

BOARD OF ELECTIONS AND ETHICS**CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there is one vacancy in Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code 1-309.06(d)(2); 2001 Ed.

VACANT: 2A02

Petition Circulation Period: **Monday, May 21, 2007 thru Monday, June 11, 2007**

Petition Challenge Period: **Thursday, June 14, 2007 thru Wednesday, June 20, 2007**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY
HOMELAND SECURITY GRANTS AND PROGRAM MANAGEMENT DIVISION**

PUBLIC NOTICE OF FUNDING AVAILABILITY

2007 Urban Area Security Initiative Nonprofit Security Grant Program

The Homeland Security and Emergency Management Agency / Homeland Security Grants and Program Management Division announces the availability of federal grant funds through the 2007 Urban Area Security Initiative (UASI) Nonprofit Security Grant Program (NSGP).

The UASI NSGP provides funding support for target hardening activities to 501(c)(3) nonprofit organizations located within specific high-threat, high-density urban areas (the National Capital Region) and are determined to be at high risk of international terrorist attack. Grant funding may only be used for the following: (1) target hardening, which includes the acquisition and installation of security equipment on real property (including buildings and improvements) owned or leased by an eligible nonprofit organization, specifically in response to a risk of terrorist attack, or (2) security-related training courses and programs. Allowable training related costs under UASI NSGP are limited to attendance fees for the training, and related expenses, such as materials, supplies, and/or equipment. Please note: the maximum grant award is \$100,000 per nonprofit organization and they must agree to match 25 percent of Federal grant funds in cash or through equivalent, related training.

Eligible applicants are limited to nonprofit organizations having current IRS approval as a IRC Section 501 (c) (3) tax-exempt status organization and located within the National Capital Region, defined as the District of Columbia; counties of Montgomery and Prince George's (MD); counties of Arlington, Fairfax, Prince William and Loudon and the City of Alexandria (VA); and all other units of government within the geographic areas of such District, Counties, and City.

For more specific information, applicants should review the eligibility requirements in the Request for Applications (RFA). The complete RFA will be available on our website at <http://ohs.dmpsj.dc.gov>.

The deadline for applications is 5:00 p.m. on Thursday, May 31, 2007.

For more information and/or to request an application, please contact by telephone or email:

Steve Kral
Director
Homeland Security and Emergency Management Agency
Homeland Security Grants and Program Management Division
2720 Martin Luther King Avenue, SE, 2nd Floor
Washington, DC 20032
Steve.kral@dc.gov
202-727-5934

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY
HOMELAND SECURITY GRANTS AND PROGRAM MANAGEMENT DIVISION**

NOTICE OF REQUEST FOR APPLICATIONS

2007 Urban Area Security Initiative Nonprofit Security Grant Program

The Fiscal Year (FY) 2007 Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP) provides funding support for target hardening activities to nonprofit organizations that are at high risk of international terrorist attack. While this funding is provided specifically to high-risk nonprofit organizations, the program seeks to integrate nonprofit preparedness activities with broader state and local preparedness efforts. It is also designed to promote coordination and collaboration in emergency preparedness activities among public and private community representatives, State and local government agencies, and Citizen Corps Councils.

The intent of the UASI NSGP is to create a sustainable national model program to enhance security and overall preparedness to prevent, respond to, and recover from acts of terrorism. States must ensure that the identified urban areas take an inclusive regional approach to the development and implementation of the FY 2007 UASI NSGP and involve core cities, core counties, contiguous jurisdictions, mutual aid partners, port authorities, rail and transit authorities, state agencies, Citizen Corps Council(s), and MMRS steering committees.

To obtain a complete RFA package and Investment Justification template, please visit our website at <http://ohs.dmpsj.dc.gov>. You may also contact Steve Kral at 202-727-5934 or steve.kral@dc.gov.

The deadline for submission is Thursday, May 31, 2007, at 5:00 p.m. E.S.T. Completed applications must be delivered on or before 5:00 p.m. E.S.T., Thursday, May 31, 2007. Address the application to:

**Attn: Steve Kral
Director**

**The Homeland Security and Emergency Management Agency
Homeland Security Grants and Program Management Division
2720 Martin Luther King Avenue, SE, 2nd Floor
Washington, DC 20032.**

NO APPLICATIONS WILL BE ACCEPTED AFTER THE FILING DEADLINE

PROJECT LABOR AGREEMENT STADIUM TASK FORCE**NOTICE OF PUBLIC MEETINGS**

The Project Labor Agreement Stadium Task Force of the District of Columbia will hold monthly public meetings on the following dates in May, June and July of 2007. The following meetings will be held at:

One Judiciary Square
441 4th Street, N.W., 11th Floor, Conference Room 1117
Washington, D.C. 20001

The scheduled meeting dates and times are as follows:

Thursday, May 17, 2007
Thursday, June 21, 2007
Thursday, July 19, 2007
6:30 – 8:00 P.M.

The public is invited to present questions and comments regarding the stadium's Project Labor Agreement. All questions and comments are limited to five minutes and must be submitted at least two weeks prior to the meeting date. Presentation of public questions and comments must be confirmed in advance by the Project Labor Agreement Task Force.

To submit your comments, write, fax or email:

Noel F. Meekins
D.C. Department of Employment Services
609 H Street, N.E., Room 411
Washington, D.C. 20002
Fax (202) 698-5721
noel.meekins@dc.gov.

MEETING AGENDA

1. Call to order
2. Roll call of task force members
3. Consideration and vote of minutes of last meeting
4. Reports
5. Unfinished business
6. New business
7. Public Comments
8. Announcements
9. Adjournment

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO
THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND
PROCEDURE

1. The Public Service Commission of the District of Columbia issued a Notice of Proposed Rulemaking ("NOPR"), published in the *D.C. Register* on April 6, 2007,¹ amending portions of the Pay Telephone rules in Sections 601, 602, 604-609, 611, and adding a new Section 618. The NOPR invited the public to submit comments and reply comments with deadlines of "30 days of the date of [the NOPR's] publication" in the *D.C. Register*, and reply comments no later than "45 days of the date of publication."² Because of the NOPR's publication date, comments are due May 7, 2007 and reply comments are due May 21, 2007.

2. On April 19, 2007, the Office of the People's Counsel ("OPC") requested that the deadline for public comments be extended to June 7, 2007.³ OPC stated that the "significance of the proposed amendments" to the public and community organizations requires that interested parties be given additional time to review the proposed rules prior to submitting comments.⁴

3. In order to afford the community groups ample opportunity to comment, we are granting OPC's request. Because of the one-week publication delay in the *D.C. Register*, we have decided to extend the comment period beyond the June 7, 2007 date requested by OPC to June 14, 2007. The deadline for reply comments shall also be extended to July 16, 2007. In the event that any party files comments before the publication of this notice, that party may either supplement those comments or withdraw and resubmit them by the new deadline.

¹ 54 *D.C. Reg.* 3077 (2007).

² 54 *D.C. Reg.* at 3083.

³ *Formal Case No. 712, In the Matter of the Investigation into the Public Service Commission's Rules of Practice and Procedure*, Motion of the Office of the Peoples Counsel for an extension of time for the Public to Present Written Comments on the Notice of Proposed Rulemaking Amending the Pay Telephone Rules, filed April 19, 2007 ("Request").

⁴ Request at 2.

TASK FORCE ON EMERGENCY MEDICAL SERVICES**PUBLIC NOTICE****Notice of Public Meeting**

The Task Force on Emergency Medical Services, established by Mayor Adrian M. Fenty as part of the District of Columbia's settlement reached on March 8, 2007 with the family of David E. Rosenbaum, hereby gives notice that it is having a meeting for the purpose of receiving testimony from members of the public on how to improve the delivery of Emergency Medical Services in the District of Columbia. Public testimony will be held:

Thursday, May 24, 2007

2:30 p.m.

Room G-9

John A. Wilson Building

1350 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

To testify, please contact Lance Holt at (202) 727-6053 or by electronic mail at lance.holt@dc.gov by close of business on May 23, 2007.

Public witnesses are invited to present up to five minutes of oral testimony. Witnesses may also submit written testimony of any length to the Task Force and should bring 20 copies of written testimony to the meeting. The meeting will begin with a discussion between Task Force members from 12 p.m. to 2:30 p.m., followed by public testimony.

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

Application No. 17446 of Pauline S. Ney, pursuant to 11 DCMR § 3104.1, for variances from lot occupancy requirements under § 403, and nonconforming structure provisions under subsections 2001.3 and 2002.4, to construct four residential units above existing one-story retail structures in the R-5-B District at premises 2160-2162 California Street, N.W. (Square 2530, Lots 99 and 100).¹

HEARING DATES: March 13, 2006, April 18, 2006
DECISION DATE: June 6, 2006

DECISION AND ORDER

This application was submitted by Pauline S. Ney (“Applicant”), owner of the property that is the subject of this application (“subject property”). The application requested several area variances in order to permit the Applicant to construct three stories, with six residential units, above two existing nonconforming buildings currently housing commercial/retail uses. The existing buildings are located at the corner of California Street, N.W. and Phelps Place, N.W. in an R-5-B zone district.

The Board scheduled a hearing on the application for March 13, 2006. In February, 2006, the Applicant revised the plans to construct a 3-story addition with 6 new units and decided instead to construct a 2-story addition with 4 new units, eliminating the need for rear yard relief. Just before the hearing, on March 8, 2006, the Board received amended plans showing the change and also showing further revisions which eliminated the need for relief from floor area ratio (“FAR”) requirements.

The hearing on the application was begun on March 13, 2006 and completed on April 18, 2006, at which time the Board set a decision date of June 6, 2006. At its June 6, 2006 decision meeting, the Board deliberated on the application and, by a vote of 3-1-1, decided to grant the relief requested.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 11, 2005, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office

¹This application was advertised for “variances from the floor area ratio requirements under § 402, lot occupancy requirements under § 403, rear yard requirements under § 404, and nonconforming structure provisions under subsections 2001.3 and 2002.4, to construct six residential units....” Throughout the proceedings on this application, however, the Applicant modified the design several times to comport with the recommendations of the Historic Preservation Office and the desires of the community. These modifications eliminated the need for the variance from the floor area ratio and rear yard provisions, and reduced the number of new residential units to 4.

BZA APPLICATION NO. 17466

PAGE NO. 2

of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 2D, the ANC within which the subject property is situated, the member for Single Member District 2D02, and the Council Member for Ward 2. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register* and mailed such notice to ANC 2D, the Applicant, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 2D was automatically a party to this proceeding. There were twenty-one requests for opposition party status, including one from the Sheridan-Kalorama Neighborhood Council (“SKNC”) and one from the Sheridan-Kalorama Historical Association. The Board requested that the parties join together for greater administrative efficiency and because many of them were alleging that the same, or substantially similar, harm would result if the application were granted.

Four discrete, consolidated parties were proffered, and each was granted party status by the Board. The Sheridan-Kalorama Neighborhood Council, an organization heavily involved in local zoning issues, and the Sheridan-Kalorama Historical Society, bringing a more historic-preservation orientation, were both granted party status. The co-op association of the Woodrow Building was granted party status, and the condominium associations of the California House and the California Court buildings were granted a single, conjoined, party status. These latter two parties represent individuals residing in close proximity to the subject property who variously alleged light, air, traffic congestion, parking, and safety concerns with the Applicant’s project.

The Board also received several letters in opposition to the application, including one from Councilmember Jack Evans, and several petitions signed by individuals in opposition.

Applicant’s Case. At the hearing, the Applicant’s son, Joseph Ney, testified concerning the project and the economic factors driving the need for zoning relief. The architect for the project, Jon Hensley, testified concerning the design of the project. He and Mr. Steve Sher, an expert in zoning and land use planning, testified as to how the project met the variance test.

Government Reports. The Office of Planning filed a report dated March 7, 2006 with the Board, recommending approval of the application as amended to eliminate the need for rear yard and FAR relief. OP treated all three variances requested as area variances and opined that the three prongs of the variance test were met for each request. OP noted that the area devoted to a nonconforming use was to be reduced in size, that a conforming residential use was to be added, and that the “character of the area in general and this streetscape in particular are at variance to the intent of the R-5-B regulations, with most

BZA APPLICATION NO. 17466**PAGE NO. 3**

buildings considerably larger and denser than what is currently permitted.” Exhibit No. 45, OP Report, at 4.

ANC Report. The Board received a report from ANC 2D dated March 6, 2006 unanimously recommending denial of the requested relief. The ANC cited concerns about historic preservation compliance, air quality, traffic congestion, and the request for a greater FAR than allowed as a matter-of-right. The ANC, in its resolution attached to the letter to the Board, suggested that the Applicant continue negotiating with the neighborhood regarding the development of the subject property.

The Board received a second report from the ANC which was based on a review of the Applicant’s final revised plans and stated that the Applicant had attempted to address the neighborhood’s concerns. The report further stated, however, that, based on these concerns and on potential effects on the Woodrow Building, the ANC had, on April 17, 2006, adopted a resolution against the Applicant’s project.

FINDINGS OF FACTThe Subject Property and the Surrounding Neighborhood

1. The subject property is located at address 2160 and 2162 California Street, N.W., at the corner of California St., N.W. and Phelps Place, N.W.
2. The subject property is comprised of Lots 99 and 100 in Square 2530, and is located in an R-5-B zone district.
3. The property has approximately fifty feet of frontage along California Street, and approximately seventy-eight feet of frontage along Phelps Place, and contains approximately 4,000 square feet of land area.
4. The property is located within the Sheridan-Kalorama Historic District and is improved with two single-story plus basement buildings found to be contributing buildings to the historic district.
5. Both buildings will be retained by the Applicant, but both are nonconforming as to use and structure.
6. Each building houses a lawful commercial use which pre-dated the Zoning Regulations, but would not be allowed under the Regulations today, making them nonconforming uses. *See*, 11 DCMR § 199.1, definition of “Use, nonconforming.”

BZA APPLICATION NO. 17466

PAGE NO. 4

7. One of the retail uses is a deli/grocery store and the other a real estate office and art gallery. At the request of the community, the Applicant will retain the deli/grocery use.
8. Both existing buildings are nonconforming as to lot occupancy and rear yard. Together, they cover 71% of Lots 99 and 100, whereas the R-5-B district permits only a 60% lot coverage. The rear yard is 10 feet, six inches deep, whereas 15 feet is required. *See*, 11 DCMR §§ 403 and 404, respectively.
9. The neighborhood surrounding the subject property consists primarily of multi-family residential buildings, but across Phelps Place, to the west, is a church and associated school.
10. The two existing buildings on the subject property, even taken together, constitute one of the smallest structures in the vicinity. Immediately adjacent to the property to the east is an attached three-story building with a FAR of 2.6 and a footprint of 1,084 square feet, for a lot occupancy of 66%. Next to this three-story building sits a larger 9-story building with a FAR of 5.1 and a footprint of 11, 090 square feet, for a lot occupancy of 57%. *See*, Exhibit No. 44, Attachment D.
11. Immediately south of the property, fronting on Phelps Place, is the five-story Woodrow Cooperative Building, with a FAR of 3.4 and a footprint of 3,199 square feet, for a lot coverage of 69%. Immediately across California Street are two taller buildings, the first at six stories, 3.4 FAR, and a footprint of 6,579 square feet, and the second at six stories, 3.3 FAR, and a footprint of 6,152 square feet. *See*, Exhibit No. 44, Attachment D.
12. Of the 14 buildings closest to the subject property, all except two have a FAR above the R-5-B maximum of 1.8. Of these two, one has the maximum-permitted FAR of 1.8, and the other has a FAR of .9. *See*, 11 DCMR § 402.4. *See also*, Exhibit No. 44, Attachment D.
13. Most of the surrounding buildings were constructed prior to the 1958 publication of the current Zoning Regulations, and most of them far exceed the current area maxima set forth in the Regulations. Therefore, the character of the neighborhood is not what would be expected in an R-5-B district, but is significantly denser and more built-up.

The Proposed Project

14. The Applicant proposes to add two new floors on top of the two existing buildings and the ground floors of each will be reconfigured and connected,

BZA APPLICATION NO. 17466

PAGE NO. 5

making the buildings one building for zoning purposes. *See*, 11 DCMR § 199.1, definition of “Building.” (Hereinafter, they will be referred to as one building.)

15. The ground floor of the existing building, now housing the nonconforming uses, will be structurally altered, necessitating a variance from 11 DCMR § 2002.4 to permit such alterations.
16. The reconfiguration of the existing ground floor will reduce the amount of space devoted to nonconforming uses, and will result in one residential unit on the ground floor.
17. The total lot occupancy of the building will continue to be 71%, necessitating a variance from 11 DCMR § 2001.3, to allow an addition to a nonconforming structure not complying with the lot occupancy maximum.
18. The height of the existing building plus addition will be approximately 42 feet to the parapet. A 50-foot height is permitted in this R-5-B zone district. *See*, 11 DCMR § 400.1.
19. On the roof of the addition, condenser units, a fire stair enclosure, and a trellis, part of a rooftop recreation area, will be placed, all of which comply with the Zoning Regulations, and none of which will be visible from the street. The roof will also support a zoning-compliant elevator enclosure and trash chute extension.
20. The façade of the addition will be set flush with the façade of the existing building to anchor this prominent street corner.
21. The second floor of the building (the first floor of the addition), will contain two two-bedroom residential units, and will exceed the maximum permitted lot occupancy of 60% by 2.7%, thereby necessitating a variance from 11 DCMR § 403.
22. The third floor of the building will contain one two-bedroom unit, but will not exceed the maximum permitted 60% lot occupancy.
23. The rear wall of the existing building, facing the northern wall of the Woodrow Building, is set 10 feet, 6 inches from the property line dividing the subject property and the lot on which the Woodrow Building stands.

BZA APPLICATION NO. 17466

PAGE NO. 6

24. The Woodrow Building was constructed directly on the property line dividing its lot with the subject property.
25. Both floors of the addition will feature relatively large, open-air terraces abutting the property line between the subject property and the Woodrow Building to the south.
26. The rear wall of the first floor of the addition will be set back eight feet, nine inches from the rear wall of the existing building, and therefore, will be 19 feet, three inches from the northern wall of the Woodrow Building. *See*, Exhibit No. 47, Amended Plans at A-3.
27. The rear wall of the second floor of the addition will be set back 19 feet, nine and one-half inches from the rear wall of the existing building, and therefore, will be 30 feet, three and one-half inches from the northern wall of the Woodrow Building. *See*, Exhibit No. 47, Plans at A-3.
28. The addition has been designed to complement the Italian Renaissance Revival-inspired architecture of the existing building, whose attractive brickwork and large arched windows, with ornamental spandrels in-between, wrap around the corner of California Street and Phelps Place.
29. The Applicant will remove the current stucco façade of the existing building and restore the original façade finish underneath.

The Variance Test**Extraordinary or Exceptional Situation or Condition**

30. Because the building on the subject property has been found to be contributing to the Sheridan-Kalorama Historic District, no permit to alter it may be issued without the approval of the Historic Preservation Review Board (“HPRB”). If HPRB makes an adverse recommendation, the permit may not issue unless it is shown to be in the public interest or that a failure to issue the permit will result in unreasonable economic hardship to the owner. *See*, D.C. Official Code § 6-1105 (2001).
31. In order to obtain HPRB’s recommendation of approval, the existing building must be retained essentially “as is,” and the Applicant is constrained to build around it, instead of having the freedom to raze it, or even partially demolish it, and build within the parameters of the Zoning Regulations.
32. Instead of recommending that the addition be set back from the two existing facades, HPRB allowed the Applicant to set it flush with the existing façades,

BZA APPLICATION NO. 17466

PAGE NO. 7

but only provided that the Applicant retain a building conservation specialist and undertake a high-quality restoration and rehabilitation of the historic façades.

33. The subject property has two façades, one along California Street, and one along Phelps Place, necessitating the creation of two pedestrian-friendly street frontages and the costly restoration and rehabilitation of both historic façades.
34. Since the building is already over the lot occupancy maximum for the R-5-B district, any addition would necessitate a variance from § 2001.3, which prevents any expansion of a building nonconforming as to lot occupancy.
35. This R-5-B zone permits, as a matter-of-right, only residential uses (with a few exceptions not relevant here), but the past use of the existing building for commercial purposes means that there are no existing “core” elements, such as elevators or stairways, which are necessary for a residential use.
36. Due to the nature of the existing historic building, new steel columns and footings will be installed to structurally support the addition, requiring cutting through the existing structure to the basement level.
37. The historic deli/grocery in the existing building is unique in the area, and will be retained by the Applicant.

Practical Difficulties

38. Placement of necessary core elements is limited by the size of the property, the dual street frontage, and the need for minimal disruption of the historic building, including its fenestration and doorways, as well as by the retention of the commercial use on the first floor.
39. Because of the limitations on the placement of the necessary core elements, excess lot occupancy is needed in order to successfully place them while retaining the minimum number of reasonably-configured residential units to make the project feasible.
40. The retention of the historic deli/grocery further limits the Applicant’s flexibility of design and placement with respect to both the core elements and the residential units.
41. The retention of the historic deli/grocery also undermines the economic viability of the project because commercial rents are estimated to be \$2.70 per

square foot per month, while residential rental rents are estimated to be \$3.20 per square foot per month.

42. The retention of the deli/grocery further undermines the economics of the project because the basement must be maintained as its storage area, at an estimated monthly rent of only \$.50 per square foot.
43. In order to abide by HPRB's recommendations, the Applicant must use more expensive materials and finishes for the restoration of the historic facades and for the exterior walls of the addition.
44. In order not to disrupt the historic facades, the Applicant cannot enlarge, or significantly change, the entrance on either California Street or Phelps Place. Therefore, the entrance to the residential units and an entrance corridor to the upper levels must be provided through the existing door, further limiting the Applicant's design flexibility.
45. The higher construction costs generated by the unique conditions of the property render the construction of a minimum of 4,000 square feet of residential space and approximately 2,300 square feet of retail space necessary in order to make the project economically viable. These square footages, coupled with the space necessary for the core elements, expand the second floor of the building slightly beyond the allowable lot occupancy.

No Harm to Public Good or Zone Plan

46. The variance relief requested is minimal. Even the smallest addition to the building would require relief from § 2001.3. The lot occupancy relief requested is only 2.7%, and the only floor for which the relief is requested actually covers less of the lot than the existing building. The relief from § 2002.4 is for interior structural alterations, which will have no perceptible effect on the exterior of the building.
47. The residential units being added to the existing building are a matter-of-right use in this R-5-B district.
48. Even with the addition, the building will be one of the few buildings in the neighborhood to be within the maximum permitted FAR of 1.8.
49. The height of the building will be less than that of most surrounding buildings and less than permitted in the R-5-B zone.

BZA APPLICATION NO. 17466

PAGE NO. 9

50. California Street is 50 feet wide, therefore, the California Street façade of the proposed addition will be at least 50 feet from the nearest building across California Street, and Phelps Place is 60 feet wide, therefore the Phelps Place façade will be at least 60 feet from the church and school, located on the other side of Phelps Place. *See*, Exhibit No. 47, Survey attached to Amended Plans.
51. The rear façade of the addition will be treated with reflective, light-colored materials to maximize reflected light to nearby buildings.
52. Although no parking is required, the Applicant has offered to provide scooter parking in the building basement and is considering other transportation/parking alternatives in response to community concerns.
53. The Applicant will repair and restore the existing historic building, with whose architecture the proposed addition is compatible.
54. The design, size, and massing of the proposed addition is in harmony with the character of the neighborhood.
55. The Applicant's retention of the historic deli/grocery on the property, where it has been located for almost 90 years, will serve the public good.

CONCLUSIONS OF LAW²

Introduction

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of

²There was some question as to whether all or some of the variances requested by the Applicant should have been treated as use variances, and not as area variances, resulting in the application of the more stringent "undue hardship" test. To support the proposition that the "undue hardship" test should have been applied, the Board was directed to the *Lenkin* case, which has strikingly similar facts to the instant case. *Lenkin v. D.C. Board of Zoning Adjustment*, 356 A.2d 428 (D.C. 1981). The underlying Board order which was appealed to the D.C. Court of Appeals and resulted in the *Lenkin* decision specifically stated, however, that the applicant in that case sought area variances.

The Board has carefully analyzed both the *Lenkin* decision and the underlying order and does not find that the Court of Appeals mandated that any particular variance relief request in *Lenkin* was a use variance. Instead, the Court stated that it operated under the standards set forth in *Wolf v. D.C. Board of Zoning Adjustment*, 397 A.2d 936, 942 (D.C. 1979): "[d]eterminations with respect to the treatment and classification of proposed variances are best made, we think, on an ad hoc basis, by the agency from whose regulations those variances are sought." The Court, therefore, leaves it up to the Board to determine whether any given variance is an area variance or a use variance. Based on all the evidence in the record, and for all the reasons stated, the Board concludes that all the variances sought by the Applicant in the instant case are area variances.

BZA APPLICATION NO. 17466

PAGE NO. 10

exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The “exceptional situation or condition” of a property can arise out of structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can only be granted “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

An applicant for area variances must make the lesser showing of “practical difficulties,” as opposed to the more difficult showing of “undue hardship,” which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Because area variances are being sought in this case, the Applicant had to make three showings: exceptional condition of the property, that such exceptional condition results in “practical difficulties” to the Applicant, and that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The Area Variance Test

Exceptional Situation or Condition

The subject property is affected by exceptional conditions which constrain its development. The subject building is a contributing building to the Sheridan-Kalorama Historic District, and any building permit for its alteration is therefore subject to the approval of HPRB. When presented with a 2-story and a 3-story option for the addition, HPRB would not recommend approval unless the addition were limited to 2 stories, effectively preventing the Applicant from building to the maximum height permitted in the R-5-B zone. HPRB permitted the façade of the addition to be constructed flush with the façade of the existing building, but also required that the Applicant employ more expensive materials and finishes than might otherwise have been used in order to maintain consistency between the existing and new facades.

The existing building has two important street frontages, further complicating the design of the addition. Pursuant to HPRB’s recommendations, both street frontages need to be made consistent with the existing historic façades, therefore, the more costly materials must be used for not only one building front, as would be the norm, but for two.

The history of nonconforming commercial uses in the existing building presents further exceptional situations for the Applicant. The space within the existing building devoted

BZA APPLICATION NO. 17466

PAGE NO. 11

to the nonconforming deli/grocery use will be structurally altered, resulting in the need for a variance from § 2002.4. The existence of this space, configured for retail although in a residentially-zoned district, presents the Applicant with an exceptional situation. If a new residential building were constructed in this zone, no retail space would be permitted. As the space already exists and creates no detriment to the public good, it would be wasteful to do away with it in order to avoid the necessity of wholly interior structural alterations and a de minimus lot occupancy variance.

The history of nonconforming use also creates the exceptional situation of a building in a residential zone with no necessary residential “core” elements. These elements must now be introduced by the Applicant. Moreover, without this first floor commercial use, the Applicant could devote the entire first floor to residential use, easing both financial pressure and the pressure of historic preservation-related design constraints. Instead, the Applicant is retaining the deli/grocery at least partially because the neighborhood feels strongly that it should be retained. Therefore, the Board concludes that the potential loss of the deli/grocery if the variances are not granted would undermine the public good. *See, Williams v. D.C. Board of Zoning Adjustment*, 535 A.2d 910, 911 (D.C. 1988). (“As part of [a variance] analysis, the BZA may also consider potential hardship to the public if the variance is not granted.”)

Practical Difficulty

The unique situation and circumstances of the subject property cause practical difficulties to the Applicant in complying with the Zoning Regulations. The historic facades restrict the internal design of the addition because an existing doorway must be used to access the upper-floor residential units. No new doorway or any significant change to an existing doorway is possible. The need to maintain the integrity of the existing historic building, particularly its façade, and to match it, as recommended by HPRB, also adds an economic burden to the project. The Applicant is forced to design around the building, while trying to abide by both the Zoning Regulations and the dictates of HPRB.

While it is true that HPRB is an advisory body and its guidance comes in the form of “recommendations,” it is also true that without HPRB’s sign-off indicating that historic preservation requirements have been met, the Applicant cannot obtain a building permit to alter its building without a potentially costly and time-consuming procedure before the Mayor’s Agent. To prevail before the Mayor’s Agent, an applicant must meet the heavy burden of showing that the issuance of its permit “is necessary in the public interest, or that failure to issue [its] permit will result in unreasonable economic hardship to the owner.” *See, D.C. Official Code § 6-1105 (2001)*. It therefore behooves Applicants to work with, and comply with, HPRB’s recommendations, and this can result in the need for zoning relief. The Board recognizes that merely being located in a historic district does not rise to the level of an “exceptional situation” in the context of the variance test.

BZA APPLICATION NO. 17466

PAGE NO. 12

See, Capitol Hill Restoration Society v. D.C. Board of Zoning Adjustment, 534 A.2d 939, 942 (D.C. 1987). The Board also recognizes, however, that when a building is subject to HPRB review, the specific design constraints imposed by HPRB as a condition to its approval can create practical difficulties in constructing a building within the parameters of the Zoning Regulations, as is the case here.

Designing around the historic building has resulted in a practical difficulty in placing the core elements necessary for a multiple dwelling. A multiple dwelling is a matter-of-right use in this R-5-B district, but such a building requires certain core elements such as a stairway and/or elevator. The project will include no elevator, and because of the size of the building, will only contain a single exit stair. The Applicant's architect stated that the maximum permitted distance from a single exit stair to an exit is 50 feet; therefore, the stair must be located in the center of the building. This central location further constrains the freedom of design, resulting in the need for a slightly over-maximum lot occupancy on the second floor.

Retaining the deli/grocery in the building enhances the public good, but further restricts placement of the core elements, and drives the need for the variance from § 2002.4 in order to permit structural alterations to the building. Retention of the deli/grocery also creates economic practical difficulties because commercial rental rates are significantly lower than residential rates. Therefore, the unique circumstance of the existence of a strongly-desired nonconforming use directly leads to the practical difficulty in complying with § 2002.4 and indirectly leads to the need for a greater-than-permitted lot occupancy to maintain financial feasibility.

Proof of economic burden is relevant to the decision of whether to grant area variances. *Tyler v. D.C. Board of Zoning Adjustment*, 606 A.2d 1362, 1366-1367 (D.C. 1992). The Court in *Tyler* specifically stated that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." *Id.*, at 1367, quoting *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). The Board concludes that in the instant case, the Applicant has demonstrated both structural and economic practical difficulties in complying with the Zoning Regulations.

No Harm to Public Good or Zone Plan

By decreasing the amount of space devoted to nonconforming uses and adding a conforming residential use, the proposed addition to the building will actually make it more conforming to the Zone Plan than it is presently. Further, the magnitude of the variances requested is small. The lot occupancy variance is merely seven tenths of a percent over the 2% flexibility granted by the Zoning Regulations to the Zoning Administrator. *See*, 11 DCMR § 407. Therefore, the lot occupancy variance is *de minimus*, with a "correspondingly lesser burden of proof" resting on the Applicant. *See*,

BZA APPLICATION NO. 17466

PAGE NO. 13

Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1171 (D.C. 1990). Nor will the variances alter the exterior configuration of the building. Two stories will be added, but the height is within the height permitted in the zone. Even with the grant of the variances and the increase in height, the resulting building will actually be smaller than many of the surrounding buildings and will fit harmoniously into the character of the neighborhood.

The Board finds it significant that the Applicant is not asking for any relief not necessitated by the existing nonconformities. A variance pursuant to § 2001.3 permits an addition to an existing nonconforming structure. Any addition to the existing building, even if constructed within all the parameters of the Zoning Regulations, would require this relief. The second variance requested is a variance from the permitted lot occupancy of 60%, but ironically, the Applicant is asking for a lot occupancy variance of more than permitted (60%), but *less than exists* (71%). The last variance requested is from § 2002.4, which prohibits structural alterations to a structure housing a nonconforming use. The structural alterations proposed are internal to the building and are necessitated by the fact that the Applicant is keeping the nonconforming deli/grocery at the request of the neighborhood, yet if it were removed, this last variance, and perhaps the lot occupancy variance as well, would not be necessary.

The opposition, specifically the residents of the Woodrow Building, claimed a loss of light, air, and privacy and an increase in noise if the project were allowed to go forward. Any increase in the height of the existing building would likely have some effect on the Woodrow Building, but the question for the Board is whether this effect rises to the level of requiring denial of the variance relief. The Board answers this question in the negative.

The opposition's own real estate expert, when discussing the possible loss of light to units in the Woodrow Building, stated that the greatest effect would be on 3 units out of a total of 15 in the building. The discussion centered on the first through third floors of the Woodrow Building, because the fourth and fifth floors would be minimally affected, if at all. It was clear that the first through third floor rear units would be more affected because "there are rather large windows there on [the] front apartments." *See*, April 18, 2006 transcript at 354, line 13. The units in the front of the building have large windows facing onto Phelps Place.

The three units most affected would be those in the rear of the first, second, and third floors, but the light to the first floor, at least, is already blocked by the 3-story row dwelling adjacent to the subject property to its east. As stated by the opposition's expert, "The first floor is already pretty dark, so --- because it's already down there." *See*, April 18, 2006 transcript at 355, lines 9-10. Further, the testimony of this expert and a resident of the Woodrow showed that all of these rear units have windows on three sides of the

BZA APPLICATION NO. 17466

PAGE NO. 14

building; therefore, even with the new addition to the north, these units will still have western and southern exposures. *See*, April 18, 2006 transcript at 361, lines 2-6, and at 369, lines 1 & 4-5.

The Applicant has also taken precautions to reduce any negative effects on the availability of light and air to the Woodrow Building. Mindful of the fact that the Woodrow Building was constructed on the property line, the Applicant has set back both of the floors of the new addition a considerable distance and will clad their rear walls in reflective materials. After a careful parsing of the evidence, the Board concludes that the project will cause no diminution of light or air to nearby buildings, including the Woodrow Building, sufficient to constitute a substantial detriment to the public good.

Nor will the addition cause any significant loss of privacy or increase in noise. The considerable setbacks help ameliorate any question of loss of privacy, and four new residential units is not too dense for the neighborhood, nor will it produce an inordinate amount of noise. The noise of the scooters was highlighted by the opposition, but the Applicant's project has no parking requirement. The possibility of scooter parking was included in the application to encourage scooter use in an attempt to alleviate the neighborhood's anxiety regarding the possible increase in automobile use due to the addition.

The Board was not persuaded that automobile use generated by the addition of 4 units would have a substantial negative effect on the area. There was much unsupported fear expressed that the addition would exacerbate traffic congestion and safety issues in the area, but the Board concludes that the addition, although it may result in automobile use, will not result in a sufficient increase in traffic to constitute a substantial detriment to the public good.

Several individuals in opposition also alleged that the Applicant's project would somehow destroy a claimed "open and spacious area," variously called a "village square," "town square," or "plaza." There is no actual "plaza" area, but it is apparent that members of the community liken the open feeling of the sidewalk and the intersection of California Street and Phelps Place to such an area. The Board, however, was not persuaded that this modest addition of two stories would have any substantial negative effect on this sidewalk/intersection area. The Board understands that the community may congregate on the corner, or on the sidewalk near the deli/grocery, but neither the corner, nor the sidewalk, nor the deli/grocery will be substantially changed by this project.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code

BZA APPLICATION NO. 17466

PAGE NO. 15

§§ 1-309.10(d) and 6-523.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP recommended approval of the final version of the application and the Board agrees.

In its first report, ANC 2D recommended denial of the application due to concerns about historic preservation compliance, air quality, traffic congestion, and the greater-than-permitted FAR. The ANC's first decision pre-dated the Applicant's removal of the need for the FAR variance. The final design presented to the Board *did* comply with the 1.8 FAR, but the ANC, in its second report to the Board addressing the final design, again voted against the Applicant's proposed development, based on neighborhood opposition and potential effects on the Woodrow Building.

The Board, in the above order, has addressed all the ANC's concerns. As to historic preservation, the HPRB also reviewed, and recommended approval of, the project. On all these issues, the Board is satisfied that the ANC's concerns have been sufficiently acknowledged and analyzed.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to variance relief from the lot occupancy maximum of § 403, and from the nonconforming structure and use provisions of §§ 2001.3 and 2002.4. It is therefore **ORDERED** that (pursuant to Exhibit 47 – Plans) the application is **GRANTED**.

VOTE: 3-1-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr. and John A. Mann II to approve; Ruthanne G. Miller to deny. No Zoning Commissioner participating.)

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

Each voting Board member has approved the issuance of this Order granting the application.

FINAL DATE OF ORDER: MAY 04 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

BZA APPLICATION NO. 17466

PAGE NO. 16

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

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

lm

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

Application No. 17610 of Leslie Nayson and Brian Paxson, pursuant to 11 DCMR § 3104.1, for a special exception to allow a basement addition to an existing single-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403), in the R-4 District at premises 1404 Constitution Avenue, N.E. (Square 1055, Lot 43).

HEARING DATE: May 8, 2007
DECISION DATE: May 8, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a letter in support of the application. The Board accepted the late filing of the ANC report. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

BZA APPLICATION NO. 17610

PAGE NO. 2

findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to the architectural plans – Exhibit 8 in the record) be **GRANTED**.

VOTE: 5-0-0 (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, John A. Mann II and Gregory N. Jeffries to Approve).

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: May 8, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

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

BZA APPLICATION NO. 17610

PAGE NO. 3

PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

rsn

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

Application No. 17606-A of Dakota Points LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure uniform height provisions under section 411, to construct a four (4) story residential building in the C-2-A District at premises 5545-5549 South Dakota Avenue, N.E. (Square 3760, Lot 10) and 5553-5575 South Dakota Avenue, N.E. (Parcel 137/86).

HEARING DATE: May 8, 2007
DECISION DATE: May 8, 2007 (Bench Decision)

CORRECTED SUMMARY ORDER

Note: This order corrects BZA Order No. 17606, as indicated by the underlined text in the above paragraph.

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 411. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17606-A

PAGE NO. 2

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 11 – Plans) be **GRANTED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Marc D. Loud and John A. Mann II to Approve, Curtis L. Etherly, Jr. and the Zoning Commission member not present, not voting.)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: May 9, 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

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

BZA APPLICATION NO. 17606-A

PAGE NO. 3

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 THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED¹ ORDER NO. 05-17B/05-32B**

Z.C. Case Nos. 05-17 and 05-32

**Approvals for Planned Unit Developments for
the Property Located in the Vicinity of the Intersection of Florida Avenue, 9th
Street, and V Street, N.W. (Square 2873, Lots 1, 232, 852, 853, 859, and 864;
Square 2875, Lots 1106, 1107, 2012, 2026, and 2030)**

April 20, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 26, 2006 to consider applications from Broadway Atlantic One LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") in Squares 2873 (Lot 864) and 2875 (Lots 1106, 1107, 2012, 2026, and 2030). The application was assigned Z.C. Case No. 05-17, and then was split into two applications. Case No. 05-17 included the properties in Square 2875, and Case No. 05-32 included the property in Square 2873. Case No. 05-32 was later amended to add the following property in Square 2873: Lots 1, 232, 852, 853, and 859. The applications were filed on behalf of and with the consent of the owners of the properties that are the subject of the applications. The Zoning Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. 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 applications subject to conditions.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On June 14, 2005, the Applicant filed an application with the Commission for review and approval of two PUDs that together comprise one project, and for a related map amendment for property located at 2030 8th Street, N.W. (Square 2875, Lot 2030). The Applicant later withdrew its request for a map amendment. Comprising a total of approximately 2.2 acres, the PUD site initially included Lot 864 in Square 2873 and Lots 1106, 1107, 2012, 2026, and 2030 in Square 2875. Subsequently Lots 1, 232, 852, 853, and 859 in Square 2873 (together with the aforementioned properties, the "Property") were included in the two PUDs.

¹ The original Order was published at 53 DCR 4517. This Corrected Order corrects a typographical error on page 16, Decision paragraph 6 – "Parcels A, B, and D" are replaced with "Parcels A, B, and C."

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 2

2. During its public meeting held October 17, 2005, the Zoning Commission voted to schedule a public hearing on each application. The Zoning Commission decided to review the application as two separate cases, and, accordingly, the application was designated Z.C. Cases No. 05-17 and 05-32. The Zoning Commission also requested that the Applicant provide a more detailed landscape and grading plan, a more detailed circulation and loading plan, additional information about relief from the requirements applicable to roof structures, and additional elevations showing the scale in relation to adjacent buildings.

3. Through the two PUD applications, the Applicant proposes to construct four mixed-use buildings with a combined total of up to 700 residential units (the "Project").

4. Three of the proposed buildings are included in Case No. 05-17. This portion of the Project is known as Atlantic Plumbing South and includes the portions of the Property located in Square 2875: Lots 1107, 2012, and 2026 ("Parcel A"); Lot 2030 ("Parcel B") and Lot 1106 ("Parcel D"). It is located in Ward 1 and contains approximately 58,023 square feet of land area. Parcel A is located in the CR zone district at the northwest corner of the intersection of 8th and V Streets, N.W. Parcel B is located in the ARTS/C-2-B zone district at the southeast corner of 8th and V Streets, N.W. Parcel D is located in the CR zone district on 9th Street, just north of the 9:30 Club, a well-known nightclub. The Applicant proposes to construct a separate building on each of the three parcels, for a total of three buildings in Atlantic Plumbing South. The Applicant has withdrawn its request for a zoning map amendment and requests PUD approval under the existing zoning categories.

5. One of the four buildings in the Project is included in Case No. 05-32. This portion of the Project is known as Atlantic Plumbing North and includes the portions of the Property located in Square 2873: Lots 1, 232, 852, 853, 859, and 864 ("Parcel C"). It is located in Ward 1 and contains approximately 37,493 square feet of land area. Parcel C is located in the CR zone district between Florida Avenue and 9th Street, N.W., south of the Howard University parking lot.

6. On November 3, 2005, the Applicant filed two prehearing statements, one for each case, including additional information requested by the Zoning Commission and the Office of Planning.

7. After proper notice, the Commission held a hearing on the applications on January 26, 2006. One hearing was conducted for the two applications. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the Property is located.

8. As a preliminary matter, the Applicant requested that the Commission waive the notice requirements set forth in § 3015.11 to enable the Applicant to add Lot 1 in Square 2873 (a 2,948-square-foot lot) to Case No. 05-32 (Atlantic Plumbing North). The Applicant explained that it had purchased additional property in order to accommodate an easement requested by the Office of Planning. Initially, the owner of Lot 1 was not inclined to sell, but the owner ultimately decided to sell the property to the Applicant shortly before the scheduled public hearing. As a

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 3

result, Lot 1 was not included in the public notice of the hearing. The Commission found that the inclusion of Lot 1 in Case No. 05-32 would have no effect on which property owners received notice of the hearing, because Lot 1 abuts property owned by the Applicant on three sides. Therefore, ample notice of the Project had been given. The Commission voted unanimously to waive the provision of § 3015.11 with regard to Lot 1.

9. At its duly noticed meeting held January 5, 2006, with a quorum present, ANC 1B voted 8-0-0 to support a proposed traffic improvement for the extension of Bryant Street culminating in a traffic circle intersection with Florida Avenue. This proposal was made by the District Department of Transportation (“DDOT”) in connection with its study of the immediate area. The ANC vote in support of the Project failed on a vote of 3-5-0. The ANC subsequently voted 7-1-0 to request that the Zoning Commission delay consideration of the applications for one month in order to allow the ANC further time to discuss the Project with the Applicant. Some members of the ANC voiced concern about the size of the development, the amount of affordable housing, and the composition and extent of the amenities package. At its duly noticed meeting held February 2, 2006, with a quorum present, ANC 1B voted 7-2 to endorse the applications. The Applicant agreed to make a \$100,000 contribution to the ANC for use in connection with various neighborhood organizations.

10. There were no parties or persons in support of the PUD.

11. There were no parties in opposition to the PUD. Christopher Hopson, a representative of Howard University, testified in opposition to the Project. He stated that Howard University did not object to the Project itself, but, rather, to the proposed extension of Bryant and/or W Streets. He testified that the extended streets would cross Howard’s campus and might interfere with the Howard Town Center project and the construction of a new School of Engineering.

12. At the hearing, the Applicant submitted into the record updated plans and elevations for Atlantic Plumbing North and Atlantic Plumbing South.

13. At its meeting held March 2, 2006, the Commission took proposed action to approve the applications with conditions. The vote on each application was 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael Turnbull voting to approve; Carol J. Mitten not present, not voting; John G. Parsons not voting, not having participated).

14. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District Charter. NCPC, by action dated March 30, 2006, found the proposed PUDs would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

15. The Commission took final action to approve the applications of Cases No. 05-17 and 05-32 on April 20, 2006, by votes of 4-0-1.

The PUD Project

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 4

16. The Project comprises four sites located between Florida Avenue and 8th Street, N.W. The total land area of the Property is 95,516 square feet. Z.C. Case No. 05-17, known as Atlantic Plumbing South, includes Parcels A, B, and D. Parcel A is situated at the northwest corner of 8th and V Streets and is the largest of the four sites at 40,530 square feet. Parcel B is situated at the southwest corner of 8th and V Streets and comprises 13,420 square feet. It abuts the Housing Finance Agency building and is located across the street from the General Baking Co. building. Parcel D is the smallest of the four sites at 4,073 square feet and is situated directly north of the 9:30 Club on the east side of 9th Street, N.W. Z.C. Case No. 05-32, known as Atlantic Plumbing North, includes Parcel C. Parcel C is situated on the east side of Florida Avenue, directly west of the intersection of W Street, N.W. It comprises 37,493 square feet.

17. The Generalized Land Use Map recommends a mix of moderate- and medium-density residential and commercial uses for the Property. The Property currently is improved with a mixture of commercial uses such as parking lots, concrete-block industrial buildings, and warehouses. All of the existing buildings will be demolished as part of the Project. Much of the property to the north and east of the Property is owned by Howard University and is part of the plan for the Howard Town Center. Much of the property to the north is currently devoted to parking lots for Howard University. The Property is just north of the U Street Corridor and lies in the northern portion of the Uptown Destination District Plan. The Property also is located within the Howard Gateway Housing Opportunity Area. This area has been designated as a desirable location for the development of housing and residential uses.

18. The proposed Project is a mixed-use development of residential and retail uses. The Applicant has requested flexibility to construct up to 700 residential units among Parcels A, B, C, and D. The Applicant currently proposes to construct approximately 342 units on Parcel A, approximately 91 units on Parcel B, approximately 262 units on Parcel C, and approximately 10 units on Parcel D. Each building will feature some ground-floor retail. Parcels A and B will provide ground-floor retail on the V Street frontages to take advantage of the prominent corner locations of these buildings. Parcel C may feature retail on the Florida Avenue frontage and Parcel D may feature retail on the 9th Street frontage, depending on market conditions.

19. The largest building in Atlantic Plumbing South will be constructed on Parcel A. This building has a prominent corner location with frontage on 8th and V Streets. The largest retail component for this building will be situated at the corner location at the intersection of 8th and V Streets. The building will feature a parking garage below grade that will provide approximately 313 parking spaces, including full-sized and compact spaces. Access to the parking garage will be from the alley behind the building. The roof of the building will feature a pool, landscaped areas, and green roof technology. The rear court of the building will be landscaped with plants. The proposed height is 100 feet, and the proposed lot occupancy is 82 percent. The proposed floor area ratio ("FAR") is 8.0, which results from the combined FAR of Parcel A and Parcel D.

20. The building to be constructed on Parcel B, which is located in Atlantic Plumbing South, will feature a tower that will emphasize and enhance the building's prominent corner location. It will feature a rear courtyard and roof terrace. The ground floor retail will be focused at the

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 5

prominent corner location. The parking garage will include three levels below grade and will provide approximately 76 parking spaces, including full-sized and compact spaces. Access to the garage will be directly from V Street. The building will have a height of 90 feet, which will be stepped down to 65 feet at the southern elevation in response to the adjacent rowhouses. The FAR will be 6.3, and the lot occupancy will be 83 percent.

21. The building to be constructed on Parcel C, which comprises Atlantic Plumbing North, will feature a large open courtyard. The roof will feature a pool with recreation and gathering space. It will contain a parking garage with three levels below grade, which will provide approximately 256 parking spaces, including full-sized and compact spaces. Access to the parking garage will be directly from 9th Street. The building will have a height of 100 feet, an FAR of 8.0, and a lot occupancy of 83 percent.

22. The building to be constructed on Parcel D will be the smallest of the buildings in the Project. A part of Atlantic Plumbing South, it will feature approximately 10 residential units with a small ground-floor retail component. There will be no parking in this building, but the residents will have access to the parking across the alley in the building located on Parcel A. The height of the Parcel D building will be 60 feet, and the lot occupancy will be 81 percent. The proposed FAR is 8.0, which results from the combined FAR of Parcel D and Parcel A.

23. In a submission made February 13, 2006, the Applicant indicated that all parking spaces for retail uses on both Atlantic Plumbing North and Atlantic Plumbing South will be located on Parcel A at grade and outside of the parking garage. The spaces will be easily accessible, and will avoid conflicts that could result from the combined use of the garage for residential and retail parking.

24. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study and the testimony presented by Martin J. Wells, the Applicant's traffic consultant, during the public hearing. As discussed below, the Applicant plans to contribute \$250,000 toward the construction of a DDOT-endorsed extension to Bryant Street that will connect Georgia and Florida Avenues and will terminate in a traffic circle at the intersection of Sherman and Florida Avenues. In addition, the Property is located in close proximity to the U Street/African-American Civil War Memorial/Cardozo Metrorail Station.

Matter-of-Right Development under Existing Zoning

25. The Property is located primarily in the CR district, which is designated for mixed-use development. The maximum building height permitted as a matter-of-right in the CR district is 90 feet. The maximum density permitted as a matter-of-right is 6.0 FAR. Parcel B is located in the ARTS/C-2-B district, which is designated to serve commercial and residential functions with high-density residential and mixed uses. The maximum height permitted as a matter of right in the ARTS/C-2-B district is 65 feet. The maximum density permitted as a matter of right is 3.5 FAR.

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 6

Development Incentives and Flexibility

26. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- a. **FAR**: The Applicant is seeking density above the matter-of-right maximum for the applicable zone district. Parcel A will be developed to an FAR of 8.0, which is the maximum density permitted for a PUD in the CR zone. Parcel B will be developed to an FAR of 6.3, which is greater than the maximum 6.0 FAR permitted for a PUD in the ARTS/C-2-B zone. For Parcel B, the Applicant is seeking an additional five percent density, which is permitted under § 2405.3 if the increase is essential for the functioning of the project. Parcel C will be developed to an FAR of 8.0, which is the maximum density permitted for a PUD in the CR zone. Parcel D will be developed to an FAR of 4.8, which is less than the maximum 8.0 FAR permitted for a PUD in the CR zone.
- b. **Roof Structures**: The Applicant has requested minor relief from the roof structure requirements. The roof structure on the Parcel B building will be 18 feet, 6 inches in height and will be set back only 10 feet from the edge of the building along the alley on the west. The roof structure on Parcel C will not be set back from the southern elevation.
- c. **Lot Occupancy**: The proposed lot occupancy for all four sites is greater than the maximum allowed as a matter of right under the Zoning Regulations. All four of the sites are limited to a 75 percent lot occupancy for the residential floors. As set forth above, all four of the Parcels have proposed lot occupancies between 80 and 83 percent.
- d. **Recreation Space**: Both the CR and C-2-B districts require residential developments to provide recreation space equal to 15 percent of the total residential gross floor area. The Applicant is proposing to provide recreation space equal to approximately 10 percent of the residential gross floor area. The recreation space will be enhanced by the spacious outdoor courtyards and roofscapes, as well as the private balconies and gardens.
- e. **Public Space at Ground Level**: The CR district requires at least 10 percent of the lot area to be open public space. Parcels A and C will provide approximately five percent, and Parcel D will provide approximately eight percent open public space. The public space at ground level will be enhanced by the proposed upgraded streetscapes, courtyards, and private gardens.
- f. **Loading**: Parcel B will not provide all of the loading facilities required by the Zoning Regulations. It will provide the required 30-foot berth, 20-foot service bay, and 200-square-foot loading platform. It will not provide a 55-foot loading berth or a 100-square-foot loading platform.

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 7

- g. Courts: The building proposed for Parcel A will feature a closed court in lieu of a rear yard. The proposed court is 15 feet. A 25-foot court is required.
- h. Parking: Because of the small size of the building proposed for Parcel D, the Applicant has requested that the required parking for Parcel D be located in the Parcel A garage.
- i. The additional five percent of FAR the Applicant is requesting for Parcel B is essential for the functioning of the Project and meets the requirements of § 2405.3 of the Zoning Regulations. Two factors related to the Property have directly affected the design of the building and created a need for an additional five percent FAR on Parcel B. First, the alley that once existed to the west of this property has been incorporated into the neighboring property. As a result, the building's loading functions must be located within the first floor plan, and thus will count toward FAR. Second, because of the narrow right of way and sidewalks of 8th Street to the west, the bay projections will be located on the property and cannot project into public space. (Bays in public space do not count towards FAR.) The bays are an important part of the design of this building that help it to integrate with the adjacent rowhouses. Also, because of the bay design, the elevation of the building will be pushed back four feet, therefore affecting all eight levels of the building.

Public Benefits and Amenities

27. The following benefits and amenities will be created as a result of the Project:

- a. Housing and Affordable Housing: The greatest benefit to the neighborhood and the District as a whole will be the creation of new housing opportunities consistent with the Zoning Regulations, the Comprehensive Plan, the Mayor's housing initiative, and the "DUKE" Plan for a cultural destination district within Washington, DC's Greater Shaw/U Street Plan. The Applicant proposes to devote an area equal to 15 percent of the density gained through the PUD process to affordable housing for those households whose income does not exceed 80 percent of the Area Median Income as that term is defined by the U.S. Department of Housing and Urban Development. The proposed Project will include a total of 695 apartments on the four parcels. Of these, approximately 14 percent will be studio apartments, 29 percent will be one-bedroom units, 40 percent will be one-bedroom with den units, and 16 percent will be two-bedroom units. The Applicant proposes a similar mix of units for the affordable housing requirement, providing 18,800 square feet of affordable housing on the Atlantic Plumbing South parcels and 11,000 square feet of affordable housing on the Atlantic Plumbing North parcel. The Applicant has requested flexibility with regard to the size and type of units. If the allocation of market-rate unit types changes, the allocation of affordable units will change to reflect this allocation. The affordable units will be distributed among floors on Parcels A, B, and C. The units will be affordable for a 20-year term. The Department of Housing and Community

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 8

Development will determine the price and enforce the affordability of the units through covenants and other legal mechanisms.

- b. Transportation: Initially, the Applicant, OP, and DDOT proposed that the Applicant would provide an easement to the District over the northern portion of Parcel C in order to allow the future extension of Bryant Street. This street extension is important to the development of the area between Georgia and Florida Avenues north of V Street. There is currently no east-west connection between V Street to the south and Barry Place to the north, and access to the Project and the future Howard Town Center will be difficult without the increased mobility and access through this unusually large block. Following further discussions with DDOT, it was determined that the preferred location for the street extension is further north of Parcel C, and not adjacent to the Applicant's property. DDOT has proposed a traffic circle at the corner of Florida and Sherman Avenues that would connect to a proposed Bryant Street to the east. The Applicant has agreed to contribute \$250,000 to DDOT toward the engineering and design costs of the circle and future Bryant Street extension. In addition, the Project will provide the benefit of effective and safe vehicular and pedestrian access.
- c. Urban Design, Architecture, Site Planning, and "Green" Building Practices: The high quality of design in the development of the architecture for the Project exceeds that of most matter-of-right projects. The landscaping, raised first floor access, and alternating composition of projecting bays all combine to create a sense of scale and visual interest. The open courtyards will be an attractive amenity for the buildings' residents. The bays of the buildings have been designed to provide ample room for street trees to grow and thrive. This Project features numerous aspects that are superior to those typical for a matter-of-right project. Some of these include: no through-wall vents or exhaust flues; a superior quality of brick with tinted mortar, and a custom bonding pattern with numerous special shapes; embellished brick window heads; pre-cast window sills and window heads that project into surrounding brick; recessing windows beyond standard to create better shadow lines and weathering characteristics; superior glass; green roof technologies with pool and accessory amenities and equipment; architectural rooftop embellishments that incorporate exhaust vents and fans to provide wind-screening and shade; ornamental metal; direct access to ground level units requiring more site work and custom units; nine-foot ceilings; water source H.P.S., which uses 40 percent less energy than air-to-air; 100 percent outside ventilation air-to-air corridors; a recycling chute to encourage compliance; generous bike storage; a 1:1 ratio of parking spaces to residential units; increased exterior wall R-value based on using a rigid insulation system outside of sheathing; and D.C. standard streetscape at street facades; and bio-water detention system in addition to green roof technologies.
- d. Uses of Special Value: The Project will provide ground-floor retail that will be a significant contribution toward realizing the vision set forth in the DUKE Plan for a

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 9

cultural, 18-hour destination district. The ground-floor retail will be a pedestrian-oriented use that will greatly enhance the street activity of the area. The Applicant also will provide more parking spaces than are required by the Zoning Regulations. The Applicant has agreed to provide at least one parking space per residential unit. Parking is a major concern of the neighbors, and the proposed rate will prevent further impacts on surrounding parking problems.

- e. Monetary Contributions to Neighborhood Organizations: As part of the amenities and benefits package offered in connection with the applications, the Applicant agreed to contribute \$100,000 to ANC 1B to assist the neighborhood programs and initiatives identified by ANC 1B. By letter dated March 1, 2006, ANC 1B indicated that the Applicant's contribution would be distributed as follows: \$20,000 to Housing Counseling Services, Inc. for the creation and representation of tenant associations in apartment buildings converted to condominiums in the ANC 1B area; \$15,000 for the purchase of historic street signs, call boxes, and history plaques in LeDroit Park; \$10,000 for the 1400-block of W Street for a pilot public safety camera project and contribution to a police work station; \$10,000 to the Boys and Girls Club and Anthony Bowen YMCA for the development of a first tee program; \$10,000 to the Casey Tree Foundation for the planting of trees in areas of ANC 1B with the greatest need (e.g., Georgia Avenue, 14th Street); \$10,000 for the development of a career exploration program for children in public housing developments in ANC 1B; \$10,000 to the MidCity Business Association for funding for the Green Team; \$5,000 for the Mary Terrell house restoration project in LeDroit Park; \$5,000 to the Hospitality Review Panel for a pilot project involving business, residential, and government stakeholders in the 1900-block of 9th Street; and \$5,000 to the Westminster Neighborhood Association for the installation of a playground sprinkler system.
- f. Historic Signage: The Applicant also plans to work with the Historic Preservation Office to contribute \$10,000 towards new historic district signage in the area.
- g. Employment and Training Opportunities: In order to further the District's policies relating to the creation of employment and training opportunities, the Applicant will participate in a First Source Agreement with the District of Columbia Department of Employment Services ("DOES"). The Applicant also has agreed to enter into a Memorandum of Understanding with the Local Business Opportunity Commission ("LBOC") to use local firms in the development and construction of the Project.

28. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping, and open space; housing and affordable housing; job training and employment opportunities; transportation measures; and uses of special value to the neighborhood.

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 10

Compliance with PUD Standards

29. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” 11 DCMR § 2403.8. Given the level of project amenities and public benefits, and the fact that the development will proceed under the existing zoning, the Commission finds that the development incentives are appropriate to increase the overall residential density to 8.0 FAR for Parcels A and C and up to 6.3 FAR for Parcel B. As stated above, the Commission finds that the extra five percent of density permitted under § 2405.3 is appropriate and essential to the functioning of the Project. The Commission also finds that the requested flexibility in roof structures, lot occupancy, recreation space, public space at ground level, and loading are justified by the superior benefits and amenities offered by this Project.

Comprehensive Plan and Public Policies

30. The Project is consistent with and furthers the goals and policies enumerated in the Comprehensive Plan.

- a. The Generalized Land Use Map: The Project is consistent with the Generalized Land Use Map, which recommends the subject site for a mix of moderate- and medium-density residential and commercial uses. The Project will not be inconsistent with this use category. In addition, the Generalized Land Use Policies Map shows the Property located within the Howard Gateway Housing Opportunity Area, which has been designated as a desirable location for the development of residential uses. The Project will be developed under the existing CR and ARTS/C-2-B zone districts. In addition, the proposed residential project is foregoing a majority of the commercial density that would otherwise be allowed on the Property in the existing CR zone district.
- b. Stabilizing the District’s Neighborhoods: The creation of up to 700 new residential units will help enhance and stabilize the U Street/Cardozo neighborhood. The creation of a significant residential development on the site also is likely to attract additional residential and retail development and stabilize the neighborhood.
- c. Increasing the Quantity and Quality of Employment Opportunities in the District: As stated above, the Applicant has agreed to enter into a First Source Agreement with DOES and a Memorandum of Understanding with the LBOC.
- d. Respecting and Improving the Physical Character of the District: The Project has been designed to improve the site’s integration with the surrounding neighborhood and to improve the streetscape on 8th, 9th, and V Streets. The facades, landscaping, raised first floor access, and alternating composition of projecting bays will all combine to create a sense of scale and visual interest. The height of the building to be constructed on Parcel B will be gradually stepped back from 90 feet to 65 feet in

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 11

order to respect the lower-density massing of the adjacent rowhouses. The Project as a whole employs traditional, time-tested materials in new and modern ways in a design that will be aesthetically enduring and that will add to the fine urban texture of the city. Finally, the construction of a high quality residential project will be an important asset for the community.

- e. Preserving and Ensuring Community Input: Through the PUD process, the Applicant has worked with representatives of ANC 1B, as well as the surrounding neighborhood, to create a new residential community that is a benefit to the neighborhood and the District of Columbia. The Applicant hosted community meetings and presented the Project to the LeDroit Park Civic Association and the Cardozo Shaw Neighborhood Association.

31. The Project also complies with the major elements of the Comprehensive Plan.

- a. Housing: The creation of up to 700 residential units on this currently underutilized site fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Project will devote 15 percent of the bonus density gained through the PUD process to affordable housing. The inclusion of these affordable units in the Project also is entirely consistent with the provisions of the Comprehensive Plan noted above.
- b. Urban Design: As shown in the detailed plans, elevations, and renderings included in the Applicant's January 6, 2006 submission (Exhibit 21), as modified by its PowerPoint presentation of January 26, 2006 (Exhibit 31) and its post-hearing submissions of February 13, 2006 (Exhibit 33), the Project exhibits all of the characteristics of exemplary urban design and architecture. The construction of prominent residential buildings will complement the established residential neighborhood that surrounds the site.
- c. Ward 1 Goals and Policies: The Ward 1 Element of the Comprehensive Plan seeks to stimulate production of new housing, maintain and strengthen the quality and construction of housing, and promote low- and moderate-income housing development opportunities. (See 10 DCMR § 1206.1 and 10 DCMR § 1207.1): The Project is consistent with these provisions of the Ward 1 Element of the Comprehensive Plan and the "appropriate study" discussed below.
- d. DUKE Plan: The Project is located within the area of land studied under the Draft Development Framework for a cultural destination district within Washington, DC's Greater Shaw/U Street Plan. The DUKE Plan has been proposed by the Office of Planning to celebrate and re-create an historical economic, cultural, social, and institutional center for the District's African-American community. The DUKE Plan seeks to guide future development of the project area by capitalizing on the area's historic context to restore the neighborhood with 18-hour destinations. As discussed in depth above, the Project will be consistent with the DUKE Plan's vision and will

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 12

be the first step in accomplishing a major goal of the DUKE Plan by contributing towards the design fees for the extension of Bryant Street. Several goals of the DUKE Plan will affect the Property. The DUKE Plan seeks: (1) an increase from moderate- to medium-density land use designations, (2) the designation of V Street as a neighborhood retail and service center, (3) residential development that includes affordable housing, and (4) the development of ground floor retail/entertainment uses and a mix of national and unique, locally-owned retail establishments on 7th, 9th, and U Streets and Florida Avenue. In addition, the Project will contribute design fees to further the goal of extending the street system in the vicinity of Bryant and W Streets to provide an east-west cut-through to link Georgia and Florida Avenues.

Office of Planning Report

32. By reports dated January 9, 2006, and February 20, 2006, the Office of Planning ("OP") recommended approval of the PUD applications. The recommendation was based on its findings that the Project is consistent with and will further important Comprehensive Plan objectives, is consistent with the zoning for the area, and provides an amenity package appropriate to the amount of density being gained through the PUD process. OP also stressed the importance of traffic mitigation in the area and recommended that the applications be approved subject to the contribution toward the proposed Bryant Street extension.

33. OP conditioned its recommendation for approval on the provision of the following amenities:

- a. A \$250,000 contribution to DDOT for design and engineering costs for a traffic circle and extension of Bryant Street;
- b. A \$100,000 contribution to ANC 1B for neighborhood amenities;
- c. Affordable housing totaling 29,800 square feet offered at 80 percent of the Area Median Income;
- d. Incorporation of green building technologies;
- e. Retail development of the V Street and Florida Avenue frontages including neighborhood serving retail;
- f. A First Source Agreement with DOES; and
- g. A Memorandum of Understanding with LBOC.

34. The Commission finds that the Applicant has offered to provide affordable housing in an amount equal to 15 percent of the bonus density generated by the PUD process. Under the gross floor area currently proposed, the affordable housing the Applicant would be required to provide would equal approximately 29,800 square feet.

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 13

Other Government Agency Reports

35. By report dated January 23, 2006, DDOT concluded that it had no objections to the Project. In its report, DDOT expressed concern that the driveway entrances for the parking garage and loading docks on Parcel B would be located adjacent to each other and would not provide the adequate clearance required by DDOT design standards.

36. During the public hearing and in its post-hearing submission of February 10, 2006, the Applicant addressed DDOT's concern about the driveway entrances for the parking garage and loading docks on Parcel B. The Applicant explained that the service entry to Parcel B, off the north frontage of V Street near the center of the block, will meet the D.C. Streetscape Standards dimension from the western property line. It will also meet the recommended maximum width for garage or loading entries. It will primarily serve the Parcel B parking garage and, to a much lesser extent, will serve a loading area that will be used, at most, once a day for trash pick-up and possibly twice a month for moving. Because of the small number of units in the building, a second entry exclusively for the minimal loading that will occur is not necessary. A second entry also would adversely affect the quality of the streetscape. Additionally, moving activities are normally scheduled by condominium unit owners to occur off-peak when the level of garage activity and local pedestrian traffic is at its lowest, and possible conflicts are therefore minimized. The minimum width of the garage ramp will be 14 feet, and the minimum width of the loading berth will be 12 feet. The total 26-foot width can be handled by one 24-foot wide opening and curb cut as illustrated in the attached plan. A six-foot-wide wall segment will be provided between the proposed loading/parking entry and the adjacent property to allow for pedestrian clearance, should the neighboring site locate its service entries in a manner similar to the subject site.

37. The Applicant learned, through conversations with DDOT, that a comprehensive study of streets, curbs, and sidewalk widths in this neighborhood is likely in the near future. The Applicant will continue to work closely with DDOT to ensure that the streetscape of the Project addresses the needs and requirements set forth by any new standards of street and sidewalk design for the neighborhood.

38. The Commission finds that the Applicant has demonstrated that the entrances to the parking garage and loading facilities for Parcel B are sufficient and that DDOT's concerns are unfounded.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 14

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 these applications as either consolidated or first-stage PUDs. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than would be available under matter-of-right development.

4. Each of the applications (Case No. 05-17 and Case No. 05-32) individually meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The Project is within the applicable height, bulk, and density standards of the Zoning Regulations. The proposed height and density will not cause a significant adverse effect on any nearby properties and will help provide the critical concentration of residents required to transform this underutilized area. Mixed use is appropriate for Atlantic Plumbing North (Parcel C), which is located in the CR Zone. Mixed use also is appropriate for Atlantic Plumbing South (Parcels A, B, and D), which is located in the CR and ARTS/C-2-B zone. The Commission notes that the zoning for the Property will not be changed, and the proposed uses are permitted as a matter of right for the appropriate zone. As demonstrated in the Traffic Study submitted by the Applicant, the Project will not cause adverse traffic impacts, and the Property is located in close proximity to mass transit. The Project has been appropriately designed to complement and respect the existing adjacent buildings with respect to height and mass.

6. The application in Case No. 05-17, Atlantic Plumbing South (Parcels A, B, and D), meets the contiguity requirements of § 2401.3. The application in Case No. 05-32, Atlantic Plumbing North (Parcel C), also meets the contiguity requirements of § 2401.3.

7. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.

8. The benefits and amenities provided by the Project, particularly the provision of housing and affordable housing, parking, neighborhood-serving retail, and substantial monetary contributions to improve the neighborhood, are reasonable for the development proposed in Cases No. 05-17 and 05-32.

9. The applications seek an increase in height, FAR, and lot occupancy. They also seek a reduced court width requirement for Parcel A, aggregation of parking between Parcel A and Parcel D, and a reduction in the public space and residential recreation space requirements. They

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 15

also seek flexibility with regard to height and setback requirements for roof structures and with respect to loading requirements. The benefits and amenities provided by the Project, particularly the provision of affordable housing, the superior design of the buildings, the contribution toward the proposed Bryant Street extension, and the transformation of an underutilized and largely vacant site into a vibrant mixed-use community, are all reasonable trade-offs for the requested development flexibility.

10. Approval of the PUD applications is appropriate, because the proposed development is consistent with the present character of the area and the existing zoning.

11. Approval of the PUD applications is not inconsistent with the Comprehensive Plan.

12. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 1B voted in favor of recommending approval of the applications in Cases No. 05-17 and 05-32. The Commission agrees with the ANC that this Project should be approved.

13. Although the Commission has considered the objection of Howard University to the proposed extension of Bryant Street and the proposed traffic circle intersection with Sherman and Florida Avenues, the Commission notes that it does not have the jurisdiction to approve the proposed extension and implement DDOT's plan. The Commission also notes that the \$250,000 contribution by the Applicant to DDOT could be used to extend the street network in other areas or to find an alternative traffic mitigation solution.

14. The two applications for PUDs under the existing zoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

15. The two applications for PUDs are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of Case No. 05-17 and Case No. 05-32 for consolidated review and approval of two planned unit developments. This approval shall apply to the following properties included in Case No. 05-17: Square 2875, Lots 1106, 1107, 2012, 2026, and 2030. This approval shall apply to the following properties included in Case No. 05-32: Square 2873, Lots 1, 232, 852, 853, 859, and 864. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD in Case No. 05-17 shall be developed in accordance with the plans prepared by Esocoff & Associates, dated January 6, 2006, marked as Exhibit 21 in the record, as modified by the PowerPoint presentation presented during the public hearing on January 26, 2006, marked as

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 16

Exhibit 31 in the record, and as further modified by the Applicant's post-hearing submission, dated February 13, 2006, marked as Exhibit 33 in the record.

2. The PUD in Case No. 05-32 shall be developed in accordance with the plans prepared by Esocoff & Associates, dated January 6, 2006, marked as Exhibit 11 in the record, as modified by the PowerPoint presentation presented during the public hearing on January 26, 2006, marked as Exhibit 21 in the record, and as further modified by the Applicant's post-hearing submission, dated February 13, 2006, marked as Exhibit 23 in the record.

3. The Project shall be a mixed-use development. With regard to the PUD in Case No. 05-17 (Atlantic Plumbing South), the building on Parcel A shall be constructed to a maximum height of 100 feet and a maximum density of 8.0 FAR, which is the combined FAR for Parcel A and Parcel D. The building on Parcel B shall be constructed to a maximum height of 90 feet and a maximum density of 6.3 FAR. The building on Parcel D shall be constructed to a maximum height of 60 feet and a maximum density of 8.0 FAR, which is the combined FAR for Parcel D and Parcel A. With regard to the PUD in Case No. 05-32 (Atlantic Plumbing North), the building on Parcel C shall be constructed to a maximum height of 100 feet and a density of 8.0 FAR.

4. With regard to the PUD in Case No. 05-17 (Atlantic Plumbing South), approximately 426,175 square feet of gross floor area shall be devoted to residential use. With regard to the PUD in Case No. 05-32 (Atlantic Plumbing North), approximately 295,269 square feet of gross floor area shall be devoted to residential use. The Applicant shall have the flexibility to construct between 630 and 700 residential units in the Project, including Atlantic Plumbing North and Atlantic Plumbing South.

5. The retail use is required on Parcels A, B, and C in the following amounts: Parcel A – 6,245 square feet; Parcel B – 4,306 square feet; and Parcel C – 4,243 square feet. Retail use is permitted, but not required, on Parcel D. If retail use is not provided on Parcel D, that space will be used for residential use.

6. Of the residential gross floor area for the Project, a minimum of approximately 29,800 square feet shall be devoted to affordable housing for residents with an income that is no greater than 80 percent of the Area Median Income. The required affordable housing shall be divided proportionately among the buildings on Parcels A, B, and C, and shall be phased accordingly.

7. The PUD approved as Case No. 05-17 (Atlantic Plumbing South) shall include a minimum of one parking space per residential unit with a minimum of nine spaces devoted to the retail uses. The PUD approved as Case No. 05-32 (Atlantic Plumbing North) shall include a minimum of one parking space per residential unit. This parking requirement may be satisfied with any combination of full and compact parking spaces.

8. Prior to the issuance of a building permit for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall make a monetary contribution of \$250,000 to the District Department of Transportation.

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 17

The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the requirement for the other PUD.

9. Prior to the issuance of a building permit for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall make a monetary contribution of \$100,000 to ANC 1B for allocation consistent with Finding of Fact No. 27e. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the requirement for the other PUD.

10. Prior to the issuance of a building permit for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall make a monetary contribution of \$10,000 to the Historic Preservation Division of the Office of Planning to provide historic signage. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the requirement for the other PUD.

11. The Applicant shall have flexibility with the design of the Project in the following areas:

- a. 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 or appearance of the structures;
- b. To vary the final selection of the exterior materials within the color ranges and material types as proposed without a reduction in quality, based on availability at the time of construction;
- c. 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;
- d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and
- e. To make alterations to the parking garage design provided that the parking garage contains a minimum of one parking space for each residential unit, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.

12. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development. The Applicant shall abide by the terms of the Memorandum of Understanding in order to achieve, at a minimum, the goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the Project to be created as a

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 18

result of Case No. 05-17 (Atlantic Plumbing South) and Case No. 05-32 (Atlantic Plumbing North).

13. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant shall abide by the terms of the agreement in order to achieve the goal of utilizing the District of Columbia residents for at least 51 percent of the jobs created by the Project.

14. No building permit shall be issued for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North) until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct on and use the applicable PUD Parcel in accordance with this Order or amendment thereof by the Zoning Commission.

15. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

16. Prior to the issuance of a certificate of occupancy for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable units in such buildings to affordable housing for not fewer than twenty (20) years.

17. The PUDs approved in Case No. 05-17 (Atlantic Plumbing South) and Case No. 05-32 (Atlantic Plumbing North) 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 for one of the buildings in either PUD as specified in 11 DCMR § 2409.1. The phasing of the four buildings is permitted. The filing of an application for a building permit for one of the four buildings shall vest this Order with regard to Case No. 05-17 (Atlantic Plumbing South) and Case No. 05-32 (Atlantic Plumbing North). However, an application for the final building permit must be filed within five (5) years of the issuance of a certificate of occupancy for the first building.

18. 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., (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, 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

Z.C. ORDER NO. 05-17B/05-32B

Z.C. CASE NOS. 05-17& 05-32

Page 19

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 March 2, 2006, the Zoning Commission **APPROVED** the application in **Case No. 05-17** by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Gregory N. Jeffries to approve; John G. Parsons, having not participated, not voting; and Carol J. Mitten, not present, not voting) and **APPROVED** the application in **Case No. 05-32** by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting; and Carol J. Mitten, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, in **Case No. 05-17** by a vote of 4-0-1 (Anthony J. Hood, Michael G. Turnbull, and Carol J. Mitten to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons, having not participated, not voting) and **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, in **Case No. 05-32** by a vote of 4-0-1 (Carol J. Mitten, Michael G. Turnbull, and Anthony J. Hood to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons, 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 **MAY 18 2007** .

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-15**

Z.C. Case No. 06-15

**Consolidated Approval for a Planned Unit Development for the
Property bounded by New York Avenue, Bladensburg Road, and
Montana Avenue, N.E. – Abdo New York LLC**

**(Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815
and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150,
153/152, and 153/153)**

February 12, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 9, 2006 to consider an application from Abdo New York LLC for consolidated review and approval of a planned unit development and related zoning map amendment from C-M-1 to CR in Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153. The application was filed on behalf of and with the consent of the owners of the properties that are the subject of the application. The Zoning 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 Hearing

1. The project site consists of Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153 (the "Property") and is bounded by New York Avenue, Montana Avenue, and Bladensburg Road, N.E. The Property contains approximately 697,874 square feet of land (approximately 16 acres) and is in the C-M-1 Zone District. The Property is currently used primarily by body repair shops, vehicle impound lots, gasoline stations, fast-food restaurants with drive-through accessory uses, and a strip club. (Ex. 24)

2. On March 22, 2006, Abdo New York LLC (the "Applicant") filed an application with the Zoning Commission for review and approval of a planned unit development ("PUD") and related zoning map amendment from C-M-1 to C-3-C. The PUD project is a mixed-use

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 2

project featuring eight new residential buildings and approximately 148,121 square feet of ground-floor retail. The original application requested a height of 130 feet for the buildings along New York Avenue, a floor area ratio ("FAR") of 5.3, and a range of 3,000 to 4,000 units. (Ex. 5, 6)

3. At a regularly scheduled public meeting on May 8, 2006, the Zoning Commission first considered the proposed PUD. During the discussion, the Commission asked the Applicant to reconsider the project's proposed zoning amendment to the C-3-C Zone District, the proposed 130-foot height of the buildings along New York Avenue, the proposed density of 5.3 FAR, and the range of units. (Tr. May 8, 2006 at 6-82.)

4. On May 23, 2006, the Applicant provided a supplemental submission to the Commission. Primarily, the Applicant indicated that it had reduced the height of the buildings to 110 feet and accordingly changed the map amendment request to the CR Zone District. The Applicant reiterated that the project was appropriate for consolidated review, particularly in light of the additional changes. (Ex. 13, 14)

5. At a special public meeting on June 1, 2006, the Zoning Commission again considered the application for setdown. Members of the Commission noted that the Applicant had made considerable progress from the original submission and had responded to each of the Office of Planning's concerns, as well as many of those of the Commission. The Commission recognized the reduction in height and change in requested zoning, but stressed its continued concerns about the proposed project density. The Commission set down the application for a public hearing as a first-stage PUD, by a vote of 5-0-0. A second vote to set it down as a consolidated PUD failed by a vote of 2-3-0, but the Commission indicated it would accept further submissions from the Applicant to support the Applicant's request for consolidated review. (Tr. June 1, 2006 at 4-50.)

6. On June 6 and June 9, the Applicant submitted letters to the Zoning Commission. The letters indicated that the project density had been reduced to a 5.0 FAR and reiterated the Applicant's assertion that consolidated review was both appropriate and critically needed for this project. (Ex. 16, 19) In recognition of the reduced density, at the June 12, 2006 regular Public Meeting, the Commission voted 5-0-0 to set down the application for public hearing as a consolidated PUD. (Tr. June 12, 2006 at 97-103.)

7. On August 1, 2006, the Applicant filed a prehearing statement with the Zoning Commission, including additional information requested by the Zoning Commission and the Office of Planning. In that statement, the Applicant proposed the construction of eight new buildings with approximately 3,400 to 3,600 residential units and 148,121 square feet of ground-floor retail (the "Project"). (Ex. 24, 26)

8. After proper notice, the Commission held a hearing on the application on November 9, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 3

("ANC") 5B, the ANC within which the Property is located. At the hearing, the Applicant submitted into the record updated plans, elevations, and drawings of the Project. (Ex. 40) Testimony and evidence on behalf of the Applicant was provided by Jim Abdo and Eric Price, representatives of the Applicant; Maurice Walters, of Torti Gallas and Partners, who testified as an expert in the field of architecture; and Jami Milanovich, of Wells & Associates, who testified as an expert in the field of traffic and parking engineering. (Tr. Nov. 9, 2006 at 8 – 39, 44 – 150; Ex. 57.)

9. A number of individuals testified or wrote letters in support of the proposed PUD. Supporters included representatives of ANC 5B and a number of members of the D.C. Council, including the then-Councilmember for Ward 5, the Councilmember-elect from Ward 5, and the Mayor-elect, as well as representatives of the Arboretum Civic Association, the Friends of the National Arboretum, the Salvation Army, the Washington Humane Society, and the Metropolitan Police Department. (Ex. 17, 18, 20, 21, 37, 38, 41, 43-45, 50, 52; Tr. Nov. 9, 2006 at 39-44, 168-201.)

10. The Applicant further refined the plans, drawings, and elevations in response to the Commission's comments and concerns at the public hearing and submitted them with the Applicant's post-hearing submission dated December 21, 2006. (Ex. 58)

11. At its meeting held January 8, 2007, the Commission took proposed action by a vote of 5-0-0 to approve the application with conditions, with the record remaining open to receive additional information on whether the Applicant would offer relocation assistance to businesses currently located on the Property, an indication of whether space in the Project would be reserved for grocery store for a specified time, and further refinement of the design of a glass parapet on the New York Avenue frontage above the grocery store space.

12. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated January 26, 2007, found the proposed PUD would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.

13. The Commission took final action to approve the application in Case No. 06-15 on February 12, 2007 by vote of 5-0-0.

The PUD Project

14. The Property consists of approximately 697,874 square feet of land and is bounded by New York Avenue, Bladensburg Road, and Montana Avenue, N.E. The National Arboretum is east and south of the Property. To the southeast, across Bladensburg Road, is the low- and moderate-density Arboretum residential community. To the north, New York Avenue is currently defined by low-scale commercial development, including hotels, gasoline stations,

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 4

and fast-food restaurants.¹ Across New York Avenue to the north are two large commercial buildings, including the Harbor Light Center, a 136-bed community-based residential facility operated by the Salvation Army. To the southwest, across Montana Avenue, are the old Hecht's warehouse and the Mount Olivet Cemetery. The Ivy City residential neighborhood is further to the southwest. (Ex. 24)

15. The Property is located in the Production and Technical Employment land use category as shown on the District of Columbia Generalized Land Use Map. The residential community to the southeast is located in both the Moderate Density Residential and Low Density Residential land use categories. Mount Olivet Cemetery, to the southwest, is located in the Parks land use category; the Arboretum is also located in this land use category. The rest of the properties surrounding the Property are located in the Production and Technical Employment land use category on the Generalized Land Use Map. (Ex. 24)

16. The Existing Land Use Map demonstrates that much of the Property and surrounding land does not contain any sort of industrial use. (Ex. 24) The Applicant's representative testified as to the illegal activities that currently take place on and in the vicinity of the Property, including violent crime, arson, and drug trafficking, which are enabled and encouraged by the current land uses. (Tr. Nov. 9, 2006 at 26-28.)

17. The proposed amendments to the Comprehensive Plan, currently approved by the D.C. Council, designate the Property as an "area for land use change" and call for a Future Land Use Map designation of "mixed use medium density residential / moderate density commercial." The text of the proposed Comprehensive Plan states that the medium-density residential designation includes taller residential buildings surrounded by large areas of permanent open space. (Tr. Nov. 9, 2006 at 12.)

18. The proposed Project is a mixed-use development of residential and retail uses. The proposed PUD project consists of eight separate buildings,² and the Applicant has requested flexibility to construct between 3,400 and 3,600 residential units. The eight buildings will ring the triangular-shaped Property and will be oriented outward, activating the street life on all three streets and forming a visually porous perimeter for the site that will allow intermittent views of the green space at the center of the Project. Additionally, the "A," "B," and "C" buildings together will have approximately 148,121 square feet of ground-floor retail, including approximately 65,000 square feet of space designed for a full-service grocery store in the "A" building. (Ex. 24, 58)

¹The Board of Zoning Adjustment recently approved a pair of variances from the maximum height and loading requirements for a property directly to the east of the PUD Property, across Bladensburg Road, to permit the construction of a five-story Holiday Inn Express and five-story Fairfield Inn and Suites. See Application No. 17484, concerning land located at 1917 Bladensburg Road, N.E. (Square 4393, Lots 815 and 821).

²Note that, for purposes of the Zoning Regulations, five buildings will be constructed on the Subject Property. There are substantial ground-floor connections between the "B" and "C" buildings along New York Avenue, "D" and "E" buildings along Montana Avenue, and "G" and "H" buildings along Bladensburg Road.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 5

19. As presented by the Applicant's architectural expert and set forth in the Applicant's pre- and post-hearing submissions, the overall site is designed in four architectural variations, giving the composition a sense of harmony and elegance, while creating an urban environment that is visually articulated and varied. (Ex. 24, 56, 58; Tr. Nov. 9, 2006 at 55-59.)

- The "A" Building: Prominently situated at an acute angle at the intersection of New York and Montana Avenues, the V-shaped "A" building will create a significant landmark for those traveling eastbound. The primary design feature will be an elegantly sweeping 70-foot-tall curved glass wall above the proposed grocery store, joining the legs of the building. A raised glass parapet embellishment, canted inwards towards its base, will create an appropriate cap and landmark feature atop the curved glass wall at the corner of New York and Montana Avenues. The New York Avenue leg will consist of an ochre-colored brick façade juxtaposed with a large glass panel that will further signify the grocery location as well as adding a vibrant, reflective "screen" to the active retail streetscape. A prismatic sculptural glass pavilion at the ground floor will contain the main pedestrian grocery entrance. The Montana Avenue façade of the "A" building will be similarly composed of an ochre-colored brick veneer; here, however, the brick face will be varied using five repeating glass bays, which will yield a gentler residential scale façade pattern.
- The "B" and "C" Buildings: The "B" and "C" buildings, east of the "A" building along New York Avenue, will be composed around a central ground floor pocket park, which will provide access to a larger upper level public terrace affording views of the central park. The two buildings will be asymmetrical, yet will employ compatible architectural scaling devices. They will be articulated horizontally with setbacks and varying façade compositions and materials to modulate the length of each building along New York Avenue. At the eastern end of the "C" building, a large canted bay window will wrap the corner and extend two floors vertically above the ninth floor terrace setback to present a gateway feature to those entering the city from the east. The facades will exhibit a variety of masonry compositions juxtaposed with glass window walls. The building base will be colored in a dark brick, unifying the overall composition and providing a subtle acknowledgement of the nearby Art Deco Hecht's warehouse building.
- The "D" and "E" Buildings: At the center of Montana Avenue, the "D" and "E" buildings will be arranged as a couplet around a central, shared lobby pavilion and motor court. These buildings will each be H-shaped and will present landscaped courts to the street that will give them a softer residential character. The buildings will be scaled vertically with a base, middle, and top, and the upper floors will be further articulated with French balconies and increased fenestration to visually lighten the buildings as they meet the sky. The facades will be composed predominantly of residentially scaled punched windows set in a buff brick wall articulated with tower features as well as corner wrap-around French balconies.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 6

- The “F” Building: Prominently situated at an acute angle at the intersection of Bladensburg Road and Montana Avenue, the “F” building will anchor the corner with a gently curving, residentially scaled bay window. At the ground plane, a small one-way drive from Bladensburg Road to Montana Avenue will lead to an elegant porte-cochere drop-off. The primary façade planes of terra cotta-colored brick will be scaled and modulated with floor-to-ceiling glass bays that will rise above the parapet height to offer rooftop views of the Arboretum and beyond.
- The “G” and “H” Buildings: The “G” and “H” buildings, along Bladensburg Road, will be arranged in an identical couplet to the “D” and “E” buildings, but will utilize a warm, ochre-colored brick to provide them with a unique identity.

20. The Project will be phased, as detailed in Condition 23 of the Order. The Applicant indicated that the first phase, with its sizeable infrastructure and associated costs, will make it necessary for the developer to proceed expeditiously with the second and third phases. Market absorption will control the timing of the phases but, due to the significant carrying costs, the Applicant will remain motivated to produce units for which there is a demand. Further, the proposed Project includes a sizeable retail component that is designed to serve a market segment that is currently underserved, and development of the retail is a critical neighborhood amenity necessary for the success of the residential portion of the development. (Ex. 56)

21. The proposed PUD Project will include underground parking for its residents at a ratio of approximately 1 to 1. Additionally, the below-grade parking will provide at least 4 spaces for every 1,000 square feet of retail space. The parking will be accessed from a series of vehicular ramps off New York and Montana Avenues, as well as from the existing public alley off New York Avenue. Loading and service facilities will also be accessible through an entrance off Montana Avenue between the “A” and “D” buildings and the existing public alley on the east side of the “C” building; they will be concealed in a below-grade service concourse behind the retail space. (Ex. 24, 58; Tr. Nov. 9, 2006 at 46-48, 51.)

22. Streetscape improvements will transform this blighted area into an active, attractive urban neighborhood. Further, the Applicant will construct and maintain a well-lit private alley at the northeast corner of the Property in order to allow neighbors from the Arboretum community direct and safe access to the New York Avenue retail while avoiding the busy New York Avenue/Bladensburg Road intersection. Additionally, along New York Avenue, the buildings will be set back 55 feet from the curb to allow for an ample 21-foot-wide sidewalk and new service road, which will provide vehicular access and parallel parking for the retail uses.³ This service road will create an additional buffer from New York Avenue and, moreover, will reduce the number of curb cuts along New York Avenue from 16 to two. Similarly, vehicular drop-offs will be created along Bladensburg Road and Montana Avenue to provide a

³ This service road is consistent with the recommendations of the District Department of Transportation (“DDOT”) in its April 2005 Draft New York Avenue Corridor Study for improvements to the roadway network in this area.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 7

safe and secure area for residents and their guests to enter the community while minimizing the interference of standing taxicabs and automobiles with vehicular traffic. Overall, the PUD will reduce the number of curb cuts on all three streets surrounding the perimeter of the Property from 41 to 15. (Ex. 24, 58; Tr. Nov. 29, 2006 at 46-48.)

23. The Project will also feature approximately 148,121 square feet of ground-floor retail uses along New York Avenue that will be available for the residents of the community. Special efforts will be made to locate neighborhood-serving retail tenants, and the retail space should be considered as both a project amenity and a public benefit of the PUD. The centerpiece of this retail space will be a 65,000-square-foot space, in the "A" building at the intersection of New York and Montana Avenues, designed to hold a full-service, community-oriented grocery store. (Ex. 24, 58)

24. All eight buildings will measure 110 feet tall. The 16 acres on which the PUD Project will be located features a considerable slope of approximately 40 feet downward from south to north, which will create the appearance of differing heights among the buildings. Further, the 110-foot tall structures along New York Avenue—a well-traveled primary thoroughfare into the District that is 130 feet wide—will complement the width and scale of that street, and this PUD Project will provide those entering the District with a signature architectural statement. (Ex. 24, 58)

25. The total gross floor area included in the proposed PUD is approximately 3,477,427 square feet for a total density of approximately 4.98 FAR. The Project will have a lot occupancy of approximately 55 percent. The Project's density will be lower than what is permitted under the CR District PUD guidelines, which specify a maximum density of 8.0 FAR and a maximum building height of 110 feet. It is necessary to rezone the Property to the CR Zone District in order to allow for the residential uses and to allow the structures to obtain the requested height and density. (Ex. 24, 58)

26. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's traffic study and the testimony presented by the Applicant's traffic consultant. The project will provide a shuttle bus to the nearby Rhode Island Avenue Metrorail Station. The shuttle bus will provide continuous daily service to the Metro station for the Project's residents and customers. The proposed shuttle bus service from the project to the Rhode Island Metrorail Station will use the aforementioned residential drop-off areas to service the community. Over time, Metrobus route expansions and schedule adjustments are expected to further improve the site's access to Metrorail and provide direct connections to employment centers in the rest of the District. Further, as discussed below, the Applicant will commit to a comprehensive Transportation Management Program. (Ex. 24, 56, 58; Tr. Nov. 29, 2006 at 61 – 66.)

27. The Applicant's representative indicated that they had engaged the community and the city extensively in the development of the project through 57 meetings with

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 8

neighborhood representatives and numerous additional meetings with District officials. (Tr. Nov. 9, 2006 at 29-30.)

Zoning Map Amendment

28. The Property is in the C-M-1 Zone District. The maximum height allowed in the C-M-1 zone as a matter-of-right is 40 feet (no more than three stories), and the maximum density is 3.0 FAR. The zones surrounding the Property permit a mix of development and include land in the C-M-1 zone immediately to the west and east, land in the C-M-2 District to the north, land in the C-3-A District to the north (zoned as such pursuant to Order No. 744, which approved the Salvation Army's Harbor Light Center), land in the R-5-A and R-1-B zones to the southeast, and land in the R-4 zone to the southwest. (Ex. 24)

29. The Applicant requested a PUD-related Zoning Map amendment for the Property to the CR Zone District to allow the residential use and to allow the structures to reach the requested height and density. The maximum building height permitted in the CR District under the PUD guidelines is 110 feet, and the maximum density permitted for residential uses is 8.0 FAR. The proposed CR zoning will allow for the creation of an entire residential community—without displacing any existing residents—that will strengthen the existing Arboretum and Ivy City communities and provide uses more consistent with the large amounts of open space to the south and east of the Property. Further, the rezoning is part of a PUD application, which allows the Zoning Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. (Ex. 24)

Development Incentives and Flexibility

30. The Applicant requested the following areas of flexibility from the Zoning Regulations. (Ex. 24, 58)

- a. Building Lot Control. The PUD project will be built on a single record lot with multiple buildings. Pursuant to § 2517.2 of the Zoning Regulations, multiple buildings are permitted on a single record lot as a matter of right, provided that each building satisfies applicable zoning requirements (such as use, height, bulk, and open spaces around each building). In order to locate the multiple structures on the Property as proposed, it is necessary to obtain relief from § 2517.2. The Zoning Commission has the authority to grant this requested flexibility pursuant to §§ 2405.5 and 2405.6.
- b. Roof Structures. The Applicant also requested flexibility from the Zoning Regulations' roof structure requirements. The Applicant did not propose to create a single roof structure for each building. Due to the size of these buildings, satisfying the requirement to have a single roof structure on each building would result in a

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 9

needlessly large roof structure. It would also constrain the creation of green roofs, pools, and recreational space on the building rooftops.

- c. Residential Recreational Space. Finally, the Applicant requested relief from the private residential recreation space requirement. The Project will provide approximately 427,727 square feet, or 13.3 percent of the residential gross floor area, as residential recreation space through active and passive recreational spaces such as the Arbor Club, the rooftop pools, the open spaces along all three street frontages, the vest-pocket park and plaza along New York Avenue, the fountain park at Bladensburg Road and Montana Avenue, and the 3.9-acre central park and adjacent courtyards.

Public Benefits and Amenities

31. The following public benefits and project amenities will be created as a result of the Project.

- a. Housing and Affordable Housing. The greatest benefit to the neighborhood and the District as a whole will be the creation of new housing opportunities consistent with the Zoning Regulations, Comprehensive Plan, and recommendations of the Mayor's Comprehensive Housing Strategy Task Force. This Project will create 3,400 to 3,600 residential units on 16 acres of land, with eight percent of the residential gross floor area reserved as affordable housing. The amount of high-quality housing created by this PUD will catalyze additional appropriate residential development in Ward 5 without displacing vital industrial uses or any residential uses. (Ex. 24; Tr. Nov. 29, 2006 at 77-78.)
- b. Efficient and Safe Vehicular and Pedestrian Access. The Applicant will place all residential parking underground, and it will be accessed by entrances off New York Avenue, Bladensburg Road, and Montana Avenue. Additionally, the Applicant will construct a new service road at the north end of the Property, parallel to New York Avenue, which will reduce the number of curb cuts from 16 to two along New York Avenue and allow for access to retail uses and on-street parking. As a result of the proposed PUD, the number of curb cuts on the three streets surrounding the site will be reduced from 41 to 15. The Project will provide separate pedestrian entrances and exits for both residents and shoppers along New York Avenue, Bladensburg Road, and Montana Avenue, reflecting the effort to transform these streets into public pedestrian thoroughfares. The Applicant will also construct and maintain a well-lit private alley along the northeast edge of the Property, to provide pedestrians on Bladensburg Road direct and safe access to the retail areas. Finally, the Applicant will link the Property to the Metrorail system through a shuttle bus system. (Ex. 24; Tr. Nov. 29, 2006 at 38-39, 65-66.)

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 10

- c. Urban Design, Architecture, and Open Spaces. The proposed project exhibits characteristics of exemplary urban design and architecture. Massing the new buildings along New York Avenue, Bladensburg Road, and Montana Avenue will create a more appropriate urban development pattern that will visually define the adjacent streets and public spaces, while creating significant open space both around the perimeter and within the center of the Property. The ground floor retail opportunities along New York Avenue will create an attractive streetscape for pedestrians as well as passing motorists. (Ex. 24, 56, 58; Tr. Nov. 29, 2006 at 45-61.)
- d. Site Planning and Efficient and Economical Land Uses. The proposed project will place ground-level retail along a major boulevard, centered around both a vest-pocket park and public plaza, all for use and enjoyment by the customers, residents, and neighbors. It will also provide its residents and neighbors with open and inviting green spaces for entertainment and relaxation along Bladensburg Road and at the intersection of Montana Avenue with Bladensburg Road. Most significantly for the residents, the Project will feature a 3.9-acre central park and adjacent courtyards at the interior of the site. (Ex 24, 58; Tr. Nov. 29, 2006 at 51-55.)
- e. Uses of Special Value—Revenue for the District. The Applicant's representative testified that the Project will generate far more revenue than both the existing uses and what a matter-of-right development could bring. The PUD will generate approximately \$61 million in one-time revenue during the construction period and through the final unit sales of the project, including sales and income tax revenue related to the construction and recordation and transfer taxes. The continued presence of a vibrant residential and retail mixed-use community will generate approximately \$43 million annually once the Project is fully developed, in the form of property, income, sales, and new recordation and transfer taxes from the resale of the individual units. (Ex. 24, Tr. Nov. 29, 2006 at 73-77.)
- f. Uses of Special Value—Public Spaces. The PUD will include the following project amenities, which will also provide public benefits to the surrounding neighborhoods as well as the District as a whole. (Ex. 24, 56, 58; Tr. Nov. 29, 2006 at 51-55.)
- i. The setback of the residential buildings along Bladensburg Road and Montana Avenue will create significant public green spaces that will enhance the pedestrian streetscape.
 - ii. The service road and streetscape along New York Avenue, as depicted in the approved plans, will provide an urban context appropriate for the proposed retail uses along a major arterial corridor. The service road, with two lanes of one-way traffic and a row dedicated to on-street parallel

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 11

- parking, will insulate pedestrians from the busy New York Avenue corridor.
- iii. A public vest-pocket park and pedestrian plaza near the middle of New York Avenue frontage, between the “B” and “C” buildings, as depicted in the approved plans.
 - iv. A park and sculptural element at the intersection of Bladensburg Road and Montana Avenue, created by the setback of the “F” building, as depicted in the approved plans.
- g. Uses of Special Value—Contributions to Neighborhood Organizations. (Ex. 42; Tr. Nov. 29, 2006 at 67-73.)
- i. Langdon Elementary School: contribution of construction work and materials to Langdon Elementary School to enable the replacement of historic windows, carpet in the laboratory room, and renovate the auditorium, valued at \$210,000.
 - ii. Harbor Light Center: contribution of construction work and materials to the Salvation Army’s Harbor Light Center to enable the completion of its fifth floor, valued at \$270,000.
 - iii. Friends of the National Arboretum: contribution of construction work and materials to enable the construction of both a kitchen facility and a greenhouse for use by the Washington Youth Garden and contribution of a pickup truck for use by the Washington Youth Garden, valued at \$200,000; and a monetary contribution of \$35,000 to the Friends of the National Arboretum.
 - iv. Washington Humane Society: monetary contribution of \$25,000 for the Spay/Neuter Clinic of the Washington Humane Society.
 - v. Arboretum Recreation Center: contribution of construction work and materials to the Arboretum Recreation Center to enable the expansion of the existing facility for multiple indoor activities, computer training, and senior activities, valued at \$150,000.
- h. Uses of Special Value—The Arbor Club. The Project also features an amenities building located near the center of the Property, between Buildings “B” and “C” and the central park. The amenities building will feature a health club, an indoor pool, a basketball court, and multi-purpose rooms for its residents, as well as a child-care facility. The Applicant notes that a limited number of memberships will be available to the general public on a first-in-time basis. (Ex. 24, 58; Tr. Nov. 29, 2006 at 48.)

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 12

- i. Environmental Benefits. The Project will transform the existing site into a mixed-use residential and retail community featuring almost seven acres of revitalized open and green space, including 2.25 acres of true pervious surfaces and 1.56 acres of green roof area. (Ex. 24, 56, 58) The Project will be designed to meet sustainable strategies that will represent approximately 16 points under USGBC's LEED for New Construction, version 2.2. (Ex. 56) The Project will feature a comprehensive set of low-impact development features, including:
 - i. A total of 1.56 acres (68,100 square feet) of green roof, providing stormwater management benefits and reducing the urban heat island effect.
 - ii. A central park providing 3.9 acres of landscaping and an additional 0.65 acres of landscaping at the perimeter that will greatly reduce the heat island effect.
 - iii. Use of environmentally-sensitive cool roofing material with a solar reflective index of 78 or more on approximately 45 percent of the roof surfaces, to reduce the heat island effect.
 - iv. A total of 2.25 acres of pervious area, including 1.6 acres in the central park, to provide on-site stormwater management benefits and enhanced landscaping. The balance of the central park area, 2.3 acres (3.9 acres – 1.6 acres) will consist of landscaped green areas over a below-grade parking structure that will also help to slow down, absorb, and treat rainfall.
 - v. Installation of the Filterra Storm Water Bioretention Filtration System as a method to mitigate stormwater loads from New York Avenue, Bladensburg Road, and Montana Avenue, which will provide off-site stormwater management benefits
 - vi. Accommodation of parking underground, reducing the heat island effect.
 - vii. Mixed-use development, including a variety of retail establishments, a grocery store, a child-development center, and a gym on-site, which will allow the number of car trips generated by each household to be significantly reduced.
- j. Employment and Training Opportunities. In order to further the District's policies relating to the creation of employment and training opportunities, the Applicant indicated that it will participate in a First Source Agreement with the District of Columbia Department of Employment Services. The Applicant also agreed to enter

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 13

into a Memorandum of Understanding with the Local Business Opportunity Commission to use local firms in the development and construction of the Project. (Ex. 24; Tr. Nov. 29, 2006 at 78-82.)

Compliance with PUD Standards

32. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8) Given the level of project amenities and public benefits, the Commission finds that the development incentives for the proposed 110-foot height and related rezoning are appropriate. The Commission also finds that the requested flexibility in building lot control, roof structures, and recreation space, as well as the requested approval for use of portions of the Property as interim accessory parking, are fully justified by the superior benefits and amenities offered by this Project.

33. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, site planning, job training and employment opportunities, transportation measures, and uses of special value to the neighborhood and to the District as a whole.

34. The Commission finds that the Applicant has offered to provide affordable housing in an amount equal to eight percent of the residential gross floor area. Under the gross floor area proposed, the affordable housing the Applicant will be required to provide will equal approximately 261,326 gross square feet.

Government Agency Reports

35. By report dated October 30, 2006 and by testimony at the public hearing, the Office of Planning (“OP”) strongly supported the project and recommended approval of the application. The recommendation was based on OP’s findings that the Project offered many potential benefits to the District, was crucial to the revitalization of the New York Avenue corridor, and would provide an amenity package appropriate for the amount of density being gained through the PUD process. OP found that the Project was consistent with and would further important Comprehensive Plan themes and elements as well as other District planning policies, including the draft Northeast Gateway Plan and the recently adopted inclusionary zoning regulations. OP also noted that the recently completed study of industrial land in the District identified the Property as one appropriate for land use change. OP further stated that the Applicant had provided responses to all of its issues raised prior to setdown and indicated that the Applicant’s proposed distribution of the affordable housing units was reasonable. Finally, OP observed that the Project was a publicly popular application, and was supported by a number of organizations,

Z.C. ORDER NO. 06-15
Z.C. CASE NO. 06-15
PAGE 14

including ANC 5B, the Arboretum Civic Association, the Friends of the Arboretum, and the National Bonsai Foundation. (Ex. 36; Tr. Nov. 9, 2006 at 151-167.)

36. OP conditioned its recommendation for approval on the provision of certain items. (Ex. 36) Specifically, OP sought:

- a. A report from DDOT noting no objection;
- b. Clarification of the duration of the Applicant's commitment to provide affordable units;
- c. Clarification of the value of the affordable housing subsidy; and
- d. Confirmation of the proffered public benefits commitments.

37. By report dated November 8, 2006, DDOT concluded that it had no objections to the Project. DDOT indicated support for the proposed PUD and stated that the related traffic impacts could be accommodated with the implementation of a strong transportation demand management ("TDM") program and signal timing modifications as proposed by the Applicant. DDOT found the Project's proposed parking and loading to be adequate and noted the improvements to the public space, including the service road along New York Avenue. DDOT recommended that the Applicant provide at least 10 bicycle parking spaces for retail development and 150 bicycles spaces for the residential development. DDOT also recommended that the Applicant provide a minimum of 10 carsharing spaces. DDOT also noted that Montana Avenue should be widened in the vicinity of the Project and recommended that the Applicant coordinate with DDOT to determine if the existing overhead utilities on Montana Avenue and Bladensburg Road could be placed underground. Finally, DDOT urged the Applicant to commit to a strong TDM program. (Ex. 39; cf. Tr. Nov. 9, 2006 at 158-162.)

38. By testimony at the public hearing, the chairman of ANC 5B indicated that at a duly noticed meeting in April 2006, with a quorum present, ANC 5B voted unanimously to support the proposed application. At the hearing, the chairman of the ANC spoke positively about the Project's amenities, job creation, retail, and vision for the neighborhood. (Tr. Nov. 9, 2006 at 168-181.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 15

that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405)

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The application meets the contiguity requirements of § 2401.3.

6. The PUD is within the applicable height and density standards of the Zoning Regulations. The proposed height and density will not cause significant adverse effects on any nearby properties and will create a concentration of residents to facilitate the transformation of this underutilized area. The mix of residential and retail uses is appropriate for the site, which is adjacent to the National Arboretum and Arboretum neighborhood and close to other residential neighborhoods. The impact of the Project on the surrounding area is not unacceptable. As demonstrated in the traffic study submitted by the Applicant, the Project will not cause adverse traffic impacts, and the Property is located in reasonable proximity to mass transit.

7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.

8. The benefits and amenities provided by the Project, particularly the provision of housing and affordable housing, sustainable design features, parking, neighborhood-serving retail, and substantial contributions to improve neighborhood organizations, are reasonable for the development proposed in this application.

9. The Applicant seeks a PUD-related zoning map amendment to the CR District and an increase in height as permitted under the PUD guidelines. The Applicant also seeks flexibility from the building control, roof structures, and residential recreation space requirements. Finally, the Applicant seeks approval to use portions of the Property as interim accessory parking for the retail uses, per § 2102.2 and subject to § 2116.5. The benefits and amenities provided by the Project, particularly the provision of affordable housing, the design of

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 16

the buildings, the sustainable design features, the contributions toward neighborhood organizations, and the transformation of an underutilized and largely blighted site into a vibrant mixed-use community, are all reasonable trade-offs for the requested development flexibility.

10. Approval of the PUD application is appropriate because the proposed development is consistent with the transitional character of the area, as set forth in the policies and goals of District planning documents, including the draft Northeast Gateway Plan and proposed Comprehensive Plan.

11. Approval of the PUD and related change in zoning is not inconsistent with the Comprehensive Plan, including the current designation of the Property as part of the production and technical employment category, because of other policies and goals regarding the production of housing, neighborhood retail, sensitive and low-impact development that outweigh the land use designation. Further, the rezoning is consistent with the proposed Comprehensive Plan that identifies the Property as an "area for land use change" and designates the Property as Mixed Use Medium Density Residential / Moderate Density Commercial.

12. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the following major themes of the Comprehensive Plan: stabilizing the District's neighborhoods, preserving and promoting cultural and natural amenities, respecting and improving the physical character of the District, and preserving and ensuring community input. The Project is also consistent with many major elements of the Comprehensive Plan, including the Land Use, Housing, and Urban Design elements, as well as the goals and policies of the Ward 5 element.

13. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 5B voted in favor of approving the application. The Commission agrees with the ANC that this Project should be approved.

14. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

15. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9) and as provided for in Condition 23 herein, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 17

built, and ends once the PUD use terminates. The Commission might grant PUD-related Zoning Map amendments in circumstances where it would otherwise reject permanent rezoning. In this case, the Commission believes that the proposed PUD-related map amendment of the Property to the CR District is appropriate given the superior features of the PUD project and District planning initiatives supporting the change in zoning, and is permitting a maximum density of 4.98 FAR in the CR District on this Property.

16. The application for a PUD and related map amendment is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the application for consolidated review and approval of a Planned Unit Development and related amendment to the Zoning Map of the District of Columbia. This approval shall apply to the following properties: Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153. The approval is 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, included in the post-hearing submission dated December 21, 2006 and marked as Exhibit 58 in the record, as modified by the guidelines, conditions, and standards herein.
2. The PUD Site shall be rezoned from C-M-2 to CR and shall have relief from the building lot control, roof structure, residential recreation space, and off-street parking requirements of the Zoning Regulations consistent with the approved plans referenced in Condition No. 1.
3. The Project shall be a mixed-use development. The PUD shall be constructed to a maximum height of 110 feet and a density of 4.98 FAR.
4. Approximately 3,266,569 square feet of gross floor area shall be devoted to residential use. The Applicant shall have the flexibility to construct between 3,400 and 3,600 residential units in the Project.
5. Approximately 148,121 square feet of gross floor area shall be devoted to retail use. The retail space in Building A shall be designed for a full-service grocery store.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 18

6. The Project will feature an amenities building as shown on the plans referenced above. A limited number of memberships to the facility will be available to the general public on a first-in-time basis.
7. The Project shall feature the creation of a service road along New York Avenue consistent with the approved plans.
8. The Project shall include a public pocket park and plaza along New York Avenue and a public park at the intersection of Montana Avenue and Bladensburg Road, as shown on the plans referenced above. In total, the Project shall feature approximately 105,397 square feet of public open space, including approximately 74,447 square feet of improved public space on private property.
9. Of the residential gross floor area for the Project, a minimum of approximately 261,326 gross square feet, which represents eight percent of the gross residential floor area, shall be devoted to affordable housing for residents with incomes that are no greater than 80 percent of the area median income. The required affordable housing shall be divided proportionately among all eight buildings and shall be phased accordingly.
10. The Project shall include parking as shown on the plans referenced above. The parking requirement may be satisfied with any combination of full and compact parking spaces. The Project shall make available up to 10 spaces for carsharing purposes. The Project shall also include at least 150 bicycle spaces for residential use and 10 bicycle spaces for retail use.
11. After the completion of the "A" building and prior to the construction of the "B," "C," or "D" buildings, the Applicant may utilize those portions of the PUD Site for an interim surface parking lot as accessory parking to the retail uses, as permitted by 11 DCMR § 2101.2 and subject to § 2116.5.
12. The Applicant shall implement the Transportation Management Plan ("TMP") detailed in the post-hearing submission marked as Exhibit 56 in the Record. The TMP shall include the following components:
 - a. A shuttle bus providing continuous daily service to the nearby Rhode Island Avenue Metrorail Station;
 - b. A transportation management coordinator responsible for implementing the TMP and assisting residents, tenants, and employees with the program; and
 - c. Transit and telecommuting incentives, including both a commuting center and a business center, as well as information dissemination regarding public transportation options.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 19

13. The Project shall provide off-street loading consistent with the approved plans. Deliveries will be prohibited during peak hours.
14. The Applicant shall work with DDOT regarding proposed improvements and modifications to the public space abutting the site, including the design and construction of the New York Avenue service road and proposed streetscape improvements for the entire site. Prior to the installation of the streetscape improvements to Montana Avenue and Bladensburg Road, the Applicant shall advise the DDOT Infrastructure Project Management Administration (DDOT-IPMA) of its schedule for reconstruction. If, after consultation with DDOT-IPMA and the appropriate utilities companies, the Applicant determines that it would be both appropriate and feasible to relocate certain existing above-ground utilities to underground locations within the property line, the Applicant shall permit those utilities to be relocated on its private property.
15. The Project shall include the low-impact development features specified in the post-hearing submission marked as Exhibit 56 of the Record, including the following features:
 - a. Creation of approximately 2.25 acres of pervious surface area;
 - b. Provision of approximately 68,100 square feet of green roof; and
 - c. Installation of a Filterra Storm Water Bioretention Filtration System.
16. Prior to the issuance of a building permit for any building approved by this Order, the Applicant shall provide the following community amenities:
 - a. Langdon Elementary School: contribution of construction work and materials to Langdon Elementary School to replace the historic windows, replace the carpet in the laboratory room, and renovate the auditorium, valued at \$210,000.
 - b. Harbor Light Center: contribution of construction work and materials to the Salvation Army's Harbor Light Center to complete its fifth floor, valued at \$270,000.
 - c. Friends of the National Arboretum: contribution of construction work and materials to construct both a kitchen facility and a greenhouse for use by the Washington Youth Garden and contribution of a pickup truck for use by the Washington Youth Garden, valued at \$200,000; and a monetary contribution of \$35,000 to the Friends of the National Arboretum.
 - d. Washington Humane Society: monetary contribution of \$25,000 for the Spay/Neuter Clinic of the Washington Humane Society.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 20

- e. Arboretum Recreation Center: contribution of construction work and materials to the Arboretum Recreation Center to expand the existing facility for multiple indoor activities, computer training, and senior activities, valued at \$150,000.
17. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, shafts, and toilet rooms, provided that the variations do not increase the exterior envelope of the structures or alter the exterior appearance of the Project;
 - 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, provided there is no reduction in quality;
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, brick coursing and patterns, sills, bases, cornices, railings and trim, fenestration configuration (in order to coordinate with the final internal layout), or any other changes that are required to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
 - d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants and storefront design; and
 - e. To make alterations to the parking garage design, provided that the parking garage contains a minimum of approximately one parking space for each residential unit, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.
18. The Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Development. The Applicant shall abide by the terms of the Memorandum of Understanding consistent with the goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the Project.
19. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant shall abide by the terms of the agreement consistent with the goal of utilizing the District of Columbia residents for at least 51 percent of the jobs created by the Project.

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 21

20. No building permit shall be issued for any building approved by this Order until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct on and use the applicable PUD Property in accordance with this Order or amendment thereof by the Zoning Commission.
21. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
22. Prior to the issuance of a certificate of occupancy for any building approved by this Order, the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable units in such buildings to affordable housing for not fewer than 20 years.
23. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the "A" building in Phase I (defined below) as specified in 11 DCMR § 2409.1. Consistent with the phasing plan outlined below, the Applicant retains the right to construct the Project as eight separate elements.
 - a. Phase I consists of three elements: the "A," "B," and "C" buildings. Construction shall begin on the first element of Phase I (the "A" building) within three years of the effective date of this Order.
 - b. Phase II consists of two elements, the "G" and "H" buildings. Within two years after the issuance of a certificate of occupancy for the final element of Phase I, an application must be filed for a building permit for the first element of Phase II, and construction shall begin on the first element of Phase II within three years after the issuance of a certificate of occupancy for the final element of Phase I.
 - c. Phase III consists of three elements, the "D," "E," and "F" buildings. Within two years after the issuance of a certificate of occupancy for the second element of Phase II, an application must be filed for building permit for the first element of Phase III, and construction shall begin on the first element of Phase III within three years after the issuance of a certificate of occupancy for the second element of Phase II.
 - d. Notwithstanding the foregoing, if an application for a building permit for the first element of Phase III has not been filed within twelve (12) years of the effective

Z.C. ORDER NO. 06-15

Z.C. CASE NO. 06-15

PAGE 22

date of this Order, the PUD shall expire with respect to all elements for which a building permit has not been filed.

24. 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 shall 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 January 8, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten , Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007 by a vote of 5-0-0 (Gregory N. Jeffries, John G. Parsons, Carol J. Mitten , Anthony J. Hood, and Michael G. Turnbull to approve).

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 **MAY 18 2007** .

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 24, 2006

Plat for Building Permit of SQUARE 4288 LOTS 2, 5, 6, 8, 10 - 12, 14, 800, 801, 804, 811, 815, 816,
PARCEL 153/26, 153/83, 153/105, 153/111, 153/113,
153/123, 153/150, 153/152 & 153/153

Scale: 1 inch = 100 feet

Recorded in Book 93 Page 147 (Lot 2); Book 155 Page 155 (Lot 5);
Book 138 Page 8 (Lot 6); Book 159 Page 104 (Lot 8);
Book 161 Page 19 (Lot 10); Book 161 Page 134 (Lot 11);
Book 163 Page 121 (Lot 12); Book 193 Page 48 (Lot 14);
A & T Book Page 3256-K (Lot 800); 3408-W (Lot 801);
Page 3412-E (Lot 804); 3683-U (Lot 811); 3680-R (Lot 815);
3774-Y (Lot 816); 342 (Parcel 153/26); 3151-14 (Parcel 153/83);
3215-K (Parcel 153/105); 3236-G (Parcel 153/111);
3239-Y (Parcel 153/113); 3258-K (Parcel 153/123);
3445 (Parcel 153/150); 3450-R (Parcels 153/152 & 153/153)

Receipt No. 25982

Furnished to: P.W.S.P.

[Signature]
Surveyor, D.C.

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

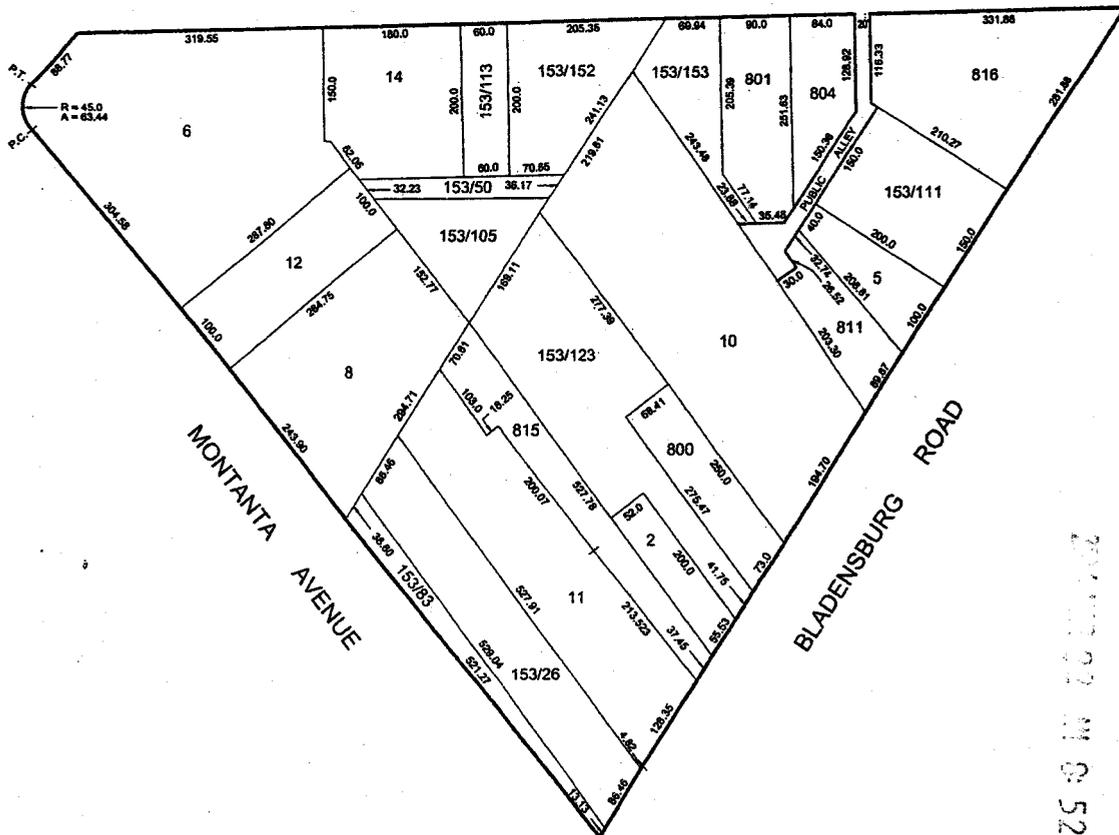
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

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 this application; that the foundation plans as shown hereon is shown, are 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 area 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 if I further certified and agreed that accessible parking area where required by the Zoning Regulations will be provided in accordance with the Zoning Regulations, and that this area has been correctly shown 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 curbside of driveway at any point on private property in excess of 20% for single-family dwellings or less, 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 residential property.)

Date: _____

(Signature of owner or his authorized agent)

NEW YORK AVENUE



DC OFFICE OF ZONING
2007-02-21 11:05:52

ZONING COMMISSION
CASE No. 010-15

EXHIBIT No. 2

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