

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**Z.C. Order No. 05-23A****Z.C. Case No. 05-23A****Modification to PUD at Eckington Place, N.E. and Harry Thomas Way, N.E.****Square 3576, Lot 815****November 19, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 18, 2007, to consider an application from NoMa West Residential I, LLC (the "Applicant"), for a modification of a planned unit development (the "Modified PUD") and a related amendment to the Zoning Map of the District of Columbia from the M District to the C-3-A District for Square 3576, Lot 815. The application was filed on behalf of, and with the consent of, CSX Realty Development, Inc., the owner of the property covered under the application. 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**Application, Parties, and Hearing**

1. On June 7, 2007, the Applicant filed an application with the Commission for a modification to the PUD approved for the property located on Lot 815, Square 3576 at Eckington Place, N.E. and Harry Thomas Way, N.E. (the "Property"), pursuant to Z.C. Order No. 05-23 (the "Approved PUD"). The Property consists of 187,958 square feet of land.
2. At its public meeting held July 30, 2007, the Commission voted to schedule a public hearing on the application. At the meeting, the Commission requested that the Applicant provide additional information relating to the range in the number of dwelling units, the building material on the north face of the building, and the lot occupancy for the Modified PUD versus that for the Approved PUD. The Commission also proposed rezoning the Property to the C-3-A District as an alternative to the C-3-C District approved for the Property pursuant to Z.C. Order No. 05-23.
3. In its Preliminary Report to the Commission, dated July 20, 2007, the Office of Planning ("OP") requested that the Applicant address issues relating to the proposed Q Street

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extension, the connection to the Metropolitan Branch Trail, the building design, sustainable design elements for the project, and the project's relationship to the development to the north.

4. On August 7, 2007, the Applicant filed a Prehearing Statement with the Commission, which included the information requested by the Commission and OP in Paragraphs 2 and 3 above (Exhibit 12, pp. 8-12) and revisions to the north elevations for Buildings 100 and 200 (Exhibit 13, Sheets 120 and 121).
5. On September 28, 2007, the Applicant submitted a Supplemental Filing in support of its application, which included an updated discussion on the proposed modification to the Approved PUD and the project design, a discussion on the Applicant's community outreach efforts, and a revised set of plans, titled "TCR – Eckington One," dated September 28, 2007, and marked as Exhibits 19A and 20 of the record. The Applicant also provided updated versions of the Development and Construction Management Plan, the Memorandum of Understanding, and the First Source Employment Agreement.
6. The Supplemental Filing also requested modifications to Condition Nos. 2, 5, 9, 10, and 15 of Z.C Order No. 05-23A as follows:

Condition No. 2

FROM:

"Harry Thomas Recreation Center – The Applicant shall make a contribution of \$10,000 to the Harry Thomas Recreation Center. The contribution shall specify that the funds may only be used for the purchase and installation of a new scoreboard."

TO:

"Harry Thomas Recreation Center – The Applicant shall make a contribution of \$10,000 to the Harry Thomas Recreation Center. The contribution shall specify that the funds may only be used for the purchase of new materials and supplies for the center."

Condition No. 5

FROM:

"5. The project will shall [sic] include seven parking spaces for exclusive use by Zip Car or a similar car-sharing company. Four of the car-sharing spaces will be located on the street, and three of the car-sharing spaces will be located in the parking garages included in Buildings 1-3. Three of the seven cars provided in

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the project shall be reserved for hybrid or low emissions vehicles will be hybrid or low emissions vehicles. [sic] Two of the on-street, car-sharing parking spaces, and one of the car-sharing parking space in the commercial parking lot of Building 1 shall be provided at the time of the construction of Building 1, the extended Q Street and the townhouse structures."

TO:

"5. The project shall include five on-street parking spaces for exclusive use by Zip Car or a similar car-sharing company. Two of the five cars provided in the project shall be reserved for hybrid or low emissions vehicles. Two of the car-sharing parking spaces shall be provided at the time of the construction of Building 100 and the Q Street extension."

Condition No. 9

FROM:

"9. The Applicant shall design and construct a connection to the Metropolitan Branch Trail consisting of a ten (10) foot wide path, pedestrian solar scale lighting, and call box(es). The Applicant shall enter into an agreement with DDOT and the District Office of Partnerships and Grants Development (OPGD), regarding the Applicant's construction of the connection to the Metropolitan Branch Trail. The proposed construction of the connection to the Metropolitan Branch Trail shall occur concurrently with the construction of the first residential building. In the event the cost of the design and construction of the trail connection is less than \$55,000, the Applicant shall contribute the balance to the organizations listed as receiving financial contributions in Paragraph 2 above. No Certificate of Occupancy for the first building shall be issued until DDOT provides a written statement to the Zoning Administrator indicating that the construction has been accepted by DDOT."

TO:

"9. The Applicant shall make a contribution of \$55,000 to DDOT for the design and construction of a connection to the Metropolitan Branch Trail consisting of a 10-foot wide path, solar scale lighting, and call box(es). No building permit shall be issued for the project until DDOT provides a written statement to the Zoning Administrator acknowledging such payment."

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Condition No. 10

FROM:

"10. The Applicant shall make a financial contribution to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street, N.E. The amount of the financial contribution shall be commensurate with the percentage of traffic that this project contributes to that intersection, but not less than \$25,000. The requirement for the Applicant to provide such a financial contribution shall be triggered by DDOT's submission of a letter to the Applicant and the Zoning Commission indicating DDOT's formal decision to construct the traffic signal and the time period in which design and construction is to be completed. The Applicant shall provide such payment within 30 days after receipt of DDOT's letter, but not earlier than the issuance of a building permit for the first residential building on the Subject Property. "

TO:

"10. The Applicant shall make a financial contribution of \$25,000 to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street, N.E. No building permit shall be issued for the project until DDOT provides a written statement to the Zoning Administrator acknowledging such payment."

Condition No. 15

FROM:

"15. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23. Within such time, an application must be filed for a building permit for the construction of the extended Q Street through the property and one of the four residential buildings. The filing of the building permit application will vest the Zoning Commission Order. If the building permit application does not include all four residential buildings, the application shall include a phasing plan for the remaining construction. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building."

TO:

"15. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23A. Within such time, an application must

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be filed for a building permit for the construction of the extended Q Street through the property and one of the three residential buildings. The filing of the building permit application will vest the Zoning Commission Order. If the building permit application does not include all three residential buildings, the application shall include a phasing plan for the remaining construction. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building."

7. At its duly noticed meeting held October 16, 2007, Advisory Neighborhood Commission ("ANC") 5C voted unanimously to support the Modified PUD application.
8. After proper notice, the Commission held a hearing on the application on October 18, 2007 (the "Hearing"). The parties to the case were the Applicant and ANC 5C, the ANC within which the Property is located.
9. At the Hearing, the Applicant filed the following documents with the Commission:
 - a. A revised version of Sheet 201 of the plans, titled "Overall Landscape Plan," dated October 18, 2007, and a revised version of Sheet 206, titled "Detailed Landscape Plan," dated October 18, 2007, which is marked as Exhibit 26 of the record;
 - b. A letter from the ANC in support of the application, which is marked as Exhibit 23 of the record;
 - c. A statement providing an additional condition of the Modified PUD approval, providing for a \$20,000 contribution to the Edgewood Civic Association approval to cover (i) the cost of printing and distributing the Association's quarterly newsletter, (ii) donations of equipment to the Harry Thomas Recreation Center and the Edgewood Recreation Center, (iii) donations to the PTSA for the Emery and Shad Elementary Schools for student and parent enrichment programs, (iv) grants to senior citizens for snow removal and safety maintenance of their homes, (v) a summer festival for youth in the community, and (vi) community beautification projects, which is marked as Exhibit 26 of the record;
 - d. A letter from the Edgewood Civic Association, dated October 18, 2007, in support of the Modified PUD application, which is marked as Exhibit 26 of the record;
 - e. A facsimile from Harry Thomas Recreation Center detailing the type of equipment and supplies that would be purchased with contribution from the Applicant, which is marked as Exhibit 26 of the record; and

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- f. A revised Development and Construction Management Plan dated October 2, 2007, which is marked as Exhibit 26 of the record.
10. At the Hearing, the Applicant requested flexibility to enlarge the courts for Building 200 and Building 300; but in no case would the courts be smaller than depicted in the plans for the Modified PUD.
11. There were no parties or persons in opposition to the PUD modification.
12. At the Hearing, the Commission voted to approve the application by a vote of 4-0-1, subject to the Applicant providing a signed copy of the Development and Construction Management Plan, dated October 2, 2007.
13. On November 1, 2007, the Applicant submitted a signed copy of the Development and Construction Management Plan to the Zoning Commission, which is marked as Exhibit 32 of the record.
14. On November 19, 2007, the Applicant submitted a letter, which is marked as Exhibit 34 clarifying the arrangement between the Applicant and DDOT for the Metropolitan Branch Trail connection proposed under the PUD. The letter attached a statement from DDOT confirming that the agency desires the Applicant to make a monetary contribution of \$55,000 to fund the construction of the Metropolitan Branch Trail connection, in lieu of constructing the improvement as was required in the original PUD.
15. The Commission took final action to approve the application on November 19, 2007.
16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self- Government and Governmental Reorganization Act. NCPC, by action dated November 29, 2007, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

Project Overview

The Approved PUD

17. The Approved PUD consists of approximately 739,951 square feet of residential gross floor area and 15,084 square feet of retail. The residential uses are comprised of approximately 585-636 apartment units located in three large residential buildings, with a mix of studio, one-bedroom, one-bedroom with den, two-bedroom, and two-bedroom with den units; approximately 27 piggyback townhouse units; and five four-story single family townhouses. Approximately 875 below-grade parking spaces are provided for residents and guests of the multifamily buildings. Garages are provided for each

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townhouse, and additional parking is provided via a surface parking lot. The building heights range from 40 feet for the townhouses to 110 feet for the apartment buildings, and the project has a lot occupancy of 47.43%, including the proposed streets. The FAR for the Approved PUD is 4.01.

The Modified PUD

18. The Modified PUD consists of approximately 592,610 square feet of floor area with 600 dwelling units (plus or minus 7%) and approximately 1,000 square feet of ground floor retail. There will be a mix of studio, one-bedroom, one-bedroom with den, two-bedroom, and two-bedroom with den units housed in three buildings - Buildings 100, 200, and 300, respectively. Building 100 will be at the northwest section of the property and will have approximately 123,460 square feet of gross floor area. Building 200 will be at the northeast section of the property and will have approximately 213,710 square feet of gross floor area. Building 300 will run along the southern boundary of the property and will have approximately 255,440 square feet of gross floor area. The retail space will be located in Building 300 at the corner of Eckington Place and Harry Thomas Way. Building 200 will be the tallest of the three buildings, and will have a maximum height of approximately 64 feet - 6 inches. The project will be served by below-grade parking garages, and will have a minimum parking ratio of .8 parking space per dwelling unit. The Modified PUD will have a maximum density of 3.3 FAR.
19. The Applicant also agrees to implement the inclusionary housing commitment standards attached as Exhibit F of the Application Statement filed June 7, 2007, and marked as Exhibit 2 of the record.

Project Design and Components

20. Building 100. The architecture for Building 100, which will be situated at the northwest corner of the Property, is designed to represent a group of three buildings in styles relating to warehouses of the late 19th and early 20th century. The first mass is designed with simple, clean lines and expansive windows that evoke a brick mill or warehouse from the Victorian era. The second mass takes on a slightly more industrial appearance, with bay windows in a metallic finish that recall industrial buildings of the 1920s and 1930s. The third and final brick mass employs the horizontal window banding of the 1950s and 1960s to turn the corner into the plaza area above the parking deck. Neutral recessed bays separate the three masses of the building. The warehouse style delivers the urban style of living that has recently gained in popularity, and the styles progress toward the more contemporary architecture of Building 200 at the heart of the development. Like the other buildings in the project, Building 100 will have two expansive courtyards for passive recreation. The height of the building will be approximately 57 feet - 6 inches.

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21. Building 200. Building 200 will be situated at the northeast corner of the project. The building will have a glass entry for the lobby entrance at the corner of Q Street and Harry Thomas Way where a clubhouse of approximately 1,000 to 5,000 square feet will anchor the corner of the building opposite the proposed park. This building uses similar materials and expansive windows to relate to Building 100, but adds a layering to the different surface materials on the facade to create patterns that add a dimension of modernism. This interjection of contrast with Building 100 adds interest to Q Street by enhancing the feel of a neighborhood created over time. The height of Building 200 will be approximately 65 feet - 6 inches.
22. Building 300. Building 300, situated along the southern edge of the property, will have two main resident lobbies, one with approximately 3,000 to 6,000 square feet of clubhouse space. The two lobbies reflect the division of the overall mass into two smaller "buildings" similar to Building 100. The "building" closest to Eckington Place is anchored by a round corner that eases one from the surrounding neighborhood into the new community. The style of this mass is reminiscent of older apartment buildings of the 1930s. The "building" closest to Harry Thomas Way is designed in a style that uses the same materials in a more modern way to relate to Building 200 directly across the Q Street extension. Private terraces will be provided on the ground floor units of Building 300, which will have a height of approximately 61 feet.
23. Ground Floor Retail. In response to concerns about the lack of local retail services in proximity to the Property, the Modified PUD will include approximately 1,000 square feet of ground floor retail in Building 300, at the intersection of Eckington Place and Harry Thomas Way.
24. Q Street Extension. The heart of the project will be the Q Street extension, from Eckington Place, N.E. to Harry Thomas Way, N.E., which is envisioned as a tree-lined, animated street with pedestrian friendly buildings, intimate gardens and on-street parking. The cross-section for the Q Street extension is depicted on Sheet 138 of the drawings filed with the Commission on September 28, 2007, and marked as Exhibit 20 of the record. The proposed Q Street extension is not wide enough to be dedicated as a public street under the current DDOT regulations. Therefore, the Q Street extension shall remain private until such time as the regulations permit the dedication of the roadway. Notwithstanding, the Applicant agrees that the construction and maintenance of the Q Street extension shall be in accordance with the current DDOT standards and subject to regular DDOT inspections.
25. "Pocket" Park. The Modified PUD includes a small park, consisting of approximately 4,123 square feet at the southeast corner of the project, which will be accessible to the public for active and passive recreation.

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Matter-of-Right Development in C-3-C and C-3-A Districts

26. The Property was rezoned from the M Zone District to the C-3-C Zone District pursuant to Z.C. Order No. 05-23. The C-3-C District is intended for medium-high density development, including office, retail, housing, and mixed-use development in a compact area. As a matter-of-right, property in the C-3-C District can be developed with a maximum building height of 90 feet, and a maximum density of 6.5 FAR, all of which may be used for residential, office, retail, hotel, or other permitted uses. The permitted maximum lot occupancy is 100%. For a PUD in the C-3-C District, the permitted maximum building height is 130 feet and the permitted maximum density of 8.0 FAR, all of which may be used for residential, office, retail, hotel or other permitted uses.
27. The alternative C-3-A Zone District is intended to be compact in area and located on arterial streets, in uptown centers, and at rapid transit stops. As a matter-of-right, property in the C-3-A Zone District may be developed with a maximum building height of 65 feet and a maximum density of 4.0 FAR, of which 2.5 FAR may be used for a permitted non-residential use. The maximum lot occupancy permitted in the C-3-A Zone District is 75%. For a PUD in the C-3-A District, the permitted maximum building height is 90 feet, and the permitted maximum density is 4.5 FAR, of which up to 3.0 FAR may be for a commercial use, including hotels and motels.

Development Incentives and Flexibility

28. The Applicant requested flexibility from the Zoning Regulations in the following areas:
- a. Side Yard for Buildings 100 and 200. The Zoning Regulations do not require a side yard for any building in the C-3-C or C-3-A Zone Districts. However, where one is provided, the Regulations require the side yard to have a minimum dimension of two inches per foot of building height. The Applicant requested flexibility to have a side yard of 5'-1", where a minimum of 10'-10" is required for Buildings 100 and 200.
 - b. Courts for Buildings 200 and 300. The Applicant requested flexibility to enlarge the courts for Buildings 200 and 300, but in no case shall the courts be smaller than depicted in the architectural drawings for the Modified PUD.
 - c. Additional Areas of Flexibility. The Applicant also requested flexibility for the following:
 - (i) to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

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- (ii) to vary the final selection of the exterior materials within the color ranges and material types as proposed, without reducing the quality of the materials; and
- (iii) to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Community Benefits and Amenities Package

29. The Modified PUD will provide several public benefits and project amenities, including the following:
- a. Housing and Affordable Housing. The Modified PUD will create approximately 600 new residential units on a site that is currently vacant. Additionally, eight percent (8%) of the gross floor area allocated for residential use (approximately 47,409 square feet) shall be reserved for households whose income does not exceed 80% of the area median income. The affordable housing shall be implemented in accordance with Inclusionary Housing Commitment standards attached as Exhibit F of the Application Statement filed on June 7, 2007, and marked as Exhibit No. 2 of the record.
 - b. Pedestrian/Bicycle Connection to the Metropolitan Branch Trail. In connection with the Modified PUD, the Applicant shall enter into an agreement with DDOT and the District Office of Partnership and Grants Development (OPGD) to fund construction of a pedestrian and bicycle connection to the Metropolitan Branch Trail.
 - c. Community Office Space. Approximately 1,200 square feet of space in the Modified PUD shall be reserved in a high visibility location along Harry Thomas Way for community office space.
 - d. Neighborhood Retail. The Modified PUD shall include approximately 1,000 square feet of ground floor retail at the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E.
 - e. Design and Construction of Signalized Intersection. The Applicant shall contribute at least \$25,000 to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street.

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- f. McKinley Technology High School. The Applicant shall make a contribution of \$20,000 to the McKinley Tech Fund.
- g. Harry Thomas Recreation Center. The Applicant shall make a contribution of \$10,000 to the Harry Thomas Recreation Center for the purchase of equipment and supplies similar to those provided in the facsimile filed with the Commission on October 18, 2007, and marked as Exhibit 26 of the record.
- h. North Capitol Main Streets Program. The Applicant shall contribute \$25,000 to the general account of North Capitol Main Street, Inc. to assist with implementing work plans that will aid in the revitalization of a neighborhood business district on North Capitol Street between Rhode Island and New York Avenues, with initial emphasis being placed on the Eckington portion of North Capitol Street.

The contribution shall specify that the funds may only be used for the following: (i) the establishment of a "Green Team," which will employ local homeless persons to clean and maintain the appearance of the North Capitol Street corridor; (ii) conducting and disseminating consumer business surveys; (iii) recruitment and promotion of business along North Capitol Street; (iv) volunteer recruitment; (v) promotion of a North Capitol Street Business Improvement District; and (vi) matching funds for a façade improvement program with initial emphasis on the Eckington portion of the North Capitol Street corridor.

- i. Eckington Civic Association. The Applicant shall contribute \$20,000 to the Eckington Civic Association. The contribution shall specify that the funds may only be used for the following programs: (i) assistance with organizing and conducting community meetings relating to the development of a North Capitol Street Small Area Development Plan; (ii) developing and disseminating updates for distribution within the community regarding business and economic development issues in Eckington, and along the North Capitol Street Corridor; (iii) establishment of a senior safety grants program in Eckington, which is intended to make small grants to help repair items that put senior citizens at risk for accidents in their home; and (iv) a historical signage program.
- j. Regional Addiction Prevention, ("RAP") Inc. The Applicant shall contribute \$5,000 to the general account of RAP, Inc. The contribution shall specify that the funds may only be used to fund a prevention and intervention outreach program for individuals who routinely congregate in the vicinity of North Capitol Street and Florida Avenue and may have a substance abuse problem or be at high risk for the development of one.
- k. Emery Elementary School. The Applicant shall contribute \$20,000 to the Emery Elementary School Student Account Fund. The contribution shall specify that the

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funds may only be used for new books, audio-visual equipment, draperies for the school's stage, and supplies for the Emery Elementary / Harry Thomas Recreation Center community garden.

- l. City Year – Young Hero's Program. The Applicant shall contribute \$5,000 to the City Year – Young Hero's Program. The contribution shall specify that the funds may only be used for participation of Emery Elementary School sixth graders in the program.
- m. Edgewood Civic Association. The Applicant shall contribute \$20,000 to the Edgewood Civic Association, which will be used to cover (i) the cost of printing and distributing the Association's quarterly newsletter; (ii) donations of equipment to the Harry Thomas Recreation Center and the Edgewood Recreation Center; (iii) donations to the PTSA for the Emery and Shad Elementary Schools for student and parent enrichment programs; (iv) grants to senior citizens for snow removal and safety maintenance of their homes; (v) summer festival for youth in the community; and (vi) community beautification projects.

Compliance with the Comprehensive Plan

30. The Modified PUD is not inconsistent with the Comprehensive Plan:

- a. Future Land Use Map. The Property is designated in the PDR/Medium-Density Residential category on the Comprehensive Plan Future Land Use Map.
- b. 2.3 Managing Growth and Change. In order to manage growth and change, the Comprehensive Plan encourages achieving diversity by maintaining and enhancing the District's mix of housing types. Housing should be developed for households of difference sizes, including growing families as well as singles and couples. (§ 217.3) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods; development of such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. (§ 217.6)
- c. 2.3 Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is the production of new affordable housing. Affordable renter - and owner-occupied housing production and preservation is central to the idea of growing more inclusively. (§ 218.3) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to every facet of its implementation. (§ 218.8)

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- d. 2.3 Connecting the City. The Comprehensive Plan states that increased mobility can no longer be achieved simply by building more roads. The priority must be on investment in other forms of transportation, particularly transit. Mobility can be enhanced further by improving the connections between different transportation modes, improving traveler safety and security, and increasing system efficiency. (§ 220.1) Also, the Comprehensive Plan states that investments in the transportation network must be balanced to serve local access needs for pedestrians, bicyclists, transit users, autos and delivery trucks as well as the needs of residents and others to move around through the city. (§ 220.2)
- e. 2.3 Building Green Healthy Communities. One of the guiding principles for building green and healthy communities is that planning decisions should improve the health of District residences by reducing exposure to hazardous materials, improving the quality of surface and groundwater, and encouraging land use patterns and land uses that reduce air pollution and facilitate pedestrian and bicycle travel. (§ 221.4)

Land Use Element

- f. 1.3 Transit-Oriented and Corridor Development. The proposal is responsive to § 306.11, which emphasizes the development of vacant/underutilized land near Metro stations, and §306.12, which stresses the need for affordable and "starter" housing in areas where transit makes car ownership less necessary.
- g. 1.4 Neighborhood Infill Development. Section 307.4 encourages the filling-in of "gaps" with buildings that are of a scale and nature to be compatible with the existing physical development pattern. The Modified PUD, with its lower height and scale than the Approved PUD, is consistent with this policy.

Transportation Element

- h. 1.1.4 Transit-Oriented Development. Section 403.10 encourages pedestrian-oriented developments around transit stations.
- i. 1.1-B Transportation Improvements. Section 403.14 implicitly encourages the incorporation of transportation demand management measures such as bicycle facilities into PUDs, which the Modified PUD would do.
- j. 2.3.2 Bicycle Network. Section 409.8 promotes the provision of a comprehensive bicycle network and the filling-in of gaps, which the Modified PUD would do by funding a connection to the Metropolitan Branch Trail.

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Housing Element

- k. 1.1.4 Mixed-Use Development. Section 503.5 encourages the construction of housing on commercially zoned land around appropriate Metrorail stations. The Modified PUD would accomplish this on land zoned C-3-C or C-3-A.
- l. 1.1.5 Housing Quality. Section 503.6 states that affordable housing should be of the same high-quality design as market-rate housing. The Modified PUD would seamlessly incorporate 8% of its units as affordable housing for 20 years for households earning up to 80% of the area median income.

Mid-City Area Element

- m. 2.7.2 Eckington/Bloomingdale. Section 2017.5 encourages the protection of the neighborhood's architectural and row-house character. The proposed height of the Modified PUD would be congruent with nearby row house areas, as would be the front stoops and landings.

Office of Planning Report

31. In its Final Report, dated October 9, 2007, OP recommended approval of the Modified PUD application, with an associated C-3-A zoning, and subject to additional information concerning the equipment and supplies that the Harry Thomas Recreation Center would purchase with the Applicant's \$10,000 contribution, and the design and management of the "pocket" park proposed at the southeast corner of the project.

Other Government Agency Reports

32. By report dated October 15, 2007, the District Department of Transportation ("DDOT") concluded that it has no objections to the PUD, provided that the Applicant continues to coordinate with DDOT and OP on the design of the Q Street extension and enter into a partnership agreement with DDOT to construct a connection to the Metropolitan Branch Trail consistent with Z.C. Order 05-23, dated October 16, 2006. In addition, DDOT requested that the Commission maintain Condition No. 10 of Z.C. Order 05-23, which requires the Applicant to make a financial contribution to DDOT for the design and construction of a signalized intersection at 3rd Street, N.E. and Rhode Island Avenue, N.E., the amount based on the percentage of traffic the Modified PUD contributes to the intersection, but not less than \$25,000.
33. As indicated in its report, DDOT did not accept the Applicant's proposed modifications to Condition Nos. 9 and 10 of Z.C. Order 05-23. However, DDOT later modified its position with respect to construction of the connection to the Metropolitan Branch Trail, and agreed to accept a monetary contribution from the Applicant, in lieu of requiring the

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Applicant to construct the improvements. The Applicant accepts DDOT's recommendations on the application.

Response to Post-hearing Information Requested by OP and the Commission

34. The Commission finds that the landscape plans and the facsimile provided by the Harry Thomas Recreation Center, submitted by the Applicant on October 18, 2007, address the concerns raised in the Office of Planning report dated October 9, 2007.
35. As set forth in Findings of Fact No. 12, the Applicant submitted a signed copy of the Development and Construction Management Plan, dated October 2, 2007, and marked as Exhibit 32 of the record. The Commission finds that the document adequately responds to the request made by the Commission at the Hearing.

CONCLUSIONS OF LAW

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

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6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project benefits and amenities are reasonable for the development proposed on the PUD Site.
8. Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area.
9. Approval of the PUD is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. 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 Office of Planning recommendations (as reflected above in ¶ 31). For the reasons stated above, the Commission concludes that the Applicant adequately addressed the concerns raised by the Office of Planning, notes the Office of Planning's underlying recommendation of approval, and concurs in its recommendation.
12. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
13. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for a modification to the PUD approved at Eckington Place, N.E. and Harry Thomas Way, N.E., in Square 3576, Lot 815, pursuant to Z.C. Order No. 05-23, and the related amendment to the Zoning Map of the District of Columbia from the M to the C-3-A Zone District for the Property. This approval is subject to the following guidelines, conditions, and standards:

1. The Modified PUD project shall be developed in accordance with the plans titled "TCR – Eckington One," dated September 28, 2007, marked as Exhibit 20 of the record; as modified by revised Sheet 201 and Sheet 206, dated October 18, 2007, and marked as Exhibit 26 of the record (collectively, the "Plans"); except as modified by the guidelines, conditions, and standards of this Zoning Commission Order.

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2. The Modified PUD shall have a maximum building height of 64 feet – 6 inches, a maximum density of 3.3 FAR, approximately 600 dwelling units (plus or minus 7%), a minimum of .8 parking space per unit, and loading for the project as shown on the Plans.
3. The Applicant shall make the following financial contributions, and obtain the written agreements described in Condition 3, prior to the issuance of a building permit for the first building on the Property:
 - a. McKinley Technology High School. The Applicant shall make a contribution of \$20,000 to the McKinley Tech Fund.
 - b. Harry Thomas Recreation Center. The Applicant shall make a contribution of \$10,000 to the Harry Thomas Recreation Center. The contribution shall specify that the funds may only be used for the purchase of new equipment and supplies substantially similar to those described in the facsimile filed with the Zoning Commission on October 18, 2007, and marked as Exhibit 26 of the record.
 - c. North Capitol Main Streets Program. The Applicant shall contribute \$25,000 to the general account of North Capitol Main Street, Inc. to assist with implementing work plans that will aid in the revitalization of a neighborhood business district on North Capitol Street between Rhode Island and New York Avenues, with initial emphasis being placed on the Eckington portion of North Capitol Street.

The contribution shall specify that the funds may only be used for the following:
(i) the establishment of a "Green Team," which will employ local homeless persons to clean and maintain the appearance of the North Capitol Street corridor;
(ii) conducting and disseminating consumer and business surveys; (iii) recruitment and promotion of businesses along North Capitol Street; (iv) volunteer recruitment; (v) promotion of a North Capitol Street Business improvement District; and (vi) matching funds for a façade improvement program with initial emphasis on the Eckington portion of the North Capitol Street corridor.

- d. Eckington Civic Association. The Applicant shall contribute \$20,000 to the Eckington Civic Association. The contribution shall specify that the funds may only be used for the following programs: (i) assistance with organizing and conducting community meetings relating to the development of a North Capitol Street Small Area Development Plan; (ii) developing and disseminating updates for distribution within the community regarding business and economic development issues in Eckington, and along the North Capitol Street Corridor; (iii) establishment of a senior safety grants program in Eckington, which is intended to make small grants to help repair items that put senior citizens at risk for accidents in their home; and (iv) a historical signage program.

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- e. Regional Addiction Prevention ("RAP"), Inc. The Applicant shall contribute \$5,000 to the general account of RAP, Inc. The contribution shall specify that the funds may only be used to fund a prevention and intervention outreach program for individuals who routinely congregate in the vicinity of North Capitol Street and Florida Avenue and may have a substance abuse problem or be at high risk for the development of one.
 - f. Emery Elementary School. The Applicant shall contribute \$20,000 to the Emery Elementary School Student Account Fund. The contribution shall specify that the funds may only be used for new books, audio-visual equipment, draperies for the school's stage, and supplies for the Emery Elementary/Harry Thomas Recreation Center community garden.
 - g. City Year - Young Hero's Program. The Applicant shall contribute \$5,000 to the City Year - Young Hero's Program. The contribution shall specify that the funds may only be used for participation of Emery Elementary School sixth graders in the program.
 - h. Edgewood Civic Association. The Applicant shall contribute \$20,000 to the Edgewood Civic Association, which will be used to cover the cost of printing and distributing the Association's quarterly newsletter, donations of equipment to the Harry Thomas Recreation Center and the Edgewood Recreation Center, donations to the PTSA for the Emery and Shad Elementary Schools for student and parent enrichment programs, grants to senior citizens for snow removal and safety maintenance of their homes, summer festival for youth in the community, and community beautification projects.
4. The Applicant shall require those organizations receiving a monetary contribution to agree in writing that each will present evidence to the Office of Zoning's Compliance Review Manager demonstrating that the money has been applied to the designated use within six months of receiving the contribution. The written agreement shall further specify that if the money has not been applied to the designated use within six months, the recipient shall provide a reasonable explanation to the Office of Zoning's Compliance Review Manager as to why not and must present evidence to the Office of Zoning's Compliance Review Manager within one year indicating that the contribution has been properly allocated.
 5. The Applicant shall abide by the Development and Construction Management Plan, dated October 2, 2007, and filed with the Zoning Commission on November 2, 2007, and marked as Exhibit 32 of the record.
 6. The project shall include five on-street parking spaces for exclusive use by Zip Car or a similar car-sharing company. Two of the five cars provided in the project shall be

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reserved for hybrid or low emissions vehicles. Two of the car-sharing parking spaces shall be provided at the time of the construction of Building 100 and the Q Street extension.

7. No through-wall HVAC systems shall be permitted in any of the buildings and no EIFS shall be used on any of the buildings.
8. Retail awnings may be canvas or similar non-rubberized cloth material, glass, or metal. Vinyl or other plastic-like sheeting is not acceptable. Awning surfaces may be any color or pattern. Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Lettering and logos shall not be placed on sides, tops, or sloping surfaces of the awnings.
9. The project shall include eight percent (8%) of the residential gross floor area available for sale (approximately 47,409 square feet) as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit F of the Application Statement filed June 7, 2007, and marked as Exhibit 2 of the record. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.
10. The Applicant shall enter into an agreement with DDOT and OPGD for a monetary contribution by the Applicant in the amount of \$55,000 for the construction of a connection to the Metropolitan Branch Trail, consisting of a ten (10) foot wide path, pedestrian solar scale lighting, and call box(es). No building permit for the project shall be issued until DDOT provides a written statement to the Zoning Administrator acknowledging receipt of said contribution.
11. The Applicant shall make a financial contribution to DDOT for the design and construction of a signalized intersection at Rhode Island Avenue and 3rd Street, N.E. The amount of the financial contribution shall be commensurate with the percentage of traffic that this project contributes to that intersection, but not less than \$25,000. The requirement for the Applicant to provide such a financial contribution shall be triggered by DDOT's submission of a letter to the Applicant and the Zoning Commission indicating DDOT's formal decision to construct the traffic signal and the time period in which design and construction is to be completed. The Applicant shall provide such payment within 30 days after receipt of DDOT's letter, but not earlier than the issuance of a building permit for the first residential building on the Property.
12. The project shall include approximately 1,200 square feet of community office space in a high-visibility location along Harry Thomas Way.

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13. The Modified PUD shall have approximately 1,000 square feet of ground floor retail at Eckington Place, N.E. and Harry Thomas Way, N.E.
14. Prior to the issuance of a building permit for the modified PUD, the Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit D of the Supplemental Filing filed by the Applicant on September 28, 2007, and marked as Exhibit 19 of the record, subject to the agency's acceptance of said instrument.
15. Prior to the issuance of a building permit for the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit E of the Supplemental Filing filed by the Applicant on September 28, 2007, and marked as Exhibit 19 of the record.
16. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To have a side yard of 5'-1" for Buildings 100 and 200, where a minimum of 10'-10" is required;
 - b. To have the flexibility to enlarge the courts for Buildings 200 and 300, but in no case shall the courts be smaller than depicted in the architectural drawings for the Modified PUD;
 - c. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the structures;
 - d. 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
 - e. To make minor refinements to exterior details and dimensions, including balcony enclosures, 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.
17. The PUD shall be valid for a period of two (2) years from the effective date of Zoning Commission Order No. 05-23A. Within such time, an application must be filed for a building permit for the construction of the extended Q Street through the Property and one of three residential buildings. The filing of the building permit application shall vest

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the Zoning Commission Order. If the building permit application does not include all three residential buildings, the application shall include a phasing plan for the remaining construction. An application for the final building permit completing the development of the Modified PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.

18. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant 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 ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
19. The change of zoning from the M Zone District to the C-3-A Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 16, pursuant to 11 DCMR § 3028.9.
20. The Applicant is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (the "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. 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 Zoning Commission Order.

On October 18, 2007, the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Anthony J. Hood, Gregory Jeffries, Curtis Etherly, and Michael Turnbull to approve; John G. Parsons not present, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on November 19, 2007, by a vote of 4-0-1 (Anthony J. Hood, Gregory Jeffries, Curtis Etherly, and Michael Turnbull to adopt; John G. Parsons having not participated, not voting).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on JAN 25 2008.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., May 7, 2007

Plat for Building Permit of SQUARE 3576 LOT 815

Scale: 1 inch = 50 feet Recorded in A & T Book Page 3810-T

Receipt No. 07669

Furnished to: HOLLAND & KNIGHT

[Signature]
Surveyor, D.C.

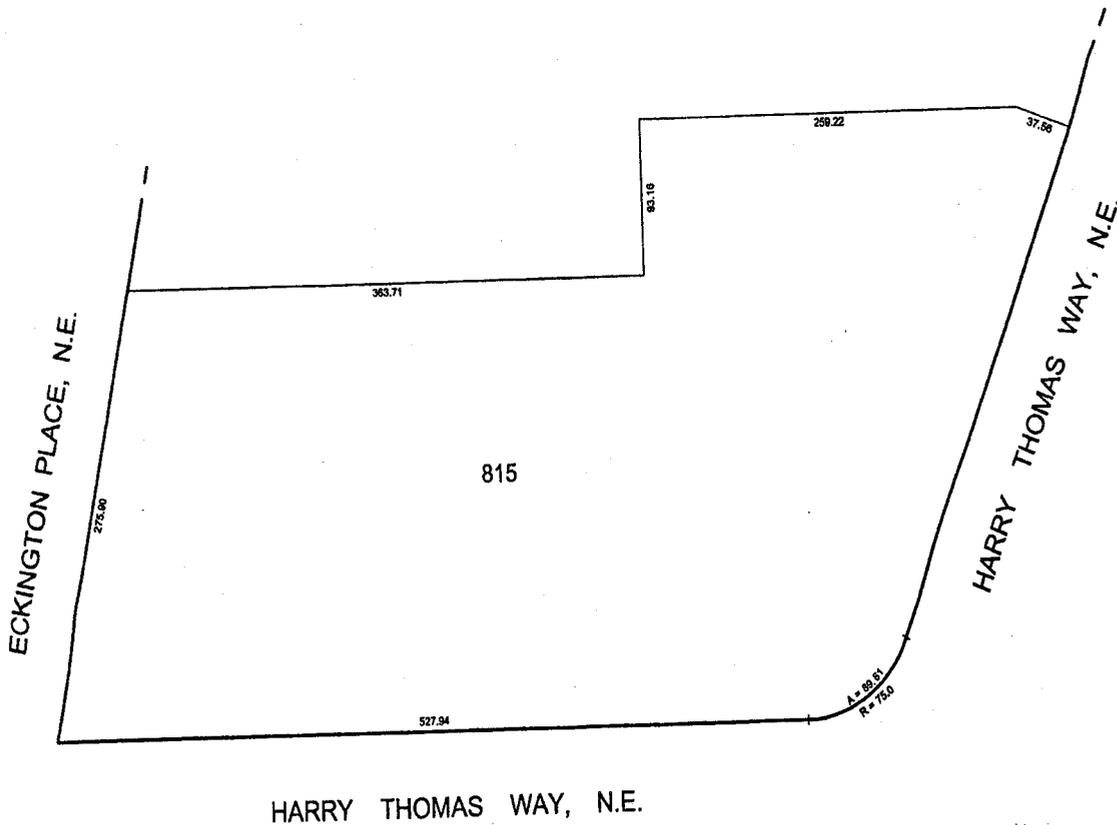
By: D.M. *[Signature]*

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned the improvements to be erected as the property lines shown on this plat and that by reason of the accuracy to the same scale as the property lines shown on this plat and that by reason of the 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 lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

(Signature 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.



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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**ZONING COMMISSION ORDER NO. 06-30****Z.C. Case No. 06-30****Consolidated Planned Unit Development and Related Zoning Map Amendment – Pollin Memorial Community Development LLC -- Consolidated PUD & Related Map Amendment @ Square 5040 & Parcels 170/27 and 170/28
December 10, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 23, 2007, to consider an application from Pollin Memorial Community Development, LLC ("PMCD"), on behalf of the District of Columbia (the "District"), owner of Parcels 170/27 and 170/28, the District of Columbia Housing Authority ("DCHA") owner of Lot 804 in Square 5040, and the National Park Service ("NPS") (collectively referred to herein as the "Applicants"), for consolidated review and one-step approval of a planned unit development ("PUD") and related zoning map amendment for the unzoned portions of the property included in the application. 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 Zoning Commission hereby approves the application.

FINDINGS OF FACT**Application, Parties, and Hearings**

1. On June 16, 2006, PMCD, on behalf of the District and DCHA, filed an application with the Commission for the consolidated review and one-step approval of a PUD for property consisting of Lot 804 in Square 5040, Parcel 170/28 and a portion of Parcel 170/27 (the "Subject Property"), as well as a related amendment of the Zoning Map to have the unzoned portion of the Subject Property zoned R-5-A (the "Initial Application").
2. Parcels 170/27 and 170/28 are owned in fee by the District. Lot 804 in Square 5040 is owned in fee by DCHA. The property included in the Initial Application consisted of approximately 459,939 square feet of land area and is located in the northeast quadrant of the District. Lot 804 in Square 5040 is zoned R-5-A and is bounded by Anacostia Avenue, Hayes Street, Barnes Street, and Grant Street. Parcels 170/27 and 170/28, which are triangular in shape, are not now included in a zone district, and are collectively bounded by Hayes Street, Anacostia Avenue, and Kenilworth Park.

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3. The proposed project contains approximately 193,688 square feet of gross floor area dedicated to residential uses, with 91 row dwellings, eight 3-unit apartment buildings, and five flats, amounting to a total of 104 residential buildings and 125 units on the Subject Property. The project includes 83 homeownership units and 42 rental replacement public housing units. The buildings will be constructed to a maximum height of three stories. The project will include at least one off-street parking space for each of the 125 units, as well as 150 on-street parking spaces. The project will have an overall density of approximately 0.8 FAR and an overall lot occupancy of approximately 31%.
4. Prior to set-down of the application, NPS submitted a letter, marked as Exhibit 18 of the record in this case, indicating that NPS has administrative jurisdiction over a portion of Parcel 170/27 and Parcel 170/28 by virtue of a transfer of administrative jurisdiction from the District to NPS recorded on October 12, 1950.
5. At its public meeting held on July 24, 2006, the Commission deferred action on the Initial Application pending resolution of the jurisdiction issue raised by NPS.
6. On April 26, 2007, the Applicants submitted a letter, marked as Exhibit 19 of the record in this case, indicating that the jurisdiction issue had been resolved with the relinquishment of administrative jurisdiction by NPS for the area to be included in the application. Specifically, the application was amended to include NPS as a co-applicant, as evidenced by the Application for Consolidated Approval of a Planned Unit Development and an Application to Amend the Zoning Map signed by NPS, as well as a letter in support of the project from NPS. In addition, the Applicants submitted a revised site plan identifying the land included in the project, and a revised Lot Tabulation sheet reflecting the modified project area and development data (the "Amended Application Materials").
7. The letter submitted by NPS expressed its support for development of the portion of the Subject Property identified in the Amended Application Materials as affordable housing, and indicated that NPS believes that, in light of the ongoing revitalization of the neighborhood, the availability of both affordable housing as well as parkland for its residents as specified in the proposed PUD is an important amenity.
8. The Amended Application Materials modified the total land area included in the Initial Application. Specifically, the Amended Application Materials limited development of the project to a defined 178,641-square-foot portion of the land located within the boundaries of the transfer of jurisdiction. The project continues to include a portion of Parcel 170/28 not included in the transfer of jurisdiction as well as the entirety of Lot 804 in Square 5040. The land removed from the Initial Application and hence no longer included in the PUD will remain within the administrative jurisdiction of the NPS for

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park purposes, whereas the area within the project will no longer be in the administrative jurisdiction of the NPS.

9. At its public meeting held on May 14, 2007, the Commission voted to schedule a public hearing on the application.
10. On May 21, 2007, the Applicants submitted a Prehearing Statement, along with revised Architectural Plans and Elevations, marked as Exhibit 21 of the record in this case ("the May 21st Plans").
11. On July 3, 2007, the Applicants submitted Supplemental Hearing Materials (Exhibit 27), which included a certification prepared by Greenhorne & O'Mara confirming that the project meets all applicable requirements for new construction within the 100-year floodplain; the final Transportation Impact Study prepared by Wells & Associates LLC; and updated Architectural Plans and Elevations (the "July 3rd Plans"). The July 3rd Plans, which supersede the plans filed with the Initial Application and the May 21st Plans, include information regarding accessibility of the Subject Property to Metro options; the location of the proposed First Tee site plan (which is not a part of the Applicants' project); information regarding façade materials; updated site sections showing compliance with the requirements for new construction within the floodplain; an updated grading plan and stormwater management plan showing the boundary of the current and proposed floodplain and compliance with the requirements for new construction within the floodplain; and an updated Parking and Circulation Plan.
12. On July 16, 2007, the Applicants submitted additional Supplemental Hearing Materials (Exhibit 32), which included a certification prepared by Greenhorne & O'Mara indicating the process it will follow to amend the floodplain designation of the Subject Property to a moderate or low risk designation; a letter prepared by the Applicants' insurance consultant indicating the estimated flood insurance premium for the units, if necessary; an updated Lot Tabulation sheet; an updated stormwater management plan incorporating revisions agreed upon with the D.C. Department of the Environment ("DCDOE"); a description of the *Green Communities* program and the project's sustainable design features; a fully-executed First Source Employment Agreement; and the resumes of the Applicants' expert witnesses. The updated plan sheets supersede those sheets included in the July 3rd Plans.
13. After proper notice, the Commission held a public hearing on the application on July 23, 2007. The parties to the case were the Applicants and Advisory Neighborhood Commission ("ANC") 7D, the ANC within which the Subject Property is located.
14. The Applicants presented six witnesses at the Commission's hearing of July 23, 2007, including John Stranix of PMCD; Lawrence Murphy Antoine of Torti Gallas and Partners, Inc.; Ben Allen of Greenhorne & O'Mara; Lisa Hodges of DCHA; Bhavna

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Mistry of Enterprise Homes; and Steven E. Sher of Holland & Knight LLP. Also available to testify were Christopher L. Kabatt of Wells & Associates, LLC, and Lee Schmelz of RCM&D, Inc. Based upon their professional experience, as evidenced by the resumes submitted for the record, and prior appearances before the Commission, Messrs. Stranix, Antoine, Allen, Kabatt, and Sher were qualified by the Commission as experts in their respective fields.

15. Five individuals signed-up to testify regarding the project (Exhibit 44). However, none of these individuals indicated whether they were proponents or opponents, and none of the individuals testified at the hearing.
16. Enterprise Community Partners submitted a letter in support of the project (Exhibit 38).
17. Gregory C. Syphax submitted a letter in opposition of the project (Exhibit 37).
18. ANC 7D submitted three letters regarding the proposed development, and ultimately voted 4-1 to support the proposed PUD. The first letter, dated July 13, 2006 (Exhibit 16), indicates that ANC 7D voted to support the project. The second letter, filed on July 16, 2007 (Exhibit 29), indicates that on June 12, 2007 the ANC voted not to support the proposed project. The third letter, filed on September 24, 2007 (Exhibit 47), indicates that ANC 7D strongly supports the project, and voted 4-1 to recommend that the Commission approve the application at the Commission's October 15, 2007 public meeting, without the need for any continued public hearing on the project.
19. On August 21, 2007, the Applicants submitted a Post-Hearing Submission (Exhibit 46), which included a section and drawing providing more detail regarding the proposed retaining wall; details regarding the rear yard fencing; a revised site and grading plan and illustrative storm drain and stormwater management plan; and a draft relocation plan for the public housing units prepared by DCHA. The updated Sheets S18 and S20 supersede those sheets included in the July 3rd Plans.
20. On September 26, 2007, at the request of ANC 7D, the Applicants submitted a chart identifying the maximum income per household size for the rental and homeownership units included in the development.
21. At its public meeting held on October 15, 2007, the Commission took proposed action by a vote of 3-0-2 to approve with conditions the application and plans that were submitted to the record.
22. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated November 29, 2007, found that the proposed PUD would not

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affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

23. The Commission took final action to approve the application on December 10, 2007 by a vote of 3-0-2.

The PUD Project

24. The proposed project contains approximately 193,688 square feet of gross floor area dedicated to residential uses, with 91 row dwellings, eight 3-unit apartment buildings, and five flats, amounting to a total of 104 residential buildings and 125 units on the Subject Property. The project includes 83 homeownership units and 42 rental replacement public housing units. The rental and homeownership units will be interspersed throughout the economically diverse neighborhood. The project also includes a community park at the center of the neighborhood.
25. The buildings will be constructed to a maximum height of three stories. The project will include at least one off-street parking space for each of the 125 units, as well as 150 on-street parking spaces. The project will have an overall density of approximately 0.8 FAR and an overall lot occupancy of approximately 31%.
26. The Subject Property is situated in Ward 7. The Future Land Use Map of the Comprehensive Plan designates the Subject Property in both the medium-density residential and moderate-density residential categories. The Generalized Policy Map designates the Subject Property in the Neighborhood Enhancement Area category.
27. The Applicants propose to provide a range of housing types including apartments, stacked flats, and townhouses. The development plan also includes a range of bedroom sizes to accommodate single occupancy as well as families. The homeownership units are projected to have three bedrooms and to serve buyers between 40% and 100% of the area median income. The rental units will have one, two, and three bedrooms and will target renters at or below 30% of the area median income. The replacement DCHA units, as well as the ownership units of varying income targets, will be architecturally indistinguishable from one another, and mixed throughout the project.
28. A key component of the project is the redevelopment of the existing public housing site known as "Parkside Additions" that is currently owned and operated by DCHA on Lot 804 in Square 5040. Parkside Additions was built in 1959 and is functionally obsolete. DCHA does not anticipate receiving capital grant funds or HOPE VI funds to rehabilitate or reconstruct the development. As part of the development, the Applicants plan to accommodate the eligible public housing families currently living at Parkside Additions within the new community. Thus, there will be a one-for-one replacement of the 42

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Parkside Additions rental units currently funded with Annual Capital Contribution ("ACC") subsidies.

29. The row dwellings tie into the existing Parkside fabric, and reflect the character of traditional northeast District neighborhoods. The stacked units and small apartment buildings will maintain the scale and attributes of the rowhouses, having individual entries, stoops, and porches addressing the public street. At least five percent of the project will meet accessibility requirements for residents with mobility impairments, including the ownership units. Accessible one- and two-bedroom units are accommodated in ground floor flats, while three-bedroom family units are in rowhouses, modified to incorporate a residential elevator.
30. At the center of the project is a new, intimately-scaled neighborhood park. The park, which will be owned by the District, will encourage active and passive recreation with a children's play area, landscaping, shade trees, and benches. Row dwellings will front the streets surrounding the park, framing the open space and allowing supervision from front porches and stoops. There is also a small, more resident-focused green space located just west of the neighborhood park. In addition, green space located in the street right-of-way will also be landscaped.
31. The proposed internal public streets are designed to encourage walking and to promote safe interaction between pedestrians and automobiles. The Applicants also propose to install new shade trees and to construct and install new sidewalks and streetlights abutting the project's boundaries. All new streets will accommodate on-street parking.

Matter of Right Development under Existing and Proposed Zoning

32. The Subject Property includes land zoned R-5-A and land that is not currently included in a zoning district. The Applicants are seeking to have the entire property zoned R-5-A in connection with this application.
33. The R-5 Districts are general residence districts designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the applicable height, density, and area requirements. (11 DCMR §350.1) The R-5 Districts are subdivided into a number of districts, including the R-5-A District, which permits low height and density developments. (11 DCMR § 350.2) The R-5-A District permits a maximum height of 40 feet and three stories. (11 DCMR §400.1) In the R-5-A district, the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story. (11 DCMR § 199.1 (definition of "Building, height of"))
34. A maximum density of 0.9 FAR is permitted in the R-5-A District. (11 DCMR § 402.4) The maximum percentage of lot occupancy in the R-5-A District is 40%. (11

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DCMR § 403.2) Rear yards in the R-5-A District must have a minimum depth of 20 feet. (11 DCMR § 404.1) A side yard is not required along a side street abutting a corner lot in a residence district. (11 DCMR § 405.5) However, when a side yard is provided, it must have a minimum width of three inches per foot of height of building, but not less than eight feet. (11 DCMR § 405.9) If provided, open courts in the R-5-A District must have a minimum width of four inches per foot of height, but not less than 10 feet. (11 DCMR § 406.1) Parking is required at a rate of one parking space for each dwelling unit. (11 DCMR § 2102.1) Under the PUD guidelines for the R-5-A District, the maximum permitted height for a residential use is 60 feet, and the maximum density is 1.0 FAR. (11 DCMR §§ 2405.1 and 2405.2)

Development Incentives and Flexibility

35. The Applicants requested the following areas of flexibility from the Zoning Regulations:

- a. *Flexibility From Lot Area Requirements for Semi-Detached Buildings.* Semi-detached dwellings in the R-5-A district are required to have a minimum lot area of 3,000 square feet. However, the project includes a number of individual semi-detached dwellings with a lot area of less than 3,000 square feet. Those units are essentially the same as the rowhouse units which they adjoin, except that they are on the end of a row. Although a number of the individual units do not meet the minimum lot area, the overall average lot area is approximately 3,663 square feet per unit, which exceeds the minimum requirement.
- b. *Flexibility from Yard Requirements.* Pursuant to § 405.9 of the Zoning Regulations, side yards provided in the R-5-A District must have a minimum width of eight feet. A rear yard with a minimum depth of 20 feet is also required. (11 DCMR §404.1) The Applicants request flexibility from these requirements because a number of the rear yards and side yards provided are less than the required width and depth. The Applicants have designed the layout of the proposed development to meet as many of the applicable zoning requirements as possible. However, due to design and massing features of the project, the existing fixed dimension of the distance between Anacostia Avenue and Barnes Street, and the clustering of units to ensure open space, a number of the units do not have complying yards. However, the project includes a significant amount of open, green space.
- c. *Flexibility From Open Court Width Requirements.* Where provided, open courts in the R-5-A District must have a minimum width of four inches per foot of height, but not less than 10 feet. (11 DCMR § 406.1) The project includes five triangular, open courts that do not meet the minimum width requirement (*See* units G1, G7, O1, O5, and P1). Each of these triangular courts occurs at the end of a row of the units along Hayes Street, since the units have been designed to

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have a continuous face along Hayes Street and are themselves orthogonal, whereas Hayes Street does not run perpendicular to the intersecting street grid. The triangular open courts open onto public space and are indistinguishable from those open areas.

- d. *Flexibility From Lot Occupancy Requirements of § 403.2.* Under § 403.2 of the Zoning Regulations, a building in the R-5-A District may not occupy more than 40% of the lot upon which it is located. Due to design and layout features of the project, and the clustering of units to provide useable open space, a number of units exceed the maximum permissible lot occupancy on individual lots. The highest lot occupancies are located between Anacostia Avenue and Barnes Street, where the Subject Property is uniquely shaped and developable area is limited. The lots located west of Anacostia Avenue are generally larger and have lower lot occupancies. Moreover, the overall lot occupancy is 32%, which is less than the maximum permissible, and the project includes a large amount of open space, such as generously-sized rear yards and two public parks.
- e. *Flexibility From Street Frontage Requirements of § 2516.5.* When the application was initially filed, flexibility from the street frontage requirements was not necessary because § 410 of the Zoning Regulations permitted groups of buildings constructed in R-5 and R-4 Districts to be deemed a single building for zoning purposes, and each "single building" in the project has street frontage. However, the Commission repealed § 410 pursuant to Z.C. Order No. 06-05. Thus, the proposed units are now being developed as separate theoretical lots under § 2516.5 of the Zoning Regulations.

Section 2516.5 of the Zoning Regulations allows theoretical lots to be created that have no public street frontage. § 2516.5(b) requires that the units that do not front on a public right-of-way must provide a front yard with a depth equivalent to the required rear yard. A number of lots included in the project, such as Lots K3 and K4, have no frontage onto the proposed right-of-way.

The front of each building is the side upon which the principal entrance is located, as required under § 2516.5(a). Each of these lots is accessible from the proposed sidewalk. Moreover, the proposed alley provides vehicular access to the lots and each of the units has private parking pads located at the rear of the unit. The units include front yards measuring five feet, one inch. The Applicants cannot, however, increase the depth of these yards due to the proposed lot depth and unit layout, as well as the desire to keep consistent street frontages. However, the units have ample rear yards ranging from 25 to 37 feet, which exceeds the minimum rear yard requirements.

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Public Benefits and Amenities

36. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

- a. *Housing and Affordable Housing.* The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The proposed PUD will contain approximately 193,688 square feet of gross floor area dedicated to residential uses, with approximately 91 row dwellings, eight 3-unit apartment buildings, and five flats. Moreover, all of the units will be affordable. The 42 replacement public housing rental units will be dedicated for families earning up to 30% of the area median income ("AMI"). A total of 83 homeownership units will be constructed, with approximately 23 units dedicated for families earning up to 100% of AMI; approximately 25 units dedicated for families earning up to 75% of AMI; approximately 27 units dedicated for families earning up to 65% of AMI; and approximately eight units dedicated for families earning up to 40% of AMI.

- b. *Environmental Benefits.* The site plan is designed to be highly efficient in land utilization and *provides* a significant amount of open, green space. Existing trees on the Subject Property will be preserved wherever possible, and new shade trees will be provided throughout the development. Moreover, the PUD project has been designed to be energy efficient and to promote comfort through the use of energy efficient appliances and fixtures, and through the provision of higher levels of insulation and efficient heating and cooling. Both the project architect and general contractor have staff that is certified in Green construction, which will provide expertise in implementing the green building elements.

In addition, all appliances, lighting fixtures and heating and cooling equipment will be Energy Star-rated. The units will be constructed exceeding the D.C. Energy Code for exterior envelope insulation, doors, and windows. A barrier membrane wrap, Tyvek or approved equal, will be provided to minimize air infiltration. Slab on-grade construction will include a vapor barrier system. In addition to the barrier membrane wrap, the Applicants will further insulate the windows with a Tyvek Flashing Systems™, or similar equivalent, with integral flanged windows that seal the window with a nine inch weather resistive barrier. Windows will be upgraded vinyl, thermal break, draft efficient, doubled-glazed with low E glass. Performance specifications meet or exceed ANSI/AAMA/NWDA 101/LS.2 specifications for aluminum, vinyl, and wood windows and glass doors. The exterior walls will be framed with 2 x 6's for all four floors to allow for R-19-fiberglass batt insulation, well above the R-13 minimum required by code. R38-insulation will be provided in the ceiling as

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required by code. Finally, the contractor will use low-toxic, solvent-free, low-VOC paints, primers, adhesives, and sealants.

The proposed PUD also includes a number of enhanced stormwater management features. On July 18, 2007, the Applicants met with DCDOE to review the proposed grading and stormwater management plan and to discuss and agree upon certain concepts for implementation of the plan. Based upon review and discussion of the grading plans and sections, DCDOE confirmed that the project, as designed, meets the applicable flood hazard rules in Title 20, DCMR, Chapter 31. DCDOE also indicated that quantity stormwater management practices would not be needed for this project because of the adjacent proximity to the Anacostia River and Watts Branch that are subject to tidal and riverine flooding, and because there is very little gradient in the unnamed tributary to Watts Branch. The following stormwater management practices were discussed and have been incorporated into the development: (1) incorporation of "Filterra" tree box filters; (2) use of amended soil filtration areas on the Subject Property as a combination filtering and infiltration quality measure; (3) placement of rain barrels at 21 locations throughout the project, each approximately 80 gallons, to allow for recycling rain water for planter and lawn irrigation in the vicinity of rain barrel; and (4) the use of Bay Saver Separator units and pre-treatment at eight catch basins and nine grate inlets. A memorandum signed by DCDOE concurring with these measures is marked as Exhibit 40 in the record of this case.

- c. *Urban Design, Architecture, Landscaping, and Open Space.* The project's design contributes a significant amount of public benefit to Ward 7 and the city. The proposed plan extends and enhances the Parkside street grid to the north. The design incorporates walkable streets defined by ordered strings of townhouses, stacked flats, and small apartment buildings, lined by trees and streetlights. Cassell Place N.E., which currently ends at the rear of the DCHA garden apartments, now terminates in a new landscaped park, intimately scaled for the neighborhood. The park will contain benches, plantings, and a children's playground, fostering both passive and active use. Row dwellings throughout the community will be designed with facades, details, and landscaping that reinforce the individuality of the homes. A variety of porches, porticoes, stoops, and entries will support this distinctiveness and maintain a lively streetscape. The project is located adjacent to Kenilworth Park, part of the river park system envisioned by the Anacostia Waterfront Corporation and the Office of Planning.
- d. *Infrastructure Improvements.* The project includes a significant investment in improving the sidewalks, streets, and alley system in the neighborhood with the construction of new public sidewalks, streets, and alleys. The construction of these new public sidewalks, streets, and alleys accomplishes a significant

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infrastructure upgrade that will benefit both the immediate neighborhood and the District.

- e. *Employment and Training Opportunities.* Expanding employment opportunities for residents and local businesses is a priority of the Applicants. Therefore, the Applicants have entered into a First Source Employment Agreement with the Department of Employment Services (“DOES”). The Applicants have also executed a Local, Small, and Disadvantaged Business Enterprises (“LSDBE”) Memorandum of Understanding with the District’s Office of Local Business Development.
37. A major concern regarding the project was construction of residential units within the 100-year floodplain. In order to address this concern, the Applicants submitted a certification letter prepared by Greenhorne & O’Mara, the Applicants’ engineering expert, confirming that the grading plan conforms to all applicable requirements (Exhibit 27). Specifically, the memorandum indicated that pursuant to 20 DCMR § 3104.2, construction is permitted within the floodplain provided that the lowest floor (including basement) of any new construction of residential structures located within any floodplain is at least one and one-half feet above the 100-year flood elevation. Moreover, with respect to streets, 20 DCMR § 3104.5(e) provides that the finished elevation of all new streets constructed within a floodplain must be no more than one foot below the regulatory flood elevation and meet the requirements of the Federal Highway Water Quality Standards. Greenhorne & O’Mara further certified that once fill is added to the site, they intend to seek a Letter of Map Revision Based on Fill (LOMR-F) to obtain FEMA’s determination that the grading has been elevated on fill and should therefore be excluded from its current floodplain designation and will thus result in the Subject Property being designated in a moderate or low risk area (Exhibit 32).
38. The Applicants’ grading plan and sections indicate that all first floor slab elevations are at or above the minimum required elevation and that the finished elevation of all new streets and alleys are at or higher than the required minimum elevation (Exhibits 27 and 46).
39. Since there are existing regulations governing flood plain construction and the Applicants are both aware of these regulations and have sought through its design to comply with the applicable requirements, the Commission need not further address the issue.

Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, effective March 8, 2007)

40. The Future Land Use Map designates the Subject Property in both the medium- density residential and moderate-density residential categories. The portion of the Subject Property located southeast of Anacostia Avenue is designated in the medium- density

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residential category, which defines neighborhoods or areas where mid-rise apartment buildings are the predominant use, but pockets of low- and moderate- density housing may exist within these areas. The R-5-B and R-5-C Zone districts are generally consistent with the medium density designation, although other zones may apply. (§ 224.8) The portion of the Subject Property located northeast of Anacostia Avenue is designated in the moderate-density residential category, which defines the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two to four unit buildings, row houses, and low-rise apartment buildings. The R-3, R-4, and R-5-A Zone districts are generally consistent with the moderate density residential category and the R-5-B district and other zones may also apply in some locations. (§ 224.7)

41. The Generalized Policy Map designates the Subject Property in the Neighborhood Enhancement Area category. Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant residentially zoned land and are primarily residential in character, and present opportunities for compatible small-scale infill development, including new single family homes, townhomes, and other density housing types. (§ 223.6) The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development "fits-in" and responds to the existing character, natural features, and existing/planned infrastructure capacity. (§ 223.7)
42. The proposed PUD is consistent with the Future Land Use Map and Generalized Policy Map designations for the Subject Property. The existing and proposed R-5-A zoning of the Subject Property is consistent with the moderate-density residential land use designation. The project's overall density of 0.8 FAR is less than the R-5-A matter-of-right density of 0.9 FAR and the PUD density of 1.0 FAR. In addition, a significant amount of the project's land area will be devoted to open, green space. Moreover, the project will have an overall lot occupancy of 31%, which is less than the maximum lot occupancy of 40% in the R-5-A District. The proposed residential uses are consistent with, and respond to, the existing character of the neighborhood.
43. The proposed PUD is also consistent with many guiding principles in the Comprehensive Plan, including managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities, as follows:
 - a. *Managing growth and change.* The Comprehensive Plan states that change in the District is both inevitable and desirable, and that the key is to manage change in ways that protect the positive aspects of life in the city and reduce negative aspects. (§ 2.3, ¶ 217.1) A diversity of housing types developed for households of different sizes, including growing families as well as singles and couples, is also encouraged. (§ 2.3, ¶ 217.3) The Comprehensive Plan further states that the District needs residential growth to survive, and also recognizes that much of the growth forecast during the next 20 years is expected to occur on large sites that

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are currently isolated from the rest of the city. (§ 2.3, ¶ 217.4) These sites are encouraged to be developed as part of the city's urban fabric through the continuation of street patterns, open space corridors and compatible development patterns where they meet existing neighborhoods. (§ 2.3, ¶ 217.5) Moreover, redevelopment and infill opportunities along corridors and near transit stations is an important component of reinvigorating and enhancing neighborhoods. (§ 2.3, ¶ 217.6) The proposed PUD is fully-consistent with each of these goals. The proposed PUD will significantly increase the availability and variety of housing in the District. Moreover, the proposed residential use will create a stable and vibrant neighborhood with residents of diverse income levels.

- b. *Creating successful neighborhoods.* A guiding principle for creating successful neighborhoods is the production of new affordable housing to avoid the deepening of racial and economic divides in the city. (§ 2.3, ¶ 218.3) The proposed PUD furthers this goal with the construction of approximately 185,234 square feet of gross floor area dedicated to residential uses, with approximately 91 row dwellings, eight 3-unit apartment buildings, and five flats. Moreover, all of the units will be affordable. The 42 replacement public housing rental units will be dedicated for families earning up to 30% of the area median income ("AMI"). A total of 83 homeownership units will be constructed, with approximately 23 units dedicated for families earning up to 100% of AMI; approximately 25 units dedicated for families earning up to 75% of AMI; approximately 27 units dedicated for families earning up to 65% of AMI; and approximately 8 units dedicated for families earning up to 40% of AMI. The rental and homeownership units will be interspersed throughout the economically diverse neighborhood.
- c. *Connecting the city.* An important goal of this element is the utilization of transportation and streetscape improvements to connect the District. (§ 2.3, ¶ 220.3) The proposed PUD is consistent with this objective since the development includes a significant investment in improving the sidewalks, streets, and alley system in the neighborhood with the construction of new public sidewalks, streets, and alleys. The construction of these new public sidewalks, streets, and alleys accomplishes a significant infrastructure upgrade that will benefit both the immediate neighborhood and the District.
- d. *Building green and healthy communities.* The Comprehensive Plan provides that as the nation's capital, the District should be a role model for environmental sustainability and new developments should minimize the use of non-renewable resources, promote energy and water conservation, reduce harmful effects on the natural environment, and improve the quality of surface and groundwater. (§ 2.3, ¶¶ 221.3 and 221.4) As discussed in the Environmental Benefits section of this Order, the proposed PUD includes a significant number of low impact

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development measures designed to promote environmental sustainability and mitigate development impacts on the environment.

44. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

- a. *Land Use Element.* Major goals of the Land Use Element include ensuring the efficient use of land resources to meet long-term neighborhood, city-wide, and regional needs; protecting the health, safety, and welfare of District residents and businesses; sustaining, restoring, or improving the character and stability of neighborhoods in all parts of the city; and effectively balancing the competing demands for land to support the many activities that take place within District boundaries. (§ 302.1) This element also recommends better utilization of land around transit stations and along transit corridors as a means to accommodate the growth of the city and minimize the number and length of auto trips generated by households. (§ 306.3) The development of diverse housing types, including both market-rate and affordable units and housing for seniors and others with mobility impairments, as well as attractive, pedestrian-friendly design are also encouraged. (§ 306.4)

The proposed PUD responds to these goals with the development of a high-quality residential project that includes housing opportunities for a range of incomes, and is within close proximity of a Metro station. The proposed PUD is also fully-consistent with and implements the following policies:

- 1) Policy LU-2.1.1 Variety of Neighborhood Types - The proposed PUD adds to the variety of neighborhood types in the District and preserves and enhances the positive elements that create the identity and character of the project's neighborhood.
- 2) Policy LU-2.1.3 Conserving, Enhancing and Revitalizing Neighborhoods - As discussed above, the proposed PUD increases the District's housing supply and enhances the character of the immediate neighborhood.
- 3) Policy LU-2.1.8 Zoning of Low- and Moderate-Density Neighborhoods - The proposed PUD is consistent with the existing residential zoning and uses. In addition, the requested Zoning Map amendment to have the unzoned portion of the Subject Property zoned R-5-A is consistent with the existing zoning of the immediate area.
- 4) Policy LU-2.1.11: Residential Parking Requirements - The proposed PUD includes at least one parking space per unit. The parking will be accommodated in a manner that maintains an attractive environment and minimizes interference with traffic flow.

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- 5) Policy LU-2.2.4: Neighborhood Beautification – The proposed PUD improves the visual quality of the neighborhood, and includes landscaping and tree planting, removal of obsolete public housing buildings, the construction of new public streets, alleys, and sidewalks, and a central community park area.
- b. *Transportation Element.* The overall goal of the Transportation Element is to create a safe, sustainable efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents. (§ 401.1) The proposed PUD is consistent with this element. Streets in the development are designed to encourage walking and to promote safe interaction between pedestrians and automobiles. Along existing streets, new shade trees will fill gaps between preserved existing trees, and new sidewalks and streetlights will provide a pleasant pedestrian experience that brings the existing streets up to modern District Department of Transportation ("DDOT") standards. New streets around the neighborhood park are narrow to promote walkability and slow automobiles, appropriate to their roles as short, local, residential streets. All streets will accommodate on-street parking. Moreover, as indicated in the Transportation Impact Study prepared by Wells & Associates LLC, the proposed development will not have an adverse impact on existing or future traffic conditions. DDOT also submitted a memorandum indicating that the proposed project will not have an adverse traffic or parking impact on the neighboring residential area, and thus DDOT has no objection to the project (Exhibit 45).
- c. *Housing Element.* The overall goal of the Housing Element is to develop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District. (§ 501.1) Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. The Housing Element encourages the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. (§ 503.2) In addition, the production of housing for low and moderate income households is a major civic priority and the Comprehensive Plan calls for investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing. (§§ 504.8, 504.10) The proposed PUD will contain approximately 185,234 square feet of gross floor area dedicated to residential uses, with approximately 91 row dwellings, 24 3-unit apartments, and 10 flats. Moreover, all of the units will be affordable. The replacement DCHA units, as well as the ownership units, will be architecturally indistinguishable from one another, and mixed throughout the project. The 42 replacement public housing rental units will be dedicated for families earning up to 30% of the area

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median income ("AMI"). A total of 83 homeownership units will be constructed, with approximately 23 units dedicated for families earning up to 100% of AMI; approximately 25 units dedicated for families earning up to 75% of AMI; approximately 27 units dedicated for families earning up to 65% of AMI; and approximately eight units dedicated for families earning up to 40% of AMI.

- d. *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality, and specific policies include the following:
- 1) Policy E-1.1.1: Street Tree Planting and Maintenance – The proposed PUD includes the planting and maintenance of street trees on the new sidewalks to be constructed immediately adjacent the project's boundaries.
 - 2) Policy E-1.1.3: Landscaping – As shown on the landscape plan include in the Plans, the proposed PUD incorporates landscaping to beautify the Subject Property, help reduce stormwater runoff, and create a stronger sense of character and identity.
 - 3) Policy E-1.3.3: Reducing Sedimentation - As discussed above, the proposed PUD includes a number of stormwater management measures, including regular maintenance of storm drains and catch basins and the use of amended soil areas, where appropriate, that will contribute to reducing sedimentation.
 - 4) Policy E-2.2.1: Energy Efficiency – The project includes a number of features designed to promote the efficient use of energy and a reduction of unnecessary energy expenses.
 - 5) Policy E-3.1.3: Green Engineering – As shown on the stormwater management plan included in the Plans, the proposed PUD incorporates a number of green engineering practices for water and wastewater systems, including the placement of rain barrels at locations throughout the project to allow for re-cycling rain water for planter and lawn irrigation in the vicinity of rain barrel and the use of Bay Saver Separator units and pre-treatment facilities.
 - 6) Policy E-3.4.1: Mitigating Development Impacts – The proposed PUD includes a number of features designed to mitigate impacts on the natural environment, including street tree planting and maintenance, landscaping, energy efficiency and the use of renewable materials, methods to reduce stormwater runoff, and other green engineering practices.

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- e. *Urban Design Element.* A major goal of the Urban Design Element is to create successful neighborhoods that strengthen the defining visual qualities of the District's neighborhoods and relate the scale of infill development to the existing neighborhood context. (§ 910.6) Creating visual interest through well-designed building facades and maintaining façade lines are specified policies. (§§ 910.12, 910.13) The Urban Design Element also states that overpowering contrasts of scale, height and density must be avoided as infill development occurs. (§ 910.14) In addition, new developments on parcels that are larger than the prevailing neighborhood lot size are encouraged to carefully integrate with adjacent sites and structures on such parcels should be broken into smaller, more varied forms. (§ 910.15)

The proposed PUD is consistent with these policies. The development ties into the existing Parkside fabric, and reflects the character of the neighborhood. The elevations respond to their Parkside context in their scale, proportion, and detail, and also produce streetscapes that fit in with the immediately recognizable residential character. In addition, a mix of porches, porticoes, and stoops will add further variety to the streetscapes. At the center of the project is a new neighborhood park that will encourage active and passive recreation with a children's play area, landscaping, shade trees, and benches. Moreover, green space located in the street right-of-way in front of units will be landscaped to subtly reinforce the threshold between the public street and the private houses. Further, streets in the development are designed to encourage walking and to promote safe interaction between pedestrians and automobiles. Along existing streets, new shade trees will fill gaps between preserved existing trees, and new sidewalks and streetlights will provide a pleasant pedestrian experience that brings the existing streets up to current standards.

- f. *Far Northeast and Southeast Area Element.* The major themes of the Far Northeast and Southeast Area Element are guiding neighborhood growth, as well as conserving and enhancing community resources. Policy FNS-1.1.1 recommends that the Comprehensive Plan and zoning designations for neighborhoods in the Far Northeast and Southeast reflect and protect the existing low density land use pattern while allowing for infill development that is compatible with neighborhood character. (§ 1808.2) Policy FNS-1.1.2 encourages new housing on vacant lots and around Metro stations within the community. (§ 1808.3) The conservation and improvement of Watts Branch and Pope Branch as safe, healthy natural resource areas, as well as linking the neighborhoods of Far Northeast and Southeast to the Anacostia River through trail, path, transit, and road improvements are important policy goals. (§§ 1809.1 and 1809.2) The proposed PUD has an overall density of 0.8 FAR, which is consistent with the existing character of the neighborhood. Moreover, the units have been designed to be compatible with the character of existing homes in the

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neighborhood. The proposed PUD also includes significant infrastructure improvements, such as new sidewalks, that will help connect the neighborhood to the Anacostia River.

- g. *Kenilworth-Parkside Element.* The Kenilworth Parkside Element encourages taking advantage of the area's proximity to the Minnesota Avenue Metrorail station to accommodate housing that is well-connected to transit and open space, in addition to improving vehicular, pedestrian and bicycle access to the Kenilworth/Parkside area. (§ 1516.6 and § 1516.9) The proposed PUD is consistent with this element since the project includes new residential development within close proximity to the Minnesota Avenue Metrorail station and other transit stops. Moreover, the development will include two new park areas.

Strategic Neighborhood Action Plan

45. The 2003 Strategic Neighborhood Action Plan ("SNAP") process identified near-term goals for individual neighborhood clusters. The Subject Property is part of Cluster 30, which includes the Mayfair and Central N.E. neighborhoods. Cluster workshop participants were asked to identify priorities for additional action planning. Area residents identified abandoned housing, public safety, commercial development and youth development as being of top priority. The proposed PUD furthers the public safety objective through the addition of residential development and "eyes on the street". The proposed PUD will create a broad mix of housing at various income levels targeted for rental and ownership. Creating new public and private affordable housing and utilizing vacant land will also improve the overall character of the community and the new residents will support neighborhood retail centers and schools.

Office of Planning Report

46. By reports dated July 14, 2006 and May 4, 2007, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the application (Exhibits 17 and 20).
47. By report dated July 13, 2007, OP recommended final approval of the application, subject to the incorporation of additional low impact development techniques (Exhibit 28). OP indicated that the application will further a number of the Guiding Principles of the Comprehensive Plan and is not inconsistent with the Plan's policies and land use maps, and OP supported all of the requested zoning flexibility necessary to create the traditional layout of the community. OP also indicated that the Applicants' amenity package is adequate in magnitude and appropriate to the neighborhood, subject to the inclusion of additional environmental features. As noted above, the Applicants met with DCDOE on July 18, 2007 (subsequent to the filing of the OP final report) and

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revised the Stormwater Management Plan to incorporate low impact development techniques acceptable to DCDOE, and DCDOE signed a memorandum indicating its approval of such design features (Exhibit 40). OP stated during the public hearing on July 23, 2007 that the measures incorporated into the project satisfied OP's concerns.

Other Government Agency Reports

48. In an email to OP on July 5, 2007, the D.C. Department of Parks and Recreation ("DPR") indicated that the existing recreational amenities in the area of the Subject Property cannot support the growing housing stock planned for this area of the District (Exhibit 28). DPR suggested that the Applicants either work with the Neville Thomas Elementary School regarding recreation amenities, or work with DPR to develop a trail leading from this neighborhood to the Kenilworth-Parkside Community Center and its surrounding fields. However, as noted by OP and the Applicants, DDOT has already planned a trail to connect the entire Anacostia riverfront, and is close to the design phase for the segment linking this neighborhood with areas to the north, including the Kenilworth-Parkside Community Center.
49. DCDOE submitted a letter dated July 16, 2007 strongly supporting the Applicants' commitment to meet Green Communities minimum development standards. DCDOE also recommend that the Applicant consider a number of enhancements to reduce the impacts of stormwater runoff through on-site infiltration, storage and reuse options. As noted in Finding of Fact No. 35, the Applicants subsequently met with DCDOE on July 18, 2007 and revised the Stormwater Management Plan to incorporate features acceptable to DCDOE, and DCDOE signed a memorandum indicating its approval of such design features (Exhibit 40).
50. DOES submitted a memorandum dated July 3, 2007 to OP recommending that no action be taken on the PUD until the applicant executes a First Source Agreement. On July 16, 2007, the Applicants submitted a fully-executed First Source Employment Agreement (Exhibit 32).
51. The D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum dated July 6, 2007, indicating that existing infrastructure is adequate to accommodate the proposed construction. DCWASA further stated that it would coordinate with the Applicants on the already-planned upgrade of a sanitary sewer line in Anacostia Avenue. DCWASA also noted that this application would need to conform to DCDOE standards for stormwater runoff and erosion control during the building permitting process.
52. DDOT submitted a memorandum dated July 19, 2007 (Exhibit 45), indicating that the proposed project will not have an adverse traffic or parking impact on the neighboring residential area. Accordingly, DDOT has no objection to the project.

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53. AWC submitted a letter dated July 16, 2007 (Exhibit 30), indicating that the PUD fulfills many objectives of the Waterfront Area Elements of the Comprehensive Plan. AWC recommended that OP work with the Applicants on green building, stormwater management, site planning, and control of erosion and runoff during and after construction of the project. AWC also recommended that the Applicants conduct additional community outreach efforts.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this 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 identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicants' request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

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8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. In this case, ANC 7D ultimately voted to strongly support the project and recommended that the Commission approve the application at the Commission's October 15, 2007 public meeting (Exhibit 47). The Commission has given ANC 7D's recommendation great weight in approving this application.
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 recommendations (as reflected in ¶ 46-47). For the reasons stated above, the Commission notes the Applicants have addressed OP's concerns and concurs in OP's recommendation for approval of the PUD.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD") and related amendment to the Zoning Map from unzoned to the R-5-A District for the unzoned portions of the Subject Property, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners, dated July 3, 2007, marked as Exhibit 27 in the record (the "Plans"); as modified by Exhibit 32 and Exhibit 46; and as further modified by the guidelines, conditions and standards herein.
2. The PUD shall be a residential development as shown on the approved plans. The PUD shall have a maximum density of 0.8 FAR and a combined gross floor area of no more than 193,688 square feet. The project shall contain no more than 125 dwelling units, including flats, apartments, and row dwellings.
3. The maximum height of the new units shall be 40 feet and three stories.

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4. The Applicants are granted flexibility from the lot area requirements for semi-detached buildings, rear yard depth, side yard width, open court width, lot occupancy requirements of § 403.2, and street frontage requirements of § 2516.5, consistent with the Lot Tabulation sheet on the Plans, as modified by Exhibits 32 and 46.
5. The 42 replacement public housing rental units shall be targeted for families earning up to 30% of the area median income ("AMI"). The 83 homeownership units shall be targeted for the following levels: approximately 23 units dedicated for families earning up to 100% of AMI; approximately 25 units dedicated for families earning up to 75% of AMI; approximately 27 units dedicated for families earning up to 65% of AMI; and approximately eight units dedicated for families earning up to 40% of AMI.
6. The project shall include a minimum of 125 off-street parking spaces.
7. The Applicants shall include landscaping, streetscape, open-space, and stormwater management features for the project as shown on the Plans, as modified by Exhibits 32 and 46.
8. Construction of the residential units shall comply with all applicable provisions of the District of Columbia Municipal Regulations regarding construction within the horizontal plane of the 100-year floodplain.
9. No building permit shall be issued for this PUD until the Applicants have submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") a fully-executed agreement with the District of Columbia Department of Small and Local Business Development.
10. The Applicants 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 partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. 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
 - c. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals.

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11. No building permit shall be issued for this PUD until the Applicants have recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
12. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicants have filed a copy of the covenant with the records of the Zoning Commission.
13. The change in zoning from unzoned to R-5-A for the unzoned portions of the Subject Property approved by this Order shall be effective upon the recordation of the covenant discussed in Condition No. 10.
14. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
15. 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.

On October 15, 2007, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Gregory N. Jeffries to approve; Carol J. Mitten and John G. Parsons, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on December 10, 2007 by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to

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adopt; John G. Parsons, having recused himself, not voting; Curtis L. Etherly, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on JAN 25 2008.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., June 7, 2008

Plat for Building Permit of PARCEL 170/27 & 170/28

Scale: 1 inch = 100 feet Recorded in Book A&T Page 3000-P

Receipt No. 00843

Furnished to: HOLLAND & KNIGHT

[Signature]
Surveyor, D.C.

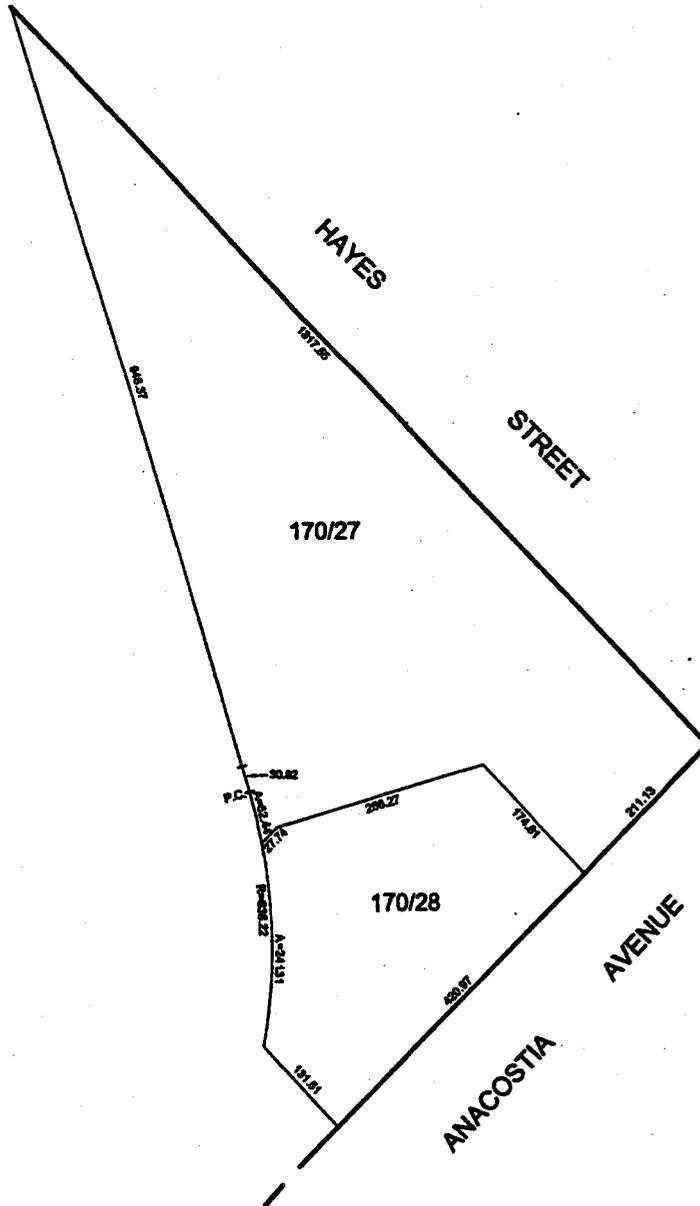
By: L.M.A. *[Signature]*

I hereby certify that all existing improvements shown herein, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying this application; that the foundation plans of shown herein is shown, and dimensioned accordingly to the same scale as the property lines shown on this plat; that by reason of the proposed improvements to be erected on shown herein the size of any existing lot or portion is not diminished to an area less than is required by the zoning regulations for age 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 shown and dimensioned herein. It is further agreed that the location of the accessible parking area with respect to the Highway Department approved curb and utility grade will not result in a ratio of grade along centerline of driveway of any point on public property to excess of 20% for single-family dwellings or lots, or to excess of 15% at any point for other buildings. (The policy of the Highway Department provides a maximum driveway grade of 12% across the public parking and the public adjacent property.)

Date: _____

(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.



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DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., May 18, 2006

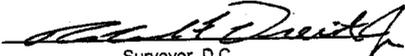
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along 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.)

Plat for Building Permit of: SQUARE 5040 LOT 804

Scale: 1 inch = 80 feet Recorded in A&T Book Page 3671-W

Receipt No. 00258

Furnished to: HOLLAND & KNIGHT (FREDA HOBAR)


Surveyor, D.C.

Date: _____

By: D.M. 

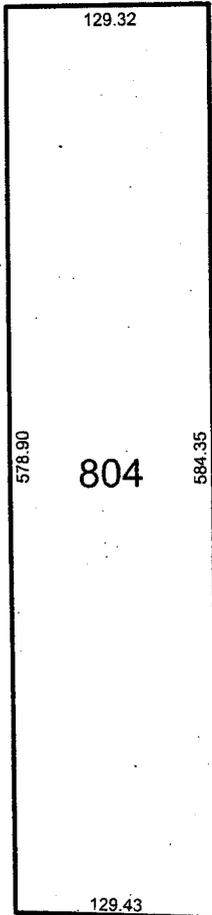
(Signature of owner or his authorized agent)

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.

GRANT STREET

STREET

BARNES



AVENUE

ANACOSTIA

HAYES STREET

000946

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**Z.C. Order No. 07-07****Z.C. Case No. 07-07****Consolidated Planned Unit Development and Related Amendment to the Zoning
Map for Broadcast Center One
November 19, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on September 20, 2007, to consider an application from Broadcast Center Partners, LLC ("Applicant") filed on behalf of the owner who on the date of final action was the District of Columbia ("Owner") for the consolidated review and approval of a Planned Unit Development and a related Zoning Map Amendment for the property located in Square 441, Lots 21, 66, 97, 814, 815, and 854, 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 its public meeting on October 15, 2007, the Commission took proposed action by a vote of 3-0-2 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. NCPC's Executive Director, through a Delegated Action dated November 1, 2007, found that the proposed PUD would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission took final action to approve the application on November 19, 2007 by a vote of 3-0-2.

FINDINGS OF FACT**PROCEDURAL HISTORY**

1. The property that is the subject of this application consists of Lots 21, 66, 97, 814, 815, and 854 in Square 441 and is located on 7th Street, N.W. between S and T Streets, N.W. in the Shaw neighborhood of Ward 1 ("Property"). The Property consists of approximately 51,062 square feet of land area and is located in the ARTS/C-2-B Zone. (Exhibits 24 and 24-A, p. 1)

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2. Broadcast Center Partners, LLC is comprised of Ellis Enterprises, LLC, The Jarvis Company, and Four Points, LLC. (Exhibit 3, pp. 2-4)
3. On March 15, 2007, the Applicant filed an application with the Commission for review and approval of a Planned Unit Development ("PUD"). The PUD project is a mixed-use project featuring the restoration and integration of the historic and historically-contributing buildings located on the Property and the construction of a new retail/arts, residential, and office building ("Project"). The Project proposes to add new street-level retail uses and return the headquarters of Radio One, a major African-America communications/broadcast company, back to the District. The original application did not request a related zoning map amendment. However, the application requested an increase in density and relief from the following zoning requirements: the roof structure setbacks, residential recreation space, lot occupancy, and loading. (Exhibit 3, pp. 1, 12-14)
4. At a regularly scheduled public meeting on April 9, 2007, the Commission voted 4-0-1 to set the case down for public hearing. At that meeting, the Commission members requested the following modifications and information: a related map amendment to ARTS/C-2-C; detailed descriptions with regard to public amenities; detailed descriptions and commitments with regard to the green building elements of the Project; a revised roof plan to better describe the green elements; discussion on the potential for antenna/satellite dishes on the roof; turning diagrams to show loading accessibility of trucks in the alley; clarification on the signatories to a Memorandum of Understanding between the Applicant and community organizations; and enhancements to the Metro Plaza. (Transcript ("Tr.") from April 9, 2007, pp. 51-62)
5. In its Pre-Hearing Submission, dated July 5, 2007 (Exhibits 24 and 24-A), the Applicant addressed and submitted information with regard to the above-mentioned recommendations and questions from the Commission.
6. In addition, as a result of both the recommendation from the Office of Planning's March 30, 2007 set down report (Exhibit 22) and the Commission's comments provided at the set down hearing, the Applicant revised its proposal and applied for a PUD-related map amendment from ARTS/C-2-B to ARTS/C-2-C. Further, it eliminated its requested relief for residential recreational space.
7. The Applicant requested, by letter (Exhibit 35), that the Commission waive its rules with regard to one of the hearing notice requirements of the Regulations. The Applicant inadvertently listed the incorrect date of the public hearing on the Notices posted on the Property. However, the date on the posted notices was actually an earlier date than the actual hearing date. Because all other notice requirements were fulfilled and any interested person still had the opportunity to participate in the hearing subsequent to the date listed on the posters on the Property, the Commission voted to waive this requirement of the rules.

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8. The Commission held a public hearing on the above-mentioned application on September 20, 2007, which was conducted in accordance with the provisions of 11 DCMR § 3022.
9. There were no requests for party status. Advisory Neighborhood Commission (“ANC”) 1B, the ANC in which the Property is located, is automatically a party to this application.
10. At the September 20, 2007 public hearing, Phil Feola of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted Marshall Purnell of Devroux & Purnell Architects/Planners, P.C. as an expert in architecture and Edward Papazian of Kimley-Horn and Associates, Inc., as an expert in traffic engineering. (Tr. from September 20, 2007, p. 9)
11. At the hearing, the Applicant submitted into the record as Exhibit 38 revised plans showing an added third level of parking and information on the sustainable features for both the office and residential buildings as Exhibit 39. (Tr. from September 20, 2007, p. 28)

PUD SITE AND SURROUNDING AREA

12. The Property is composed of approximately 51,062 square feet of land and is located on 7th Street, N.W. between S and T Streets, N.W. in the Shaw neighborhood adjacent to the Shaw-Howard University Metrorail station. It is located in Ward 1 and within the jurisdiction of ANC 1B. A portion of the Property is vacant and a portion is improved with low scale, underused and vacant commercial buildings. (Exhibits 24 and 24-A, p. 1)
13. The neighborhood contains the historic Howard Theatre, the Dunbar Theater, and parts of the Greater U Street and LeDroit Historic Districts. Several of the existing structures on the Property fronting both 7th and T Streets are contributing buildings in the Greater U Street Historic District. (Exhibits 24 and 24-A, p. 2)
14. In March 2005, the Applicant received preliminary approval from the National Capital Revitalization Corporation (“NCRC”)¹, a publicly chartered corporation responsible for overseeing the redevelopment of underused and emerging areas of the District of Columbia, to develop the Property as a mixed-use complex. (Exhibit 3, p.1; Exhibits 24 and 24-A, p. 1)
15. The area of the subject site has been the object of two major Office of Planning (“OP”) initiatives, the “DUKE” Plan for Greater Shaw/U Street, and the Convention Center Area Strategic Development Plan, both of which recommend a

¹ NCRC was abolished as of October 1, 2007 by an act of Council that transferred its functions to the Office of the Deputy Mayor for Economic Development.

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large mixed-use project at the Property to anchor the revitalization of the area. (Exhibit 33, p. 1)

DESCRIPTION OF THE PUD PROJECT

16. The proposed development contains approximately 319,917 square feet of gross floor area, which includes 192,511 gross square feet of residential uses (180 apartments), 24,323 gross square feet of retail/arts uses, and 103,083 gross square feet of office use. The development will preserve the architectural traditions of the local historic districts by incorporating the historically-contributing buildings into the Project. The density is 6.3 FAR and the Project will have a total lot occupancy of 88%. (Exhibits 24 and 24-A, pp. 3-5 and Ex. A.)
17. Viewing the Project from 7th Street, N.W., there will appear to be two new, distinct structures: a glass office component on the southern portion of the site and masonry residential component to the north. The façade of the historic buildings at the northern end of the Property will be rehabilitated and the depth of those buildings will be maintained to a minimum of 40 feet, while elements of the new residential building will feature terraced setbacks so as not to encroach upon the existing historic buildings. The height of both the residential and office elements is 90 feet – nine floors in the residential portion and seven floors in the office portion. At the street level, the Project establishes an open plaza located between the Shaw-Howard University Metrorail Station entrance and the main entrance of the office element. (Exhibits 24 and 24-A, pp. 3, 4 and Ex. A)
18. Special attention will be paid to the landscaping along 7th and T Street, N.W. in order to activate the streetscape leading from the Metrorail station along the proposed open plaza. (Exhibits 24 and 24-A, p. 4)
19. Recreation space in the residential building includes private terraces and a large rooftop terrace open to all of the Project's residents. (Exhibits 24 and 24-A, p. 4)
20. The Property is in ARTS/C-2-B Zone District. Under PUD guidelines, the C-2-B Zone District allows a total density of 6.0 FAR, with a non-residential density of 2.0 FAR and a height of 90 feet. OP, in its March 30, 2007 report, recommended a related map amendment to ARTS/C-2-C to allow for zoning consistency. (Exhibit 22, p. 4)
21. The Applicant revised its proposal to incorporate the recommendation from OP and applied for a related Map Amendment for the property from ARTS/C-2-B to ARTS/C-2-C. (Exhibits 24 and 24-A, p. 5)
22. The PUD project complies with the broad parameters for PUDs in the C-2-C Zone District and the ARTS Overlay pursuant to 11 DCMR Chapter 24. However, the design scheme proposed does not meet all of the zoning requirements for this

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zone. Therefore, relief is requested to permit an additional 5% (0.30 FAR) density (pursuant to § 2405.3), as well as relief from the following: the roof structure setback, lot occupancy, and loading requirements. (Exhibits 24 and 24-A, p. 5)

- a. *Additional 5% density (0.30 FAR):* the Applicant requests that the Commission utilize its discretion to permit the Project to achieve an additional 5% density (0.30 FAR) pursuant to 11 DCMR § 2405.3 due to the extensive amount of ground-floor retail/arts space proposed and the provision of such a large amount of affordable housing in the Project.
- b. *Roof structure requirement:* the Applicant requests relief from the roof structure requirements of the Regulations that requires housing for mechanical equipment to be set back from exterior walls at a distance equal to its height above the roof. The proposed roof structure configuration is a result of the Historic Preservation Review Board ("HPRB") approved design which pushes the mass of the building away from the historically contributing buildings on 7th Street, N.W.
- c. *Lot Occupancy:* the Applicant also seeks relief from the lot occupancy requirement. The deviation is necessary because the footprints of the historic buildings occupy a large percentage of the Property and, pursuant to direction from HPRB, construction over those historic building is discouraged.
- d. *Loading Requirements:* the Applicant requests flexibility from the loading requirements of the Regulations. The Regulations require five loading berths, four at 30-feet-deep and one loading berth at 55-feet-deep. The Project provides five loading berths at 30-feet-deep all accessed from the public alley at the rear of the buildings. Due to configuration of the site, the access constraints of retaining the historic structures on the site and the requirements of the program make it impossible to provide a 55-foot-deep loading berth. The Applicant believes that with proper management, the proposed loading facilities will be adequate to service the Project without creating adverse impacts on the public.

SATISFACTION OF PUD EVALUATION STANDARDS

23. Through written submissions and testimony to the Commission, the Applicant and its representatives asserted that the Project will provide a high quality metro-oriented residential, commercial, and retail/arts development on the Property with significant public benefits to the neighborhood and the District as a whole.
24. The Applicant's representative, Roy "Chip" Ellis, testified that the Applicant has tried to ensure that the mixed-use development is consistent with OP's DUKE

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plan and in keeping with the community's needs. This has been accomplished by the Applicant's continued work with OP and in the negotiation of a Memorandum of Understanding with the community that outlines a number of issues important to both the community and the Applicant. (Tr. from September 20, 2007, pp. 14, 15)

25. The Project satisfies the PUD evaluation criteria that it be of exemplary urban design and architecture. The proposed development is located along 7th Street, N.W. -- a major arterial -- and it is immediately adjacent to the Shaw-Howard University Metrorail Station. Given the prominence of the site - at an entrance to a Metrorail station and along a leading commercial corridor with a rich cultural history - the Property offers an important opportunity and the Project fulfills the site's potential. It provides new housing opportunities, including a substantial number of units affordable to moderate-income households. Moreover, it possesses multiple retail opportunities, particularly for arts-related uses. (Exhibits 24 and 24-A, p. 8)
26. This mixed-use development maintains the general character of 7th Street in the Shaw neighborhood while taking full advantage of its prominent, transit-oriented location to create a landmark project that is convenient to Metrorail. The Project blends traditional and modern elements into a signature architectural statement that accommodates an appropriate density without an imposing visual and physical impact on the street. This effect is achieved by: (1) concentrating the mass of the residential portion toward the rear of the site; (2) partitioning the residential portion into three distinct masses; (3) setting back of the office portion behind a sidewalk plaza; and (4) preserving the historically-contributing buildings along 7th Street. The restored historic buildings, window openings, balconies and terraces of the apartment portion, and the glass curtain wall of the office portion all combine to create a sense of scale and visual interest. (Exhibits 24 and 24-A, pp. 8, 9)
27. The proposed landscaping incorporates the trees that are an integral part of the District's streets and includes landscaping on the roof and on the private terraces which will add to the overall greenery of the site. Additionally, a generous sidewalk plaza area between the office portion of the Project and the Metrorail entrance is proposed. (Exhibits 24 and 24-A, p. 9)
28. The Project satisfies the PUD evaluation criteria that it exemplify high quality site planning. It will both create and take advantage of a vibrant street life on 7th Street through the new retail and arts uses on the ground floor, the renovation of the historically-contributing buildings, and the sidewalk plaza area. Using the alley as the means of entry to the garage and loading area allows the preservation of substantial street parking in front of the building. (Exhibits 24 and 24-A, p. 9)

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29. The Project's design simplifies vehicular and pedestrian access to promote vehicular and pedestrian safety as required by the PUD review standards. The garage has one point of entry and exit, from the alley to the rear of the building (which has existing access points on S and T Streets), thus improving pedestrian safety and convenience along the busiest street (7th Street) bordering the property. Numerous pedestrian access points to the building along 7th and T. Streets encourage walking. (Exhibits 24 and 24-A, p. 10)
30. Based on the Traffic Impact Study prepared by Kimley-Horn and Associates, the proposed development is anticipated to generate 140 AM peak-hour vehicular trips and 176 PM peak-hour vehicular trips. The proposed development would account for approximately 6% of the total AM and PM peak hour traffic volumes at the intersections of 7th and T Streets and approximately 8 to 9% of the total AM and PM peak hour trips at the intersection of 7th and S Streets and not have a significant adverse effect on traffic flow in the area. In addition, the study found that the site and surrounding area are well served by transit including Metrorail and Metrobus and, as a result, there will be ample opportunities for travel by alternatives to the automobile. (Exhibits 24 and 24-A, Ex. B, p. 26)
31. The Project provides approximately 180 new housing units, of which 45 will be affordable. The need for dedicated affordable housing is particularly acute in the neighborhood of the Project, where the lack of large development, combined with increased neighborhood desirability, has recently driven up overall housing prices substantially. (Exhibits 24 and 24-A, pp. 10, 11)
32. The Applicant will enter into an agreement with the Department of Employment Services ("DOES") for the First Source Employment Program, to promote and encourage the hiring of District residents. During the construction phase, the Project will generate 835 jobs (based on the one-year full-time equivalent) with approximately 426 available to District residents. Once complete, the Project will generate 44 new permanent retail jobs of which at least 22 will be available to District residents. (Exhibits 24 and 24-A, Ex. C)
33. The Applicant will enter into a Memorandum of Understanding ("MOU") with the Local Business Opportunity Commission ("LBOC") to use the resources of the LBOC to utilize local business enterprises in the development of the Project. Further, many of the Broadcast Center Partners professional team and partners are Local, Small, Disadvantaged Business Enterprises ("LSDBEs"). (Exhibits 24 and 24-A, p. 11)
34. The Project satisfies the PUD evaluation criteria that it provide environmental benefits. The Project site is directly accessible to both the Shaw-Howard University Metrorail Station and to Metrobus routes providing opportunity for alternative transportation for residents and users of the Project. The office component's penthouse will store water for use for the green roof system and for

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other site vegetation. The Project will utilize low flow faucets and shower heads and dual or low flush water toilets. Both the office and residential elements will make use of low-emitting adhesives and sealants, paints, carpets, and other finishes. During the construction phase, recyclable materials used for construction will be store in appropriate containers for reuse. The reuse and restoration of the existing historic buildings on 7th Streets is an environmentally sound practice. In addition, a program will be implemented to limit construction waste by the general contractor.

35. To further its commitment to an environmentally sound Project, the office component will use some products, such as pre-cast concrete, that are manufactured within a 500 mile radius from the Property. Its HVAC system will be a vertical self-contained system that will be located on every floor and also use high R-value insulation in the walls. The roof area of the office component will use a high albedo (white reflective) roof system which will reduce cooling energy costs by reflecting away most of the solar energy that strikes its surface. The residential component will feature a number of environmentally friendly elements including light pollution reduction, recyclable storage and collection, operable windows to provide ventilation effectiveness, controllability of lighting and low energy lighting fixtures.
36. The Project will have a substantial "Green Roof" that incorporates green roof design elements to reduce storm water quantity and quality controls while also incorporating light colored pavers and roof membranes: 71% of the residential roof (not including the historic properties) will be green (14,585 out of 20,599 square feet) and 52% of the office roof will be green (7,873 out of 15,142 square feet). (Exhibits 24 and 24-A, p. 19)
37. In order to provide special value to the neighborhood, the Applicant, ANC 1B, ANC 2C, Shaw Main Streets, Organizing Neighborhood Equity DC, formerly Manna Community Development Corporation (collectively, the "Community"), and the National Capital Revitalization Corporation ("NCRC") entered into an Agreement ("MOU"), later updated and amended in May 2007, that established a series of priorities for the community's involvement in the Project (Exhibits 24 and 24-A, Ex. D). These priorities, in summary, are:
 - a. The Applicant will provide both affordable and workforce housing units of at least twenty-five percent (25%) of the total number of residential units and insure that these units are spread throughout the development;
 - b. The Applicant will require commercial tenants of the Project to make reasonable efforts to employ residents of the community at newly created entry level, management and professional jobs and the Applicant will work with the community to provide construction training and apprenticeship opportunities to member of the community;

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- c. The Applicant shall include between 35-50% participation of local, small business (LSDBE) vendors in the Project and use LSDBE contractors for a number of services such as, without limitation, title, insurance, property management, moving services, and parking operators;
- d. The Applicant will construct and operate the project with a mix of retail tenants and assist qualified existing local businesses move into the Property. The Applicant shall also designate and provide reduced rents to 3,000 square feet (10% of the retail space) for existing or emerging local businesses at reduced rents;
- e. The Applicant made a commitment to provide \$350,000 to a Community Development Initiative Fund ("CDI Fund") to be used to support local residents and benefit the local needs of the Shaw community. The CDI Fund will be managed by the Community Foundation of the National Capitol Area. The Applicant will donate seventy-five thousand dollars (\$75,000) to the CDI Fund upon the recordation of the PUD covenant and provide another seventy-five thousand dollars (\$75,000) on first anniversary date of the completion of the construction of the Project, as defined by permanent financing of both the residential and office components. Another \$100,000 will be donated at the settlement of permanent financing on the stabilized residential and commercial elements. Finally, a \$100,000 donation will be made if the Project is refinanced or sold.

The Fund will support local community organizations and families in need and will be used for the following projects and community needs: (1) resources to prevent tenant and homeowners displacement; (2) tax relief for senior citizen homeowners; (3) job training for young adults and adolescents; and (4) cooperative business training.

38. The PUD is consistent with the District of Columbia Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"). The 2006 Future Land Use Map recommends the site for a mix of medium density residential and commercial uses. Thus, the PUD is consistent with the Generalized Land Use Map designation for the Property. (Exhibit 3, p. 29)

GOVERNMENT REPORTS

39. In its September 10, 2007 report and through testimony at the public hearing, OP recommended that the Commission approve the Project. OP determined that the Project is consistent with the goals and objectives of the Comprehensive Plan since it is a well-designed development in an area that is vacant, underused, and deteriorated and it is providing new housing to meet the needs of present and future District residents. The Project will also provide significant investment and

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a catalyst for further redevelopment in the area. OP opined that the proposal is consistent with the DUKE and Convention Center Plans, each calling for development of a retail corridor along 7th Street anchored by a medium-density mixed-use development at this location. (Exhibit 33, pp. 7, 8)

40. By written report dated September 12, 2007, the District Department of Transportation ("DDOT"), stated that it had no objection to the proposed PUD provided that the Applicant continues to coordinate with DDOT staff. The report stated that several issues have to be resolved as the project plans are refined, including: the location of new Pepco vaults to serve the building, placement of bike racks, alley improvements and streetscape improvement plans for 7th, S, and T Streets, N.W. (Exhibit 34, p. 2)
41. HPRB undertook a conceptual review of the project and indicated that it would recommend that the Mayor's agent find that the project is consistent with the Historic Preservation Act. (Exhibits 24 and 24-A, p. 5)

ANC REPORT

42. Based on the testimony of Myla Moss, ANC Commissioner of 1B01, and by letter dated August 4, 2007, ANC 1B voted to unanimously support the Project at its August 2, 2007 regularly scheduled meeting held with proper notice and with a quorum present. (Exhibit 27)

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 this 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 roof structure setbacks, lot occupancy and loading requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
3. 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 the five percent (5%) bonus density because the increase is essential to the successful functioning of the Project and consistent with the purpose and

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evaluation standards of Chapter 24 of the Zoning Regulations. The Commission was persuaded the density was necessary to provide the extensive amount of ground-floor retail/arts space proposed and the sizeable affordable housing component of the Project

4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a building with more attractive and efficient overall planning and design not achievable under matter-of-right development.
6. The Commission agrees with the written submissions and testimony of the Applicant's representatives and the project architect that the project will provide 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 mix of residential, commercial, retail and arts uses, the reuse of the historic buildings, the metro-oriented design, the commitment to green architecture, the provision of affordable housing, and the revitalization of this underused property are all significant project amenities and exemplify superior features of urban design, architecture, and site planning.
7. The Commission concludes that the density and building height of the PUD is appropriate at this location immediately adjacent to a Metrorail Station.
8. The Commission concludes that the proposed community amenities, set forth in Condition 8 below, will provide appropriate benefits to members of the surrounding area and the District as a whole.
9. 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 Project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the Project furthers the themes of: well-designed development in an area that is vacant, underused and deteriorated, and it is providing new housing to meet the needs of present and future District residents. The Project will also provide significant investment and a catalyst for further redevelopment in the area. The Commission also finds that the proposed PUD is also consistent with the DUKE area plan. The Commission finds that the PUD is consistent with the mixed-use, medium-density residential and commercial categories of Generalized Land Use Map of the Comprehensive Plan shown for the Property.

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10. The Commission agrees with the conclusions of the Applicant's expert transportation consultant and DDOT that the proposed Project will not create any adverse traffic or parking impacts on the surrounding community.
11. The Commission concludes that the proposed PUD-related rezoning of the Property is appropriate given the superior features of the PUD project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The project benefits and amenities are a reasonable tradeoff for the requested flexibility from the strict requirements of the Zoning Regulations
12. In accordance with D.C. Code § 1-309.10(d), the Commission must give great weight to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 1B voted unanimously and unconditionally in favor of approving the application. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Code § 6-623.04), to give great weight to OP recommendations. The Commission concurs with OP that the PUD should be granted.
14. 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.
15. Notice of the public hearing was provided in accordance with the Zoning Regulations, subject to the waiver described in Finding of Fact 7.
16. Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Finding 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 application and related Zoning Map Amendment to the ARTS/C-2-C Zone District for Lots 21, 66, 97, 814, 815, and 854 in Square 441. 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 24-A and 38 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Project shall be a mixed-use development containing residential, office, and retail/arts uses with below-grade parking.

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3. The density of the project shall not exceed the floor area ratio (FAR) of 6.3 of which a maximum of 2.5 FAR shall be devoted to office/retail/arts use with a minimum of 3.8 FAR devoted to residential use.
4. The height of the Project shall not exceed 90 feet.
5. The total lot occupancy of the Project shall not exceed 88 %.
6. The Project shall include parking with a minimum of 177 spaces as shown on the revised parking plans, submitted into the record as Exhibit 38.
7. The Applicant shall provide the following community amenities:
 - a. *Affordable Housing and Work Force Housing:* The Applicant shall provide both affordable housing and workforce housing units equaling at least 25% of the total number of residential units. The Affordable Housing units shall comprise 10% of the total units and shall be made available to families making between 31% and 50% of the Area Media Income as defined by HUD; and the Workforce Housing Units shall comprise 5% of the total units available for families making between 51% and 80% of the Area Median Income as defined by HUD. The Work Force Housing units shall comprise 10% of the total units available for families making between 81% and 120% of the Area Median Income as defined by HUD. The Applicant also shall ensure that these units are spread throughout the Project.
 - b. *Employment and Training Opportunities:* The Applicant shall require commercial tenants of the Project to make reasonable efforts to employ residents of the community at newly created entry level, management and professional jobs. The Applicant shall also work with the community to provide construction training and apprenticeship opportunities to members of the community;
 - c. *Local, Small, Disadvantaged Business Enterprises:* The Project will include 35-50% participation by local, small business vendors including use of LSDBE contractors for, without limitation, title, insurance, property management, moving services, and parking operators.
 - d. *Retail Space:* The Applicant shall construct and operate the Project with a mix of new tenants and shall assist qualified existing local businesses to move into the Project. It shall designate, and provide reduced rents to, 10% of the retail space for existing or emerging local businesses.
 - e. *Community Development Initiative Fund:* The Applicant shall establish a Community Development Initiative Fund to be administered by the

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Community Foundation of the National Capitol Region to support Shaw Community initiatives. The initial contribution shall be \$75,000 upon recordation of the PUD Covenant. An additional \$75,000 contribution shall be made upon completion of the Project, but before issuance of the first Certificate of Occupancy.

8. The Project shall include the low-impact development features including the green roof elements specified in Exhibits 24-A and 39 of the record.
9. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit D of Exhibit 24-A of the record. 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.
10. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit C of Exhibit 24-A of the record. 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.
11. 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, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;
 - 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
 - To make minor refinements to exterior details and dimensions, including the flexibility to shift the location of the doors to the retail/arts uses, balcony enclosures, 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.
12. The change of zoning from ARTS/C-2-B to ARTS/C-2-C for the Property shall be effective upon recordation of a PUD covenant discussed in Condition 15, pursuant to 11 DCMR § 3028.9.
13. The PUD shall be valid for a period of two (2) years from the effective date of Z.C. Order No. 07-07. Within such time, an application must be filed for a

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building permit within two (2) years after the effective date of this Order 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.

14. The Office of Zoning shall not release the record of this case to the Department of Consumer and Regulatory Affairs ("DCRA") and no building permit (other than the Specialty Permits referenced at 12A DCMR § 105.1.11), shall be issued for the PUD until the Broadcast Center Partners, LLC has acquired fee simple ownership of the PUD site, and has recorded a covenant in the land records of the District of Columbia, between itself and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to constrict and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
15. 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 responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

At its public meeting of October 15, 2007, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 3-0-2 (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve; Carol J. Mitten and John Parsons, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on November 19, 2007, by a vote of 3-0-2 (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve; Gregory N. Jeffries and Curtis L. Etherly, Jr., having not participated, not voting).

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In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the *D.C. Register* on JAN 25 2008

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 27, 2008

Plat for Building Permit of SQUARE 441 LOTS 21, 66, 97, 814, 815 & 854

Scale: 1 inch = 40 feet Recorded in Book 189 Page 139 (LOT 97)
Book B Page 110 (LOT 21)
Book A&T Page 3750-T (LOT 854)
Book 10 Page 129 (LOT 66)
Microfilm (LOTS 814 & 815)

Receipt No. 26039
Furnished to: PWSP

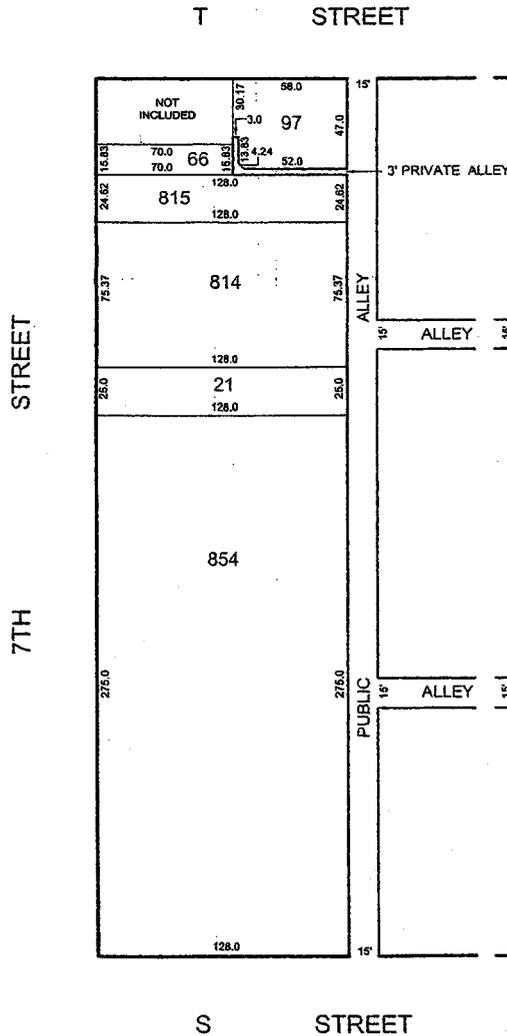
[Signature]
Surveyor, D.C.
By: L.M.A. *[Signature]*

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly placed; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and placed 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; that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that the 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 side of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

(Signature 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.



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DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

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