extend down from the top through the third level, enhancing the building’s vertical rhythm. Residential balconies on the upper levels

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animate the façade. On the west façade, floor to ceiling windows on the third through tenth levels, as well as scoring in the masonry, brighten the building face.

33. The building is accented by a pedestrian-friendly streetscape, with sidewalk seating areas. Streetscape features adhere to NoMA streetscape standards, employing warm-toned concrete with aggregate as sidewalk pavers.
34. The project includes a three-level underground garage with 188 vehicle parking spaces and 44 bicycle parking spaces.
35. One 30-foot loading berth, one 55-foot loading berth, and one 20-foot delivery vehicle space will be provided. All access to garage and docks will be provided from Morse Street.

The Retail Component

36. The project proposes retail uses on the first level, entered from Florida Avenue, and the second level, entered from Morse Street and via the Grand Staircase from the first level. The multilevel entrances accommodate the substantial grade change between these two streets. Both retail levels will have slab-to-slab heights of 16 feet.
37. In response to Commission concerns as to the viability of the Applicant's retail strategy, the Applicant provided two retail strategies.
38. In Plan A, the Applicant's preferred plan, both levels are designed as a food-themed emporium. On both levels, the food retail areas are designed to be open, with individual retailers serving customers over chest-high glass cases and smaller kiosks. A centrally-located atrium brings light and a sense of openness to the shopping area. The first level's east and west corner retail spaces are envisioned as, respectively, a café restaurant and a specialty market. On the second level, a street-facing window-walled interior corridor extends along the Fourth Street and the Florida Avenue sides. The approximately 9,000 square foot space in the southwest corner is designed to accommodate additional food-stands and kiosks. The retail levels have, in effect, two "front doors" – an approximately 50-foot-wide Florida Avenue entrance to the first level, and a Morse Street entrance to the second level. In the interior, a centrally-located Grand Staircase links the two levels.

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

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the Commission as a modification of the PUD and subject to the approval of DHCD, pursuant to the Applicant's development agreement(s) with DHCD.

The Office Component

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

The Residential Component

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

Building Height

44. From the Florida Avenue measuring point, the PUD will have a maximum height of 119.5 feet and 10 stories on the Florida Avenue side, stepping down to 71 feet and four stories on the Morse Street side.
45. In response to Commission concerns, the Applicant redesigned the layout of the roof to ensure that the rooftop structures comply with the setback requirements of the Height Act. The Height Act requires that rooftop structures shall be set back from exterior walls distances equal to their respective heights above the adjacent roof.

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46. The top level of the roof is L-shaped. The north and west sides of the “L” overlook the fifth-level roof. On those sides, the Applicant repositioned the balconies so that they overhang the fifth-level roof, rather than jutting inward at the tenth level and decreasing the space available for the rooftop structures. With this redesign, all the 18-foot high rooftop structures are clearly set back by 18 feet from the adjacent roof, as required by the Height Act, obviating the need for a variance.
47. The stair towers and penthouse screen wall are also set back at a 1:1 ratio, as required by the Height Act.

Energy and Environmental Design

48. The project qualifies for 20 credits on the LEED (Leadership in Energy and Environmental Design) for New Construction v 2.2 Project Checklist, as follows:
- (a) Site Selection: The PUD Site is not located on a site considered inappropriate for development, such as farmland or wetlands.
 - (b) Development Density and Community Connectivity: The PUD Site is located within one-half mile of at least 10 basic services, and within one-half mile of a residential zone or neighborhood with an average density of 10 units per acre.
 - (c) Brownfield Redevelopment: The PUD Site qualifies because it was documented as contaminated by means of a Phase II Environmental Site Assessment.
 - (d) Alternative Transportation / Public Transportation: The PUD Site is located within one-half mile of a subway station.
 - (e) Site Development/Maximize Open Space: The PUD Site contains vegetated open space equal to 20% of the project’s site area of 38,452 square feet. The 18,788 square foot green roof exceeds this amount.
 - (f) Stormwater Design/Quality Control: The green roof absorption of stormwater and the use of a stormwater management plan will reduce runoff.
 - (g) Heat Island Effect/Non-Roof: All of the parking spaces are underground, which exceeds the 50% LEED requirement.
 - (h) Heat Island Effect/Roof: The PUD Site qualifies due to the extensive green roof.
 - (i) Water Efficient Landscaping/Reduce by 50%: High efficiency irrigation will achieve a 50% reduction in the use of potable water.

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- (j) Construction Waste Management/Divert 50% From Disposal: Anticipated.
 - (k) Construction Waste Management/Divert 75% From Disposal: Anticipated.
 - (l) Regional Materials /10% Extracted, Processed & Manufactured: At least 10% of the building materials will be obtained from sources within 500 miles of the PUD Site.
 - (m) Certified Wood: At least 50% of wood-based materials and products will be certified in accordance with the Forest Stewardship Council's Principles & Criteria as coming from responsibly-managed forests.
 - (n) Outdoor Air Delivery Monitoring: The project's outside air units and air monitoring system comply with this requirement.
 - (o) Low-Emitting Materials/Adhesives & Sealants: To be used in compliance with this specification.
 - (p) Low-Emitting Materials/Paints & Coatings: To be used in compliance with this specification.
 - (q) Low-Emitting Materials/Carpet Systems: To be used in compliance with this specification.
 - (r) Low-Emitting Materials/Composite Wood & Agrifiber Products: To be used in compliance with this specification.
 - (s) Innovation In Design/100% Underground Parking: By having all parking underground, the project exceeds LEED requirements and thereby delivers exceptional performance.
 - (t) LEED Accredited Professional: In compliance with this requirement, at least one principal participant of the project team is a LEED Accredited Professional.
49. The project incorporates an extensive green roof, covering approximately 18,000 square feet of rooftop over the tenth level floor and approximately 788 square feet of the rooftop over the fifth level floor. Altogether, the green roof extends over approximately 53% of the total rooftop area. The planted area is confined by a washed gravel border, and roof drains are located at various points under the soil medium in the containers holding the plants. The green roof over the fifth level extends over the fifth level multipurpose pavilion and related facilities. The green roof will reduce storm water runoff by

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temporarily storing rainwater within the growing medium and then slowly discharging it into the on-site collection system, thereby reducing the load during peak flows of a major storm. The plants will trap airborne pollutants. The thickness of the growing media/soil mix insulates the building from heat and cold, thereby providing energy savings.

50. The Commission finds that the project's energy and environmental design features are superior to what would be provided in a matter-of-right development at the PUD Site.

Development Incentives and Flexibility

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

Public Benefits and Project Amenities

52. In addition to the sustainability features discussed in paragraph 48 above, the following benefits and amenities will be created as a result of the PUD project:
- (a) Affordable Housing (§2403.9(f)) – The Applicant has set aside 20% of the residential area, totaling 24 units, as affordable housing. These units will be made affordable to households earning no more than 80% of the AMI. The units will be distributed evenly throughout the fifth through eighth floors and in sizes proportional to the building as a whole. The Commission finds that the provision of affordable housing is a valuable community benefit of the PUD that should be recognized.
 - (b) ANC Office, Community Meeting Facilities, MPD Work Station (§2403.9(g)) – The Applicant will provide a Community Meeting Room of 1,869 square feet, which will seat approximately 100 people, with adjacent storage space, restrooms, pantry, and a breakout area. This space will be provided to the community without charge in perpetuity. The Applicant has also agreed to provide office space for ANC 5B, which represents the area, without charge and in perpetuity. Finally, the Applicant has agreed to provide space for a Metropolitan Police Department work station, in perpetuity and without charge.
 - (c) First-Source Employment Agreement (§2403.9(e)) – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services on May 30, 2008. (*Exhibit 55*)

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- (d) *CBE Contracting Commitment* – The Applicant has made a commitment to enter into a Certified Business Enterprise (“CBE”) Agreement with the Department of Small and Local Business Development.

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

Office of Planning Reports

54. In reports dated February 29 and May 26, 2008 (Exhibits 31, 48), OP did not object to the project’s height, density, or use mix. In the May 26, 2008 report, OP said it could not make a recommendation until receiving information regarding the life span of the affordable units, additional data demonstrating that the proposed loading facilities will be sufficient to accommodate project needs, clarification of the public space design including the tree planting strip and sidewalk pavers, and detail on how the appearance of retail windows will be protected.

55. The Applicant responded to the OP requests in a pre-hearing submission filed June 4, 2008 (Exhibit 52) and also filed a Loading and Service Vehicle Analysis prepared by Wells & Associates on July 14, 2008 (Exhibit 68). The Applicant stated:

- (a) The affordable units will be set aside in perpetuity, subject to any changes proposed or allowed by DHCD or D.C. law in accordance with the Applicant’s development agreement(s) with DHCD;
- (b) The Applicant will implement a management and scheduling system assuring that the loading berth facilities will adequately serve the project’s retail, office, and residential loading needs. Based on a field survey of similar buildings, the Wells & Associates analysis concluded that such a system will result in efficient use of the loading facilities and will avoid the construction of unnecessary and unused loading space;
- (c) Regarding public space, the Applicant will use evergreen groundcovers as a design feature in the tree planting strip and tree boxes and a combination of brick and concrete pavers in varying shades of neutral colors in the sidewalks; and
- (d) The exterior appearance of the retail windows will be protected by means of the Applicant’s retail lease agreements that require Gateway building management approval of tenant window displays and prohibit displays that would, in the opinion of the management, detract from the attractive appearance of the building,

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undermine its marketability as a setting of superior quality, or offend neighborhood tastes.

56. In testimony at the July 24, 2008 hearing, OP recommended approval of the applications and stated that the Applicant's responses satisfied OP's requests and resolved OP's questions and concerns regarding the life span of the affordable units, the adequacy of the loading facilities, the public space design, and the retail window appearance. OP stated that it has no objection to the Applicant's request for zoning relief for the loading facilities.
57. In the written reports and testimony, OP stated that the PUD and related map amendment to rezone the site to C-3-C is not inconsistent with the Comprehensive Plan and its Generalized Policy Map and Future Land Use Map. OP concluded that the proposal is consistent with the Comprehensive Plan's Land Use, Transportation, Housing, and Urban Design Citywide Elements and the Upper Northeast Area Element and that it would further the Comprehensive Plan's Guiding Principles through the beneficial management of inevitable change, creation of jobs and opportunities for less affluent residents, effective in-fill and transit-oriented development, neighborhood and "great streets" revitalization, expansion of affordable housing, and enhancement of public safety.
58. OP determined that the project will have an overall positive impact on the neighborhood and the District, and that the project's impact on city services will not be unacceptable.
59. OP accepted the Applicant's proffer of affordable housing, community space, a First Source Employment Agreement, and a Local, Small or Disadvantaged Business Enterprises commitment as public benefits and amenities which are acceptable in all proffered categories and superior in many in accordance with 11 DCMR § 2403.9. OP concluded that the public benefits and amenities are commensurate with the amount of relief the Applicant seeks. However, OP disagreed with the Applicant's proffer of environmental design on grounds that the project will not achieve a level of LEED compliance sufficient to qualify as a public benefit or amenity.

Other Government Agency Reports

60. The Deputy Mayor for Planning and Economic Development, Neil Albert, expressed support for the applications in a letter to the Commission on May 22, 2008. (Exhibit 50.) Mr. Albert stated that the project would serve as a catalyst for development in the area, and would bring needed jobs, services, revenue, and affordable housing to the community. He said the project promotes the policy objectives of expanding the supply of affordable housing and encouraging transit-oriented development.

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61. DHCD expressed support for the project in a letter to the Commission on December 1, 2006. (Exhibit 29.) The DHCD letter called the project an important initiative to continue revitalization of the area, bring new affordable housing and other services to the neighborhood, and increase the District's tax revenues. DHCD said the project resulted from collaborative efforts by the District, the Applicant, ANC 5B, and the Ward 5 community.
62. DDOT submitted a report (Exhibit 57) on June 4, 2008, stating that it has no objection to the application and that the project will not have a significant traffic impact on the neighborhood. DDOT requested that the Applicant submit a Transportation Management Plan ("TMA") describing incentives to reduce motor vehicle trips to the property.
63. On July 14, 2008, the Applicant submitted a TMA (Exhibit 67) with the following incentives:
 - (a) Garage parking for 44 bicycle spaces;
 - (b) Providing a one-time-only car-sharing membership fee subsidy of \$40 per residential unit to the initial residential occupants upon move-in and encouraging DDOT to designate two street parking spaces adjacent to the Gateway building for car-sharing services;
 - (c) Providing complementary SmarTrip cards with a Metro fare value of \$20 per person to the initial residential occupants upon move-in;
 - (d) Providing links to CommuterConnections.com and goDCgo.com websites on the property management and developer websites;
 - (e) Designating a member of the building management team as Property Transportation Coordinator; and
 - (f) Developing an employer outreach program to encourage the use of alternative means of transportation by employees of Gateway's retail and office tenants, and providing information about alternative transportation options via lobby kiosks, welcome packets, and bulletin boards.
70. DDOT stated in testimony at the July 24, 2008 hearing that Applicant's Transportation Management Plan is acceptable and that DDOT has no objection to the Applicant's loading-berth plan.
71. The District of Columbia Water and Sewer Authority ("DCWASA") submitted a memorandum to OP dated May 20, 2008, stating that the capacity of existing combined

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sewers in the area is adequate to handle the expected sanitary flows and expected storm flows from the proposed project.

72. Ward 5 Councilmember Harry Thomas provided a letter (Exhibit 51) in support of the applications, which was presented at the June 5, 2008 hearing. Councilmember Thomas stated that the project would help jump-start development of the Capital City Market; would bring much-needed development to the Trinidad-Ivy City community; has broad support within the Ward 5 community, and provides numerous and invaluable public benefits and amenities.

ANC Reports

73. ANC 5B submitted a resolution in support of the project (Exhibit 74) and testimony by its duly-authorized representative, Chairman William Shelton, at the July 24, 2008 hearing. Commissioner Shelton testified that ANC 5B voted repeatedly to support the project during the six years it has been pending. The ANC 5B resolution expressed support for the employment opportunities provided by the project, the affordable housing commitment, and the community meeting space and ANC office facilities.
74. ANC 6C submitted letters dated June 4 and July 14, 2008 (Exhibits 58, 72), a written statement (Exhibit 78) and testimony by its duly-authorized representative, ANC 6C04 Commissioner Anne Phelps. In the June 4, 2008 letter, ANC 6C expressed opposition to the application on grounds that the ANC 6C had not received notice of the hearing and had not had sufficient time to review the proposed project. After the Applicant participated in ANC 6C meetings on June 25, July 2, and July 9, 2008, ANC 6C voted to support the project concept with six recommendations for improvements, as stated in its July 14, 2008 letter and July 24, 2008 written statement and testimony. (Exhibit 78.)
75. The Applicant addressed the ANC 6C recommendations in its July 14, 2008 submission (Exhibit 78) and in testimony at the July 24, 2008 hearing, as follows:
- (a) The Applicant agreed with the recommended emphasis on market-oriented space, with a market-type environment and outreach to local, small, entrepreneurial businesses as tenants;
 - (b) The Applicant agreed with the recommended incorporation of the better elements of the Capital City Market into the Gateway retail plan and encouragement of outdoor cafes;
 - (c) With regard to the ANC's request for a retail rental plan supportive of merchants with limited capital, the Applicant pledged to work with DHCD, the Office of the Deputy Mayor for Planning and Economic Development, and the Department of

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Small and Local Business Development to assist prospective small-business retail tenants;

- (d) The Applicant affirmed that its retail design and strategy will promote the recommendation for a deliberate effort to encourage people walking along 4th Street and Florida Avenue to visit the Gateway retail establishments;
 - (e) With regard to the recommendation for neighborhood-serving retail elements, and a long-term commitment to local owners and operators, the Applicant affirmed that all Gateway retail elements are intended to serve the local neighborhood as well as visitors to the area and pledged to work with District Government agencies to help Gateway retailers attain long-term stability and profitability; and
 - (f) With regard to the request for exploration of a greater diversity in AMI with respect to eligibility for the affordable housing units, the Applicant stated that the AMI eligibility level resulted from the Applicant's agreement(s) with DHCD, taking into account the facts that the units will be set aside as affordable units in perpetuity and that the Gateway project is receiving no public subsidy at this time. The Applicant pointed out that developments with a lower AMI threshold typically receive governmental financial assistance through one or more defined governmental programs or through the government's contribution of publicly-owned land at no cost.
76. The Commission finds that ANC 6C's recommendations have been reasonably and adequately addressed.

Compliance with the Comprehensive Plan

77. The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.
78. The project carries out Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment bring growth and revitalization to a long-vacant and underutilized industrial site.
79. The project carries out Transportation Element policies that promote transit-oriented development and urban design improvements to major thoroughfares such as Florida Avenue. The PUD brings new housing, retail, and office uses within walking distance of

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the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.

80. The project carries out Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing. The PUD brings 116 new residential units to an underserved neighborhood, with a 20% of the total, or approximately 24 units, set aside as affordable units in perpetuity.
81. The project carries out Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a once-blighted site bordering Florida Avenue.
82. The project carries out Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing, office, and retail uses.

CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential, retail, and office uses for this project are appropriate for the PUD Site. The impact of the project on the

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surrounding area is acceptable given the quality of the public benefits of the project, and the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's public benefits and amenities strike a reasonable balance with the requested development flexibility.
7. Approval of this PUD and related map amendment is appropriate because the proposed development is consistent with the present and future character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the project will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
8. The PUD-related rezoning of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01).
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code §6-623.04), to give great weight to OP recommendations. The Commission carefully considered the OP report and found OP's reasoning persuasive in recommending approval of the application.
10. The Commission is required under D.C. Official Code §1-309.10(d) to give great weight to the issues and concerns expressed in the written report by the affected ANC. The Commission carefully considered the ANC 5B position supporting approval of the application and concurred in its recommendation of approval. The Commission also gave careful consideration to the ANC 6C position supporting approval of the project concept with recommendations for project improvements, and the Applicant's response thereto. The Commission concluded that the Applicant's response satisfactorily addressed the ANC 6C recommendations.
11. Notice was provided in accordance with the Zoning Regulations and applicable case law.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Applications for consolidated review of a Planned Unit Development and for a related Zoning Map amendment from C-M-1 to C-3-C for the PUD Site. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by McKissack & McKissack, dated May 15, 2008, in the record as Exhibit 45, as modified by the plans prepared by McKissack & McKissack, dated July 14, August 21, and September 17, 2008, in the record as Exhibits 71, 81, and 85, respectively, as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The PUD shall be a mixed-use residential, retail, and office project, containing a maximum of 294,092 square feet of gross floor area and including approximately 116 residential units. Approximately 21,836 square feet of gross floor area, located on the first and second levels, shall be devoted to retail; approximately 61,399 square feet of gross floor area, located on the third and fourth levels, shall be devoted to office space; and approximately 111,721 square feet of gross floor area, located on the fifth through tenth levels, inclusive, shall be devoted to residential use. The maximum density of the project shall be 7.65 FAR.
3. The maximum height of the building shall be 119.5 feet with steps in heights and setbacks as shown on the Plans.
4. The project shall include a minimum of 188 vehicle parking spaces and 44 bicycle parking spaces in the below-grade parking garage. The project shall provide one 30-foot loading berth, one 55-foot loading berth, and one 20-foot delivery vehicle space, as shown on the Plans.
5. The Applicant shall set aside 20% of the residential units as affordable housing in perpetuity. The affordable units shall be equitably dispersed among the market-rate units on the fifth, sixth, seventh, and eighth floors, and shall be of a size and type comparable to the market-rate units.
6. The affordable housing units shall be available to households with an annual income of no more than 80% of the Area Median Income as adjusted for household size.
7. The Applicant shall have flexibility to implement the Plan B retail space contingency plan described in Finding 38 of this Order if it becomes necessary in order to assure the viability of the project. In such case, the Applicant may present recommendations to the

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Zoning Administrator for retail space changes within the scope of the three uses – retail, office, and residential – approved for the PUD. The Zoning Administrator shall determine whether any such changes are allowed within the scope of this Order or require review and approve by the Commission a modification to this Order. Any such changes also may be subject to approval by DHCD, pursuant to the Applicant’s development agreement(s) with DHCD.

8. The Applicant shall incorporate the environmental and energy conservation features set forth in Finding 48 of this Order as qualifying for 20 LEED credits.
9. The Applicant shall provide, at no cost and in perpetuity, a community meeting room and related amenities, an ANC office, and a Metropolitan Police work station comprising a total of approximately 4,500 square feet of gross floor area, as shown on the Plans. If the Metropolitan Police Department chooses not the use the work station, the Applicant may use the space for building security purposes.
10. The ANC office shall be assigned to ANC 5B, or any successor ANC which may be designated to represent the PUD Site by redistricting legislation enacted by the Council of the District of Columbia and signed by the Mayor.
11. The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant’s Transportation Management Plan.
12. The Applicant shall enter into and abide by the terms of a Certified Business Enterprise (“CBE”) Agreement with the D.C. Department of Small and Local Business Development (“DSLBD”) in order to achieve the goal of 35% participation by D.C.-certified local, small, and disadvantaged businesses in the project development and construction contracts. No building permit may be issued for this project until the Applicant and DSLBD have executed the CBE Agreement.
13. The Applicant shall abide by the terms of its First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project.
14. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building;

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- (b) To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;
 - (c) To vary the final selection of the exterior materials within the color ranges and material types as proposed, without a reduction in quality, based on availability at the time of construction;
 - (d) To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
 - (e) To make refinements to the garage configuration, including layout, location, and design of parking spaces and/or other elements, so long as the total number of vehicle and bicycle parking spaces provided complies with the PUD approval.
15. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the PUD Site and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.
16. Pursuant to 11 DCMR § 3028.9, the Zoning Map Amendment approved by the Commission, rezoning the PUD Site to C-3-C, shall take effect upon the recordation of the covenant described in Condition No. 15 of this Order.
17. The PUD and Zoning Map Amendment approved by the Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR §2409.1. Construction shall begin within three (3) years of the effective date of this Order.
18. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the

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above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On September 29, 2008, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** these applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr., Peter G. May and Michael G. Turnbull to approve; Gregory N. Jeffries to approve by absentee ballot).

On November 10, 2008, upon the motion of Chairman Hood, as seconded by Commissioner May, the Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot; third Mayoral appointee position vacant, not voting).

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

Washington, D.C., February 3, 2006

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

Scale: 1 inch = 30 feet

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

Receipt No. 25577

Furnished to: MARGARET GENTRY

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown 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 it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along center of driveway at any point on private property in excess of 20% for single-family dwellings or fields, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

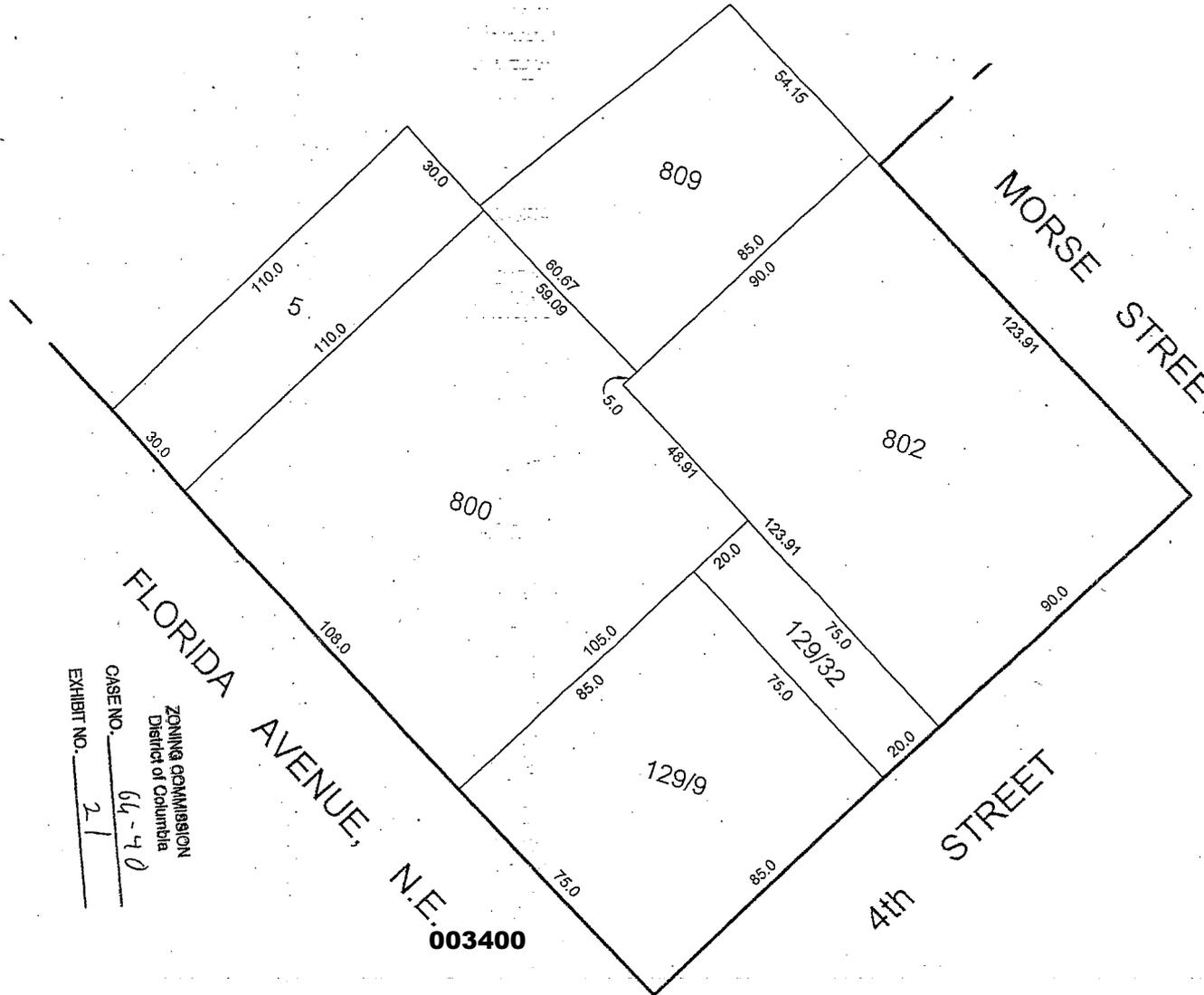
Date: _____

[Signature]
Surveyor, D.C.

(Signature of owner or his authorized agent)

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

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



ZONING COMMISSION
District of Columbia
CASE NO. 64-40
EXHIBIT NO. 21

003400

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 08-05

Z.C. Case No. 08-05

(Text Amendment - 11 DCMR)

**(Amendments to DD Zoning Regulations to Facilitate Construction
of the Convention Center Hotel)**

October 20, 2008

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 08-16/08-16A

Z.C. Case Nos. 08-16 and 08-16A

(Text Amendment - 11 DCMR)

**(Text Amendments to Modify Definitions of Child Development Home and Child
Development Center)**

February 9, 2009

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 08-23

Z.C. Case No. 08-23

(Text Amendment - 11 DCMR)

**(Text Amendments to §§ 1706.2 and 1706.8(b) to remove Square 374 from Housing
Priority Area B)**

February 23, 2009

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

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