



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

February 15, 2018

Kyrus Freeman
Holland & Knight LLP
800 17th Street N.W., Suite 1100
Washington, D.C. 20006

Re: Request to confirm new matter-of-right charter school use on Lots 1 & 2 in Square 3766 (the "Property") with first-stage PUD approval (Case No. 06-10)

Dear Mr. Freeman,

This letter responds to your February 14 request to confirm that (i) the Property's inclusion in a first-stage Planned Unit Development ("PUD") approval in Case No. 06-10 does not bar the owner or tenant of the Property from renovating two existing warehouses and constructing a connection between them; and (ii) a charter school use is a matter-of-right under the current Zoning Regulations.

I agree that the Property is not subject to Section 2408.16 of the 1958 Zoning Regulations under which the first-stage PUD approval was granted, because Section 2408.16's prohibition on any construction on a PUD site that does not conform to the PUD approval only applies to second-stage PUDs, as Section 2408 is entitled "Processing of Second-Stage PUD Applications". Furthermore in Condition 5 of Order No. 06-10 that granted first-stage PUD approval to the Property, the Zoning Commission also specified that "the rezoning of the properties included in the first-stage PUD shall not become effective unless a second-stage PUD application is approved for the particular property" Under Condition 25, the Commission specified that only one-second-stage PUD application needed to be submitted to vest the first-stage PUD approval, provided a phasing plan for the remaining second-stage PUD applications was included in the first second-stage PUD application. At the July 10, 2017 hearing on the second-stage PUD application for Building B of the PUD (Case No. 06-10B), the Zoning Commission required that the first-stage PUD approval in Case No. 06-10 will expire unless a revised second-stage PUD application for Building B, together with a "realistic phasing plan" that would include projected submission dates for a subsequent second-stage PUD application for the Property, is submitted by September 4, 2018 (Transcript at p. 10).

As a result, the Property will not be subject to a second-stage PUD application, let alone approval, in the near future, and so the Property will remain classified in the current MU-28 zone until a second-stage PUD for the Property is approved, at which point the Property will be rezoned as authorized by the first-stage PUD approval. In the meantime, I agree that the Property may continue to be used in conformance with the provisions of the current Zoning Regulations for the current MU-28 zoning of the Property. I note that your attached February 14 email specifically states that the owner confirms that it will ensure the compliance of the Property with the Zoning Regulations – whether by terminating the lease of the charter school prior to the effective rezoning of the Property under a future a second-stage PUD is approval, by amending the first-stage PUD approval for the Property to include the school, or by terminating the first-stage PUD approval for the Property. In light of the extended timeframe for the first-stage PUD

ZONING COMMISSION
District of Columbia

CASE NO.

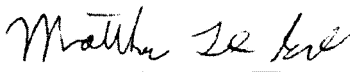
06-10

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approval for the Property, I am providing a copy of this letter to the Zoning Commission for its use.

I also agree the MU-28 zone currently allows a public charter school use, subject to compliance with the development standards of Chapter 16 of Subtitle C, as follows. The MU-28 zone falls in the MU-Use Group F per Table U-500.2. Section U-515.1(a) allows as matter-of-right uses those permitted as such in the R, RF and RA zones (and in the MU-Use Group E, which allows matter-of-right uses that are permitted as such in the R, RF, and RA zones, per Section U-512.1(a)). Section U-202.1(m) authorizes as a matter-of-right use for the R-Use Groups A, B, and C "public education buildings ... subject to the development standards of Subtitle C, Chapter 16". The definition of "public school" in Section B-100.2 specifically includes the educational use as a school "chartered by the District of Columbia Board of Education or the District of Columbia Public Charter School Board", while the definition of the "Public Education" use-category in Section B-200.2(m) specifically includes "public or public charter schools". Therefore to the extent the proposed renovation for a charter school is for a public charter school and conforms with the development standards of Subtitle C, Chapter 16, as well as all other relevant requirements in the Zoning Regulations and Construction Codes, I would classify such use as a matter-of-right in the MU-28 zone.

This letter is issued in reliance upon, and therefore limited to, the questions asked, and documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is **NOT** a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor does it constitute a "first writing" under Section Y-302.5, but instead is an advisory statement of how the Zoning Administrator would rule on an application consistent with the information provided if reviewed as of the date of this letter. Therefore this letter does **NOT** vest an application for zoning or other DCRA approval process, which may only occur as part of the review of a permit application submitted to DCRA.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Cc: Sharon Schelling, Secretary to the Zoning Commission

Attachments: February 14, 2018 email from Kyrus Freeman to Matthew LeGrant, with attached Z.C. Case 06-10 Order and excerpt of Approved Plans.

File: Letter to Freeman re PUD 06-10 on 2-15-18

-----Original Message-----

From: Kyrus.Freeman@hklaw.com [<mailto:Kyrus.Freeman@hklaw.com>]

Sent: Wednesday, February 14, 2018 9:50 AM

To: LeGrant, Matt (DCRA)

Cc: Tondro, Maximilian (DCRA); Kyrus.Freeman@hklaw.com

Subject: Charter School use of Square 3766, Lots 1 and 2

Importance: High

Mr. LeGrant:

The purpose of this email is to confirm the substance of our discussions regarding the proposed renovation of two existing warehouse buildings at Square 3766, Lots 1 and 2 (the "Subject Property") and conversion of the buildings for use as a charter school by City Arts + Prep Public Charter School.

The underlying zoning of the Subject Property at the time the PUD was approved was FT/C-3-A, which converts to MU-28 under the current, 2016 Zoning Regulations ("ZR 16").

The Subject Property is included in a First-Stage PUD and Related Zoning Map Amendment approved pursuant to Z.C. Order No. 06-10, which became final and effective on January 15, 2010. A copy of Z.C. Order No. 06-10 is attached. As shown on the attached excerpts of the First-Stage Plans, the First-Stage PUD granted preliminary approval to redevelop the Subject Property and adjacent land into a residential building identified as "Building C," measuring eight stories, having a maximum height of 90 feet, and including approximately 400 residential units. (See Z.C. Order No. 06-10, Finding of Fact 7.c. and Attached Plan Sheets).

Z.C. Order No. 06-10 includes the following relevant provisions:

.The First-Stage PUD approval includes the Subject Property (Finding of Fact No. 1).

.The Subject Property shall be rezoned from FT/C-3-A to FT/C-2-B (Finding of Fact No. 4).

.However, the rezoning of the properties included in the First-Stage PUD, including the Subject Property, does not become effective unless/until a Second-Stage PUD is approved for the particular property and the owner subsequently records the covenant required by 11 DCMR 2409.3. (Finding of Fact No. 5).

.Finding of Fact 25 states that "[s]econd-stage PUD approval for the remainder of the Property may be requested in one or more applications. If there is to be only one second-stage application, that application shall be filed within two years of the effective date of this Order. If there is to be more than one second-stage application, the first second-stage application shall be filed within two years of the effective date of this Order, and that application shall include a phasing plan for the remaining applications."

.There is no timeframe or phasing plan in Z.C. Order No. 06-10 indicating when a second-stage application has to be filed for the Subject Property, nor is there an order specifying the sequencing of the second stage applications for the remaining buildings.

As outlined in my correspondence below with the Office of the Attorney General ("OAG"), and as reconfirmed by OAG on February 8, 2018, OAG agreed that there is nothing in Z.C. Order 06-10 or the 1958 Zoning Regulations that precludes the owner of the Subject Property from being able to use, operate, and/or renovate the existing buildings on the Subject Property as a

matter-of-right (and without requiring a PUD amendment to do so) in accordance with the underlying zoning and uses permitted in the underlying zoning for those buildings, and that the prohibition against construction on a PUD Site stated in 2408.16 is limited to situations where a second stage (or consolidated) PUD has been approved.

I cited the 1958 Zoning Regulations in my correspondence with OAG since the project was approved under the 1958 Zoning Regulations; however, the analysis under ZR 16 is similar. Specifically, Subtitle X, Section 310.2 states: "The grant of a PUD prohibits any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter-of-right standards, until: (a) The validity of the PUD order expires; or (b) The Zoning Commission issues an order granting the applicant's motion to extinguish the PUD."

However, similar to the analysis regarding the same provision in the 1958 Zoning Regulations (11 DCMR 2408.16) as outlined in the correspondence below with OAG, I read this provision as only applying to property that has received consolidated or second-stage approval since:

.A First-Stage PUD does not result in approved plans, but rather sets forth guidelines for future second-stage applications. (See Subtitle X, Sections 302.2(a) and 309.1). The owner still has to go back to get second-stage approvals for each site, and those second-stage orders will approve plans that specify the construction to occur on a particular site.

.A First-Stage PUD does not approve specific plans or construction on a site.

.First-stage approvals are "conditional" and require further processing to become final and vested. (See Subtitle X, Section 309.1). As such, a conditional approval cannot take away an property owner's right to use their property in accordance with the underlying zoning regulations.

.Pursuant to Subtitle X, Section 300.4, a PUD-related zoning map amendment is valid only in combination with and is contingent upon a project being built and operated under the conditions of a PUD approval. Thus, the Subject Property is still subject to and can be used in accordance with the underlying zoning regulations since the zoning map amendment is a contingent approval and has not vested.

.A PUD Covenant is not required for the portions of the site that only received first-stage approval. The PUD Covenant is what binds development of a site to a particular, approved plan. Moreover, as indicated in Finding of Fact No. 5 of Z.C. Order No. 06-10, the rezoning of the Subject Property only becomes effective once a Second-Stage PUD is approved for the Subject Property and the owner subsequently records a PUD Covenant for the Subject Property.

Also, please note that the owner will be submitting a second-stage application in September 2018 in Case No. 06-10B for one of the other properties included in the overall PUD (i.e., "Building B"), and as part of that application the owner will include a phasing plan indicating when second-stage applications will be filed for the remaining sites, including Square 3766, Lots 1 and 2 (the "Subject Property"). However, as of now there is no established deadline regarding when a second-stage application has to be filed for the Subject Property. The owner hereby confirms that when a second-stage application is filed for the Subject Property, such application will either include the school use, or will otherwise modify or amend the first-stage PUD uses and/or boundaries as necessary to allow for the school use to continue on the Subject Property and, if necessary, to distribute the approved density and uses for Building C elsewhere in the project.

Based on the above, can you please confirm by counter-email that:

1. The owner of the Subject Property and/or its tenant, may use, operate, renovate, and construct a connection between the existing buildings on the Subject Property as a matter-of-right and without requiring an amendment of the First-Stage PUD approval.
2. A charter school is a matter-of-right use for the Subject Property based on Subtitle U, Sections 202.1(m), 512.1(e), and 515.1(a) as follows. MU-28 is within MU-Use Group F.
 - i. Subtitle U, Sec. 202.1(m) - "Public education buildings and structures" are permitted as a matter of right in R-Use Groups A, B and C.
 - ii. Subtitle U, Sec. 512.1(e) - "Education uses, private" are permitted as a matter of right in MU-Use Group E.
 - iii. Subtitle U, Section 515.1(a) - Uses permitted as a matter of right in any R, RF and RA zones, and all uses permitted as a matter of right for MU-Use Group E are permitted as a matter of right in MU-Use Group F.
3. This determination only applies to the matter-of-right use permitted for the Subject Property. The design and any addition(s) to the existing buildings will have to comply with any applicable Zoning Regulations and Building Code provisions governing such design and any addition(s).

Thank you for your review of this matter, and please let me know if you have any questions or need any additional information to confirm the above.

As discussed during our meeting, the owner is in the process of negotiating a lease with City Arts + Prep Public Charter School for use of the Subject Property, and thus we seek your confirmation as soon as possible.

Kyrus Freeman | Holland & Knight
Partner

Holland & Knight LLP

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202.955.5564 kyrus.freeman@hklaw.com | www.hklaw.com



FORT TOTTEN, WASHINGTON DC

200 LAMOND & CLAYTON ST. N.E. WASHINGTON, DC 20002

Aerial & Site Location



SCALE
0 100' 200'

SHEET NUMBER
3

SEPTEMBER 16TH, 2009



FORT TOTTEN, WASHINGTON DC
THE BROWN & CALDWELL FOUNDATION

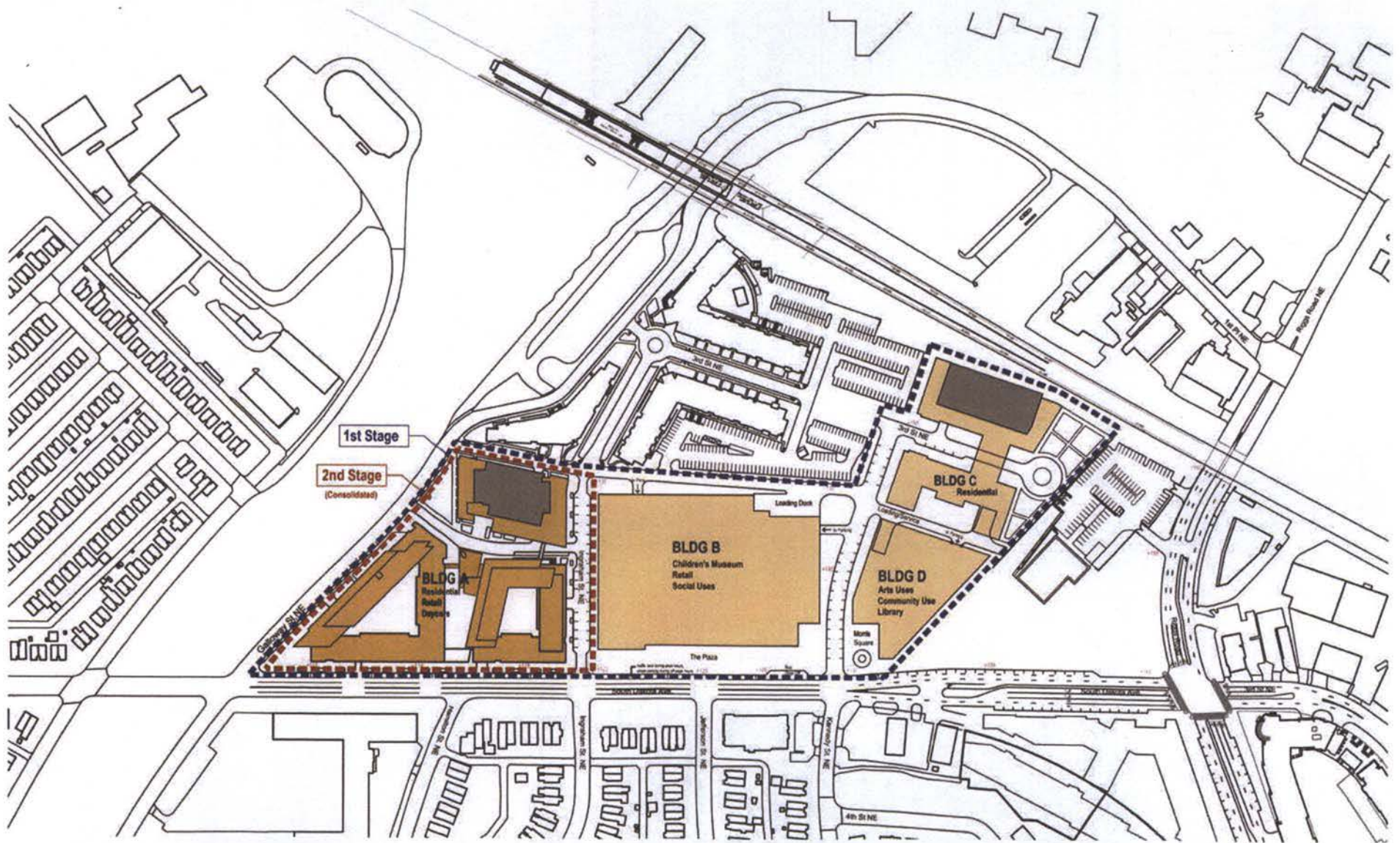
Illustrative Site Plan



SCALE
0' 100' 200'

SHEET NUMBER
4

SEPTEMBER 16TH, 2009



FORT TOTTEN, WASHINGTON DC
THE MORRIS K. AND ANNE ARATZ FOUNDATION

1st & 2nd Stage PUD Identification



SCALE
0' 100' 200'

SHEET NUMBER
7

SEPTEMBER 16TH, 2009

Development Data

Lot	Area (SF) **	Bldg Footprint	Lot Occupancy (%)	GFA (SF) *	FAR	Breakdown per Use	# of Units	SF (per FAR)	FAR	Parking Required	Parking Provided***
Lot A	216,453.8	188,315.0	87.0	804,880.0	3.72	Residential (431 Mixed Income + 98 Senior Units) Retail (Grocery-Ground Flr) ^ Retail (Non-grocery; All Levels) ^^ Flexible Commercial (Non-grocery; All Levels) ^^^ Daycare ^^^^ Canopies (Attributable to Res. & Retail) Loading / Service (Covered) Parking (SW; 2 Levels-Retail / Commercial) Parking (NW; 7 Levels-Residential)	529	526,930.0 25,195.0 26,885.0 19,210.0 7,250.0 7,450.0 4,890.0 88,720.0 98,550.0	2.43 0.12 0.12 0.09 0.03 0.03 0.02 0.41 0.46	160 30 36 26 3	344 215 122 AAA AAAA
Lot Subtotal							529	804,880.0		254	681
Lot B	216,252.8	165,000.0	76.3	456,000.0	2.11	Retail Children's Museum Senior Center Lobby, Atrium, Service Parking Level		203,000.0 47,000.0 15,000.0 27,000.0 164,000.0	0.94 0.22 0.07 0.12 0.76	267 147 8	1,100
Lot Subtotal								456,000.0		421	1,100
Lot C	150,466.0	72,000.0	47.9	520,000.0	3.46	Residential (Mixed Income) Parking Deck (5 Levels-Resid.)	400	410,000.0 110,000.0	2.72 0.73	133	420
Lot Subtotal							400	520,000.0		133	420
Lot D	73,125.4	52,000.0	71.1	238,000.0	3.25	Arts Uses Library Community Use Lobby, Loading, Misc.		170,000.0 20,000.0 30,000.0 18,000.0	2.32 0.27 0.41 0.25	110 34 60	160 *** ***
Lot Subtotal								238,000.0		204	160
Total **	656,298.0	477,315.0	72.7	2,018,880.0	3.08		929	2,018,880.0	3.08	1,012	2,361
Total Residential (including Residential Parking)							929	1,145,480.0	1.75		
Total Non-Residential (including Non-Res. Parking)								873,400.0	1.33		

NOTES:

* GFA contributing to FAR only (per DC Zoning Regulations)

** Lot Areas exclude 63,415.7 SF assumed to be dedicated to R.O.W.s within PUD application zone

*** Parking provided on building-wide basis

**** Additional shared parking in Lot B

^ Full Grocery Retail area, including both FAR and non-FAR space =

59,350.0 (This area used to determine parking PROVIDED for this retail use. Ratio = 3.62 spaces per 1000 sf)

^^ Full Non-Grocery Retail area, including both FAR and non-FAR space =

51,990.0 (This area used to determine parking PROVIDED for this retail use. Ratio = 2.35 spaces per 1000 sf)

^^^ Flexible Commercial Space (Retail, Office, or Lower Level Residential along Galloway). Required Parking with non-grocery Retail.

**** Daycare use assumes 12 employees for parking calculations. Required Parking with non-grocery Retail.

Loading/Service

Lot	Use	SF	Loading/Service Required			Loading/Service Provided *		
			55' Berth	30' Berth	12' Space	55' Berth	30' Berth	12' Space
Lot A	Residential	526,930.0	1	0	1	1	0	1
	Grocery, Retail, Flexible Commercial (retail use assumed)	25,195.0						
	Retail + Flexible Commercial (retail use assumed)	45,895.0	2	2	2	2	2	2
	Daycare	7,250.0	0	0	0	0	0	0
	Aggregated Requirement for entire block (all uses)	605,270.0	3	2	3	3	2	3
Lot B	Retail	203,000.0	2	1	1	2	1	1
	Children's Museum	47,000.0	1	1	1	1	1	1
	Senior Center	15,000.0	0	0	0	0	0	0
	Aggregated Requirement for entire block (all uses)	265,000.0	3	2	2	3	2	2
Lot C	Residential	410,000.0	1	1	1	1	1	1
Lot D	Arts Uses	170,000.0	1	1	1	1	1	1
	Library & Community Uses	50,000.0	1	1	1	1	1	1
	Aggregated Requirement for entire block (all uses)	220,000.0	2	2	2	2	2	2

NOTES:

* Per Building

** This berth is actually 55' long, but satisfies the 30' requirement

*** All buildings will have loading platforms which comply with zoning regulations



FORT TOTTEN, WASHINGTON DC
THE WORLD & CRENSHAW CROSSING STATION

Development Data

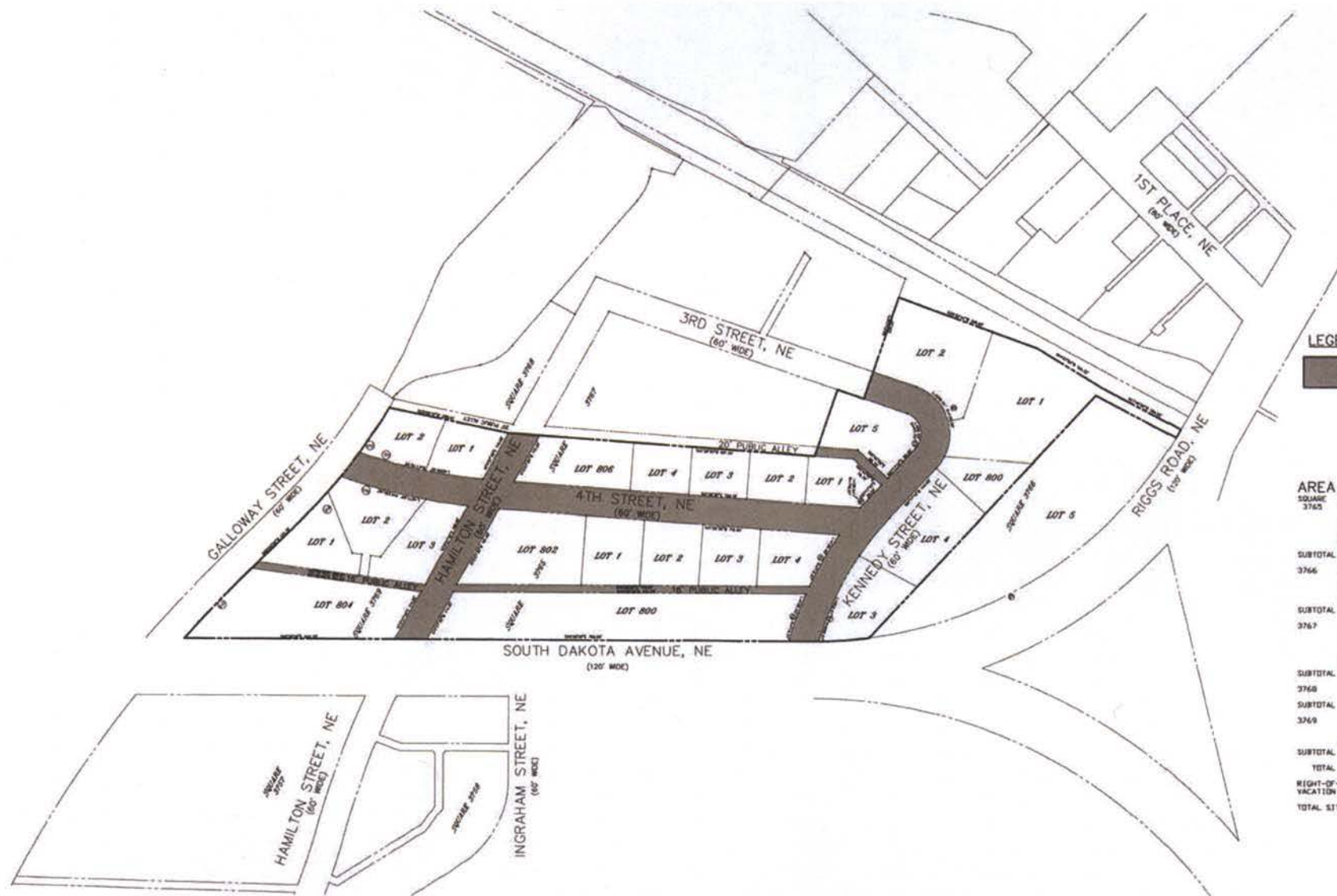


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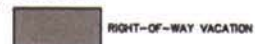
SHEET NUMBER

8

SEPTEMBER 16TH, 2009



LEGEND:



AREA TABULATION:

SQUARE	LOT	S. F.	AC
3765	1	17,433.79	0.40002
	2	16,374.57	0.37591
	3	15,315.35	0.35199
	4	15,688.11	0.36015
800		73,102.49	1.72412
802		34,274.21	0.78683
		174,188.52	3.99882
SUBTOTAL			
3766	1	56,857.38	1.30527
	2	36,548.93	0.83905
	3	20,197.82	0.46268
	4	31,896.67	0.73025
800		12,479.41	0.28649
		137,980.20	3.12674
SUBTOTAL			
3767	1	13,129.42	0.30141
	2	12,267.26	0.28162
	3	12,267.26	0.28162
	4	12,267.26	0.28162
806		22,553.87	0.51777
		22,128.44	0.50800
SUBTOTAL			
3768	1	14,258.04	0.32732
	2	14,677.69	0.33695
SUBTOTAL			
3769	1	18,354.07	0.42125
	2	20,848.33	0.47861
	3	19,495.71	0.45218
804		52,093.20	1.19590
SUBTOTAL			
		110,991.46	2.54801
TOTAL			
		568,709.42	
RIGHT-OF-WAY VACATION AREA			
		153,004.26	3.51249
TOTAL SITE AREA			
		719,713.66	16.52235



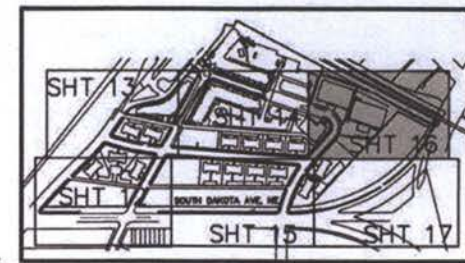
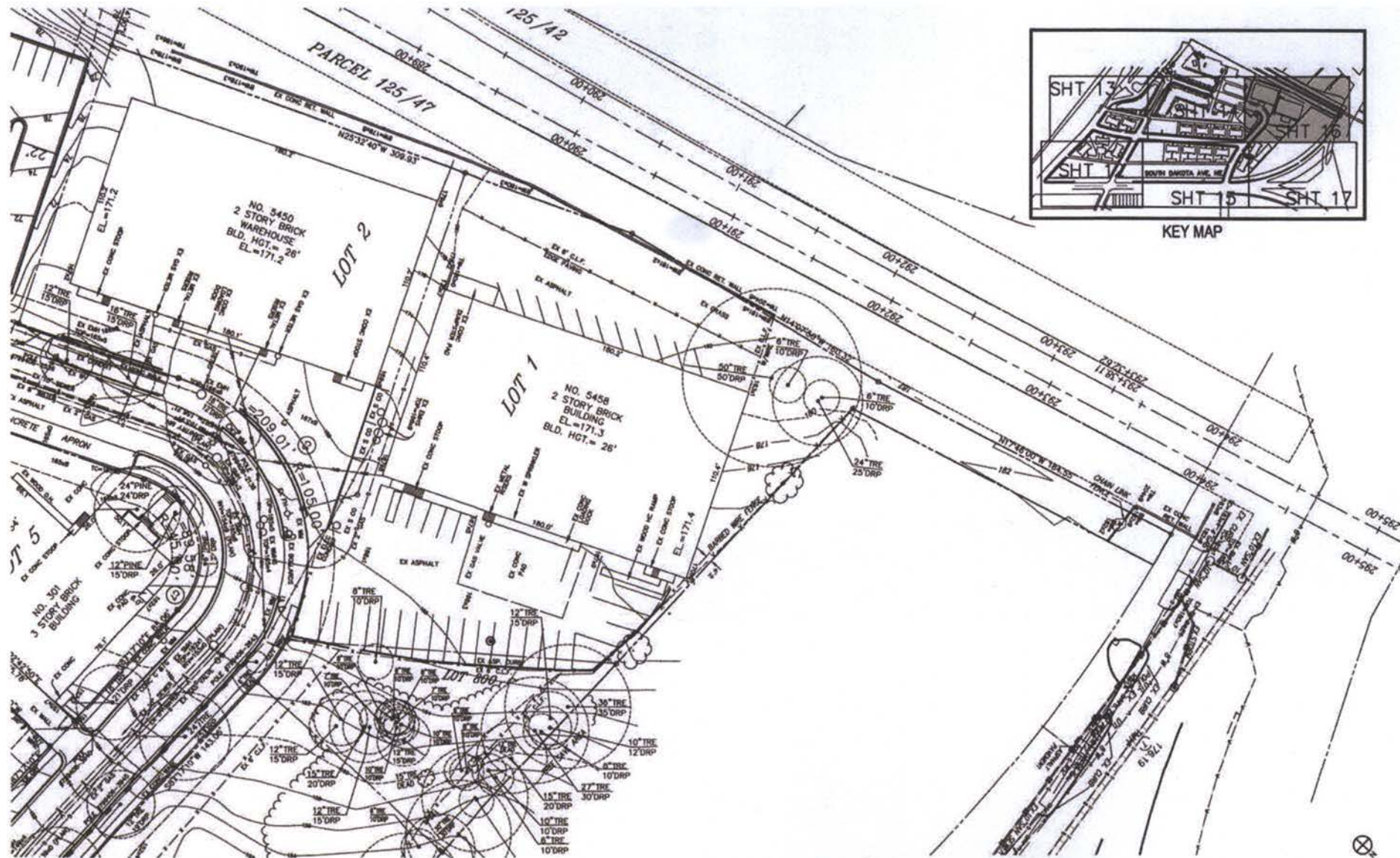
FORT TOTTEN, WASHINGTON DC
 THE OFFICIAL RECORDING AND ARCHIVING DIVISION

Existing Site Tabulations / Street & Alley Closings



SHEET NUMBER
C-9

SEPTEMBER 18, 2009



KEY MAP



FORT TOTTEN, WASHINGTON DC
 1000 14TH STREET, NW, WASHINGTON, DC 20004

Existing Conditions Plan



SHEET NUMBER
 C-16

SEPTEMBER 16, 11TH 2009