

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

**SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS**

**March 2008**

<b>CONTACT PERSON</b>	<b>BOARDS AND COMMISSIONS</b>	<b>DATE</b>	<b>TIME/ LOCATION</b>
Theresa Ennis	Board of Accountancy	4	8:30 am-12:30 pm
Leon Lewis	Board of Appraisers	19	10:00 am-12:00 pm
Leon Lewis	Board Architects and Interior Designers	7	9:00 am-1:00 pm
Dorothy Thomas	Board of Barber and Cosmetology	3	10:00 am-12:00 pm
George Beatty	Boxing and Wrestling Commission	11	7:00-pm-9:00 pm
Dorothy Thomas	Board of Funeral Directors	6	1:30 pm-5:00 pm
Theresa Ennis	Board of Professional Engineers	27	9:30 am-12:00 pm
Leon Lewis	Board of Real Estate	11	10:30 am-12:30 pm
Pamela Peters	Board of Industrial Trades	20	10:00 am-1:00 pm
	Asbestos Electrical Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 941 North Capitol Street, NE., Suite 7616, Washington, DC 20001. For further information on this schedule, please contact Ms. Jackie Wright at 202-442-4435.

**DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL  
DISABILITIES AND TENURE**

**Judicial Tenure Commission Begins Reviews  
of Judges For Senior Status**

This is to notify members of the bar and the general public that Judges Leonard Braman and Henry F. Greene of the Superior Court of the District of Columbia have requested recommendations for reappointment as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendation and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations and members of the public to submit any information bearing on the qualifications of Judges Braman and Greene which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, or faxed, by **April 4, 2008**, and addressed to:

District of Columbia Commission on Judicial  
Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718

The members of the Commission are:

William P. Lightfoot, Esquire, Chairperson  
Hon. Gladys Kessler, Vice Chairperson  
Gary C. Dennis, M.D.  
Noel J. Francisco, Esq.  
Shirley A. Higuchi, Esq.  
Ronald Richardson  
Claudia A. Withers, Esq.

BY: /s/ William P. Lightfoot  
Chairperson

**FRIENDSHIP PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

Friendship Public Charter School (FPCS) is soliciting proposals for the following services

**SURVEY CONSULTANT**

Friendship Public Charter School is seeking bids from prospective candidates to provide us with support in the analysis and interpretation of the California Healthy Kids Survey in accordance with requirements and specifications detailed in the Request for Proposal.

**ACADEMIC CONSULTANT**

Friendship Public Charter School is seeking bids from prospective candidates to provide Academic Services/Professional Development in accordance with requirements and specifications detailed in the Request for Proposal.

**TELEPHONE VOICE AND NETWORK WIRING CONTRACTOR**

Friendship Public Charter School is seeking bids from prospective candidates to provide Telephone (Voice), Network (LAN) wiring and support services in accordance with requirements and specifications detailed in the Request for Proposal.

An electronic copy of the full Request for Proposal (RFP) may be requested by contacting:

Valerie Holmes  
[vholmes@friendshipschools.org](mailto:vholmes@friendshipschools.org)  
202-281.1722

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****NOTICE OF FUNDING AVAILABILITY****To Develop an Online Database of Available and Affordable Housing Units**

The District of Columbia Department of Housing and Community Development (DHCD) hereby announces grant funding availability for a District of Columbia, non-profit organization to develop an online database of available and affordable housing units for potential renters and homeowners in the District of Columbia. The Department intends to make funds available to one non-profit organization for these activities.

The Request for Applications (RFA) will include detailed descriptions of required organizational qualifications and grant-eligible activities.

The RFA will be available on Friday, March 14th, 2008, at DHCD, located at: 801 North Capitol Street NE, Washington, DC 20002 – 8th Floor Reception Desk. The RFA will also be available on the DHCD website, located at [www.dhcd.dc.gov](http://www.dhcd.dc.gov), on or about March 14, 2008. For additional information about this opportunity, please contact Kathryn Howell of DHCD's Office of Strategy and Communications at (202) 442-7255 or [Kathryn.Howell@dc.gov](mailto:Kathryn.Howell@dc.gov).

The deadline for submission of grant applications is Friday, April 11, 2008, at 4:00 p.m.

Funding under this notice is anticipated to begin on or before May 1, 2008.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET N.W., 2ND FLOOR, WEST TOWER  
WASHINGTON, D.C. 20005**

**NOTICE AND REQUEST FOR COMMENTS**

**FORMAL CASE NO. 945, PHASE II, IN THE MATTER OF THE INVESTIGATION  
INTO ELECTRIC SERVICE, MARKET COMPETITION, AND REGULATORY  
PRACTICES**

1. On February 22, 2008, the Potomac Electric Power Company (“Pepco” or “Company”) filed a petition seeking approval from the Public Service Commission of the District of Columbia (“Commission”) to establish and maintain a special purpose account (“Panda PPA Account”) for the benefit of its customers.
2. In its petition, Pepco states that on May 31, 2006, it entered into a Settlement Agreement and Release (“Settlement Agreement”) with Mirant Corporation (“Mirant”) and several of its affiliates. Pepco asserts in its petition that the Settlement Agreement: (1) has resolved the outstanding issues between the parties arising from or related to the bankruptcy of Mirant; (2) was approved by the United States Bankruptcy Court for the Northern District of Texas in August 2006; and (3) was subsequently affirmed by the United States District Court for the Northern District of Texas. Pepco states that although an appeal of the District Court’s order was taken to the United States Court of Appeals for the Fifth Circuit, the appeal was dismissed with prejudice and the Settlement Agreement implemented.
3. According to Pepco, the Settlement Agreement resolves, among other issues, the disputes with Mirant regarding a back-to-back arrangement (“Back-to-Back Arrangement”) that had been entered into in connection with an Asset Purchase and Sale Agreement for Generating Plants and Related Assets by which Pepco sold substantially all of its electric generation facilities. As explained in the petition, under the Back-to-Back Arrangement, Pepco sells to Mirant and Mirant purchases, at Pepco’s cost, all capacity, energy, ancillary services and other benefits Pepco receives under certain existing power purchase agreements that Pepco entered into with third parties. The principal power purchase agreement that is subject to the Back-to-Back Arrangement is the power purchase agreement with Panda-Brandywine L.P. (“Panda PPA”). Pepco asserts that under the Panda PPA, the Company is obligated to purchase 230 megawatts of capacity and energy from Panda-Brandywine L.P. annually through 2021 at rates that currently are significantly in excess of market prices.
4. Pepco asserts further in its petition that the Panda PPA Account will be funded by a portion (\$320 million) of the amount Pepco received under the Settlement Agreement for monetary damages resulting from the rejection and termination of the Back-to-Back Arrangement. Pepco also indicates in its petition that, after the payment of the actual reasonable costs of management and investment, the funds in the Panda PPA Account, and any earnings thereon, are to be used solely to pay amounts associated with the higher than market price cost of the Panda PPA. Pepco proposes that any amounts remaining in the Panda PPA Account at the termination of the Panda PPA will be refunded to customers, and any shortfall in covering the

above market costs of the Panda PPA will be recovered from customers. The Company also proposes to credit \$23 million to customers' electric distribution service bills representing the District of Columbia customers' share, under the divestiture proceeds sharing formula approved by the Commission in Formal Case No. 945, of the remaining funds Pepco received pursuant to the Settlement Agreement.

5. The Commission hereby gives notice that it is inviting the parties in Formal Case No. 945 to express written views regarding Pepco's petition and its proposal to dispense the funds, including the establishment and maintenance of the Panda PPA Account. Interested parties shall file comments with the Commission within forty-five (45) days and replies within sixty (60) days of publication of this notice in the *D.C. Register*. The notice and documents referenced herein may be viewed on the Commission website at [www.dcpso.org](http://www.dcpso.org) or in person at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington DC, 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the petition are also available from the Commission Secretary at a per page reproduction cost. Comments and reply comments shall be in writing and addressed to Dorothy Wideman, Commission Secretary, at the same address.

6. Any interested member of the public wishing to file comments or otherwise participate in this proceeding, and is not already a party, must file a Petition for Intervention pursuant to the Commission's Rules at 15 DCMR § 106.1, *et seq.*, within fifteen (15) days of publication of this notice in the *D.C. Register*. Such Petition shall be in writing, addressed to Dorothy Wideman, Commission Secretary.

## THE OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE OF AVAILABILITY ONLINE  
OF MAYOR'S ORDERS

The Office of the Secretary of the District of Columbia is pleased to announce that all Mayor's Orders signed by Mayor Fenty are now available online. This feature is another step in the Office of the Secretary's Electronic Document Management program to improve the District government's ability to provide efficient, accountable and customer-oriented service. All Mayor's Orders are posted after they are officially released.

To view a Mayor's Order, visit the Web page for the Office of the Secretary at [www.os.dc.gov](http://www.os.dc.gov) and look under the **Information** Section. The website has all the Mayor's orders issued in 2007 and 2008. The Mayor's Orders are listed by the year and month they were issued.

For information on Mayor's Orders issued before 2007, contact Clifton Posey, Administrative Issuance Specialist, Office of Documents and Administrative Issuances at 202-727-5090 or [clifton.posey@dc.gov](mailto:clifton.posey@dc.gov).

**DC STATE BOARD OF EDUCATION**

**NOTICE OF PUBLIC MEETING**

State Board of Education Meeting

This is a regular meeting of the State Board of Education.

Should anyone wish to testify before the State Board of Education,  
please contact the office by March 17, 2008.

Wednesday, March 19, 2008

5:30 pm

Old Council Chambers

441 4<sup>th</sup> Street, NW

Washington, DC 20001

Contact: Beverley R. Wheeler (202)741-0888

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
OFFICE OF PUBLIC CHARTER SCHOOL FINANCING AND SUPPORT**

**ANNOUNCES A CHANGE IN MEETING DATE  
FOR THE DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL CREDIT  
ENHANCEMENT FUND COMMITTEE**

The Office of the State Superintendent of Education hereby announces that the March meeting for the District of Columbia Public Charter School Credit Enhancement Fund Committee, originally scheduled for March 20, 2008, will be held on March 17, 2007.

The meeting will take place at 441 4<sup>th</sup> Street, NW, Suite 350 North, Conference View Room, Washington, DC 20001 from 12:30 pm to 1:30 pm. For additional information, please contact:

Vanessa Carlo-Miranda  
Program Manager  
Office of the State Superintendent of Education  
Government of the District of Columbia  
441 4th Street, N.W.; Suite 350N  
Washington, D.C. 20001  
Tele: 202-442-4022  
Fax: 202-727-2019  
[vanessa.miranda@dc.gov](mailto:vanessa.miranda@dc.gov)

**TWO RIVERS PUBLIC CHARTER SCHOOL****REQUEST FOR SOLICITATION**

Bids solicited for summer small group instruction for math for 40 elementary and middle school students. Contact Sarah Richardson at Two Rivers Public Charter School for RFP via e-mail [srichardson@tworiverspcs.org](mailto:srichardson@tworiverspcs.org). Submissions due by March 31, 2008.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****Z.C. ORDER NO. 03-27A****Z.C. Case No. 03-27A****Time Extension – Consolidated Planned Unit Development****(Clemens 4600 Partners, LLC)****January 14, 2008**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on January 14, 2008. At the meeting, the Commission approved a request from Clemens 4600 Partners, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for Lots 817 and 818 in Square 1732, located at the intersection of Wisconsin Avenue and Brandywine Street, N.W. ("Property") pursuant to the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

**FINDINGS OF FACT**

1. By Z.C. Order No. 03-27, effective November 18, 2005, the Commission approved a consolidated PUD for the Property. The approved PUD is for a mixed-use, primarily residential, project that includes 42 residential units occupying approximately 36,333 square feet of gross floor area and ground-floor retail along Wisconsin Avenue, consisting of approximately 1,650 square feet of gross floor area. The approved density is 3.0 FAR, a building height of 65 feet, a lot occupancy of 60%, approximately 49 parking spaces, and one affordable housing unit. Advisory Neighborhood Commission ("ANC") 3E, the ANC in which the Property is located, was automatically a party in the case. The Commission also granted party status to ANC 3F, which is adjacent to the Property. Z. C. Order No. 03-27 expired on November 18, 2007.
2. On November 7, 2007, the Applicant filed an application requesting a two-year extension of the PUD ("Application"). The Application stated, in relevant part, that the extension was necessary because the Applicant was unable to obtain sufficient project financing despite its good faith efforts because of changes in economic and market conditions beyond its control. It stated the request was the result of changes in the residential condominium market, the prediction that housing values would continue to decline, and the lack of willingness on the part of lenders to finance speculative condominium projects. It stated the Applicant

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- initially pre-sold some of the residential units but those deals were withdrawn when the condominium market softened, contributing to its difficulty in obtaining financing. It stated that conversion of the building to rental apartments was possible, but that the building does not have sufficient density for this form of financing to be financially viable.
3. The Applicant served the Application on ANCs 3E and 3F. ANCs 3E and 3F had at least thirty (30) days to respond to the Application. Neither ANC submitted a report. There was no opposition to the requested time extension.
  4. By report dated November 23, 2007, the Office of Planning ("OP") recommended approval of the two-year extension request. The OP report stated that the only change in material facts upon which the Commission based its original approval of the PUD was the adoption of the 2006 Comprehensive Plan. OP stated that the Future Land Use Map of the 2006 Comprehensive Plan recommends mixed-use for the Property, a combination of medium-density residential (four to seven story apartment buildings) and moderate-density commercial (buildings generally not exceeding five stories in height), that this is the same designation as was effective in the previous Comprehensive Plan, and that the PUD is consistent with the designation. The OP report concluded that the request is consistent with the Comprehensive Plan.
  5. On January 14, 2008, at its regular monthly meeting, the Commission reviewed and approved the two-year time extension. Upon consideration of the record, the Commission finds there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. The Commission finds there is good cause for the extension because of the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond its control.

### **CONCLUSIONS OF LAW**

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties and all parties are allowed thirty (30) days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) substantial evidence there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and

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market conditions beyond the applicant's control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the Application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the Application and allowing them thirty (30) days to respond.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control.

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

The approval of the time extension is not inconsistent with the Comprehensive Plan.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the Application for a two-year time extension of the approved PUD in Z.C. Case No. 03-27, Z.C. Order No. 03-27.

The final PUD approved by the Commission shall be valid until November 18, 2009, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than November 18, 2010.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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, familial status, family

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responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also 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 the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the Application be **GRANTED**.

On January 14, 2008, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of **5-0-0** (Gregory N. Jeffries, Peter G. May, Anthony J. Hood, Curtis L. Etherly, Jr., and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the D.C. Register on           **MAR 14 2008**          .

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-42**

**Z.C. Case No. 05-42**

**Consolidated Approval for a Planned Unit Development and  
Zoning Map Amendment for  
Sibley Memorial Hospital  
(Square N-1448, Lot 26)  
January 14, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 12, 2006, February 1, 2007, and February 21, 2007, to consider an application from Lucy Webb Hayes Training School for Deaconesses and Missionaries, doing business under the name Sibley Memorial Hospital ("Sibley") for consolidated review and approval of a planned unit development and related zoning map amendment from R-5-A to SP-1 in Square N-1448, Lot 26. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**Applications, Parties, and Hearing**

1. The project site consists of Square N-1448, Lot 26 (the "Property") and is bounded by Loughboro Road, Dalecarlia Parkway, Little Falls Road, and MacArthur Boulevard. The Property contains approximately 20.48 acres of land and is in the R-5-A Zone District. The Applicant has operated a hospital and related facilities on the site since 1961.
2. On December 22, 2005, Sibley (the "Applicant") filed an application with the Commission for review and approval of a planned unit development ("PUD") and related Zoning Map Amendment from R-5-A to SP-1 for a 2.86-acre portion of the Property. The PUD project includes construction of a new medical office building (the "MOB") and parking garage. The original application requested a height of 90 feet for the MOB and a four-level, 600-space parking garage.

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3. At a public meeting on April 20, 2006, the Commission set down the application for a public hearing. During the discussion, the Office of Planning ("OP") recommended that the PUD be set down with a zoning map amendment to the SP-2 Zone District, in order to accommodate the height of the MOB without using § 400.9. OP also indicated that the Applicant had amended its application to add an additional level to the parking garage structure, increasing the number of parking spaces to 750. Accordingly, the Commission voted to set down the application with a map amendment to the SP-2 Zone District to accommodate the proposed height. Notice of the public hearing, including a description of the subject property and the proposed development, was published in the *D.C. Register* ("DCR") on July 21, 2006, 53 DCR 5827, and was mailed to all property owners within 200 feet of the subject property and to Advisory Neighborhood Commission ("ANC") 3D.
4. On June 9, 2006, the Applicant filed a prehearing statement with the Commission, including additional information requested by the Commission and OP, and the application was further updated by a supplemental submission filed on September 21, 2006.
5. The parties to the case were the Applicant, ANC 3D, and the Sibley Neighbors for Responsible Growth ("SNRG"). The Commission opened the public hearing on October 12, 2006. At that time, the Applicant requested a continuance in order to address concerns raised by the District Department of Transportation ("DDOT"), and the Commission voted 3-0-2 to grant the motion. The public hearing was continued to February 1, 2007.
6. On October 16, 2006 and January 22, 2007, the Applicant submitted additional information to the Commission, including revised plans that indicated the height of the MOB had been reduced to 77 feet, 4 inches and that one story of the parking garage had been placed below-grade, as viewed from Loughboro Road. Accordingly, the Applicant amended the rezoning request to the SP-1 Zone District.
7. The public hearing continued on February 1, 2007 and concluded on February 21, 2007. During the public hearing, the Commission heard testimony and received evidence from the Applicant, ANC 3D, SNRG, OP, and DDOT, as well as from persons and organizations in support of, and in opposition to, the application.
8. The Applicant provided additional information in response to the Commission's comments and concerns in both the Applicant's rebuttal testimony (February 21, 2007) and in the Applicant's post-hearing submission dated February 26, 2007.
9. At a public meeting held March 12, 2007, the Commission deferred action on the application and instructed the Applicant to reduce the "intensity of use" of the proposed MOB. Members of the Commission also expressed concern regarding the sufficiency of

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the community amenities package and relocation of the helipad in order to accommodate a potential change in public bus routes.

10. On October 22, 2007, the Applicant provided additional information in response to the Commission's comments, including revised plans that indicated the height of the MOB had been further reduced to 65 feet and would accommodate 62 physicians at any one time. The Applicant also indicated that it had supplemented the community amenities package to include a contribution of \$30,000 to the Friends of Palisades Park, which was used for the installation of benches. Finally, the Applicant agreed to relocate the helipad to an existing surface parking lot located on the hospital campus. (Ex. 211.)
11. At a public meeting held November 19, 2007, the Commission took proposed action by a vote of 3-0-2 to approve the application with conditions.
12. On December 17, 2007, the Applicant provided additional information in response to the Commission's request for consideration of free or reduced rate parking for patients and visitors. The Applicant replied that the provision of free or reduced rate parking would be a significant disincentive to the success of the transportation demand management plan associated with the application, and noted that there was no substantive evidence in the record of this case showing that the Applicant's activities generate parking problems in the surrounding community.
13. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated December 28, 2007, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capitol.
14. The Commission took final action to approve the application in Case No. 05-42 on January 14, 2008 by vote of 3-0-2.

### **The PUD Project**

15. The Property consists of approximately 20.48 acres of land and is bounded by Loughboro Road, Dalecarlia Parkway, Little Falls Road, and MacArthur Boulevard, N.W. The Property currently contains the Sibley Memorial Hospital at its center, the Grand Oaks Assisted Living Facility in its southwest corner, and the Renaissance Skilled Care Nursing Facility between the Hospital and Grand Oaks. To the south are the Kent and Palisades residential neighborhoods. The rest of the Property is surrounded by land associated with the Dalecarlia Reservoir. The reservoir itself lies to the north, straddling the Maryland-D.C. border.

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16. The southern portion of the Property is located in the Institutional land use category, as shown on the District of Columbia Generalized Land Use Map. The northern portion of the Property is located in the Parks, Recreation, and Open Space category; at the time that the Generalized Land Use Map was last revised, this portion of the property was owned by the Washington Aqueduct. The Kent and Palisades neighborhoods to the south are located in the Low-Density Residential land use category. The Dalecarlia Reservoir land to the west, north, and east is located in the Parks, Recreation, and Open Space land use category.
17. The proposed Project consists of the construction of the MOB and parking garage on the northeast portion of the Property, which is currently used as a surface parking lot. The Applicant has sited these structures on the Property so as to maintain a large buffer area from the existing homes on Loughboro Road. The MOB will consist of offices for physicians, a data center (which houses computer servers, HVAC services for the servers, and IT Department space), and associated outpatient services on the ground and first floors. The proposed outpatient services include: an outpatient surgery center, a pharmacy, a diagnostic center, and a café. These services, combined with the presence of the doctors themselves, will greatly expand the health care options for Sibley's patients. The MOB will also include a new auditorium to replace the existing Ernst Auditorium, which will include seating for 240 people. (Tr. Feb. 1, 2007 at pp. 29-31.)
18. As presented by the Applicant's architectural expert and set forth in the Applicant's pre- and post-hearing submissions, the MOB will be integrated with the rest of the medical campus. The 65-foot MOB is shorter than existing buildings on the Property, such as the patient tower and Hayes Hall, which have heights of 83.4 feet and 79.5 feet, respectively. The exterior design character of the MOB and garage will be sympathetic with existing campus architecture. The facades will have brick colors, bond patterns, and pre-cast concrete horizontal banding treatments used on existing campus buildings to help create a cohesive continuity of design. A combination of aluminum curtain wall and windows will be used to add a contemporary quality to the façade compositions. Horizontal window fenestration patterns borrowed from the existing patient tower will also be utilized. (Tr. Feb. 1, 2007 at pp. 30-35; Ex. 211.)
19. The Parking Garage is designed to blend in with the rest of the campus and surrounding green space. In response to community concerns about the sufficiency of parking provided in this project, the parking garage includes 750 spaces on five levels. As viewed from Loughboro Road, the garage provides only three floors of parking above-grade (including the roof level). Special attention will be paid to this most visible south elevation to develop an attractive façade and create an articulated streetscape face by borrowing brick colors, pre-cast accent banding, and fenestration opening patterns from the new MOB. Moreover, the garage will utilize brick veneer and spandrel walls with punched openings to add architectural interest and minimize the visual impact of the

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- garage and parked automobiles. Additional boulevard street tree plantings and upper deck level planter screening will further screen the garage face from the neighboring properties across Loughboro Road. (Tr. Feb. 1, 2007 at pp. 35,36.)
20. The Applicant will improve the existing entrance to the hospital off Dalecarlia Parkway and will create a landscaped entry to the Campus. Extensive landscaping will enhance the open space buffer between the MOB and the hospital's neighbors to the south. As part of this improvement, the Applicant will create a park at the southeast corner of the Property, near the intersection of Loughboro Road and Dalecarlia Parkway. The proposed park will be located on Sibley's property as well as public space. The Applicant will enter into a landscaping and maintenance agreement with appropriate District agencies to assure that the park area is appropriately maintained. (Tr. Feb. 1, 2007 at pp. 44-47.)
  21. The garage will include approximately 750 parking spaces. However, the location of the garage on the site of existing surface parking spaces and relocation of the helipad results in a net gain of approximately 349 parking spaces. Additionally, the hospital currently has an inventory of approximately 360 unused spaces. Therefore, a total of approximately 709 parking spaces will be available to the physicians, staff, and patients of the MOB, at a ratio of 6.7 spaces per 1,000 square feet of gross floor area. Loading and service facilities will be accessible off Little Falls Road and will be located between the MOB and garage at the rear of the Property, behind a decorative screen wall. (Tr. Feb. 1, 2007 at pp. 31,32; Ex. 211.)
  22. Several sustainability initiatives will be included as a part of the Project. Three bio-retention areas, which are designed to absorb and filter water through natural processes, are proposed for stormwater quality control. A sandfilter is also proposed for both stormwater quality and quantity control. Additionally, a rainwater harvesting system will be used to collect stormwater in a cistern. This will reduce the amount of water going into the bioretention and sandfilter areas, and the collected stormwater will be used to irrigate landscaping and help satisfy the non-potable water needs of the MOB and hospital. A cool roof system is proposed for the roof of the MOB as well as portions of the parking deck roof. Other initiatives include high-performance glazing for the glass used in the MOB and use of recycled materials during construction. The Project results in a net increase in impervious surface area of less than 1%. (Tr. Feb. 1, 2007 at pp. 36-39.)
  23. The total gross floor area included in the proposed PUD is approximately 260,181 square feet for a total floor area ratio ("FAR") of approximately 2.09 on the Rezoned Property (described below). As mentioned, the MOB will have a height of 65 feet, and the parking garage features three levels above-grade as viewed from Loughboro Road. The proposed project will have a lot occupancy of approximately 62% on the Rezoned Property. The proposed project has a density that is significantly less than what is permitted under the

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- SP-1 District PUD Guidelines (maximum density of 3.5 FAR). Indeed, discounting the gross floor area for the garage, the project has a density of only 0.85 FAR, which is consistent with the density of the remainder of the Sibley campus (0.89 FAR). (Ex. 211.)
24. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study and supplemental traffic reports, as well as the testimony presented by the Applicant's traffic consultant during the public hearing. The traffic impacts would be offset by a series of mitigation measures, including the implementation of a signalization timing adjustment at Loughboro Road and MacArthur Boulevard, reconstruction of the Dalecarlia Parkway/Loughboro Road intersection, addition of signage to direct traffic to Little Falls Road, and a comprehensive Transportation Management Plan that includes a shuttle bus to the nearby Friendship Heights Metrorail station. The shuttle bus will provide continuous daily service to the Metro station for the project's employees, patients, and visitors, as well as those using the rest of Sibley campus. The shuttle bus will also be available for public use. (Tr. Feb. 1, 2007 at pp. 47-57.)
25. In response to concerns raised by DDOT and the community, the Applicant's traffic consultant undertook a series of additional studies and analyses of the proposed PUD's effects on vehicular and pedestrian traffic. In response to issues raised by DDOT in its October 12, 2006 report, the Applicant's traffic consultant provided DDOT and the parties with information on pedestrian levels of service and safety, speed survey data, the Loughboro Road/Dalecarlia Parkway intersection redesign, and additional intersection analyses. Additionally, the Applicant's traffic consultant provided DDOT and the parties with a supplemental traffic analysis, which summarized the trip generation impact of the reduction in height and density of the MOB. Finally, in response to DDOT's request, the Applicant's traffic consultant provided DDOT and the parties with information on peak hour trips, a multi-way stop warrant analysis for the Loughboro/Dalecarlia intersection, and information on diagnostic space in the proposed MOB. (Tr. Feb. 1, 2007 at pp. 57-60.)
26. The Applicant's representative indicated that they had engaged the community and the city extensively in the development of the project, through presentations to both ANC 3D and the Palisades Citizens' Association. The Applicant also met with both community leaders and individual neighbors to assess their reactions and solicit their suggestions for the project. Their comments have been integrated into the design for the proposed project, the decision to rezone only a portion of the Property, the decision to reduce the height of the MOB by two floors, and the decision to add an additional level of below-grade parking, while reducing the visual impact of the parking garage. (Tr. Feb. 1, 2007 at pp. 19-25; Ex. 211.)
27. The Applicant's representative testified as to the need for the MOB. In written submissions and oral testimony, the Applicant demonstrated that most modern

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community hospitals have a medical office building on their campus and asserted that the MOB would counteract the high cost of practicing medicine in the District. Finally, the Applicant's representative testified that the MOB would provide convenience and accessibility for patients and doctors alike, improve the productivity and efficiency of physicians at the hospital, and provide Sibley with a non-insurance-based source of revenue. (Tr. Feb. 1, 2007 at pp. 18,19.)

28. The Applicant's representative also testified regarding the demonstrated interest of physicians in leasing office space in the MOB. In response to a mailing sent to existing Sibley doctors regarding interest in the MOB, the hospital received signed cards of interest for over 137,000 square feet of office space. The Applicant submitted letters from two commercial real estate firms indicating that the hospital could expect a minimum of 45-60% of the interest would convert into closed lease conversions, which would fill the MOB. (Tr. Feb. 21, 2007 at pp. 211-214.)

### Zoning Map Amendment

29. The Property is located in the R-5-A Zone District. The R-5-A District, as a matter-of-right, permits a maximum building height of 40 feet<sup>1</sup>, a maximum density of 0.9 FAR, and a maximum lot occupancy of 40%.
30. The Applicant has requested a PUD-related Zoning Map Amendment for a portion of the Property in the northeast corner of the hospital campus to the SP-1 Zone District (the "Rezoned Property") in order to allow for the medical office and retail uses, and to allow the structures to obtain the requested height and density. (Tr. Feb. 1, 2007 at pp. 13,14, 26, 27.) The SP-1 Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum density of 2.5 FAR for non-residential permitted uses, and a maximum lot occupancy of 80% for residential use. In the SP Zone District, construction of a new office building and a parking structure are only permitted if approved by the Board of Zoning Adjustment ("BZA") as a special exception. The PUD guidelines for the SP-1 Zone District allow a maximum height of 75 feet and a maximum density of 3.5 FAR for non-residential uses. The proposed SP-1 zoning will allow for the medical office uses, which are consistent with other uses that occur on the hospital campus. The Commission approved a substantially similar PUD-related rezoning from R-5-A to SP-1 for portions of the Washington Hospital Center in order to allow for the construction of a physician's office building and parking structure in Z.C. Order. No. 784.
31. Further, the requested rezoning to SP-1 is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and

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<sup>1</sup> Institutional buildings "may be erected to a height not exceeding ninety feet (90 ft.); provided, that the building or structure shall be removed from all lot lines of its lot a distance of not less than one foot (1 ft.) for each foot of height in excess of that authorized in the district in which it is located." See 11 DCMR § 400.9.

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amenities against the requested zoning relief. In Z.C. Order No. 921, a PUD and Zoning Map amendment case in Ward 3, the Commission articulated the legal standard for reviewing PUD-related Zoning Map amendments:

A PUD map amendment is thus a temporary change to existing zoning, that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. This being the case, the Commission may grant PUD-related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17 (COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that “public health, safety, and general welfare goals of the zoning regulations would be served by the... amendment.”

Id. at 16 (COL 6); see Tr. Feb. 21, 2007 at 173-75; Ex. 204 (Applicant’s Post-Hearing Submission dated February 26, 2007).

32. In this case, the Commission finds that the proposed PUD-related map amendment of the Property to the SP-1 Zone District is appropriate, given the superior features of the PUD project, and is only permitting a maximum density of 2.09 FAR in the SP-1 Zone District on this Property. The Commission agrees with OP’s conclusion that granting the requested Zoning Map Amendment will permit the development of the MOB, which will allow Sibley to provide more efficient and effective delivery of health care services and will promote the public health, safety, and general welfare of the District of Columbia. Therefore, the Applicant has satisfied its burden of proof in order for the Commission to approve the proposed Zoning Map Amendment.

The Applicant provided a written submission to the Commission regarding an allegation that the proposed rezoning would constitute illegal “spot zoning.” A full discussion of this issue may be found in paragraph 16 of the conclusions of law portion of this Order.

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**Development Incentives and Flexibility**

33. The Applicant requested the following areas of flexibility from the Zoning Regulations:
- a. Approval for the office and parking garage uses, which are permitted by special exception under §§ 506.1 and 508.1 of the Zoning Regulations (Parking Garages (SP) and Office Uses (SP), respectively). The Commission has the authority to grant approval of both special exceptions pursuant to § 2405.7 of the Zoning Regulations. The Applicant requested and the Commission agreed not to apply the special exception standards normally applied by the BZA as permitted by § 2405.8 of the Zoning Regulations.
  - b. Approval for the construction of multiple structures on a single record lot, which is permitted by special exception under § 2516.4 of the Zoning Regulations (Exceptions to Building Lot Control (Residence Districts)). Again, the Applicant requested and the Commission agreed not to apply the special exception standards normally applied by the BZA as permitted by § 2405.8 of the Zoning Regulations.
  - c. Flexibility from the Zoning Regulations' roof structure requirements.

**Public Benefits and Amenities**

34. The Applicant, in its written submissions and testimony before the Commission, noted, the following benefits and amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403. (Tr. Feb. 1, 2007 at pp. 23-25.)
- a. Efficient and Safe Vehicular and Pedestrian Access. The PUD features the following amenities:
    - i. A shuttle bus providing continuous weekday service to the nearby Friendship Heights Metrorail station from 6:00 AM to 5:00 PM.
    - ii. The Applicant will pay for and undertake the construction of the intersection of Loughboro Road and Dalecarlia Parkway. The Applicant will work with DDOT to install active warning signs and pavement markings at the intersection for pedestrian access and safety. The intersection design shall include a layover lane exclusively for use by buses.
    - iii. Compliance with a Transportation Management Plan, which includes: traffic routing program to route traffic to Little Falls Road; the shuttle bus and information dissemination to encourage use of shuttle bus; dedicated parking spaces and ridesharing matching incentives to encourage carpooling; bicycle

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parking spaces adjacent to the MOB; a pre-tax transit benefits program for employees; and a quarterly report to DDOT that includes details on the utilization of the carpool and shuttle bus services (derived from data obtained in a typical week) as well as details on the utilization of the transit benefits program.

- iv. Provision of ample parking, equivalent to a ratio of 6.7 parking spaces for every 1,000 square feet of medical office space, which exceeds industry standards. In order to further mitigate any adverse parking impacts that may result from the MOB, the Applicant has agreed to include a provision in all leases that employees of each doctor's office provide onsite parking for their employees.
- b. Urban Design, Architecture, and Open Spaces. The MOB features high quality design that creates an attractive addition to the Hospital in a campus-like setting on the Property. The garage replaces unattractive surface parking with a sensitively landscaped structure that ensures ample parking onsite. The project also includes the creation of a landscaped park and relocated bus stop and layover that will provide aesthetic benefits to the neighborhood.
- c. Site Planning and Efficient and Economical Land Uses. The Applicant has sited the new structures at the back of the subject Property to minimize the impact on the surrounding neighbors and maintain the development buffer along Loughboro Road. At the same time, the hospital is a logical site for a physicians' office building that promises increased efficiency and expanded care options, particularly for outpatient services. The proposed site plan complements the hospital's advanced medical facilities yet minimizes its impact on its residential neighbors.
- d. Social Services and Facilities. The project provides a host of social services to the community and the District as a whole. Primarily, the MOB enhances the quality of ambulatory care that Sibley may provide to its patients. It helps draw and retain top-quality physicians and strengthens the financial position of the hospital. It also provides an integrated set of outpatient services that will provide alternatives to hospitalization. In addition to adding neighborhood physicians, it also adds amenities such as medical retail space that will provide convenient services to the surrounding community.

Moreover, as a benefit of the PUD, Sibley will partner with IONA Senior Services ("IONA"), a local organization that provides assistance to the elderly, to enhance services available to senior citizens in the surrounding neighborhoods. Specifically, Sibley will contribute \$140,000 to IONA for the purchase of two

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vans and other improvements to assist Iona with the transportation services that it provides to seniors in the Northwest Washington community.

Finally, Sibley currently provides a host of amenities to the surrounding community and city. Foremost is the amount of free medical care Sibley provides to those who need it most; in 2005, the hospital provided \$7.12 million in uncompensated care. That number was approximately \$8.8 million in 2006. Sibley is a Catholic Charities partner; it gives more outpatient surgery and diagnostics than any other D.C. Hospital, and is second in the amount of inpatient care that is given. The hospital is also affiliated with other District clinics, such as Community of Hope and Healthcare for the Homeless. Additionally, the hospital promotes its fitness and wellness programs to the neighborhood through ads in the Northwest Current and in quarterly and monthly publications. In particular, Sibley serves as a home for Ward 3's senior community, through its 8,000 member Sibley Senior Association. Membership in the Senior Association gives access to free parking; health screening for glaucoma and flu shots; health services such as blood pressure checks and pharmacy consults; support groups for persons with cancer, diabetes, Alzheimer's, and Parkinson's and for widowed persons; and exercise and recreation programs.

- e. Uses of Special Value. The MOB brings a comprehensive set of on-site primary care physicians, specialists, and outpatient services that makes Sibley a true full-service community medical center of special value. The MOB's proposed ground-level amenities further enhance the value of this facility. Sibley serves as a community center as well, and the construction of the replacement auditorium adjacent to the MOB will allow community groups, such as the ANC, to hold their meetings in a more comfortable setting.

In addition, as detailed in its October 22, 2007 Supplemental Submission, the Applicant has contributed \$30,000 to the Friends of Palisades Park. These funds were used for the installation of benches along the northern sideline of the new artificial turf soccer field at Palisades Park. A letter confirming that the financial contribution was received and used for the above-stated purpose was submitted into the record as a part of the Applicant's October 22<sup>nd</sup> Supplemental Submission. (See Ex. 211.)

- f. Environmental Benefits. By locating the MOB and garage on land that is currently used as surface parking, the Project results in a net increase of impervious surface of approximately 0.5%. The project will also be designed to meet sustainable strategies which would represent approximately 16 points under USGBC's LEED for New Construction, version 2.2. The Project features a comprehensive set of low-impact development features, including reflective

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membrane roofing and concrete paving to reduce the heat island effect, bio-retention technologies to provide stormwater quality and quantity control, and rain harvesting technologies to provide irrigation water for landscaped areas.

- g. Employment and Training Opportunities. In order to further the District's policies related to the creation of employment and training opportunities, the Applicant has indicated that it will participate in a First Source Agreement with the District of Columbia Department of Employment Services. The Applicant also has agreed to enter into a Memorandum of Understanding with the Local Business Opportunity Commission to use local firms in the development and construction of the Project.
- h. Consistency with the Comprehensive Plan. The PUD advances the major themes as well as polices and objectives of the elements of the Comprehensive Plan. The Project increases the stability and strength of the hospital and benefits the surrounding community with a convenient and efficient physician presence. Additionally, the Project respects and improves the physical character of the District through high-quality design, transportation improvements, and sustainability and landscaping initiatives. Finally, the Applicant has demonstrated a commitment to preserving and ensuring community input by making numerous presentations and modifying the Project design to remove one floor of the MOB and place one floor of the garage underground.

### Compliance with PUD Standards

35. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8.) Given the level of project amenities and public benefits, the Commission finds that the development incentives for the proposed 65-foot height, 2.09 FAR, and related rezoning to SP-1 are appropriate. The Commission also finds that the requested approval for building lot control and office and parking garage uses, as well as the requested flexibility from the roof structure requirements, are fully justified by the benefits and amenities offered by this Project.
36. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, social services, environmental benefits, and uses of special value to the neighborhood and District as a whole. The Commission finds that the Applicant's proposal to pay for the engineering and construction costs of the new intersection at Dalecarlia Parkway and Loughboro Road, as

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well as the Applicant's Transportation Management Plan, mitigate any potential adverse traffic impacts that may occur as a result of this application.

### Government Agency Reports

37. By report dated January 22, 2007, and by testimony at the public hearing, OP recommended approval of the application pursuant to SP-1 limits and subject to DDOT's recommendation of approval. OP's support was based on the Applicant's agreement to remain within the SP-1 PUD guidelines, in keeping with community concerns regarding height, density, and traffic impacts. OP observed that the application falls within the SP-1 PUD guidelines. OP requested that the Applicant provide details on the intended use of the leftover space created once existing hospital uses are transferred to the MOB. OP supported the proposed mitigation measures and amenities, including the intersection reconstruction, the sustainable design elements, the contribution to IONA, and the Transportation Management Plan. By report dated September 29, 2006, OP found that the Project is consistent with the Comprehensive Plan, including the Generalized Land Use Map designations of the Property, and will further important Comprehensive Plan themes and elements. OP further stated that, "similar uses and subsequent rezoning to the SP-1 Zone District in prior applications have been deemed consistent with the Comprehensive Plan." (Tr. Feb. 1, 2007 at pp. 163-68, 170, 176, 177.)
38. By report dated November 9, 2007, OP indicated support for the Applicant's response to the Commission's and ANC 3D's comments regarding the intensity of use and traffic impacts of the previously proposed project design. OP found that the reduced building height and intensity of use, in tandem with instituted transportation demand strategies, respond to concerns articulated by the Commission and the community. OP also indicated support for Sibley's method to cap the number of doctors at the MOB to 62 "at any one time." OP did not support free parking, because it found that it would contradict the intent of the transportation demand management strategy.
39. In its November 9th report, OP reviewed the project against the 2006 Comprehensive Plan and determined that the PUD was not inconsistent with the Plan. OP concluded that the proposed SP-1 designation was consistent with the Institutional land use designation on the Future Land Use Map and was also consistent with past actions of the Commission that approved medical office buildings in close proximity to residential neighborhoods. OP also concluded that the PUD was not inconsistent with policies of the plan governing institutional uses and the transportation impacts of institutional uses in the Land Use Element as well as policies calling for improvements to primary and emergency care facilities, particularly in areas with high populations of senior citizens, in the Community Services and Facilities Element. Finally, OP found that the location, bulk, and height of the MOB were modified to minimize the impact on the surrounding community and

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concluded that the PUD was not inconsistent with policies that govern the management of institutional uses in the Rock Creek West Area Element. (Ex. 215.)

40. By report dated January 25, 2007, DDOT concluded that it has no objections to the proposal. DDOT indicated support for the proposed PUD and stated that the Applicant had responded to comments and recommendations raised by DDOT in its initial report dated October 11, 2006. DDOT observed that the Applicant had agreed to reconstruct the Dalecarlia Parkway/Loughboro Road intersection, and requested that the Applicant install active warning signs and pavement markings on Dalecarlia Parkway to slow vehicles approaching the entrance. DDOT further observed that a traffic signal was not warranted for the new intersection. DDOT noted that the pedestrian safety analysis indicated pedestrian levels of service would not change under future conditions. DDOT found that future levels of service at additional area intersections would not be adversely affected by the MOB. DDOT supported the Transportation Management Plan proposed by the Applicant, including the shuttle bus. DDOT recommended that the Applicant provide quarterly reports on the utilization of the shuttle bus, public transit, and other Transportation Management Plan measures. Finally, by report dated January 26, 2007, DDOT concluded that the Applicant was in compliance with the conditions of previous orders of the Commission and BZA. (Tr. Feb. 1, 2007 at pp.179-193.)

### ANC 3D Report

41. By report dated October 5, 2006, and by testimony at the public hearing, representatives of ANC 3D indicated that at a duly noticed meeting in September 2006, with a quorum present, ANC 3D voted to approve the hospital's application. The ANC's vote was conditioned on recommendations to remove two floors from the then-90 foot MOB, as well as one level of parking so that a maximum of 525 parking spaces would be included, and change the requested rezoning from SP-2 to SP-1. ANC 3D also proposed 11 conditions regarding traffic, buffering, and amenities. (Tr. Feb. 21, 2007 at pp. 8-73.)
42. By report dated October 29, 2007, ANC 3D indicated that at a duly noticed meeting in October 2007, with a quorum present, ANC 3D voted to approve the Applicant's October 22<sup>nd</sup> Supplemental Submission. The ANC's vote was conditioned on recommendations regarding the upgrading of Little Falls Road (including relocation of the helipad), a limit of no more than 62 doctors in any 24-hour period, a restriction on the proposed ground floor use to use as a proposed imaging and outpatient surgery center, one hour of free visitor parking, quarterly meetings during construction and semi-annual meetings thereafter, and receipt of all the Applicant's applications for regulatory reviews, permits, and approvals for the project. (Ex. 212.)

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**Persons in Support**

43. Over 85 individuals and organizations testified in support of the application through letters to the Commission and testimony at the public hearing. Those testifying in support included residents of the neighboring Palisades and Kent neighborhoods as well as physicians. The current and former Councilmembers for Ward 3, the Ward in which Sibley is located, also submitted letters in support of the proposed PUD.
44. Mr. Stuart Ross and Ms. Penny Pagano testified in support on behalf of the Palisades Citizens' Association ("PCA"), which represents approximately 1,700 households in the Palisades neighborhood. Mr. Ross testified that the PCA had voted to endorse the Project at its June 2006 meeting. Mr. Ross indicated that the PCA supported the Project in large part because features of the PUD such as the ample parking and shuttle bus, ameliorated its impacts on those residential areas immediately adjacent and contiguous to the hospital. (Tr. Feb. 1, 2007 at pp. 231-235.)
45. Mr. Vince Treacy testified in support on behalf of the Spring Valley West Homes Corporation ("Spring Valley West"), which represents 155 homes in a community southeast of the hospital. Mr. Treacy testified that the board of directors of Spring Valley West had unanimously voted to support the proposed PUD in September 2006, and that the vote was endorsed by the entire membership of the association at its annual membership meeting in January 2007. Mr. Treacy indicated that Spring Valley West supported the Project as essential to the continued economic viability of the hospital, and believed that the traffic impact would be reasonable. (Tr. Feb. 1, 2007 at pp. 236-238.)
46. Ms. Barbara Lang, President and Chief Executive Officer of the D.C. Chamber of Commerce, testified in support both as a representative of the D.C. Chamber and as a 20-year resident of the Palisades neighborhood. Ms. Lang testified that the proposed Project would encourage doctors to stay in the District, and was necessary to protect patient access to quality health care. Ms. Lang also testified that the MOB would serve as a great community resource that would provide convenience for both doctors and patients and help ensure Sibley's continued economic competitiveness. (Tr. Feb. 1, 2007 at pp. 238-241.)
47. Drs. Janelle Goetcheus and John Marlow, two physicians practicing in the District, testified in support of the PUD. Dr. Goetcheus testified regarding the free care—including laboratory tests, admissions, and prescription medicines—that Sibley regularly provides to uninsured patients from community health organizations. Dr. Marlow testified regarding the importance of retaining physicians for the continued economic viability of hospitals in the District. Dr. Marlow, who noted he lived in the neighborhood of the hospital, also testified in support of the shuttle bus and other transit initiatives and indicated that co-locating medical offices with a diagnostic center and hospital was a benefit to both patients and physicians. (Tr. Feb. 1, 2007 at pp. 241-250.)

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48. Mr. Andrew Diem, a resident of Loughboro Road immediately across the street from the main entrance of Sibley Hospital, testified in support of the proposed PUD. Mr. Diem testified that the MOB would not change the residential character of the neighborhood, because it was being located at the rear of the Property. Mr. Diem further testified that the height of the MOB would be consistent with Sibley's other buildings and would not cast shadows on any residential buildings in the area. Mr. Diem also testified that the traffic generated by the MOB would not have any appreciable impact on the neighborhood. Mr. Diem noted that most traffic problems were caused by commuter traffic during the morning and evening rush hours, and accordingly did not believe a reduced, less effective MOB was either necessary or desirable. (Tr. Feb. 1, 2007 at pp. 251-254.)

#### **Party in Opposition**

49. The Sibley Neighbors for Responsible Growth ("SNRG"), by testimony at the public hearing, opposed the application. SNRG argued that (1) there was no demonstration that the proposed medical office building would strengthen the hospital and attract physicians; (2) the proposed amenities were worthwhile but not sufficient; (3) the traffic and other impacts generated by the Project would adversely affect the surrounding neighborhood; and (4) the hospital had failed to comply with conditions of previous Commission and BZA orders. In addition, SNRG's planning expert testified that the proposed rezoning to SP-1 was inappropriate "spot zoning" and that the application misused the PUD process to circumvent the purpose of the Zoning Regulations. He also testified that fiscal reasons could not be grounds for approval of a PUD or rezoning, and that there was no demonstrated need for the medical office space. (Tr. Feb. 21, 2007 at pp. 105-155.) In a supplemental filing dated October 29, 2007, SNRG indicated that it generally supported ANC 3D's conditions with minor adjustments, such as a request for two hours of free parking. (Ex. 213.)

#### **Persons in Opposition**

50. Approximately 50 individuals, through written submissions or testimony at the public hearing, noted opposition to the Project. Concerns were raised related to the Project's design, its traffic and parking impacts, and a lack of demand or need for a medical office building adjacent to Sibley. (Tr. Feb. 21, 2007 at pp. 177-209.)

#### **Satisfaction of the PUD and Zoning Map Amendment Approval Standards**

51. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to SP-1 are appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of OP that the proposed Project and rezoning are consistent with the Comprehensive Plan, including the District of Columbia Generalized Land Use Map. The Commission notes

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that the Applicant has proffered a condition to limit the use of leftover space created by the relocation of existing hospital uses, and finds it to be responsive to OP's concern regarding additional impacts.

52. The Commission agrees with DDOT's conclusion that the Applicant has fully addressed parking and traffic issues associated with the proposed development. The Commission credits DDOT's testimony that the traffic impacts of the Project will be mitigated by specific measures, including the TMP, the signal optimization measures, and the reconstruction of the Dalecarlia Parkway and Loughboro Road intersection. The Commission concurs with DDOT that the quarterly reports, which will include details on the utilization of the shuttle bus and the transit benefits program, will ensure that the Project's traffic impacts continue to be mitigated.
53. The Commission accorded ANC 3D the "great weight" to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 3D holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission is persuaded that the proposed medical office and garage uses and SP-1 zoning request are appropriate. The Commission recognizes that the Applicant responded to ANC 3D's recommendation by reducing the MOB by two floors to 65 feet, by revising its map amendment request SP-1 zoning, and reducing the number of doctors to 62 at any one time. Although the ANC wished to limit this number of doctors to 62 doctors within a single 24 hour period, the Commission finds that 62 doctors at any one time is the more appropriate method to control the intensity of the MOB use. Limiting the number of doctors practicing in the MOB at any one time provides an adequate cap on the overall intensity of the use and provides a more effective measurement of that intensity. The Commission also recognizes that the Applicant redesigned the parking garage by placing one level below ground to reduce its visual impact. In addition, the Commission has included the ANC's proposed conditions regarding upgrading Little Falls Road (including relocating the helipad), restricting uses within the Sibley campus, and quarterly meetings with the community during construction and semi-annual meetings thereafter.
54. The Commission is also not persuaded it should include all of the ANC's proposed conditions. The Applicant has proffered a series of conditions designed to mitigate traffic impacts, provide landscaping and visual buffering, and provide significant amenities and benefits to the surrounding community, and the Commission finds that these conditions of approval are sufficient given the development incentives and flexibility requested. The Commission finds it inappropriate to require removal of one level of the parking garage so it contains a maximum of 525 parking spaces, because construction of the garage will result in a net gain of only 349 spaces on the Sibley campus, and the Applicant reduced the visual impact of the facility by modifying its plans to place an additional level underground. The Commission finds that the ANC's proposed condition

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- requiring the Applicant to provide the ANC with copies of all applications for regulatory reviews, permits, and approvals is beyond the scope of these proceedings and the Commission's jurisdiction. The Commission also notes that the majority of the conditions proposed by ANC 3D were accepted and proffered by the Applicant.
55. The Commission credits the testimony and evidence provided by the Applicant regarding the existence of adequate interest and demand for office space within the proposed MOB.
  56. The Commission credits the testimony and evidence provided by the Applicant that no on-street parking impacts are generated by visitors and employees of Sibley in the surrounding residential neighborhood. Neither ANC 3D nor SNRG have offered persuasive evidence to cause the Commission to find that Sibley should be required to provide any amount of free parking or parking at a reduced rate for its visitors and patients. The Commission concurs with OP that free parking should not be required, because it contradicts the intent of the transportation demand management strategy to encourage mass transit use.
  57. The Commission credits the testimony of DDOT that the Applicant has complied with all previous conditions in orders of the Commission and the BZA.

#### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote, "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (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, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA. (11 DCMR § 2405.)
3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

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4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The application meets the contiguity requirements of § 2401.3.
6. The proposed height and density will not cause a significant adverse effect on any nearby properties. The medical office and garage uses are appropriate for the site, which includes the location of the Sibley Memorial Hospital and other related uses. The impact of the project on the surrounding area is not unacceptable. As demonstrated in the Traffic Study submitted by the Applicant, the Project will not cause adverse traffic impacts and the Property is accessible to mass transit, especially with the creation of the shuttle bus service from the Friendship Heights Metrorail Station.
7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.
8. The benefits and amenities provided by the Project, particularly the provision of sustainable design features, exemplary architecture, landscaping features, parking, contribution to IONA, and substantial contributions to improve mass transit access and service, are reasonable for the development proposed in this application.
9. The application seeks a PUD-related zoning map amendment to the SP-1 Zone District, and an increase in height and density as permitted under the PUD guidelines. The application also seeks flexibility from the building control requirement, roof structure, and approval of medical office and parking garage uses. The benefits and amenities provided by the Project are all reasonable trade-offs for the requested development flexibility.
10. Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan, including the current designation of the Property in the Institutional land use category on the Generalized Land Use Map.
11. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the following major themes of the Comprehensive Plan: stabilizing the District's neighborhoods, respecting and improving the physical character of the District, and preserving and ensuring community input. The Project is also consistent with many major elements of the Comprehensive Plan, including the Transportation, Urban Design, and Human Services elements, as well as the goals and policies of the Ward 3 Element.
12. The Project is also consistent with the 2006 Comprehensive Plan and fosters its policies. Specifically, the Project is consistent with both District-wide Land Use Element policies and Rock Creek West Area Element policies governing institutional uses. The Project is

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also consistent with Community Services and Facilities Element policies that call for improvements to primary and emergency care facilities, particularly in areas with high populations of senior citizens. Finally, the proposed rezoning is consistent with the site's Institutional land use designation on the Future Land Use Map.

13. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) to give "great weight" to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 3D voted in favor of approving the application. The Commission agrees with the ANC that this Project should be approved, that the medical office and garage uses are appropriate, and that the rezoning request to SP-1 is appropriate. The Commission has included the recommended conditions regarding upgrading Little Falls Road, including the relocation of the helipad and quarterly meetings with the community during construction and semi-annual meetings thereafter. The Commission disagrees with the ANC's recommendation to remove an additional floor from the parking garage. Rather, the Commission is persuaded that the height, density, and design, as proposed by the Applicant, are appropriate. The Commission is persuaded that the limitation on the number of physicians using the MOB to 62 at any one time is appropriate. The Commission is also persuaded that a condition requiring one hour of free parking is not appropriate because it contradicts the intent of the transportation demand management strategy to encourage mass transit use. Moreover, the Applicant has not agreed to this amenity and, therefore, the Commission cannot compel the Applicant to provide it. Further, the Commission disagrees with the ANC's assertion that additional conditions are required. Substantial efforts have been made by the Applicant to minimize impacts associated with the MOB and garage. In addition, the Commission notes that the Project has received support from neighborhood organizations and both the current and recently-elected Councilmembers from Ward 3.
14. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

#### PUD-Related Zoning Map Amendments

15. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9), the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if

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the PUD is not built, and ends once the PUD use terminates. The Commission might grant PUD-related Zoning Map amendments in circumstances where it might reject permanent rezoning. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the SP-1 District is appropriate given the restrictions placed upon the project and the public benefits that will result from the medical office use.

### Spot Zoning

16. Spot zoning is the, “wrenching of a small parcel from its environment for the benefit of a single owner and without the benefit to the public at large or the area affected.” *Daro Realty, Inc. v. District of Columbia Zoning Comm’n*, 581 A.2d 295, 299 (D.C. 1990) (citing *Citizens Ass’n of Georgetown v. District of Columbia Zoning Comm’n*, 402 A.2d 36, 40 (D.C. 1979)). There is a two-pronged test to determine if a parcel of land has been illegally, “wrenched” from its environment: (1) when the Zoning Commission’s action, “pertain[s] to a single parcel or a limited area—ordinarily for the benefit of a particular property owner or specially interested party,” and (2) the Zoning Commission’s action is, “inconsistent with the city’s comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare.” *Id.* The Commission (as noted above) finds that the proposed rezoning to the SP-1 Zone District is consistent with the Comprehensive Plan and the purposes of the Zoning Regulations. For this reason, the Commission finds that granting the requested zoning map amendment does not result in “spot zoning.”
17. The application for a PUD and related map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for consolidated review of a planned unit development and related Zoning Map amendment from the R-5-A Zone District to the SP-1 Zone District for the property located at 5255 Loughboro Road (Lot 26, Square N-1448). The approval of this PUD is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Wilmot Sanz Architects and Planners marked as Exhibits 171 and 211 in the record, as modified by the guidelines, conditions, and standards herein.
2. The PUD Site shall be rezoned from R-5-A to SP-1, and shall have relief from the penthouse setback requirement of the Zoning Regulations consistent with the plans

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marked as Exhibit 211 in the record. Pursuant to § 2405.7, both the office and parking garage uses shall be approved.

3. The Project shall be developed as a medical office building and parking garage, and shall be constructed to a maximum density of 2.09 FAR. The medical office building shall consist of approximately 105,153 square feet of gross floor area and be constructed to a maximum height of 65 feet. There shall be no more than 62 doctors in the medical office building at any one time. The ground floor of the medical office building shall be used for the proposed imaging and outpatient surgery center use.
4. The Project shall include a five-level parking garage containing approximately 750 spaces and consisting of approximately 155,028 square feet of gross floor area as shown on the approved plans. In regard to the operation of the parking garage, the Applicant shall:
  - a. Turn off all lights on the above-grade levels of the parking garage at 9:00 PM. The below-grade levels of the garage will remain lit for after-hours parking.
  - b. Require that all leases for space in the medical office building include a provision that requires the tenant to provide validated parking for its staff members.
5. The Project shall include off-street loading consistent with the approved plans.
6. The Applicant shall comply with the Transportation Management Plan ("TMP") outlined in Exhibit 171 of the record. The TMP shall include the following components:
  - a. A traffic routing program for employees, patients, and visitors who drive to the hospital, including signage to direct vehicular traffic to entrances located off Little Falls Road;
  - b. A shuttle bus providing continuous weekday service to the nearby Friendship Heights Metrorail Station;
  - c. Information dissemination measures to promote the shuttle bus, including distribution of brochures to individual offices and advertisement materials in the office building lobby;
  - d. Carpool incentives for hospital employees (as well as employees of the medical office building's tenants), including a ridesharing database and matching service and carpool spaces to registered rideshare groups;

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- e. A transit benefits program that deducts pre-tax dollars for transit fare for all hospital employees that register for the program; and
  - f. A quarterly report to the District Department of Transportation (“DDOT”) and ANC 2A, detailed in the DDOT Report marked as Exhibit 164, that includes:
    - i. Details on the utilization of the carpool and shuttle bus services; and
    - ii. Details on the utilization of the transit benefits program.
7. The Applicant shall pay for and undertake the construction of the redesign of the intersection of Loughboro Road and Dalecarlia Parkway, in accordance with the “Intersection Design Details” Plan dated January 25, 2007 and included in the Applicant’s presentation marked as Exhibit 171 of the record. Further, the Applicant shall:
- a. Coordinate the installation of active warning signs and pavement markings on southbound Dalecarlia Parkway with DDOT staff, including an approach warning 500 feet from the entrance to the Sibley medical campus, in order to regulate vehicular speed;
  - b. Coordinate the final design and construction of the intersection, including all pedestrian facilities, with DDOT staff, all plans and construction to be consistent with DDOT standards;
  - c. Include a layover lane exclusively for use by public buses. In the event that DDOT and WMATA determine that it is appropriate to relocate the existing Metrobus stop on Loughboro Road to the bus layover location, the Applicant shall coordinate with DDOT and WMATA officials to relocate the bus stop;
  - d. Relocate the helipad currently located in the Little Falls Road travel lane to an existing surface parking lot on the Sibley Campus near the Emergency Department entrance; and
  - e. The redesigned intersection shall be completed and functional prior to the issuance of a Certificate of Occupancy for the medical office building.
8. The Project shall include the sustainable design features detailed in the Applicant’s “Project Sustainability Initiatives” Plan submitted on February 21, 2007 and marked as Exhibit 196 of the record.

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9. The Project shall include the stormwater management features detailed in the Applicant's "Concept Grading and Stormwater Management Plan" and included in the Applicant's presentation marked as Exhibit 171 of the record.
10. The Project shall include the landscape design features detailed in the Applicant's Landscape Plan and included in the Applicant's presentation marked as Exhibit 171 of the Record.
11. The Project shall include a public park located at the northwest corner of the intersection of Loughboro Road and Dalecarlia Parkway, which shall be maintained by the Applicant as a public park and open for public use and enjoyment.
12. The Applicant shall abide by the "Development and Construction Management Plan" submitted to ANC 3D on September 6, 2006 and included in the Applicant's supplemental submission marked as Exhibit 80 of the record. This plan shall include quarterly community meetings during the construction process. Further, following the issuance of a building permit, and prior to the issuance of a certificate of occupancy for the parking garage, the Applicant shall utilize the measures detailed in the "Interim Parking Plan" submitted on February 21, 2007 and marked as Exhibit 196 of the record in order to ensure adequate parking for hospital employees, patients, and visitors during the construction of the Project.
13. Prior to the issuance of a building permit, the Applicant shall contribute \$140,000 to IONA Senior Services, for the purchase of two vans and other improvements to assist IONA with the transportation services that it provides to seniors in the Northwest Washington community.
14. Following the completion of the medical office building, the Applicant shall not supplant any uses transferred to the medical office building from other facilities on the Sibley campus with any new uses; provided, that the Applicant expressly retains the right to use such space for the relocation and decompression of any hospital-related use in existence on the Sibley campus as of the effective date of this Order.
15. 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, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structures;
  - b. To vary final selection of the exterior materials within the color ranges and materials types as proposed, [without a reduction in quality,] based on the availability at the time of construction;

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- c. To make minor refinements to exterior details and dimensions, including belts, courses, sills, bases, cornices, railings, and trim or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit; and
  - d. To make alterations to the parking garage design provided that the parking garage contains approximately 750 spaces, which requirement may be satisfied by any combination of compact and full-sized spaces, and conforms to the Zoning Regulations requiring parking garages, such as but not limited to aisle width.
16. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development prior to the issuance of a building permit for the Project.
17. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services prior to the issuance of a building permit for the Project.
18. No building permit shall be issued for this planned unit development until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct on or use the property in accordance with this order and any amendment thereof by the Zoning Commission.
19. The PUD approved by the Zoning Commission shall be valid for a period of (2) two years from the effective date of this Order. Within such time, an application must be filed by the Applicant for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin on the Project within (3) three years of the effective date of this Order.
20. The change of zoning from the R-5-A Zone District to the SP-1 Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 18, pursuant to 11 DCMR § 3028.9.
21. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code section 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, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or

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business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also 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 the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On November 19, 2007, the Zoning Commission took proposed action to **APPROVE** the application by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Gregory N. Jeffries to approve; Curtis L. Etherly, Jr. and John G. Parsons, having not participated, not voting).

This order was **ADOPTED** by the Zoning Commission at its public meeting held on January 14, 2008, by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt; Curtis L. Etherly, Jr. and Peter G. May, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the D.C. Register; that is, on MAR 14 2008.

DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C. February 27, 2008

Plat for Building Permit of: SQUARE 1448-N LOT 26

Scale: 1 inch = 200 feet Recorded in book 197 Page 147

Receipt No. 02749

Furnished to: PWSP

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 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 centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, 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.)

*[Signature]*  
\_\_\_\_\_  
Fa Surveyor, D.C.

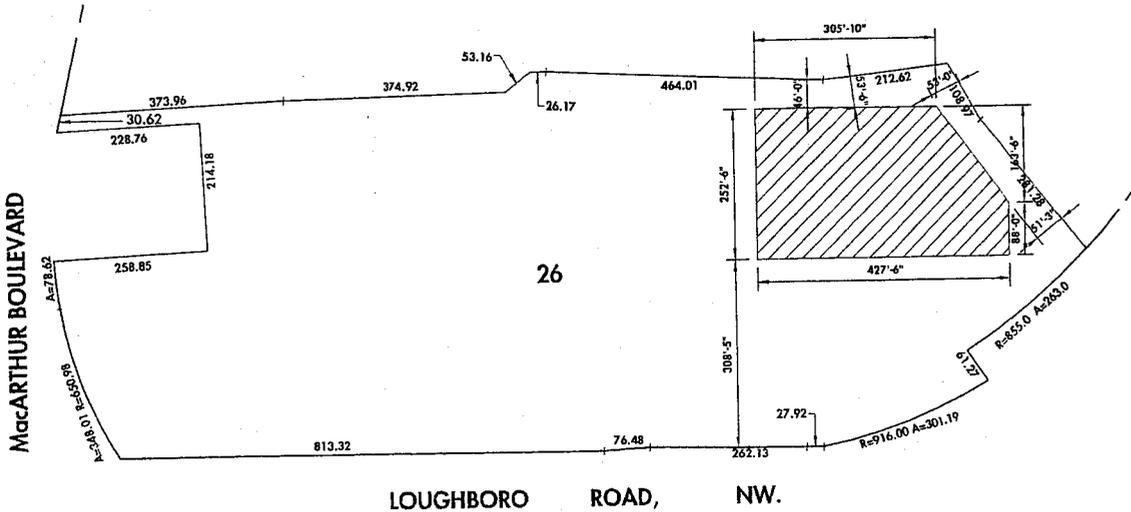
Date: \_\_\_\_\_

By: D.M.

\_\_\_\_\_  
(Signature of owner or his authorized agent)

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.

Area to be rezoned to the  
SP-1 Zone District



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**ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**  
**Z.C. ORDER NO. 07-16**  
**Z.C. Case No. 07-16**  
**(Consolidated Planned Unit Development – 2300 Pennsylvania Avenue, LLC)**  
**January 31, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 29, 2007, to consider an application ("Application") from 2300 Pennsylvania Avenue, LLC (the "Applicant") for the consolidated review and approval of a planned unit development ("PUD") for the property known as Lots 19, 20, 53, 54, 802, 803, 810, and 811 in Square 5560, located at 2300 Pennsylvania Avenue in southeast Washington, D.C., pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At a special public meeting on December 13, 2007, the Commission took proposed action by a vote of 5-0-0 to approve the Application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated December 28, 2007, found that the proposed PUD, would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any federal interests.

The Commission took final action to approve the Application on January 31, 2008, by a vote of 4-0-1.

**FINDINGS OF FACT**

1. On May 11, 2007, the Applicant filed an application for the consolidated review and one-step approval of a PUD and a related amendment to the Zoning Map.
2. The project site consists of Lots 19, 20, 53, 54, 802, 803, 810, and 811 in Square 5560, and has an address of 2300 Pennsylvania Ave., S.E. (the "Property"). The Property is located in the Fairlawn neighborhood in Ward 8. The Property consists of approximately 31,500 square feet. The Property is located in the C-2-A Zone District.

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3. The Property is owned by the following: Dr. Melvin D. Howard, II, D.V.M., owner of 2309 Pennsylvania Avenue, S.E. (Lot 811, Square 5560); E&L Auto Sales Inc., the owner of 2311-2313 Pennsylvania Avenue, S.E. (Lot 810, Square 5560); Francis C. Minni, Helen Patricia Mudd, and Robert G. Sherman, the owners of 2317-2323 Pennsylvania Avenue, S.E. (Lots 19, 20, 53, and 54, Square 5560); Asghar Kazemifar, Aghdas Kazemifar, Hossein Moghadam, and Habibeh Mahboobi Moghada, the owners of 2325 Pennsylvania Avenue, S.E. (Lot 802, Square 5560); and Renee Miller, Peggy Brooks Smith, Estate of Evelyn Peskin, and The Dan Chesivoir Trust, the owners of 2327 Pennsylvania Avenue, S.E. (Lot 803, Square 5560). The Applicant has entered into a contract with each of the referenced owners to purchase the Property and is authorized by such owners to prosecute the subject application.
5. At its July 9, 2007 public meeting, the Commission considered the Application but took no action to schedule it for a public hearing. The Commission requested that the Applicant consider a decrease in the height and density of the project and certain revisions to the design concept. In response to those comments, the Applicant submitted a revised application, together with revised plans, on July 23, 2007. The Application, as revised, withdrew the request for an amendment to the Zoning Map.
6. On July 30, 2007, the Commission approved the Application for a public hearing. The Commission also requested that the Applicant provide additional information on the following issues: 1) provide details regarding the articulation of the ground floor façade along Pennsylvania Avenue, S.E.; 2) revise the proposed brick colors; 3) provide renderings that show the building in the context of the neighborhood and neighboring properties; 4) take the Pennsylvania Avenue S.E. Corridor Plan into consideration in the development of the streetscape plan; 5) consider reducing the density of the proposed building; 6) provide further information concerning on-site storm water retention; and 7) provide further justification for proposed relief.
7. On September 11, 2007, the Applicant submitted supplemental materials, including revised development plans and the transportation analysis report for the proposed project.
8. The Commission held a public hearing to consider the Application on November 29, 2007, pursuant to the provisions of 11 DCMR § 3022.
9. As preliminary matters prior to the public hearing, the Commission determined that Reverend Oliver Johnson did not qualify for party status because he was not likely to be more significantly, distinctively, or uniquely affected in character or kind by the proposed development than those of other persons in the general public and granted the request of the Applicant for a waiver of a posting requirement. There were no other requests for party status. The Advisory Neighborhood Commission ("ANC") 8A, the ANC in which the Property is located, was automatically a party to the case.

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10. At the November 29, 2007 public hearing, the Applicant presented its evidence including testimony and the presentation of plans, reports, and material samples. In response to the Applicant's request for designation of certain witnesses as experts, the Commission accepted Mutesh Asatoy of Computecture as an expert in architecture; Christopher L. Kabatt, P.E. of Wells & Associates as an expert in transportation; and John Heinrichs, P.E. of Phoenix Engineering, Inc. as an expert in civil engineering.
11. As discussed below, the Office of Planning ("OP"), numerous persons in support, and several persons in opposition testified at the public hearing.
12. On December 3, 2007, in response to requests made by the Commission at the public hearing, the Applicant submitted the following materials into the record and served them on OP and ANC 8A:
  - Revised architectural plans reflecting revisions to the plans as shown at the public hearing;
  - A revised landscape plan which corresponds with the revised architectural plans;
  - The Applicant's response to the D.C. Water and Sewer Authority's ("DCWASA") concern with the proposed development's location within a Low Service Area water pressure zone;
  - The Applicant's proposed transportation demand strategies;
  - The Applicant's response to concerns regarding precautionary measures the Applicant will take with regard to the protection of older structures located in Square 5560;
  - Memorandum of Understanding between Chapman Development and the Earth Conservation Corps ("Corps"), a youth development and environmental service organization, to engage twenty-five (25) Corps members on the 2300 Pennsylvania Avenue Project; and
  - Letter of Agreement from the Ward 8 Business Council to Chapman Development agreeing to work with the Applicant to provide coordination services to on-site businesses at the Property.
13. On January 22, 2008, the Applicant submitted a letter clarifying its commitments to construct a rainwater capture system into the PUD project's storm water management system, the courtyard as a green roof above the below grade parking garage, and an on-site business center on the ground floor of the PUD project.

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#### PUD SITE AND SURROUNDING AREA

14. The Property includes approximately 31,500 square feet of land, and is located in the Fairlawn neighborhood approximately one-quarter mile from the John Philip Sousa Bridge. The Property is rectangular shaped and is bounded by Pennsylvania Avenue to the northeast; Prout Street to the northwest; an alleyway to the southeast; and an alleyway to the southwest.
15. The Property is currently improved with small deteriorating structures, a commercial garage, and parking lots. Commercial structures are located across Pennsylvania Avenue, S.E. from the Property and to the southeast, along Pennsylvania Avenue, S.E. The Fairlawn neighborhood, which includes a mix of single family homes and multi-family buildings, is situated south and southwest of Pennsylvania Avenue. Single family homes are located directly across the southwest alleyway from the Property.
16. The grade of the Property slopes from the south corner to the north corner.

#### DESCRIPTION OF THE PUD PROJECT

17. The PUD project creates a 118-unit multi-family residential apartment building with ground floor retail and a community center, along with underground parking and loading docks. The residential units will consist of 110 one-bedroom and eight two-bedroom units. A 6,428-square-foot courtyard will be landscaped and accessible to the residents of the building. The 8,290 square feet of ground floor retail space is oriented toward Pennsylvania Avenue. The community center will be available to the community for community meetings and as a business center for residents of the building.
18. The building will have a height of 59 feet six inches and a density of 3.135 floor area ratio ("FAR"). The residential dwelling units will be reserved for households making up to 60% of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Area.
19. The underground parking garage will provide 77 parking spaces. The first 18 parking spaces will be available for use by retail employees and customers, while the remaining 59 spaces will be reserved for residents. The loading facilities, which include a 30-foot loading berth and a 55-foot loading berth, will be accessible from Prout Street, S.E.
20. The building will include a mix of brick, siding, and trim. A five foot six inch tall brick architectural embellishment will crown the building on its northwest corner near the intersection of Pennsylvania Avenue and Prout Street, S.E.
21. The building will have a 15-foot side yard on the southeast side of the Property, adjacent to the southeast alleyway. The courtyard opens to the rear of the Property on the building's southwest side.

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22. Although the Property is located within a Low Service Area water pressure zone, according to the testimony of the civil engineer and additional materials submitted for the record, the existing eight inch line in Pennsylvania Avenue, S.E. is connected to a 30-inch water transmission line in Prout Street, S.E. adjacent to the Property and such facilities should provide adequate volume even if the pressure is low. Furthermore, the Applicant will perform a fire hydrant flow test and if the test indicates that the pressure is too low for the proposed development, the Applicant will include low water pressure devices in the proposed building's mechanical room to increase the pressure inside the building to satisfactory levels.
23. The Applicant submitted the following transportation demand management strategies:
- Fifty-one bicycle parking spaces will be provided for residents of the building within the garage. "U" racks will also be provided outside for visitors and the retail.
  - An on-site Business Center will be provided for residents and will provide access to a copier, fax, and Internet service.
  - An agreement to post information regarding alternative transportation choices on the property management's website to include hotlinks to goDCgo.com and CommuterConnections.com. Transit information will also be provided to new residents upon move-in and displayed in the lobby of the building.
  - Transit subsidy in the form of a SmartTrip card with a value of \$20.00 will be provided to tenants who sign a one-year lease to encourage use of transit.
  - The Applicant will work with DDOT and a car-sharing company to locate an appropriate space on or around the property for car-sharing.
  - The property management company will provide a transportation demand management coordinator to implement transit strategies.

#### ZONING RELIEF REQUESTED

24. The PUD project requires relief from the lot occupancy, rear yard, loading, and floor area ratio requirements (§§ 403, 404, 2201.1, and 2405.2).

#### SATISFACTION OF PUD EVALUATION STANDARDS

25. Through written submissions and testimony to the Commission, the Applicant and its representatives noted that the PUD project will provide high-quality residential development on the Property with public benefits to the neighborhood and the District as a whole.

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26. Urban Design and Architecture: The proposed building is designed to complement the architectural design of this area of the District, as well as introduce the mixed-use ground-floor retail model building to Pennsylvania Avenue, S.E., a style commonly seen in other areas of the District. The impact of 118 new residential units and ground-floor neighborhood-oriented retail at this location will set a design standard for this area and help to revive the Pennsylvania Avenue, S.E. thoroughfare by restoring its commercial significance and utility.
27. Site Planning: The Applicant noted that throughout the design review process it has sought to address the requests of the Commission, OP, and the community to reduce the size of the building and to orient the ground-floor retail along Pennsylvania Avenue, S.E. The proposed density of the project is appropriate for the Property. The amount of green space at the Property will be increased from 2,000 square feet to 8,000 square feet. This will result in approximately 20% of the Property dedicated to green space. The large courtyard opens on the rear of the building, lessening any impact to the residential dwellings across the southwest alleyway.
28. Effective and Safe Vehicular and Pedestrian Access: The access points for the loading dock and parking garage are located on Prout Street, S.E. The portions of the project facing the Pennsylvania Avenue and Prout Street, S.E. sidewalks have been designed to encourage pedestrian activity. The proposed development provides residents and retail patrons with 77 parking spaces.
29. The Applicant's traffic and parking expert provided written documentation that the study area roadway network currently operates near or at capacity during the morning and afternoon peak periods. All approaches at unsignalized intersections in the study area operate at Level of Service "D" or better during both peak hour periods. The traffic and parking expert noted that modifications to the existing signal timings at the Pennsylvania Avenue intersections with Minnesota Avenue SB and Minnesota Avenue NB/25<sup>th</sup> Street would improve overall vehicle delay during peak hours. Overall the intersections would operate a Level of Service "C" or "D" during the AM and PM peak hours with such modifications. The traffic expert found that the PUD project would add one second or less of overall delay to the signalized intersections of Pennsylvania Avenue and L'Enfant Square (Minnesota Avenue SB) and Pennsylvania Avenue and Minnesota Avenue NB/25<sup>th</sup> Street assuming the signal timing modifications suggested were implemented for background conditions. The unsignalized intersections would continue to operate at acceptable levels of service during the AM and PM peak hours. Based on these findings, the traffic and parking expert concluded that the subject development would have no objectionable impact on the public street network.
30. Housing: The PUD project will add 118 new workforce residential units to the Fairlawn neighborhood. The residential units will be reserved for households making up to 60% of AMI.

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31. First Source Employment Program: The Applicant will enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents during the development and construction process.

32. Local, Small, and Disadvantaged Businesses: The Applicant will enter into a Memorandum of Agreement with the Department of Small and Local Business Development in an effort to utilize local, small, or disadvantaged business enterprises certified by the D.C. Local Business Opportunity Commission in the development of this project.

The Applicant has also formed a partnership with the Ward 8 Business Council (the "W8BC"). W8BC is a nonprofit organization that promotes and monitors Certified Business Enterprises ("CBEs") in Ward 8. As a result of this partnership, a Ward 8 CBE Pre-Bidders Conference event was held on October 19, 2007, at which 40 Ward 8 CBEs attended. The purpose of the Pre-Bidders Conference was to engage this group early to ensure that Ward 8 businesses had needed information to qualify for contractual opportunities. Also as a result of this effort, the Applicant has started a series of workshops to provide information on issues including bonding, working with government to get paid on time, employment law, establishing relationships with big contractors, and A3 contracting.

33. Environmental Benefits: The PUD project includes a rainwater capture system as a way to reduce run-off into the storm water system. The PUD project also includes a courtyard to be a green roof above the below-grade parking garage that will collect rainwater to reduce storm water run-off and for watering on-site plantings, and to increase the amount of green space at the Property, so that approximately 20% of the property will be green space. As well, 51 bike parking spaces would also be included in the parking garage. The PUD project also includes an on-site business center available to residents, including a copier, fax, and internet service.

34. Comprehensive Plan: The PUD project is fully consistent with and fosters the goals and policies stated in the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"). The District of Columbia Future Land Use Map recommends low-density commercial land use for the Property. The low-density category includes facilities for shopping, business, housing and mixed use needs.

35. The PUD project serves the goals of several of the citywide elements of the Comprehensive Plan:

- Consistency with the Land Use Elements – The Applicant seeks to construct a new building in an area and a commercial corridor which is planned for revitalization by the District government. The block in which the proposed PUD is located is currently in bad repair. The new development will help to prompt

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revitalization of the area, bringing vibrancy across the Anacostia River. The proposed design of the building will introduce a type of building design not commonly seen east of the River. Furthermore, the new building will also bring much desired retail to the neighborhood. Finally, the building will introduce 118 needed new workforce dwelling units to the community.

- Consistency with the Housing Element – The proposed project will introduce a new concentration of both retail and residential uses along the Pennsylvania Avenue, S.E., bringing energy to the neighborhood. The apartment house will provide amenities such as a business center for its tenants. A landscaped courtyard will also be open to all tenants for passive recreation.
  - Consistency with the Economic Development Element – The proposed project will establish new retail in the neighborhood along Pennsylvania Avenue, S.E., as sought by the community. As well, new retail is anticipated under the Corridor Land Development Plan for Pennsylvania Avenue S.E. in order to increase neighborhood livability and economic development along the corridor.
36. Compliance with Area Element - The PUD project also complies with priorities and policies of the Far Northeast and Southeast Area Elements of the revised Comprehensive Plan.
- Development of New Housing – The Comprehensive Plan seeks to “[e]ncourage new housing for area residents on vacant lots...on underutilized commercial sites along the area’s major avenues.” The construction of the project will redevelop the currently underutilized commercial sites along Pennsylvania Avenue, S.E.
  - Development of New Retail – The Comprehensive Plan also seeks to “[s]upport the revitalization of the neighborhood commercial areas with new businesses and activities that provide needed retail services to the adjacent neighborhoods and that are compatible with surrounding land uses.” Additionally, such plan notes that “[p]articular emphasis should be placed on upgrading the shopping area between Fairlawn Avenue and 28<sup>th</sup> Street SE.” The proposed project will initiate this revitalization process by providing neighborhood oriented retail and promoting a return of the commercial corridor to a walkable shopping street.
37. The Commission has the authority to approve an increase of not more than five percent of the density of the underlying zone district pursuant to § 2405.3, provided that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations. The PUD project has a density of 3.135 FAR and, therefore, requires additional relief pursuant to § 2405.3.
38. The increase in density will allow additional light and air to residential units located in the southeast corner of the building and produce an improved window pattern. The lot

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occupancy, rear yard, loading and density flexibility requested by the Applicant will have no measurable impact on the surrounding properties. The Commission finds that the additional light and air together with the improved window pattern are essential to the successful functioning of the project and consistent with the evaluation standards of Chapter 24 of the Zoning Regulations.

#### GOVERNMENT REPORTS

39. In its November 19, 2007 report, OP recommended approval of the project. It also recommended consideration of certain transportation demand strategies. OP stated it believed that the proposal is consistent with the Comprehensive Plan. OP noted that the Property is classified as Commercial/Mixed-Use within a Main Street Mixed-Use Corridor on the Generalized Policy Map. OP also noted that the Future Land Use Map designates the area of the Property along Pennsylvania Avenue as low-density commercial, which defines shopping areas that are generally low-scale in character. OP found that the proposed ground-floor retail space is intended to serve the building's residents and surrounding neighborhood and is not inconsistent with this designation. OP noted that the redevelopment of the site will have an overall positive impact on the neighborhood and supports the District's Great Street Initiative for the Pennsylvania Avenue S.E. Corridor.
40. In its November 19, 2007 report, the District Department of Transportation ("DDOT") concurred with the observations and conclusions of the Applicant's parking and traffic expert that the traffic expected to be generated from the project will not significantly worsen the existing traffic condition.
41. In its November 9, 2007 report, DCWASA noted that the Property is a part of a Low Service Area water pressure zone and required the Applicant to submit results from a fire flow test in the 8-inch water main in Pennsylvania Avenue, S.E. in order for DCWASA to determine the ability of the water distribution system to provide adequate fire flows for the proposed development. DCWASA found the sanitary sewers in this area to be adequate to handle the expected sanitary flows for the proposed project. DCWASA found that the storm sewers in the area of the Property to be adequate to handle the expected storm flows for the proposed development.

#### ANC REPORT

42. ANC 8A supported the PUD project by letter dated October 31, 2007 and a resolution dated November 6, 2007. The ANC's resolution in support of the project noted the project as revised responded to issues and concerns raised by the community and ANC 8A regarding the height and density of the proposed building, as well as concerns with the exterior design of the building. Additionally, the resolution noted that the ANC is supportive of the residential and retail development as proposed by the Applicant.

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#### PERSONS IN SUPPORT

43. Ashley Howard, a youth involved with the Environmental Corps; Thelma Jones, a resident of the Fairlawn neighborhood; Herman Barber, a Ward 8 Certified Business Enterprises business owner; James Bunn, a representative of the Ward 8 Business Council; and Freddie Winston, a Ward 8 Certified Business Enterprises business owner, testified in support of the project.

#### PERSONS IN OPPOSITION

44. Reverend Oliver Johnson, a resident of Nicholson Street, S.E., which property is located directly across the southwest alley from the Property, testified in opposition to the project. Reverend Johnson noted his concern for older structures located in the vicinity of the Property.
45. Marvin Thomas, a business owner currently located in a building at the Property who will be displaced by the proposed construction, testified in opposition to the project.
46. Laura Richards, a resident of the Penn Branch neighborhood, testified in opposition of the project and, particular, her opposition to the height and density of the proposed project. Ms. Richards noted that such a development is more suitable to a location near a Metro rail station.

#### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider the application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested relief from the lot occupancy, rear yard, loading, and floor area ratio requirements, can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
3. 11 DCMR § 2403 provides the standards for evaluating a PUD application and 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right

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- zoning. The instant application will achieve the goals of the PUD process by providing superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right project on the Property would provide. The Commission finds that the workforce residential units, the ground-floor retail and the community center are significant project amenities and exemplify superior features of urban design, architecture, and site planning. The Commission finds that the proposed low impact development proposed by the Applicant is an environmentally sensitive approach to development on the Property and is a public benefit and project amenity.
4. The project benefits and amenities are a reasonable trade-off for the zoning relief provided in the application. The use, height, bulk, and design are appropriate for the building.
  5. The Commission agrees with the written submissions of the Applicant, as well as the recommendations of OP, that approval of the proposed project is not inconsistent with the Comprehensive Plan. The Commission finds that the PUD project is consistent with and fosters the goals of numerous citywide elements of the Comprehensive Plan, including: the Economic Development Element; Land Use Element; and Housing Element. The Commission also finds that the project furthers objectives and policies of the Far Northeast and Southeast Area Elements, including new housing and new retail.
  6. The Applicant seeks an increase in density as permitted by 11 DCMR § 2405.3. The Applicant has met the burden of proof required by 11 DCMR § 2405.3 for approval of five percent bonus density, because the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations.
  7. In accordance with D.C. Official Code § 1-309.10(d)(3)(A), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission has carefully considered the ANC's recommendation for approval of the project and concurs in its recommendation.
  10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations, as reflected in paragraph 39 above. For the reasons stated above, the Commission agrees with OP's recommendation for approval and concurs in its recommendation.
  11. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
  12. Notice of the public hearing was provided in accordance with the Zoning Regulations.

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13. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
14. The Applicant is subject to compliance with the Human Rights Act of 1977 (D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq.).

### 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 Application for consolidated review of a planned unit development for 19, 20, 53, 54, 802, 803, 810, and 811 in Square 5560. The approval of this PUD is subject to the following guidelines, conditions, and standards of this Order:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 16, 18, and 60 of the record, as modified by the guidelines, conditions, and standards of this Order. To the extent minor modifications are needed to conform with D.C. laws and regulations with regard to the plans and materials, the Applicant is afforded the necessary flexibility to make such changes.
2. All of the residential units shall be reserved as workforce housing units, and will be affordable to households making no more than 60% of AMI.
3. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the standard form First Source Agreement. A fully executed First Source Agreement shall be filed with the Office of Zoning and the Office of the Zoning Administrator prior to issuance of a building permit for the PUD project.
4. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development. A fully executed Memorandum of Understanding shall be filed with the Office of Zoning and the Office of the Zoning Administrator prior to the issuance of a building permit for the PUD Project.
5. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and bathrooms, provided that the variations do not change the exterior configuration of the structures;
  - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and

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- To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.
6. The consolidated PUD 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 and construction of the project must start within three (3) years of the effective date of this Order, pursuant to 11 DCMR §§ 2408.8 and 2408.9.
  7. No building permit shall be issued for the PUD project until the owner[s] of the Property have executed and recorded a covenant in the land records of the District of Columbia, between the owner[s] 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 owners and all successors in title to constrict and use the Property in accordance with this Order, or amendment thereof by the Commission. The owners shall file a certified copy of the covenant with the records of the Office of Zoning.
  8. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.
  9. A rainwater capture system shall be included in the PUD project’s storm water management system.
  10. The courtyard of the PUD project shall be constructed as a green roof above the below grade parking garage.
  11. The on-site business center described in finding of fact paragraphs 23 and 33 shall be available to residents, and shall be located on the ground floor of the building.

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12. The Applicant shall abide by the terms of the Development and Construction Management Plan submitted into the record at Exhibit 67.

On December 13, 2007, the Zoning Commission took proposed action to **APPROVE** the Application by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Peter G. May, and Michael G. Turnbull to approve).

On January 31, 2008, the Zoning Commission took final action to **ADOPT** the Application by a vote of **4-0-1** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to adopt; Curtis L. Etherly, Jr., to adopt by absentee ballot; Gregory N. Jeffries not present, 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 on           **MAR 14 2008**          .

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