

**ZONING COMMISSION NOTICE OF FILING**  
**Case No. 06-30**  
**(Consolidated PUD & Related Map Amendment – Square 5040, Lot 804**  
**and Parcels 170/27 and 170/28)**  
**June 22, 2006**

**THIS CASE IS OF INTEREST TO ANC 7D**

On June 16, 2006, the Office of Zoning received an application from Pollin Memorial Community Development, LLC (the “applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property (parcels only).

The applicant is requesting from the Zoning Commission approval of a consolidated PUD and related map amendment from unzoned to R-5-A for property located in the northeast quadrant of the District that is generally bounded by Hayes Street, N.E., Anacostia Avenue, N.E., and the Anacostia Park ().

The property that is the subject of this application consists of Square 5040, Lot 804 and Parcels 170/27 and 170/28 in Northeast Washington, D.C. (Ward 7) and is generally bounded by Hayes Street, N.E., Anacostia Avenue, N.E., and the Anacostia Park. Square 5040, Lot 804 is currently zoned R-5-A and Parcels 170/27 and 170/28 are currently unzoned.

The applicant proposes to construct a 125-unit mixed-income development. The project will contain approximately 185,234 square feet of gross floor area dedicated to residential uses, with approximately 91 single family dwellings, 24 3-unit apartments, and 10 flats. The buildings will have a maximum height of three stories and will include at least one off-street parking space for each of the 125 units and 150 on-street parking spaces. In addition, the applicant seeks a related map amendment for Parcels 170/27 and 170/28 to the R-5-A District. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

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**ZONING COMMISSION NOTICE OF FILING**

**Case No. 06-31**

**(Consolidated PUD & Related Map Amendment – Square 1657, Lots 810-812)**

**June 22, 2006**

**THIS CASE IS OF INTEREST TO ANC 3E**

On June 19, 2006, the Office of Zoning received an application from The John Akridge Development Company (the “applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 1657, Lots 810-812 in Northwest Washington, D.C. (Ward 3) and is located at 5220 Wisconsin Avenue, N.W. The property is currently zoned R-5-B.

The applicant proposes to construct an apartment house with 55-70 units and approximately 13,200 square feet of gross floor area devoted to retail use on the ground floor. The project will have a maximum density of 5.25 FAR and height of 79 feet. In addition, the applicant seeks a related map amendment to the C-2-B District. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

**ZONING COMMISSION NOTICE OF FILING**

**Case No. 06-32**

**(Text Amendment – Section 1709.18)**

**June 28, 2006**

**THIS CASE IS OF INTEREST TO ANC 6D**

On June 20, 2006, the Office of Zoning received an application from Washington Telecom Associates, LLC (the “applicant”) for approval of a text amendment to § 1709.18 of the Zoning Regulations.

The applicant proposes to add Square 766 to the Capitol South receiving zone. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

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**ZONING COMMISSION NOTICE OF FILING**

**Case No. 06-34**

**(Consolidated PUD & Related Map Amendment – Square 109, Lots 51-55)**

**June 29, 2006**

**THIS CASE IS OF INTEREST TO ANC 6B**

On June 23, 2006, the Office of Zoning received an application from Comstock East Capitol, LLC (the “applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 1096, Lots 51-55 in Southeast Washington, D.C. (Ward 6) and is located at 1705-1729 E. Capitol Street, S.E. The property is currently zoned R-4.

The applicant proposes to replace the existing vacant housing units with a newly-constructed four-story apartment building that will include 136 units, 11 of which will be for affordable housing. The apartment building will include a fitness center, a meeting room with kitchen facilities, front and rear courtyards and passive recreational space on the rooftop terrace. The project will have an overall height of 48.5 feet and contain 114,672 square feet of gross floor area for a total density of 2.7 FAR. The project will include 117 underground parking spaces. In addition, the applicant seeks a related map amendment to the R-5-B District. This request is not inconsistent with the Comprehensive Plan of the District of Columbia.

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

**ZONING COMMISSION ORDER NO. 05-15**  
**Z.C. Case No. 05-15**  
**(Consolidated Planned Unit Development - Broadway I Associates, LLC)**  
**January 9, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 24, 2005, to consider an application from Broadway I Associates, LLC for the consolidated review and approval of a planned unit development application for Lots 1, 22, 23, 32, 826, and 827 in Square 775, located at 318 I Street, N.E. pursuant to Chapter 24 and §102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

**FINDINGS OF FACT**

1. The project site consists of Lots 1, 22, 23, 32, 826, and 827 in Square 775 and has an address of 318 I Street, N.E. (the "Property"). The Property is located in the Near Northeast neighborhood of Ward 6 at the northwest corner of 4<sup>th</sup> and I Streets, N.E. The Property contains approximately 28,310 square feet of land and is in the C-2-B Zone District. The Property was most recently used by the Uptown Bakery as a wholesale bakery establishment and accessory parking lot. (Exhibit 13, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. v.)

2. On May 23, 2005, Broadway I Associates, LLC (the "Applicant"), filed an application with the Zoning Commission for review and approval of a planned unit development ("PUD"). The Applicant did not seek a Zoning Map amendment. The proposed height and density of the project are significantly less than the maximum provided under the PUD guidelines in the C-2-B Zone District. The PUD project is a proposed condominium building with approximately 140 new residential units. The PUD project will also include approximately 9,120 square feet of affordable housing. (Exhibit 13, Pre-Hearing Statement at p. 1.)

3. At a Special Public Meeting on July 11, 2005, the Commission unanimously voted to set down the application for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on October 24, 2005.

4. At the October 24, 2005, public hearing, the Commission accepted Phil Esocoff of Esocoff and Associates and Martin Wells of Wells & Associates as experts in their respective fields based on a review of their resumes (submitted as Exhibit A to Exhibit 20 in the record).

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There were no other preliminary matters before the Commission and no applications for party status. ANC 6C, the Advisory Neighborhood Commission ("ANC") in which the Property is located, is automatically a party to this application.

5. At its public meeting on November 14, 2005, the Zoning Commission took proposed action by a vote of 3-0-2 to approve the application and plans that were submitted to the record.

6. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated November 23, 2005, found that the proposed PUD "would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any federal interests".

7. The Commission took final action to approve the application on January 9, 2006, by a vote of 4-0-1.

#### PUD APPLICATION AND PROJECT

8. The Property includes the lots in the southeastern portion of Square 775. It is zoned for mixed use (i.e., residential and commercial) and has a long history of non-residential use. The lots in Square 775 to the west of the Property are improved with commercial office buildings that line the entire length of I Street, N.E. between 3<sup>rd</sup> Street, N.E. and the alley directly to the west of the Property. The square to the west of Square 775 contains commercial buildings along its I Street frontage. The square to the south of the Property is ringed by rowhouses. To the southwest at the intersection of 3<sup>rd</sup> and H Streets, N.E. is a large commercially-zoned, vacant property (formerly a gas station) that has mixed-use zoning and the former Capital Children's Museum (currently being converted to a residential project). Directly to the east of the Property are rowhouses and single-family homes. To the north of the Property are rowhouses and a few warehouses. (Exhibit 13, Pre-Hearing Statement at p. 3.)

9. The recently approved Station Place PUD is located along the west side of 2<sup>nd</sup> Street, N.E. between F and H Streets, N.E. The Station Place PUD project included a rezoning to the C-3-C Zone District to allow a commercial office development with retail and service uses of approximately 1,396,950 square feet (5.9 Floor Area Ratio ("FAR")) and a building height of 115.5 feet. In March 2005, the Commission also granted final action to the Capital Children's Museum PUD, which is located along the west side of 3<sup>rd</sup> Street, N.E. between H and I Streets, N.E. The Capital Children's Museum PUD included a rezoning to the C-3-C Zone District and a residential development of approximately 599,134 square feet (5.72 FAR). The new buildings on that site will have a maximum height of approximately 110 feet, and the existing Capital Children's Museum building, which will be retained, is approximately 64 feet in height. (Exhibit 13, Pre-Hearing Statement at pp. 3-4.)

10. In Zoning Commission Case No. 821, the Property was rezoned from C-M-1 to C-2-B (except for Lots 22, 23, and 32, the small lots at the northern edge of the Property, which

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were rezoned from R-4 to C-2-B in that Commission action). These lots were rezoned, in large part, because the Office of Planning ("OP") determined that a mixture of residential and commercial uses at moderate- to medium-density should be encouraged. The previous change in the designation now supports the construction of a high-quality residential project on a site that is currently home to a wholesale bakery and accessory parking lot. (Exhibit 13, Pre-Hearing Statement at p. 19.)

11. The City's planning objectives call for more residential use in the area of the Property. The Property is located in the Moderate-Density Residential land use category shown on the District of Columbia Generalized Land Use Map. The properties to the north and east of the Property in Square 775 are also included in the Moderate-Density Residential land use category. The square directly to the west of the Property and the squares to the south and southeast of the Property are located in the Low-Density Commercial/Moderate-Density Residential land use categories. The properties further to the west, which include the Station Place PUD site and the square to the northwest of the Property, are located in the Production and Technical Employment/Medium-High Density Commercial land use categories. The square directly southwest of the Property is located in the Institutional land use category. (Exhibit 13, Pre-Hearing Statement at p. 4.)

12. The Applicant stated that the proposed project will result in the creation of a unique and inviting residential building with the introduction of approximately 140 residential units. All of the residential units will be for-sale units. The main lobby for the building will be accessed from the I Street entrance. The project will have ground floor access to individual units along I and 4<sup>th</sup> Streets, N.E. (Exhibit 13, Pre-Hearing Statement at pp. 4-5.)

13. The total gross floor area included in the proposed PUD is approximately 160,000 square feet for a total density of approximately 5.65 FAR. The project's height proposed is approximately 65 feet measured from I Street, N.E., the maximum permitted height under existing zoning. The project's proposed lot occupancy is approximately 85%. The project will be considerably smaller than what is permitted under the C-2-B District PUD guidelines (maximum density of 6.0 FAR and a maximum building height of 90 feet). The C-2-B Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum lot occupancy of 80% for residential uses, and a density of 3.5 FAR with a limit of 1.5 FAR of non-residential density. (Exhibit 13, Pre-Hearing Statement at pp. 8-9.)

14. The building will be primarily brick and masonry with metal windows and precast concrete and stone and metal trim. No EIFS will be used on the project. Along 4<sup>th</sup> and I Streets, N.E., the design provides soft edges through the secondary massing of bays, balconies, and setbacks. Elevational elements within these bays, ornamental brickwork, and window patterns will further establish an appropriate scale in relation to nearby buildings and an intricate design that will bring richness to a site presently devoid of charm. (Exhibit 13, Pre-Hearing Statement at p. 5.)

15. The roof of the new building will serve as a landscaped recreation space. The roof will feature planters with both trees and shrubs and many clusters of seats arranged to

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facilitate resident and guest gatherings. A swimming pool will be one of the primary features on the roof. In addition to being a usable and attractive recreation area, the roof will be a partially "green roof." The green portion of the roof will be constructed in a manner that creates a lush urban park and will feature material that will both absorb rainwater and utilize it to keep the vegetation on the roof green. In addition, the Applicant will add trellises to the roof penthouse to make the space more inviting. (Exhibit 13, Pre-Hearing Statement at pp. 5-6.)

16. The below-grade parking garage will contain approximately 140-170 parking spaces. Access to the garage will be from the public alley located on I Street, NE, in the middle of the block between 3<sup>rd</sup> and 4<sup>th</sup> Streets, N.E. as shown on pages 10 and 24 of Exhibit A to Exhibit 13 in the record. Based on community requests, the project will include 12 additional visitor parking spaces in the parking garage. Also, due to District of Columbia Department of Transportation ("DDOT") requests and community concerns, the Applicant will construct the building so as to add 9 feet in width to the north-south alley. This added space will allow easier vehicular access, calm traffic flow around the Property, and increase sightlines. The vehicular entrance and exit opens onto a courtyard that has been designed as an attractive and inviting entry for residents of the project and their guests. Residents of the project will be able to proceed directly from their parking space in the below-grade garage to their units. A pedestrian-only entrance will be located on I Street, N.E. (Exhibit 13, Pre-Hearing Statement at p. 6.)

17. The project will include extensive landscape improvements on the Property. Trees and small rows of grass will be planted down the length of the Property on I and 4<sup>th</sup> Streets, N.E. The project will reinvigorate the alley space by enhancing the interior of the Property. The project entails the repaving of the north/south alley and the eastern extensions of the alley system in unit pavers in consultation with DDOT and the community. The Applicant also will pave the northwest corner of the Property in similar materials to effectively create a central, urban courtyard around a bosque of trees as an amenity for residents of the project and the square. The trees will be located on the Property – not in public space – and outside the footprint of the garage to ensure their long-term survival and growth. The trees will be surrounded with bollards to protect them from vehicles and include appropriate, aesthetic lighting. Such trees will soften the space and create a livable alley area in great contrast to typical District properties. Small, walled gardens adjoining ground level units of the proposed building will allow individual residents to add varied background greenery to this environment. (Exhibit 13, Pre-Hearing Statement at pp. 6-7.)

18. The courtyard will allow service vehicles to access the project's enclosed loading area as well as the service areas of surrounding neighbors. The loading platform and recycling areas will be enclosed within the building and accessed from the open space in the alley just below the tree bosque. Because the level of service activity for a condominium is low (with trash vehicles arriving at most once a day and moving vans far less frequently), the Applicant intends to develop this service area as a landscaped urban courtyard that occasionally accommodates a service vehicle. Designing the courtyard in the manner proposed, as a communal space that is regularly maintained, will be an effective way to improve security for all

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the surrounding residents. (Exhibit 13, Pre-Hearing Statement at pp. 6-7, 9; pp. 11 and 24 of Exhibit A to the Pre-Hearing Statement.)

19. The Applicant will work closely with the DDOT to implement the proposed I Street streetscape improvements adjacent to the site. (Exhibit 13, Pre-Hearing Statement at p. 7.)

20. The project will include approximately 25,200 square feet of residential recreational space (15.75% of the residential space), exceeding the 15% residential recreational space requirement in the C-2-B Zone District. The recreation space will be comprised of space on the roof, in the courtyard, in the lobby, and in a fitness center. (Exhibit 13, Pre-Hearing Statement at p. 8.)

21. The project design and massing are compatible with the surrounding area. As shown on pages 15 and 25 of Exhibit A to Exhibit 13 in the record, special attention has been paid to the scale and massing of the surrounding area, particularly on 4<sup>th</sup> Street, N.E. so that the project complements the residential neighborhood. In addition, the project acts as a bridging element between the low scale Near Northeast neighborhoods to the larger structures to the south and west of the project, including Station Place and Senate Square projects. The Applicant planned a building with a height lower than the PUD guidelines and greater lot occupancy to make the massing appropriate for the neighborhood. The elevations illustrate the use of two setbacks, at the top of the bay projections and top floor. Along with reportioning of windows and doors, this strategy has established an appropriate scale relationship with the physically smaller buildings adjoining and surrounding the project. (Exhibit 13, Pre-Hearing Statement at pp. 8-9.)

22. As detailed in Exhibit C of Exhibit 13 in the record, no adverse environmental impact will result from the construction of the project. In addition, the increased use of water and sanitary services that will occur as a result of the project, will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The project's proposed stormwater management and erosion control plans will minimize impact on the adjacent properties and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the project.

23. The project will not have an adverse impact on the public facilities that its occupants will rely on for service. The Property is located within easy walking distance of the Union Station transportation hub, which offers Metrorail, MARC, and VRE service. In addition, numerous Metrobus lines utilize H Street, N.E. which is only one block south of the Property, such that the project is adequately served by public transportation. Bicycle usage by residents of the project will be integrated into the design of the project. Bicycle usage will be supported and encouraged through the provision of secure bike storage areas, including a bike room directly off the alley and more bike storage in the parking garage.

24. The proposed development complies with the broad parameters of the C-2-B Zone District. However, the design scheme proposed for the PUD has created a configuration that does not meet all the requirements of the C-2-B Zone District. Specifically, the Applicant

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seeks flexibility to provide a lot occupancy of 85% rather than the 80% lot occupancy required in 11 DCMR § 772.1. This increased lot occupancy will allow for a building height that is more compatible with the neighboring buildings. (Exhibit 13, Pre-Hearing Statement at p. 9.)

25. As its second area of flexibility, the Applicant requests relief from the fifteen-foot (15 ft.) rear yard requirement imposed by 11 DCMR § 774.1. Under 11 DCMR § 2405.5, the Commission may grant such flexibility from the rear yard requirement. The Applicant has designed a proposed landscaped and finished courtyard in lieu of a rear yard.

26. In its Pre-hearing Statement, the Applicant requested relief for two aspects of its parking garage - the requirement of 11 DCMR § 2115.2 that allows no more than 40% of the parking spaces to be compact spaces and the requirement of 11 DCMR § 2117.5 that drive aisles be at least 20 feet wide. At the request of the Commission, the project architect revised the parking garage design to eliminate the necessity for this relief. (Exhibit 13, Pre-Hearing Statement at p. 10.)

27. The project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

1. Stabilizing the District's neighborhoods;
2. Respecting and improving the physical character of the District; and
3. Preserving and ensuring community input.

The project is also consistent with many Major Elements of the Comprehensive Plan (including: the Housing and Urban Design Elements), and fulfills the goals and policies of the Ward 6 Plan. The OP report submitted on October 14, 2005 stated that OP believes that the land use impact of the project will be favorable to the District. (Exhibit 13, Pre-Hearing Statement at pp. 15-17; Exhibit 21, OP Report, pp. 4, 9-11.)

28. Testimony and evidence on behalf of the Applicant was provided by Marge Brown, Director of Midatlantic Operations, Broadway Management Company; Phil Esocoff, Esocoff & Associates Architects (who testified as an expert in the field of architecture); and Martin Wells, Wells & Associates (who testified as an expert in the field of traffic and parking engineering).

29. Ms. Brown testified about the Applicant's history and other recent projects in the District. She noted that the Applicant participated in many meetings with neighborhood organizations and residents regarding the proposed project.

30. As addressed in the Applicant's Pre-Hearing Statement and in the testimony of Ms. Brown and Mr. Esocoff, the following public benefits and project amenities will be created as a result of this project.

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- Housing and Affordable Housing – The PUD project will create approximately 12 affordable residential units in the Near Northeast neighborhood. The units will comprise approximately 9,120 square feet of gross floor area and will be available to potential purchasers with a household income that does not exceed 80% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area. The Applicant submitted a site plan as Exhibit F of Exhibit 20 that shows the proposed location of the affordable units, their sizes and their configurations. This distribution was slightly amended based on requests by OP and is subject to further refinement (with OP approval) as the overall project is finalized. The Applicant submitted Exhibit 27 into the record to reflect the substitution of a one bedroom unit for a studio unit. The Applicant has distributed the affordable units throughout the building and evenly across the sizes and configurations of units offered at the property. (Exhibit 13, Pre-Hearing Statement at p. 12; Exhibit F of Exhibit 20; OP Report Exhibit 21; Exhibit 27, p. 3 ).
- Urban Design and Architecture – Ms. Brown and Mr. Esocoff noted the significant architectural quality and superior urban design involved in the PUD project are greater than the same found in a matter-of-right project. The following is a list of such design features:
- the provision of setbacks on the top floor to decrease the perceived height of the building;
  - the provision of direct access units with ornamental metal balconies and flower boxes evoking the traditional townhouse architecture of the community and further adding to the streetscape of the neighborhood;
  - the provision of both parking and loading access to the building from the rear alley system making additional curb-cuts unnecessary for the project and maintaining the existing residential character of both I and 4<sup>th</sup> Streets;
  - the provision of at-grade bike storage and additional bike storage below-grade;
  - the provision of a 1:1 ratio of parking located in a below-grade garage;
  - the provision of using time-tested, quality methods and materials of deep set windows, ornamental metal railings, brick, and precast concrete lintels and sills on all sides of the building; the provision of a hydronic heat pump system in lieu of a through-wall type system for both aesthetic and acoustic benefits;
  - the provision of windows on the north party wall further enhancing the building's residential character when viewed looking south on 4<sup>th</sup> Street;
  - the provision of recycling collection on each level of the building to encourage the practice of recycling;

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- no through-wall vents along the street facades;
- the provision of a high level of finish on all exposures of the building, including the rear of the building facing the alleys;
- and 100% outside ventilation to corridors and dwelling units.

(Exhibit 13, Pre-Hearing Statement at pp. 12-13.)

➤ Site Planning – The proposed project involves site planning that includes significant landscape and hardscape improvements surrounding the property. As shown in the plans submitted to the Zoning Commission, these improvements would not necessarily be included in a matter-of-right project. These enhanced landscape and hardscape features provide benefits for the residents of the project and the entire neighborhood yet will be maintained by the new building. First, the project will include numerous upgrades to the public alley system that will benefit the nearby neighbors and the District of Columbia. The Applicant will enhance the alley in the following ways:

- increase the width of the alley and existing curb cut on I Street from the existing 15 feet to 20 feet to match DDOT's recommendations for alleys;
- increase the width of the alley along the property's west boundary by 4 feet for a total alley width of 24 feet to allow for both additional vehicular maneuvering room and pedestrian and bicycle traffic;
- repave both the north-south alley from I Street to K Street and the alley system just north and west of the property with brick pavers; and
- provide a landscaped 'piazza' courtyard interior to the block with trees planted in natural soil, benches, aesthetic lighting, and a water feature.

Second, the provision for a streetscape on both I and 4<sup>th</sup> Streets will meet the DDOT Streetscape Standard Regulations established for other parts of the District. The Applicant is proposing to add brick pavers to the entire street frontage of the project. In addition, the Applicant noted that the proposed project has been designed to provide residents and their guests with open and inviting spaces for entertainment and relaxation. These spaces include the large landscaped courtyard on the interior of the site, the private garden areas, the roof terrace, and a health club. (Exhibit 13, Pre-Hearing Statement at p. 13.)

➤ Effective and Safe Vehicular and Pedestrian Access – The project provides effective and safe vehicular and pedestrian access by separating the two methods of accessing the building. The main vehicular ingress/egress is provided through the enhanced alley off I Street, N.E. The pedestrian entrance is on I Street at the corner of the

property near 4<sup>th</sup> Street, N.E., and the first floor residences facing the streets have their own individual entrances. The Applicant responded to OP, DDOT, and community concerns to refine the vehicular and pedestrian access plan for the project. (Exhibit 13, Pre-Hearing Statement at p. 13.)

- Environmental Benefits – The project will include numerous environmentally-sensitive features that would not necessarily be included in a matter-of-right project. These attributes include: a green roof system covering part of the building's roof; a landscaped roof terrace reducing the effects of urban heat islands; and the use of storm water retention as much as feasible for site irrigation. (Exhibit 13, Pre-Hearing Statement at pp. 5 and 11.)
- Revenue for the District – The Applicant noted that the addition of approximately 140 new households will result in the generation of additional tax revenues for the District of Columbia. (Exhibit 13, Pre-Hearing Statement at p. 14.)
- Employment and Training Opportunities – The Applicant submitted into the record a draft First Source Employment Agreement with the Department of Employment Services (“DOES”) and a draft Memorandum of Understanding with the Office of Local Business Development (“OLBD”) that the Applicant will enter into upon approval of the application. (Exhibits D and F to Exhibit 20, Pre-Hearing Statement at p. 14.)
- Consistency with the Comprehensive Plan – The Applicant noted that the project fosters and furthers numerous elements of the Comprehensive Plan as well as numerous major themes of the Comprehensive Plan. (Exhibit 13, Pre-Hearing Statement at pp. 14-15.)

31. At the public hearing and in his transportation impact study submitted into the record as Exhibit B to Exhibit 13 in the record and as Exhibit 3 to Exhibit 21 in the record, the Applicant's traffic engineer, Mr. Wells, concluded that the proposed project will have no significant impact on peak-hour levels of service at nearby intersections. Mr. Wells testified that all key intersections around the Property currently operate at an acceptable level of service, but the 4<sup>th</sup> and K Streets intersection operates near capacity at the PM peak hour due to the high volume of eastbound traffic. The redevelopment of the Property will be adequately accommodated at the key intersections in the study area with traffic signal timing modifications. Mr. Wells stated that the vehicular access to the site through the existing alley along I Street is the preferred location to access the parking garage and the loading area. The transportation study noted that the proposed on- and off-site parking supply would adequately meet the minimum zoning parking requirements and prevailing parking demands in this neighborhood. In addition, the PUD project provides for 12 dedicated, non-sellable visitor parking spaces located in a below-grade garage, in addition to the 1:1 ratio of parking previously noted. These spaces were provided in response to community concerns about parking. At the public hearing, Mr. Wells testified that the visitor spaces would function sufficiently and did not create any adverse conditions for the project. (Exhibit B to Exhibit 13; Exhibit 3 to Exhibit 21.)

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32. In response to issues raised by Commissioners during the public hearing, the record of the case was left open for the Applicant to provide the post-hearing materials. The Applicant submitted the required materials on October 31, 2005. (Exhibit 27.)

#### GOVERNMENT REPORTS

33. OP, in its report dated October 14, 2005 and through its testimony at the public hearing, recommended approval of the project subject to the provision of more information. The OP report noted that the project benefits and amenities are commensurate with the amount of development incentives requested, that the application meets the standards for a PUD, and that the project is not inconsistent with the Comprehensive Plan. The other information requested by OP included: a signed First Source Agreement and LSDBE Memorandum of Understanding; a tabulation of the type, size, and location of the affordable units, summation of the approximate floor area of affordable units, and classification of the affordable units according the DHCD affordability stands; a revised ground-floor plan responding to DDOT's comments (by the time the OP report was submitted, the Applicant had addressed DDOT's concerns); a revised roof plan identifying the portion that would be a "green roof," consistent with LEED standards; and a list of environmentally-sensitive standards and systems incorporated into the development that meet LEED standards. (Exhibit 21, pp. 1-2.)

34. The Fire and Emergency Medical Services Department issued a memorandum that was attached to the OP report. That memorandum stated that D.C. Fire and EMS Department had no objection to the proposal provided that the alley is not less than 20 feet wide for fire department access. (Exhibit 5 of Exhibit 21.)

35. In testimony at the public hearing, representatives of OP noted that the significant amenities of the project include: the construction of an entirely residential project on a commercially-zoned site; the significant affordable housing component of the project; set aside visitor parking; and the site planning and urban design aspects of the project.

36. DDOT submitted a report dated August 8, 2005 that supported the PUD project with a slight modification that the alley be widened. Since the DDOT report was submitted, the Applicant revised the site plan to accommodate DDOT's modification request to widen the alley entrance to incorporate a pedestrian buffer area. (Exhibit 14.)

#### ADVISORY NEIGHBORHOOD COMMISSION REPORTS

37. Advisory Neighborhood Commission ("ANC") 6C voted to support the project with no conditions at a regularly scheduled and publicly noticed meeting on October 12, 2005. The letter sent by Mark Dixon, Chairman of ANC 6C, on October 19, 2005, states that the Applicant held several community meetings to explain the project and answer questions. The letter stated that the project was generally well received at these meetings and the ANC 6C Zoning and Planning Committee meeting. No one from ANC 6C was present at the public hearing. (Exhibit 23.)

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PARTIES AND PERSONS IN SUPPORT

38. In a letter dated October 14, 2005, the Capitol Hill Restoration Society noted its support for the application with the conditions that the Applicant: increase the affordable housing to 17,600 square feet; guarantee that the mix of the unit sizes for the affordable housing will be the same ratio as the mix for the market units; and provide more two bedroom units rather than one bedroom plus den units. (Exhibit 22.)

39. Two neighbors of the Property submitted letters in support of the application. These support letters highlighted the positive community relations of the Applicant and the beneficial impact the project would have on the neighborhood. Both letters highlighted the appropriateness and importance of the change from a heavy industrial use to a vibrant residential use.

40. No persons testified in support of the application at the public hearing.

PARTIES AND PERSONS IN OPPOSITION

41. At the public hearing, one resident of Square 775, Paul Heavey, testified in qualified opposition to the PUD project. Mr. Heavey raised concerns that the project may cast a shadow on his house. The Applicant provided shadow studies to show that the height and mass of the new buildings will not create such adverse shadow impacts on neighboring residential properties.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. Notice of the public hearing was provided in accordance with the Zoning Regulations.

3. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance and would otherwise require approval by the Board of Zoning Adjustment. In this application, the Commission finds that the requested flexibility from the requirements of § 772.1 regarding lot occupancy can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The slightly increased lot occupancy allows the project to remain within the matter-of-right height limit of 65 feet. Under 11 DCMR § 2405.5, the Commission also finds

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that the PUD project may provide the proposed landscaped and finished courtyard in lieu of the fifteen-foot rear yard requirement imposed by 11 DCMR § 774.1. The courtyard achieves the same goals that the rear yard requirement was created to encourage and will likely have a more positive impact on the surrounding properties.

4. The development of this PUD project carries out 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 not achievable under matter-of-right development.

5. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

6. The Commission agrees with the testimony of the project architect and the representative of the Applicant and finds that this project does in fact provide superior features that benefit the surrounding neighborhood to a greater extent than a matter-of-right development on the Property would provide. The Commission finds that the affordable housing provided in the project, the enhanced design and environmental sensitivity of the project, and the landscape and hardscape improvements provided on the site are significant project amenities of this PUD application.

7. In accordance with D.C. Official Code § 1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission takes note of ANC 6C's letter in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission agrees with ANC 6C's conclusion that the Applicant has been well received by the community.

8. The Commission notes the support that the project received from Capitol Hill Restoration Society. In response to the issues raised by the Capitol Hill Restoration Society, the Commission finds that the proposed amount and unit mix of affordable housing is sufficient and appropriate.

9. Approval of the PUD is not inconsistent with the Comprehensive Plan. Specifically, the Commission believes that the proposed project will be a residential project of appropriate height that, along with the Senate Square project, will provide a critical mass of new residents that will help revitalize the commercial corridor of H Street, N.E.

10. In response to the issue raised by Paul Heavey regarding the impact of any shadows from the proposed building on Mr. Heavey's solar panels, the Applicant provided detailed shadow studies. These shadow studies demonstrate that there will be no such problem. The Commission notes that abundant light, air, and views still will be available to residents of the square. The Commission concurs with the testimony of the project architect, and the information submitted into the record, that the setting back of the top two floors of the proposed building and the terraces on some of the units effectively reduces the scale of the building and further mitigates the visual impact of the building on surrounding properties.

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11. The Commission finds that the project relates well to nearby townhouses. The Commission finds that the treatment of the lower levels of the project, including individual entries on a rhythm and scale similar in frequency and detailing to that of individual row houses, balcony projections, front yards, two-story windows, and significant landscaping creates a design along 4th Street, N.E. that is consistent with townhouses and townhouse neighborhoods throughout the Near Northeast Neighborhood, Capitol Hill, and the District.

12. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

13. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

14. The project will achieve numerous goals of the District. The project will create a significant residential development and will improve dramatically the appearance of the site. The proposed height and massing of the project are consistent with recently approved PUD projects in the area and with the District's planning goals for the future of this neighborhood. The Applicant has not sought a height in excess of that permitted as matter of right in recognition of the location of the site east of 3rd Street, N.E. in recognition of the need to achieve compatibility with the surrounding residential neighborhood.

15. The Applicant does not propose any change in zoning and the proposed apartment house use is permitted in the C-2-B Zone District.

16. No adverse environmental impact will result from the construction of the project. In addition, the increased use of water and sanitary services that will occur as a result of the project will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The project will not have an adverse impact on the public facilities on which it will rely for service.

17. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. The instant application will achieve the goals of the PUD process by creating high-quality residential development, with a significant affordable housing component, on the Property that will help to enliven and revitalize the Near Northeast neighborhood of Ward 6.

- Housing and Affordable Housing - Pursuant to 11 DCMR § 2403.9(f), the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 140 new, for-sale, residential units in the Near Northeast neighborhood. In addition, the project will result in the creation of approximately 9,120 square feet of affordable housing.

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This amount represents 15% of the additional density received through the PUD process. Given the current strong demand for the production of affordable housing in the District, this is a significant amenity. In addition, the affordable housing units have been distributed sufficiently throughout the building and across the sizes, types, and configurations of the units at the project.

- Urban Design and Architecture - 11 DCMR § 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. As shown in the detailed plans, elevations, and renderings included as Exhibit A in the Pre-Hearing Statement and Exhibit 27, the project exhibits the characteristics of superior urban design and architecture. The courtyard, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create a sense of scale and visual interest. The design includes many design features that would not be found in a matter-of-right project. The result is an exemplary design.
- Site Planning - Pursuant to 11 DCMR § 2403.9(b), "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The project is an efficient design that beneficially maximizes the zoning designation of the Property without negatively impacting the neighboring properties. In addition, the project has been designed to provide residents and their guests with open and inviting spaces for entertainment and relaxation. These spaces include the landscaped courtyard on the interior of the site, the large roof deck, the fitness center, and the private garden areas. Further, the project includes a great deal of parking, including visitor parking at the request of the community.
- Effective and Safe Vehicular and Pedestrian Access - 11 DCMR § 2403.9(c) states that "Effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. Based on the testimony and report of the Applicant's traffic expert and review of the Applicant's submissions, the project provides such effective and safe vehicular and pedestrian access. The project will provide a below-grade parking garage with approximately 140 parking spaces and approximately 12 parking spaces for visitors. This vehicular entrance and exit will be accessed from a public alley off I Street, N.E. and will be appropriately landscaped and buffered from neighboring properties. This entrance opens onto a courtyard that has been designed as an attractive and inviting entry for residents of the project, visitors, and their guests. A pedestrian-only entrance/exit will be constructed on I Street, N.E. Lastly, the street-fronting first floor units will have their own separate entrances. These separate and distinct entrances/exits will mitigate any potential pedestrian and vehicular conflicts.
- Revenue for the District - According to 11 DCMR § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The addition of approximately 140 new households will result in the generation of significant additional tax revenues in the form of

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recordation, transfer, property, income, sales, use, and employment taxes for the District.

- First Source Employment Program - According to 11 DCMR § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, the Applicant will voluntarily enter into an agreement to participate in the DOES First Source Employment Program to promote and encourage the hiring of District of Columbia residents.
- Local Business Opportunity Program - Pursuant to 11 DCMR § 2403.9(e), the use of local firms in the development and construction of a project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a Memorandum of Understanding ("MOU") with the OLBD to use the resources of the Local Business Opportunity Commission ("LBOC") to utilize local business enterprises in the development of the project.
- Comprehensive Plan - According to 11 DCMR § 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The project is consistent with and furthers many elements and goals of the Comprehensive Plan.
- Public Benefits of the Project - 11 DCMR §§ 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of the Pre-Hearing Statement, and in the table attached thereto as page 8. It is only as a result of the additional density provided through the PUD process that the Applicant is able to construct such a well-designed project. The architectural detailing of the proposed building and the large open spaces provided in the project set it apart from a matter-of-right residential project. In addition, a matter-of-right project would not provide any affordable housing. The approval of this PUD application will result in the creation of approximately 9,120 square feet of affordable housing.

18. The PUD project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan.

- Stabilizing the District's Neighborhoods - The creation of approximately 140 new residential units will help stabilize the Near Northeast neighborhood. The creation of a significant residential development on the Property is also likely to help stimulate additional residential development and stabilize the neighborhood. The influx of these new residents in this neighborhood will provide the critical mass of customers needed to patronize existing commercial uses on nearby H Street, N.E. Therefore, the project will have a catalytic effect on surrounding areas while respecting the massing and scale of the neighborhood.

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- Respecting and Improving the Physical Character of the District - The project has been designed to integrate with the surrounding neighborhood and to dramatically improve the streetscape on 4<sup>th</sup> and I Streets, N.E. The 4<sup>th</sup> and I Streets facades, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create an appropriate scale and visual interest. The design of the building blends the structure with the surrounding single-family rowhouses. Due to the Applicant's sensitivity to the height of the surrounding houses, the matter-of-right height limit of 65 feet has been observed.
- Preserving and Ensuring Community Input - Through the PUD process, the Applicant has worked and will continue to work with representatives of ANC 6C, as well as the surrounding neighborhood, to create a new residential building that is a benefit to the neighborhood and the District.

19. The Comprehensive Plan also contains 11 major elements. The project furthers the objectives and policies of several of these elements as follows:

- Housing Element - The creation of approximately 140 residential units on this currently underutilized property fully satisfies the provisions of the Housing Element of the Comprehensive Plan. As previously stated, the project will provide approximately 9,120 square feet of affordable housing. The inclusion of these affordable units in the project is also entirely consistent with the provisions of the Comprehensive Plan.
- Urban Design Element - As shown in the detailed plans, elevations, and renderings included with Exhibit A to the Pre-Hearing Statement and in post-hearing submissions to the Commission submitted as Exhibit 27, the project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a prominent residential building will complement the established residential neighborhood that surrounds the site. As mentioned, the project has been painstakingly designed to complement and enhance the scale of the surrounding neighborhoods, particularly that on 4<sup>th</sup> Street, N.E. adjacent to the Property. The architects designed a building with lower height than allowed under the PUD guidelines and greater percentage of lot occupancy to create a more appropriate design.
- Generalized Land Use Map - As previously mentioned, the Generalized Land Use Map includes the Property in the Moderate-Density Residential Land Use Category. In Commission Case No. 821, the Property was rezoned from C-M-1 to C-2-B (except for Lots 22, 23, and 32, the small lots at the north of the Property, which were rezoned from R-4 to C-2-B in that Commission action). These lots were rezoned, in large part, because OP determined that a designation permitting high-density residential and mixed uses was more appropriate for the largely residential area. Such a change in the designation supports the construction of a high-quality residential project on a site that is currently home to a wholesale bakery and accessory parking

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lot. The project and C-2-B Zone District are consistent with the flexibility that the Moderate- Density Residential Land Use category provides for the Property.

- Ward 6 Goals and Policies - Under 10 DCMR § 1707.1, the Ward 6 Element of the Comprehensive Plan seeks to maintain and strengthen the quality and construction of housing, stimulate production of new housing, and promote low- and moderate-income housing development opportunities. The proposed PUD is consistent with these provisions of the Ward 6 Element of the Comprehensive Plan.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a Planned Unit Development application for Lots 1, 22, 23, 32, 826, and 827 in Square 775. The approval of this PUD is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 13, 20, and 27 of the record, as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of an all-residential project that includes a minimum of 125 and a maximum of 140 residential units. There will be a minimum of one parking space for each residential unit. The entire project will include approximately 160,000 square feet of gross floor area resulting in a density of approximately 5.65 FAR. The new building will be 65 feet tall and the total lot occupancy of the project will be approximately 85%.

3. The Applicant is required to provide 12 non-sellable visitor spaces in the parking garage.

4. The project will include a minimum of approximately 9,120 square feet of gross floor area available for sale as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in the District of Columbia's Department of Housing and Community Development's ("DHCD") guidelines and policies. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with DHCD to make such changes comply with the same. The unit types and locations shall be as shown on Exhibit C of Exhibit 27. Any changes to the proposed unit types and locations must be approved by OP and in no event shall the total amount of affordable housing be less than 9,120 square feet.

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5. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the draft First Source Agreement submitted as Exhibit D to Exhibit 20 of the record.

6. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the draft Memorandum of Understanding submitted as Exhibit E to Exhibit 20 of the record.

7. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the structures;
- To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials;
- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, trim, or any other minor changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and
- To make alterations to the parking garage design provided that the parking garage contains a minimum of one parking space for each residential unit and a total of 12 visitor spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.

8. The consolidated 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 and construction of the project must start within three years of the date of the effective date of this Order pursuant to 11 DCMR § 2408.8 and 2408.9.

9. 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 violation of the Act will not be tolerated. Violators will be subject to

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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.

10. The Applicant shall contribute \$25,000 to the H Street Main Street program for use with the Ready to Work program as designated by ANC 6C. This contribution will fund Ready to Work's clean up efforts in the Capitol Hill Business Improvement District's boundaries and on H Street, N.E. H Street Main Street will be required to report to ANC 6C on the specific use of this contribution.

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

On November 14, 2005, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (Carol J. Mitten, Anthony J. Hood, and Kevin L. Hildebrand to approve; John G. Parsons and Gregory N. Jeffries, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on January 9, 2006, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons to approve; Kevin L. Hildebrand to approve by absentee ballot; Gregory N. Jeffries, not having 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* on \_\_\_\_\_.

**ZONING COMMISSION ORDER NO. 05-19**

Case No. 05-19

**(Application for the Consolidated Review and Approval of a Planned Unit Development by  
The Neighborhood Development Company, LLC)**

April 20, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 6, 2006, to consider an application from The Neighborhood Development Company, LLC, for the consolidated review and approval of a planned unit development application and related zoning map amendment for Lots 803 and 35, and the alley between them, in Square 2910 located at 4100 Georgia Avenue, N.W., pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

**FINDINGS OF FACT**

1. The project site consists of Lots 803 and 35, and the alley between them, in Square 2910 and has an address of 4100 Georgia Avenue, N.W. (the "Property").

2. On June 21, 2005, The Neighborhood Development Company, LLC (the "Applicant"), filed an application with the Zoning Commission ("Commission") for review and approval of a planned unit development ("PUD") and a Zoning Map amendment. The Applicant requested the amendment of the Zoning Map from the C-2-A Zone District to the C-3-A Zone District for the Property. The proposed height and lot occupancy of the project are significantly less than the maximum provided under the PUD guidelines in the C-3-A Zone District. The PUD project involves a condominium building with approximately 72 new residential units that are all affordable rental units for at least 60% of the Washington, D.C. Area Median Income ("AMI"). The PUD project also includes approximately 10,486 square feet of retail space. (Exhibit 14, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at pp. 1, 8; Exhibit 18 at p. 2.)

3. At a Special Public Meeting on September 15, 2005, the Commission did not set the project down for a hearing and advised the Applicant to enhance its designs. At a Special Public Meeting on October 16, 2005, the Commission voted to set down the application for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on February 6, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022.

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4. At the February 6, 2006 public hearing, the Commission accepted Scott Knudson and Marc Feinstein, of Weincek and Associates, as experts in architecture based on a review of their resumes (submitted as Exhibits 22 and 23 in the record, respectively). The Commission also accepted Nicole White of Symmetra Design as an expert in traffic and parking based on previous approval of such expert status for Ms. White. There were other preliminary matters before the Commission involving: (i) waiving of the hearing fee for the Applicant under 11 DCMR § 3042 based on the affordable nature of the project and the letter from the District of Columbia Department of Housing and Community Development ("DHCD") (Exhibit E to the Applicant's post-hearing submission dated February 24, 2006 ("Post-Hearing Submission")); (ii) waiving of the rules under 11 DCMR § 3013.8 to allow the submission of Exhibit 18 to the record, dated January 23, 2006; and (iii) the granting of permission to amend the application pursuant to 11 DCMR § 3013.9 so that the Applicant could slightly amend the project design at the hearing. There were no applications for party status. Advisory Neighborhood Commission ("ANC") 4C, the ANC in which the Property is located, is automatically a party to this application. The Commission denied the waiver of the hearing fee because of the applicant's untimely request for a waiver<sup>1</sup>; waived the rules under 11 DCMR § 3013.8 to allow the submission of Exhibit 18 to the record, dated January 23, 2006; and granted the Applicant's amendment to the project design at the hearing under 11 DCMR § 3013.9.

5. The Zoning Commission took proposed action on March 13, 2006 by a vote of 4-0-1 to approve), with conditions, the applications and plans that were submitted into the record.

6. 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 PUD and related map amendment would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.

7. The Commission took final action on April 20, 2006 by a vote of 5-0-0.

#### PROJECT SITE

8. The Property consists of approximately 17,640 square feet of land area and includes the southern portion of Square 2910 between Kansas Avenue, Georgia Avenue, Taylor Street, and Upshur Street, N.W. It is commercially zoned and was used as an automobile lot for a number of decades. (Exhibit 14, Pre-Hearing Statement at p. 4.)

9. The square to the west of the Property includes a self-storage facility, an office building, and an auto repair shop directly across from the Property. To the south is a used car lot

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<sup>1</sup> 11 DCMR § 3042 provides the procedures the Commission is to follow when deciding to waive hearing fees. 11 DCMR § 3042.5 provides that the Commission should make the decision when it sets the matter down for a public hearing. In this case, the Commission decided to set the case down for a public hearing on September 15, 2005. The Applicant did not apply for the fee waiver until February 24, 2006, which was after the Commission held its hearing on the case.

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with parcels of vacant land adjoining it, lining the whole of the south side of Taylor Street, N.W., between Georgia Avenue and Kansas Avenue, N.W. A park is located directly to the east of the Property, across Georgia Avenue, N.W. Further still, along the east side of 9<sup>th</sup> Street, N.W., are two churches, a vacant lot, and several other structures. Directly to the north, and adjacent to, the Property along the west side of Georgia Avenue, N.W., is a building housing an Internet café and a carry-out restaurant. North of, and adjacent to, the Property along the east side of Kansas Avenue, N.W., is a commercial storage structure. A gas station is located north of the retail building and the storage structure, at the intersection of Georgia Avenue and Kansas Avenue, N.W. To the southeast of the Property, along the west side of Georgia Avenue, N.W., between Taylor Street and Shepherd Street, N.W., are retail buildings. Along the east side of Georgia Avenue, between Taylor Street and Shepherd Street, N.W., is a large, 6-story apartment complex. To the southwest of the Property, along the west side of Kansas Avenue, N.W., between Taylor Street and Shepherd Street, N.W., are several apartment buildings and along the east side of the block are seven townhouses. (Exhibit 14, Pre-Hearing Statement at p. 5.)

10. The Property is .3 miles (approximately a five-minute walk) to the Georgia Avenue-Petworth Metro Station. A number of new developments, either proposed or approved, are or will be located along Georgia Avenue, N.W., between the Property and the Metro station, including 3910 Georgia Avenue (a proposed mixed-use or retail-only project on 31,000 square feet of land area); 3646 Georgia Avenue, N.W. (a proposed development of sit-down restaurants and quick eateries); and a large \$40 million mixed-use project at the Metro station that will include 148 condominiums, 17,000 square feet of retail space, and underground parking. (Exhibit 14, Pre-Hearing Statement at p. 5.)

11. The City's planning objectives call for more residential use in the area of the Property. The site is located in the Low-Density Commercial/Moderate-Density Residential land use category as shown on the District of Columbia Generalized Land Use Map. The properties to the south of the Property on Georgia Avenue, N.W., are in the Moderate-Density Commercial/Medium-Density Residential land use category. Given its location and prominence on the Georgia Avenue corridor, the Property shares many of the same characteristics of the properties in this land use category. The properties north, west, and south of the Property are also in the Low-Density Commercial/Moderate-Density Residential land use categories, as is the property one-half block to the east, and the properties to the northeast, northwest, and southwest. The property beyond one-half block to the east is in the Moderate-Density Residential land use category, as is the square to the southeast. (Exhibit 14, Pre-Hearing Statement at pp. 5-6.)

12. The PUD guidelines for the C-2-A Zone District allow a height of 65 feet and a maximum density of 3.0 FAR, with a limit of 2.0 FAR for non-residential uses. The C-2-A Zone District, as a matter-of-right, permits a maximum height of 50 feet, a maximum lot occupancy of 60% for residential uses, and a maximum density of 2.5 FAR, with a limit of 1.5 FAR for non-residential uses.

13. The PUD guidelines for the C-3-A Zone District allow a maximum height of 90 feet and a maximum density of 4.5 FAR, with a limit of 3.0 FAR for non-residential uses. The C-3-A Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum lot

occupancy of 75% for residential uses, and a maximum density of 4.0 FAR, with a limit of 2.5 FAR for non-residential uses.

PUD APPLICATION AND PROJECT

14. The Applicant stated that the proposed project will result in the creation of a unique residential building with approximately 72 residential units and a retail space on the ground floor (the "Project"). All of the residential units will be affordable rental units at 60% of AMI. The main lobby for the building will be accessed from the Georgia Avenue entrance. (Exhibit 14, Pre-Hearing Statement at p. 6; Exhibit 18 at p. 2.)

15. The new building will be constructed to a height of 72 feet. The building will be a gateway for the Petworth neighborhood and will also provide impetus and direction for the development of the Petworth community in the future. (Exhibit 14, Pre-Hearing Statement at p. 6.)

16. The building will be primarily masonry and Hardiplank cementitious siding. The massing of the building, decorative masonry base, cornice detailing, corner towers, patterned brick, and projecting bays from the face of building will create an expression appropriate to this neighborhood. The building was significantly redesigned in response to the comments of the Commission at the September 15, 2005 and October 17, 2005 setdown meetings and the comments of the Office of Planning ("OP"). The Applicant seeks to implement a design that is both attentive to Commission concerns and brings a fresh design statement to Petworth. Different, more subdued, colors are now incorporated in a more cohesive pattern that blends traditional and modern elements. The building materials have been simplified. The first two floors of the building are articulated with a large expanse of brick masonry, including banded brick accents. A muted and complimentary Hardiplank exterior meets the brick base. A top layer of even lighter color, comprised of Hardiplank exterior tops the façade. A hardcoat stucco is used on the bay projections along Taylor Street, N.W. The tower elements have been emphasized and add vibrancy to the Property. All of the stucco is at least two stories above the ground. Windows have been added at the ground level retail along Taylor Street and Georgia Avenue, N.W., to create more inviting space. In addition, the Applicant reduced the unit count from 78 to 72 units, in part to decrease the intensity of the use and the size of the building. The scale of the Georgia Avenue elevation has been reduced to be a more cohesive part of the streetscape. The Applicant worked through the design with OP at meetings following the Commission setdown hearings, and OP responded favorably to the refinements. The Applicant revised the project design after the February 6, 2006 public hearing, including such items as a redesign of the Georgia Avenue and Kansas Avenue façades and altering the color of the building, as requested by the Commission. (Exhibit 14, Pre-Hearing Statement at pp. 6-7; Exhibit A to the Post-Hearing Submission.)

17. The roof of the new building will include as a recreation terrace that will allow a lively visual ending to the building that, combined with the tower detailing, will create a memorable skyline. The Applicant updated the roof with a green roof. (Exhibit 14, Pre-Hearing Statement at p. 7.)

18. As shown on page 8 of Exhibit A to Post-Hearing Submission, vehicular ingress/egress to the site, including the largely below-grade parking garage of approximately 54 parking spaces, will be onto Kansas Avenue, N.W., approximately 75 feet north of Taylor Street, N.W. A portion of the parking area is sloped down so that it effectively forms a ramp below the retail space. Residents of the Project can proceed directly from their parking space in the below-grade garage to their units. The main lobby for the residential portion of the building will be accessed from the Georgia Avenue entrance to the Project via a glass entranceway and lobby, which creates a visual connection to Georgia Avenue. A pedestrian-only entrance for the retail space will be located on the corner of Georgia Avenue, N.W. and Taylor Street, N.W. The Project will enliven the street by its pedestrian access and ground-floor retail. The separation of the vehicular and pedestrian entrances to the Project will reduce overlap and conflicts at the Property.

19. As a result of input from the District Department of Transportation ("DDOT"), OP, and community members, the Applicant added 20 parking spaces to its initial project design and closed a proposed vehicular entrance off Taylor Street. The 20 parking spaces will be added through the inclusion of the Space Savers parking structure system at the Property. This system incorporates a "pit" at certain parking spaces so that two cars are parked vertically and an elevator raises and lowers the cars to grade.

20. The proposed Project will include landscape and hardscape improvements on the Property. In addition to a landscaped area on the southwest corner of the building, there will be a green space created along Taylor Street, N.W. The landscaping and the finish on the building will help to reinvigorate the surrounding neighborhood.

21. The total gross floor area included in the proposed PUD is approximately 79,467 square feet, for a total Floor Area Ratio ("FAR") of approximately 4.5. The building will have a height of approximately 72 feet, as measured from Georgia Avenue, N.W. The proposed Project will have a lot occupancy of approximately 68%. The proposed Project is equal to or smaller than the building envelope permitted under the C-3-A District PUD Guidelines (maximum density of 4.5 FAR and a maximum building height of 90 feet). It is necessary to rezone the Property to the C-3-A Zone District in order to allow the proposed 72 foot height and density of 4.5 FAR. The proposed height and density on the Property is critical to allow for the affordable housing. (Pre-Hearing Statement at p. 8; Exhibit B of Exhibit 18.)

22. The Project will have approximately 5,281 square feet of residential recreational space (8% of the residential space), less than the 15% residential recreational space required in the C-3-A Zone District. It will be comprised of space on the roof terrace, a tenant meeting room, lobby space, and landscaped recreation space. (Pre-Hearing Statement at p. 8, Exhibit B of Exhibit 18.)

23. The loading platform and recycling areas will be enclosed within the building and located at the rear side of the building. They will be accessed from a separate loading entrance on Kansas Avenue, N.W. (Pre-Hearing Statement at p. 9; Post-Hearing Submission, Exhibit A.)

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FLEXIBILITY UNDER PUD GUIDELINES

24. The PUD Process was created to allow greater flexibility in planning and design than is possible under conventional zoning procedures. The PUD regulations specifically allow the Commission to approve any zoning relief that would otherwise require the approval of the Board of Zoning Adjustment ("BZA"). The proposed development complies with the broad parameters of the C-3-A Zone District. However, the design scheme proposed for the PUD has created a configuration that does not meet all of the exact requirements of this zone. (Pre-Hearing Statement at p. 9.)

25. Specifically, the Applicant seeks to establish 54 parking spaces, rather than the 61 that are required under 11 DCMR § 2101.1. This change is requested and is necessary in order to maintain the affordability of the units, while still constructing a residential project that will satisfy the District and neighborhood planning goals for the area. It would be cost-prohibitive to excavate an additional level of parking on the site. Due to the Property's proximity to the Georgia Avenue-Petworth Metro Station, as well as Metrobus lines on Georgia Avenue, N.W., and because the immediate vicinity of the Property is relatively uncongested, this smaller number of parking spaces will not result in any negative effects. The Applicant's parking report and DDOT support this conclusion. (Pre-Hearing Statement at pp. 9-10.)

26. The Applicant requests relief from the residential recreation space requirement of 15% of residential gross floor area required by 11 DCMR § 773. Instead, the Applicant seeks to provide residential recreational space in the amount of approximately 8% of the residential gross floor area. This reduction will not conflict with the spirit or intention of the requirement, because the close proximity of the Upshur Recreation Center (an extensively-equipped park including a lighted basketball court, lighted athletic fields, a swimming pool, a playground, and a multi-purpose room) and the ground floor retail space will provide ample diversionary and recreational outlets for residents of all ages to accommodate the gap between the 8% residential recreation space offered by the Project and the 15% required under the Zoning Regulations. In addition, the space that will be provided will be highly functional and desirable to the residents. Both the roof deck and the residents' meeting room will be useful spaces. Also, the Project will have green space surrounding the building on the Property. Further, the Applicant requests relief from 11 DCMR § 773.6 in order to include areas that are less than 25 feet wide in the calculation of residential recreation space. The requested relief is the result of the irregular shape of the roof and will maximize the available open space on the roof for tenant enjoyment. (Pre-Hearing Statement at p. 10; Exhibit 18 at p. 2.)

27. The Applicant requires relief from 11 DCMR § 411. The Project has two roof structures – one houses a stairwell and the elevator and the other houses the emergency stairwell. It would be impractical to connect the roof structures, and such a connection would lead to an appearance of greater height. Also, the design of the roof structures has been integrated into the design of the tower elements. As a result, the Applicant also requires relief from § 400.7 of the Zoning Regulations regarding setback of the roof structures. By working the roof structures into the tower elements, the building has become more cohesive and can offer a greater amount of space on the roof for residential recreation space. In addition, the roof structures are not setback

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from the exterior walls of the building a distance equal to their height, in order to enhance the design of the Project and to allow for a greater amount of residential recreation space on the roof. (Pre-Hearing Statement at pp. 10-11.)

28. The Applicant requests relief from the requirements of 11 DCMR § 776 regarding the minimum width of courts in buildings with a residential component. The court was created, because the elevator shaft has been pushed away from the building in order to give nearby bedrooms windows. The proposed court begins at the top of the roof of the first floor and extends 51 feet 8 inches in height. Therefore, a court of 17 feet 3 inches in width would be required. The court provided is 9 feet 6 inches in width. This relief will not violate the intention of the Zoning Regulations and will allow for greater flexibility in design of the building. (Pre-Hearing Statement at pp. 10-11.)

29. Applicant requests relief from the provisions of 11 DCMR § 2201.1 requiring a loading space and second loading platform for residential and retail areas. The Project only has one complying loading berth and loading platform. These loading facilities are sufficient due to the smaller size of the Project. There are only 72 units (50 units trigger the loading requirements) and less than 11,000 square feet of retail (5,000 s.f. of retail trigger the loading requirements). By only having one loading berth and platform, the Project economizes the site and allows for more parking. (Testimony of the Applicant.)

30. Finally, the Applicant requests relief from the parking space distribution provisions of 11 DCMR § 2115.4. The Applicant proposes a parking garage that contains one area of three (3) contiguous compact parking spaces rather than the required five (5) contiguous compact parking spaces. Since it is an oddly configured lot and space is at a premium, the arrangement of such parking spaces maximizes all open areas in the most efficient manner. Such a configuration also allows more parking to be on the site without excavation, which would be cost-prohibitive in an affordable housing development. (Pre-Hearing Statement, Exhibit A.)

31. As detailed in Exhibit E of Exhibit 2 in the record, no adverse environmental impact will result from the construction of the Project. In addition, the increased use of water and sanitary services that will occur as a result of the Project, will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project.

32. As detailed in Exhibit E of Exhibit 2 in the record, the Project will not have an adverse impact on the public facilities that it will rely on for service. The Property is located within easy walking distance of the Petworth/Georgia Avenue Metrorail Station. In addition, numerous Metrobus lines utilize Georgia Avenue, such that the Project is adequately served by public transportation.

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33. The Applicant communicated with the community a great deal. D.C. Councilmember Adrian Fenty supported the Project. ANC 4C offered support and suggestions for the Project, many of which were incorporated into the plan.

34. The Project is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan for the National Capital, D.C. Law 12-275, 10 DCMR (Planning and Development) § 100 *et seq.* (1998) ("Comprehensive Plan"). The Project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input.

The Project is also consistent with many Major Elements of the Comprehensive Plan (including the Housing and Urban Design Elements) and fulfills the goals and policies of the Ward 4 Plan. The OP report submitted on January 27, 2006 stated that OP believes that the land use impact of the Project would be favorable to the District. (Pre-Hearing Statement at pp. 18-22; Exhibit 19.)

35. Testimony and evidence on behalf of the Applicant was provided by Karl Jentoft, Chief Executive Officer, The Neighborhood Development Company, LLC; Scott Knudson and Marc Feinstein of Weincek & Associates Architects (who testified as an expert in the field of architecture); and Nicole White, of Symmetra Design (who testified as an expert in the field of traffic and parking engineering).

36. As addressed in the Applicant's Pre-Hearing Statement and in the testimony of Mr. Jentoft, Mr. Feinstein, and Mr. Knudson, the following public benefits and project amenities will be created as a result of this Project.

- Housing and Affordable Housing – Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This Project will create approximately 72 new, rental apartments in the Petworth neighborhood. As a whole, the Project will result in the creation of approximately 68,981 square feet of affordable housing units. The units will be available to potential residents with a household income that does not exceed 60% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area. In addition, the District Department of Housing and Community Development ("DHCD") requires that at least fourteen (14) units will be required to be reserved for potential residents with a household income between 31% and 50% of the AMI. The Applicant will be receiving a loan from DHCD's Housing Production Trust Fund. The Applicant will enter into an agreement with DHCD requiring that the building remain 100% affordable for at least 60% AMI for forty (40) years. Given the current strong interest in the production of

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affordable housing in the District of Columbia, this is a significant amenity. (Pre-Hearing Statement at p. 14; Exhibit 18 at p. 2; and Post-Hearing Submission at p. 3.)

- Urban Design and Architecture – Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. Mr. Jentoft, Mr. Feinstein, and Mr. Knudson noted the significant architectural quality and superior urban design involved in the PUD project are greater than the same found in a matter-of-right project. As shown in the detailed plans, elevations, and renderings included in Exhibit A of Exhibit 31 to the record [Post-Hearing Submission], the proposed Project exhibits all of the characteristics of exemplary urban design and architecture. The high level of building finish, freshness of design, and alternating composition of projecting bays combine to create a sense of energy and visual interest. In addition, the Applicant is providing enhanced landscaping on the Property. The Applicant revised and enhanced the design to address the comments of OP and the Commission. (Pre-Hearing Statement at p. 14; Post-Hearing Submission.)
- Site Planning – Pursuant to § 2403.9(b) of the Zoning Regulations, "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. The proposed Project has been designed to provide residents and their guests with open and inviting spaces, including the roof terrace and landscaped area. In addition, the Project would bring much needed retail space to the area and a great deal of affordable housing to an area close to the Metro. The Project would be an efficient use of the Property and take advantage of its many positive characteristics. (Pre-Hearing Statement at p. 15; Post-Hearing Submission.)
- Effective and Safe Vehicular and Pedestrian Access – The Zoning Regulations, pursuant to § 2403.9(c), state that "Effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. The proposed Project will provide a parking garage with approximately 54 parking spaces. The entrance and exit to this garage will be on Kansas Avenue, and it will be landscaped and buffered from neighboring properties. Residents of the Project will be able to proceed directly from their parking space in the garage to their units, and patrons of the retail space will be able to park in designated retail parking spaces. The Project will also provide two separate entrances/exits for pedestrians on Georgia Avenue – one for the retail space and one for residents. These separate and distinct vehicular and pedestrian entrances/exits will mitigate any potential pedestrian and vehicular conflicts. (Pre-Hearing Statement at p. 15; Post-Hearing Submission.)
- Environmental Benefits – The Project will include numerous environmentally-sensitive features that would not typically be included in a matter-of-right project. These attributes include: a green roof system covering part of the building's roof top; a landscaped roof terrace reducing the effects of urban heat islands; and the use of extensive landscaping for most open spaces. (Post-Hearing Submission.)

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- First Source Employment Program – According to § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, the Applicant has voluntarily entered into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 32; Pre-Hearing Statement at p. 16.)
- Local Business Opportunity Program – Pursuant to § 2403.9(e), the use of local firms in the development and construction of the Project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a Memorandum of Understanding ("MOU") with the Department of Small and Local Business Development ("DSLBD") to use the resources of the DSLBD to utilize LSDBEs in the development of this Project. Further, the Applicant is an LSDBE in accordance with the spirit of D.C. Law 12-268. The District should make a particular effort to allow the Applicant this opportunity to grow its business in strength and vitality, and to allow the Applicant to be a key participant in "stimulating economic development in the District." It should be noted that the Property is directly adjacent to the Applicant's headquarters. (Pre-Hearing Statement at p. 16; Post-Hearing Submission, Exhibit D.)
- Public Benefits of the Project – Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of the Pre-hearing Statement and during the February 6, 2006 hearing. It is only as a result of the funding provided by DHCD, the District of Columbia Housing Finance Authority, and the additional density and height provided through the PUD process that the Applicant is able to construct such a well-designed project and provide so much new affordable housing. The building will be well-designed and integrated into its surroundings and equipped with all modern safety amenities as well as parking and recreational space. As a substantial investment, the Project will be a valuable addition to the urban fabric of the Petworth neighborhood. The architectural detailing of the proposed building, landscaping, and the large amount of quality affordable housing provided in this Project set it apart from a matter-of-right residential project. Whereas a matter-of-right project would not be required to provide any affordable housing, the approval of this PUD application will result in the creation of approximately 68,981 square feet of high-quality affordable housing. In addition, the surrounding neighborhoods will greatly benefit from the first floor retail space. The Project is likely to have a highly desirable catalytic effect on development in the immediately surrounding area.

37. At the public hearing and in her transportation impact study and amendment submitted into the record as Exhibit B to Exhibit 14 and as Exhibit 27, the Applicant's traffic engineer, Ms. White, concluded that the proposed Project will have no significant impact on peak-hour levels of service at nearby intersections. Ms. White testified that all key intersections around the Property currently operate at acceptable levels of service. The redevelopment of the

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Property will be adequately accommodated at the key intersections in the study area and have only minimal impact on the delay and volume/capacity ratios in the study area. (Exhibit B to Exhibit 14; Exhibit 27.)

38. In response to issues raised by Commissioners during the public hearing, the record of the case was left open for the Applicant to provide post-hearing materials including: revisions to the site plans including the updated first level plan showing new parking plan and traffic flow; updated elevation for the Georgia Avenue façade; specifics about the Space-Saver parking spaces proposed for the parking garage; details of the green roof; drawings that show the elevator tower and the main corner tower at the same height; and details of the affordability program for the Property. The Applicant submitted the required materials on February 24, 2006. (Post-Hearing Submission.)

#### GOVERNMENT REPORTS

39. OP, in its report dated January 27, 2006 and through its testimony at the public hearing, recommended approval of the Project subject to the provision of more information. The OP report noted that the project benefits and amenities are commensurate with the amount of development incentives requested, that the application meets the standards for a PUD, and that the Project is not inconsistent with the Comprehensive Plan. The information and conditions to approval that OP listed are:

- The Applicant will provide more detail and articulation along the Kansas Avenue façade.
- The Applicant will restrict all loading and unloading from Georgia Avenue and Taylor Street.
- The Applicant will provide details of the arrangement regarding the provision of an off-site location for car-sharing for use by residents of the development.
- The Applicant will remove the large sign from the side of the building.
- The Applicant will provide a signed First Source Agreement with the District of Columbia Department of Employment Services and a Memorandum of Understanding with the Local Business Opportunity Commission prior to the Zoning Commission's final action.

(Exhibit 19.)

40. In testimony at the public hearing, representatives of OP noted that the significant amenities of the Project include: the construction of an entirely affordable residential project on a commercially-zoned site and the site planning and urban design aspects of the Project.

41. The DDOT submitted a report dated February 7, 2006 ("DDOT Report") that supported the Project with a recommendation that it include 57 parking spaces. As stated, the Applicant revised the site plan to include 54 parking spaces. DDOT also requested that the Applicant submit a site plan indicating the size of the loading dock and dimension of the

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driveway. The Applicant provided such a site plan to DDOT on February 6, 2006. The DDOT Report stated that the Property is well-served by public transportation. (Exhibit 30, p. 2.)

#### ADVISORY NEIGHBORHOOD COMMISSION REPORTS

42. ANC 4C voted to support the Project with no conditions at a regularly scheduled and publicly-noticed meeting on February 14, 2006. The letter sent by Joseph Martin, Chairman of ANC 4C, on February 27, 2006, states that the Applicant held community meetings to explain the Project and answer questions. That letter stated that a meeting with Single Member District Commissioner Shanel Anthony did not result in any significant opposition to the Project. No one from ANC 4C was present at the public hearing. (Exhibits 25 and 26.)

#### PARTIES AND PERSONS IN SUPPORT

43. In a letter dated February 23, 2006, the Petworth Action Committee noted its support for the application. (Post-Hearing Submission; Exhibit F.)

44. No persons testified in support of the application at the public hearing.

#### PARTIES AND PERSONS IN OPPOSITION

45. There were no parties that testified or submitted any materials in opposition to the application.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. Notice of the public hearing was provided in accordance with the Zoning Regulations.

3. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance and would otherwise require approval by the BZA. In this application, the Commission finds that:

- The requested flexibility from the requirements of 11 DCMR § 2101.1 regarding parking spaces can be granted with no detriment to surrounding properties and without detriment

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to the zone plan or map. The Project has adequate parking and the site is well-served by mass transit.

- The requested flexibility from the requirements of 11 DCMR § 773 regarding the provision of 15% residential recreation space can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has adequate space for resident recreation and the surrounding neighborhood offers many opportunities for recreation. In addition, the requested flexibility from 11 DCMR § 773.6 can be granted since the Applicant is attempting to maximize the residential recreation space available on the roof for tenant enjoyment.
- The requested flexibility from the requirements of 11 DCMR § 411 regarding the roof structures and their setbacks can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. It would be impractical to connect the roof structures and detract from the design of the building.
- The requested flexibility from the requirements of 11 DCMR § 776 regarding the minimum width of courts in buildings with a residential component can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The courts were created in an attempt to give certain bedrooms windows. This relief will allow for greater flexibility in design of the building.
- The requested flexibility from the requirements of 11 DCMR § 2201.1 regarding loading space and second loading platform for residential and retail areas can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has sufficient loading facilities due to the smaller size of the Project.
- The requested flexibility from the requirements of 11 DCMR § 2115.4 regarding compact parking space distribution can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project is maximizing the space given on an oddly-configured lot. Such a configuration also allows more parking to be on the site without excavation, which would be cost-prohibitive in an affordable housing development.

4. The development of this Project carries out 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 not achievable under matter-of-right development.

5. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

6. The Commission agrees with the testimony of the project architect and the representative of the Applicant and finds that this Project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the affordable housing

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provided in the Project, the enhanced design and environmental sensitivity of the Project, and the landscape and hardscape improvements provided on the site are significant and substantial project amenities of this PUD application.

7. The Commission finds that the Project is designed to be compatible with nearby buildings. The Commission finds that the treatment of the lower levels of the building, including residential entry, will have a rhythm and scale similar to that of the neighboring properties. The designs of the façades of the building, particularly the Taylor Street, Georgia Avenue, and Kansas Avenue façades are consistent with the buildings throughout the neighborhood.

8. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

9. The Commission evaluates the impact of the Project as follows:

- Land Use Impact – The proposed PUD Project will create a significant residential development along the important Georgia Avenue Corridor and will improve dramatically the appearance of the site. The proposed height and massing of the Project are consistent with the buildings in the area and with the District's planning goals for the future of this area of the City. In order to create a more compatible building with the surrounding neighborhood, the Applicant designed the Project to a height of 72 feet.
- Zoning Impact – The proposed PUD-related Zoning Map Amendment can be granted without adversely affecting nearby and adjacent Zone Districts. The proposed C-3-A Zone District is consistent with the Moderate-Density Residential/Low-Density Commercial Land Use Category designation for the Property and the surrounding Generalized Land Use Map designations. It is particularly consistent with the Medium-Density Residential/Moderate-Density Commercial Land Use Category designation for the properties on the Georgia Avenue Corridor. Those properties are zoned C-3-A. The PUD-related rezoning of the Property comports with the District's planning initiatives in the vicinity of the Property. Further, the requested rezoning does not constitute spot zoning. The D.C. Court of Appeals has held that PUDs do not constitute spot zoning. Daro Realty, Inc. v. District of Columbia Zoning Commission, 581 A. 2d 295, 299.
- Facilities Impact – The proposed Project will not have an adverse impact on the public facilities on which it will rely for service. As previously mentioned, the Property is located within easy walking distance of the Georgia Avenue-Petworth Metro Station. In addition, Metrobus lines utilize Georgia Avenue, N.W., such that the Project is well-served by public transportation. The increased use of water and sanitary services that will occur as a result of the Project will have an inconsequential effect on the District's delivery systems. The site is currently

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served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems.

10. In accordance with D.C. Official Code § 1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission takes note of ANC 4C's support of the Project, and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission notes the support that the Project received from the Petworth Action Committee. Based on the letters and support from the community, the Commission concludes that the application has been well-received by the community.

11. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

12. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. The instant application will achieve the goals of the PUD process by creating a quality affordable housing and retail building on the Property that will help to enliven and revitalize the Georgia Avenue Corridor and the Petworth neighborhood of Ward 4.

13. The proposed PUD is consistent with and fosters the goals and policies enumerated in the District of Columbia Comprehensive Plan. The proposed Project significantly advances these purposes by furthering the social and economic development of the District through the creation of approximately 72 new affordable residential units and active ground level retail space on a site that is critically important to the development of the Georgia Avenue Corridor. Further, the Property is vacant and underutilized property near the Metrorail system. The affordability of the units is a realization of a main aspect of the Comprehensive Plan. The Applicant's proposal is consistent with three major themes as follows:

- Stabilizing the District's Neighborhoods – The creation of approximately 72 new residential units, which will be rented rather than sold, will help stabilize the Petworth neighborhood by providing an opportunity for District residents to live in desirable housing in the District even if they cannot afford or do not wish to buy. The creation of a significant retail and residential development on the Property is also likely to help stimulate additional residential development and further stabilize the neighborhood. The affordability will allow long-time District residents who have been priced out of housing elsewhere in the District maintain a residence in the City. The influx of new residents in the neighborhood will help provide the critical mass of customers needed to patronize existing, and hopefully new, commercial uses along Georgia Avenue, N.W. In addition, the first floor retail space will bring much-needed services to the area and begin the active streetscape that the District seeks. In

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addition, the retail space will offer much needed goods and services for the immediate neighborhood. Therefore, the Project will both have a catalytic effect on surrounding areas, while respecting the massing and scale of the neighborhood.

- Respecting and Improving the Physical Character of the District – The proposed Project has been designed to improve the site's integration with the surrounding neighborhood, put it to a more beneficial use than the current vacant lot, and to dramatically improve the streetscapes along Taylor Street, Georgia Avenue, and Kansas Avenue. By increasing the density and maximizing the lot usage, the Project will not only contribute to the streetscape along Georgia Avenue, N.W., but also create a new streetscape on Taylor Street. Although the building will be taller than its immediate neighbors, the Project's architects have used materials, alternating projecting bays, banding, and layering of textures to unite the building with its surroundings and scale. Thus, the Project will not overwhelm the neighborhood, will fit in well with the surrounding buildings, and will create a sense of scale and visual interest.
- Preserving and Ensuring Community Input – Through the PUD process, the Applicant has worked with representatives of ANC 4C, as well as the surrounding neighborhood, to create a new residential building and retail space that is a benefit to the neighborhood and the District. The Applicant's further commitment to community input is demonstrated by the support from Councilmember Fenty.

14. The Comprehensive Plan also contains 11 major elements. The Project furthers the objectives and policies of several of these elements as follows:

- Housing Element – The creation of approximately 72 rental residential units on this currently underutilized property fully satisfies all of the provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Applicant will provide 68,981 square feet of affordable housing priced for at least 60% of the AMI. The affordability of the Project is also entirely consistent with the provisions of the Comprehensive Plan and furthers the intent of many of its housing provisions.
- Urban Design Element – As shown in the detailed plans, elevations, and renderings included in Exhibit A to the Pre-Hearing Statement and in post-hearing submissions to the Commission submitted as Exhibits 14 and 31 of the record, the proposed Project exhibits superior design and architecture. The construction of a well-designed residential building will complement and enhance the neighborhood that surrounds the site. The integration of the site design into a prominent lot at the corner of Georgia Avenue, Kansas Avenue, and Taylor Street, and the offering of street-level retail will tie the Project into the neighborhood. The Applicant met with OP several times on the proposed Project. As a result of OP's input and the comments of the Zoning Commission during the setdown hearing, the design was greatly enhanced. The result is a sensitive design that utilizes modern materials for a traditional appearance.

- Generalized Land Use Map – As previously mentioned, the Generalized Land Use Map includes the Property in the Moderate-Density Residential/Low-Density Commercial Land Use Category. It should be noted that, while the Generalized Land Use Map typically is helpful in determining appropriate uses and density in areas of the city, it is not intended to serve as a “general” zoning map, nor does it mandate a parcel-by-parcel limitation on permitted development. The proposed Project and C-3-A Zone District are consistent with the flexibility that the Moderate-Density Residential/Low-Density Commercial Land Use category provides for the Property. Such a designation supports the construction of a high-quality affordable housing project with a retail component on the site of a vacant lot. In addition, the Georgia Avenue corridor adjacent to the property is a long stretch designated as Medium-Density Residential/Moderate-Density Commercial. Therefore, the Project would fit well in the plan for the establishment of Georgia Avenue as a rejuvenated vibrant corridor.
- Ward 4 Goals and Policies – The Ward 4 Element of the Comprehensive Plan seeks to “capitalize on Metrorail station areas as focal points for retail services...and community activities” (10 DCMR § 1501.1(d)); “create and expand retail activity” (10 DCMR § 1505.1(a)); expand development on vacant commercial properties (10 DCMR § 1506.1(a)); maintain, conserve, and expand the housing stock, particularly of affordable housing (10 DCMR § 1507.1(a)); provide affordable housing in particular near the Georgia Avenue-Petworth Metro Station (10 DCMR § 1507.3)); provide for the housing needs of moderate-income households (10 DCMR § 1508.1(a)); encourage the private sector to provide new housing (10 DCMR § 1508.1(c)); and support the construction of rental housing (10 DCMR § 1508.1(d)). Furthermore, the Ward 4 Land Use Plan calls for the implementation and upgrading of local neighborhood centers in a small area that includes the Property (10 DCMR § 1530.1 (h)(2)(C)(ii)). The proposed PUD is consistent with these provisions of the Ward 4 Elements of the Comprehensive Plan. It is difficult to imagine a project that better satisfies the goals and objectives of the Ward 4 Element of the Comprehensive Plan.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a Planned Unit Development application for Lots 35, 803, and the alley between them, in Square 2910, and a Zoning Map amendment from C-2-A to C-3-A for the PUD site subject to CONDITIONS. The approval of this PUD is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit A to Exhibit 14 submitted with the initial application materials, as amended by Exhibit A to Exhibit 18 submitted on January 23, 2006, as amended by Exhibit 21 submitted at the hearing, and as amended by Exhibit A to the Post-Hearing

Submission submitted on February 24, 2006 (which includes the illustration of finish materials on page 29), as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of a project that includes a minimum of 72 residential units. The entire Project will include approximately 79,467 square feet of gross floor area resulting in an FAR of approximately 4.5. The Project shall include 68,981 square feet of affordable residential space and 10,486 square feet of commercial space. The new building will have a height of 72 feet and total lot occupancy of the Project of approximately 72%.

3. There will be a minimum of 54 parking spaces provided on site. The use of Space-Saver parking spaces (as described in this Order), or Space-Saver-like spaces shall be permitted.

4. All of the residential units in the Project shall be made available as affordable units to residents having an income not exceeding 60% of AMI and consistent with the eligibility requirements and enforcement mechanisms enumerated in the DHCD guidelines and policies. In addition, at least fourteen (14) units shall be reserved for potential residents with a household income between 31% and 50% of the AMI. All of the units shall remain affordable to residents having an income not exceeding 60% AMI for forty (40) years. The Applicant shall enter into an agreement or agreements with DHCD requiring these affordability requirements. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant will work with DHCD to make such changes comply with the same.

5. The Applicant shall restrict all loading and unloading from Georgia Avenue and Taylor Street and only perform such activities from Kansas Avenue.

6. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services before submitting an application for a building permit.

7. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the draft Memorandum of Understanding submitted as Exhibit D to the Post-Hearing Submission before submitting an application for a building permit.

8. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the structures;
- 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

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the time of construction;

- To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
- To make alterations to the parking garage design provided that the parking garage contains a minimum of 54 parking spaces, which requirement may be satisfied with any combination of compact and full-sized spaces;
- To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and
- To make minor adjustments to the site plan, including such areas as the loading areas and driveway, to accommodate DDOT, if necessary.

9. The consolidated 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 and construction of the Project must start within three years of the date of the effective date of this Order pursuant to 11 DCMR §§ 2408.8 and 2408.9.

10. No building permit shall be issued for this PUD and the PUD-related map amendment shall not become effective until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and 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 this property in accordance with this Order or amendment thereof by the Zoning Commission.

11. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (the "Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sexual discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **APPROVED subject to CONDITIONS**.

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On March 13, 2006, the Zoning Commission approved the application by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, and Michael G. Turnbull to approve; Gregory N. Jeffries not present, not voting).

The Order was adopted by the Zoning Commission at its public meeting on April 20, 2006, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot).

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

**ZONING COMMISSION ORDER NO. 05-24**  
**Z.C. Case No. 05-24**  
**(Consolidated PUD –Eastgate Family Housing)**  
**April 20, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 12, 2006 to consider an application from the D.C. Housing Authority and the associated private development team of A&R/THC II LLC (collectively, the "Applicant") for review and approval of a consolidated planned unit development ("PUD") pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The proposed development is a mixed-income residential community with various building types and an open space preserve. The public hearing was conducted in accordance with the contested case provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application subject to the specified conditions.

**FINDINGS OF FACT**

**The Application, Parties and Hearing**

1. On July 28, 2005, the Applicant submitted an application to the Zoning Commission for a consolidated PUD utilizing the existing R-5-A zoning of the subject property.
2. The application requested approval of the plans and site plans depicting 186 dwelling units, including 158 townhouses, 20 detached single-family dwellings, and eight (8) units in two (2) grandhomes (each having four units). The plans also include an open space preserve, or "Urban Tree Park," of 2.5 acres on the site.
3. The Office of Zoning received the Applicant's Pre-Hearing Submissions on October 21 and December 8, 2005.
4. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on November 18, 2005 (52 DCR 10177). The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject property, as well as to Advisory Neighborhood Commission ("ANC") 7E.
5. The parties in the case were the Applicant and ANC 7E.

6. The Zoning Commission opened and completed the public hearing on January 12, 2006. At the conclusion of the public hearing, the Zoning Commission requested supplemental information and analysis from the Applicant, which was received on January 26, 2006. Additional information was requested at a public meeting on February 9, 2006. That information, submitted on February 13, 2006, included a new Exhibit A depicting the Applicant's proposed surface for the project's walking trail.
7. 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 February 24, 2006, 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.
8. The Zoning Commission took proposed action to approve the application on February 13, 2006, by a vote of 4-1-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael Turnbull to approve; John G. Parsons opposed). The Commission took final action on April 20, 2006, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Michael Turnbull John G. Parsons; Gregory N. Jeffries not present, not voting).

#### **The Site and the Area**

9. The property that is the subject of this Order consists of approximately 16.03 acres of land area (698,382 square feet) in the Marshall Heights neighborhood. The site is bounded by Fitch Street, 51<sup>st</sup> Street, F Street, Queen's Stroll Place (Drake Place), and Benning Road, S.E. It is a rolling hillside that changes in grade by approximately 80 feet, rising from Benning Road and Fitch Street to the level of the rest of the neighborhood at its north and east ends. The property is identified as Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320 (the "PUD Site").
10. Surrounding development adjacent to the perimeter streets of the PUD Site is predominantly three- four-story apartment buildings or open spaces, with the exception of a group of six detached houses along Queen's Stroll Place. There is a C-2-A commercial strip on the west frontage of Benning Road between Fitch and F Streets.
11. The majority of the land area of the surrounding neighborhood is zoned R-5-A (low-density general residential) or R-2 (semi-detached dwellings). R-5-A is a low-density apartment house zone that allows a variety of residential building types within a height limit of forty feet (40' or three stories) and a maximum density of 0.9 floor area ratio ("FAR"). With a PUD, the maximum permitted building height is sixty feet (60') and the maximum density FAR is 1.0 FAR. Existing development in the surrounding neighborhood is predominantly detached and semi-detached houses and four-story apartment buildings. There is a C-2-A (low-moderate density commercial) strip directly across Benning Road and C-1 (neighborhood commercial) site about 1,000 feet to the east on Benning Road.
12. Community services such as the Metropolitan Police Boys and Girls Club and the Benning Park Recreation Center are located just to the north and south of the residential area. The largest parcels of land in the neighborhood (other than Eastgate Gardens itself)

accommodate three public schools -- Fletcher-Johnson Middle School, J.C. Nalle Elementary School, and C.W. Harris Elementary School. Numerous places of worship also serve the neighborhood.

**The PUD Project**

13. The apartment buildings formerly constituting the 230-unit Eastgate Gardens public housing development have been demolished, and the PUD Site is currently vacant.
14. The Applicant plans to develop the PUD Site with 186 dwelling units, including 158 townhouses, 20 detached single-family dwellings, and eight units in two grandhomes (each having four units). The overall goal is to create a stable, mixed-income residential community, with the emphasis on affordable housing. Eighty units (43 percent [43%]) will be in the low-income range, 42 units (23 percent [23%]) will be in the moderate-income range and 64 units (34 percent [34%]) will be market rate. The breakdown of the 186 dwelling units by building type, affordability, and tenure is as follows:

<b><u>Building Type/Number</u></b>	<b><u>Tenure</u></b>	<b><u>Affordability</u></b>
53 townhouse	Rental	At or Below 60% Area Median Income ("AMI")
19 townhouses	Sale	At or Below 60% AMI
42 townhouses	Sale	60-80% AMI
44 townhouses	Sale	Above 80% AMI (Market)
20 detached houses	Sale	Above 80% AMI (Market)
8 grandhome units	Rental	At or Below 60% AMI

15. The site plan is generally described as follows. Two- and three-story townhouses in groups of three to five units will line the perimeter street frontages facing the surrounding neighborhood along F Street, Queen's Stroll Place, 51st Street, and Fitch Street. The only exceptions to this pattern are a short section of open space along Fitch Street and two grandhomes sited at the corner of 51st Street and Queen's Stroll Place. Eighty-six of the townhouses will have garages and 72 will not; all of the detached dwellings will have either a one-car or a two-car garage.
16. The new community will be pedestrian-friendly, with ample sidewalks, street lamps, and ample open spaces. Common areas and the proposed urban tree park will provide a total of 2.88 acres of open space in the 16.03-acre site. Two tot lots are included in the project plans.
17. The interior of the PUD Site will be served by two new streets that are proposed to be public streets, lined with six-foot-wide sidewalks, lighting, and street trees following public street standards. These streets will be continuations of E and F Streets outside the PUD Site. The streets will form a U-shaped loop road where both frontages will be developed with detached single-family houses, so that like housing types will face each other along the street frontages.
18. Five-foot-wide easements will run through the center of rear yards between the two new public streets. The easements will provide access to the dwellings for residents of the for-

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- sale units and management in the case of rental units, and are needed for maintenance and rear access to yards. Easements are also proposed in other locations, as depicted on the Circulation and Parking Plan (Sheet C-9.0 of the plans). The easements will allow "dry" utilities to be located underground, a major benefit in terms of visual and design quality.
19. One proposed new street will be constructed in the southern part of the PUD Site. It will be curvilinear, running generally east-west, and will connect to 51<sup>st</sup> Street on the east and Fitch Street on the west. The south frontage will be developed with groups of townhouses and the north frontage with six detached dwellings. An east-west public alley will serve the interior of this block. A tot lot will be located at the western end of the town houses facing the new interior street.
  20. A large open space of approximately 2.5 acres is planned for the area to the south and west of the detached houses. This area consists of steeply-sloping land with substantial coverage of mature trees. The Applicant determined that creating streets and new buildings on this part of the PUD Site would be environmentally undesirable. The Applicant submitted plans to preserve the mature trees in this open space and create an Urban Tree Park. A pedestrian path at the upper part of this area will link the two tot lots, together with a sitting area and meadow. In the lower part, the Applicant's landscape architect will work in cooperation with the Casey Tree Foundation, the Urban Forestry Administration, and the Earth Conservation Corps to re-establish the heavily treed area as a self-sustaining natural woodlands.
  21. Building heights will range from just under 23 feet for the two-story detached houses to 33 feet, 6<sup>3</sup>/<sub>4</sub> inches for the three-story townhouses. The grandhomes and two-story townhouses will be in the range of 23 to 24 feet high. All of the proposed building heights are within the 60-foot building height allowed for a PUD in the R-5-A zone. Lot occupancy will be 35.15 percent (35.15%) based on the area devoted to residential lots, or 27.23 percent (27.23%) based on the lot areas plus open space. The proposed lot occupancy is within the allowed 40 percent (40%) lot occupancy in the R-5-A District.
  22. The Applicant testified that the new residential community will have substantially fewer dwelling units than the previous Eastgate Gardens public housing complex, so that automobile trip generation will be reduced. Metrobus service connecting to the Benning Road Metrorail Station and other destinations is convenient to the PUD Site, with numerous lines along Benning Road and 51<sup>st</sup> Street.
  23. The Commission credits the conclusion of the Applicant's traffic expert that the proposed PUD will not create any significant adverse traffic impacts. Intersections in the immediate vicinity of the PUD Site currently operate at acceptable levels of service during both the morning and afternoon peak hours, and are expected to continue to operate acceptably upon build-out and occupancy of the Eastgate Family Housing development. The PUD will not create any appreciable roadway capacity, safety, or operational deficiencies, or otherwise be unacceptable in terms of its traffic-related impact on the surrounding area.
  24. The proposed PUD will provide ample parking in excess of the R-5-A requirement of one parking space per dwelling unit, in this case a requirement of 186 spaces. There will be

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132 spaces in garages and 186 in driveways for a total of 318 off-street parking spaces. In addition, there will be 56 curbside parallel parking spaces on public streets.

**Public Benefits and Project Amenities**

25. The Application offers the following public benefits and project amenities and other statements of compliance with the PUD Evaluation Standards set forth in 11 DCMR § 2403:
- (a) A new, high-quality, mixed-income residential community will replace the former, deteriorated public housing complex that exhibited social, physical, and environmental problems. The revitalization plan features a housing mix tailored to homeowners and renters with a wide spectrum of incomes, with an emphasis on affordable units. More than half of the units included in the PUD – 97 units or 52 percent (52%) – will be affordable to low-income residents, while 25 units (13 percent [13%]) will be affordable to moderate-income residents and 64 units (34 percent [34%]) will be available at market rates.
  - (b) The development plan exhibits attractive urban design, new landscaping, a 2.5-acre Urban Tree Park, environmental improvements, and renewed street connections with the surrounding neighborhood. An improved street network will be created, and a balanced mixture of housing types and densities is proposed according to planning principles.
  - (c) The site plans, landscape plans, and architectural plans exhibit a high quality of planning and urban design.
  - (d) The Applicant will execute a First-Source Employment Agreement with the Department of Employment Services and a Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development to ensure local, small, and disadvantaged vendor participation.
26. 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.

**Zoning Flexibility**

27. The PUD Site is zoned R-5-A. The Applicant requested flexibility from requirements pertaining to lot occupancy, side yards, rear yards, driveway widths, and multiple buildings on a single lot.
28. In light of the topography of the PUD Site, which varies from flat to undulating to very steep, and to preserve the topography in an environmentally-sensitive manner, the Applicant proposed to reduce rear and side yards and to exceed maximum lot occupancy on many lots in the PUD. Of the 180 lots within the PUD, 75 (or 45 percent [45%]) will

exceed the maximum permitted lot occupancy of 40 percent (40%) and 64 (35 percent [35%]) will have a reduced rear yard. The Commission credits the testimony of the Office of Planning that the Applicant's proposed deviations in side and rear yards would not adversely affect the privacy, light, and air to each unit.

29. A side yard is required on 88 of the 180 lots, but, as proposed, 77 of those lots will not comply with the minimum requirement; most will have side yards of 7.5 feet, but six lots would have side yards of three feet or less.
30. As proposed, driveways for the townhouses along the new streets, Queen's Stroll Place, and F Street will not be 28 feet apart, as required by § 2117.8(d). The Applicant indicated that the distance requirement could not be satisfied by pairing the driveways, because the planned gable roofs over the garages will not permit the merging of rooflines due to drainage concerns.
31. The Applicant also requested flexibility from zoning requirements so as to construct the two grandhome buildings on one record lot. Construction of both grandhomes on one lot will allow the buildings to meet rear yard requirements and to provide on-site parking.
32. The Commission credits the testimony by the Office of Planning that the requested zoning flexibility is commensurate with the public benefits and amenities proffered by the Applicant in the proposed PUD, including affordable housing, urban design and architecture, preservation of open space, an urban park, site planning, pedestrian access, a first-source employment program, and a local business opportunity program.

### **Comprehensive Plan**

33. The PUD project furthers specific public plans and policies, including the Eastgate/Marshall Heights Neighborhood Alliance Plan and the D.C. Office of Planning's Cluster 33 SNAP initiative.
34. The PUD is not inconsistent with the Comprehensive Plan for the National Capital. The PUD Site is a designated Development Opportunity Area and the proposed development will help carry out numerous goals and objectives regarding the development of housing and affordable housing in the District of Columbia. The PUD will advance at least six of the ten Major Themes of the Comprehensive Plan: "Stabilizing and improving the District's neighborhoods;" "Respecting and improving the physical character of the District;" "Preserving and promoting cultural and natural amenities;" "Preserving and ensuring community input;" "Providing for diversity and overall social responsibilities;" and "Promoting enhanced public safety."
35. The scale of development and the existing R-5-A zoning are fully consistent with the land use designation of "Moderate-Density Residential" on the Generalized Land Use Map of the Comprehensive Plan.

### **Office of Planning Report**

36. By report dated January 3, 2006 and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the Application. OP noted that the

Applicant's proposal "meets the PUD evaluation standards outlined in § 2403 and is in accordance with the intent of the Zoning Regulations, the PUD process, and the consolidated PUD."

37. OP stated that, "The proposal is a very important residential development in furtherance of the District's aim to provide a variety of housing types for different income levels. The application is consistent with the requirements of the Zoning Regulations, elements of the Comprehensive Plan, and the Eastgate-Marshall Heights Neighborhood Alliance Master Plan."
38. OP cited public benefits including affordable housing, urban design and architecture, preservation of open space, an urban park, site plan, pedestrian access, and First Source Employment and LSDBE commitments. The OP report also noted that the site is a designated Development Opportunity Area in the Land Use Element of the Comprehensive Plan, which provides additional policy support for the PUD project.

#### **Reports of Other Agencies**

39. The District Department of Transportation ("DDOT"), by report dated January 11, 2006, indicated that had no objection to the overall proposal, but recommended changes regarding driveway spacing and roadway design. DDOT stated that the proposed new roadways and alleys must be constructed to DDOT standards and offered to work with the Applicant to ensure such compliance.
40. DDOT also expressed a policy of wider driveway spacing, shared driveways, or fewer driveways in the interest of allowing more curbside parking on the public streets. At the public hearing, the Zoning Commission asked the Applicant to submit a post-hearing report on this and other issues. See the discussion of this item under "Contested Issues."

#### **Advisory Neighborhood Commission 7E**

41. Advisory Neighborhood Commission 7E voted to support the PUD project and testified in support at the public hearing and submitted a letter indicating its support.

#### **Public Testimony**

42. Several individuals testified in support of the application. There was no testimony in opposition to the application.

#### **Contested Issues**

43. The DDOT report recommended that driveway spacing be increased or that fewer driveways or shared driveways be provided in order to increase curbside parking for visitors, delivery vehicles, and overflow parking for residents.
44. In its post-hearing submission dated January 26, 2006, the Applicant responded as follows:

- (a) There will be 345 parking spaces available on the PUD site for 186 dwelling units, a ratio of 1.8 spaces per dwelling. These will include regulation spaces in garages, parking spaces in driveways, plus 40 curbside spaces on streets.
- (b) Because of the ample parking provided, the curbside parking spaces on peripheral streets -- as proposed or if increased -- would only be needed very occasionally, typically when a resident has a large social gathering.
- (c) As stated by OP at the public hearing, elimination of driveways would likely reduce total parking available. Typically, loss of a driveway eliminates the garage parking space and the driveway parking space, while creating only one additional curbside space.
- (d) The Applicant submitted four alternative driveway configurations reflecting implementation of DDOT's recommendations.
- (e) FedEx and United Parcel Service ("UPS") deliveries will occur only occasionally, and these vehicles park for very short periods of time. They will either park curbside (even if partially blocking a driveway for 1-3 minutes typically) or they will double park. This is what they do on neighborhood streets generally.
- (f) Typically, United States Postal Service ("USPS") mail delivery vehicles will park in one (or two) locations within a small community such as this, and the postal worker will handle deliveries on foot.
- (g) Although driveway spacing is relatively close:
  - 1) These driveways serve single-family dwellings (except for the two grandhome buildings) and thus will be sparsely used, unlike multi-family or commercial driveways.
  - 2) The visual effect will be softened by plantings of shade trees, ornamental trees, and shrubs as set forth in the Landscape Plan.
- (h) The Zoning Regulations at § 2117.9(b) authorize a waiver of any parking requirement for groups of three or more row dwellings where no rear access is feasible. The Applicant prefers to meet parking needs to the extent feasible within sound planning principles.

#### CONCLUSIONS OF LAW

1. The planned unit development process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides public benefits (11 DCMR § 2400.1) and allows flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2).

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2. Under the PUD process of the Zoning Regulations, the Zoning 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 Zoning 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 this PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.
5. Approval of this application is consistent with the purposes of the Zoning Regulations and the Zoning Map of the District of Columbia and will promote orderly development in conformity with the zone plan as a whole.
6. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the proposed height and density of buildings will not cause any adverse effect on nearby properties. The proposed residential uses are appropriate on this site, which is well served by a major arterial street, bus lines, and a nearby mass transit station. The impact of the project on the surrounding area will not be adverse, but rather will enhance and promote the revitalization of the area.
7. The development of the project will be compatible with District-wide and neighborhood goals, plans, and programs and is sensitive to environmental protection, public safety, and other significant policy objectives.
8. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
9. The proposed PUD meets the contiguity requirements of § 2401.3 of the Zoning Regulations.
10. The project benefits and amenities are reasonable for the development proposed on the site and responsive to the needs of the community and the city.
11. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the PUD will be mitigated.
12. The Commission is required under D.C. Code §1-309.10(d) (2001) to give great weight to the issues and concerns raised in the recommendations of the affected ANC. The Commission notes that ANC 7E testified and submitted a report in support of the application.
13. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

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**DECISION**

In consideration of the Findings of Fact and Conclusions of Law stated herein, the Zoning Commission orders **APPROVAL** of the consolidated PUD for property bounded generally by Fitch, F, and 51<sup>st</sup> Streets, Queen's Stroll Place, and Benning Road, S.E., specifically Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 14, 17, 32, and 38 in the record of this case, and as modified by the guidelines, conditions, and standards of this Order.
2. The project shall be developed with residential buildings, accessory parking, and open space as depicted on the approved plans.
3. The maximum building height in the project shall be 35 feet and the maximum aggregate gross floor area shall result in density of 0.80 FAR.
4. In accordance with the plans cited above, the approved PUD shall consist of 186 dwelling units, distributed as follows by building type:

(a) Single-family detached dwellings	20
(b) Single-family townhouses	158
(c) Grandhome units (four units per building)	8
Total dwelling units	186
5. Approximately forty percent (40%) of the dwelling units will be affordable to households having sixty percent (60%) or less of Area Median Income, and approximately twenty percent (20%) will be moderate-income units serving households having incomes between sixty percent (60%) and eighty percent (80%) of AMI, in accordance with the requirements of the public agencies providing financial subsidies for this purpose.
6. There shall be a minimum of 147 on-site parking spaces that conform to zoning standards, plus approximately 158 spaces in driveways and 40 curbside spaces as depicted on the plans, for a total of 345 parking spaces.
7. The Applicant shall have the flexibility to:
  - (a) Vary the location and design of all interior components of the buildings, provided that the variations do not change the exterior configuration or appearance of the buildings;
  - (b) Make minor refinements to exterior details and dimensions needed to comply with the D.C. Building Code and the Americans with Disabilities Act ("ADA") or otherwise necessary to obtain a building permit;

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- (c) Erect an entry sign that is consistent with the design character of the development and all applicable laws regarding signs; and
  - (d) Vary the mix of dwelling unit types by up to ten percent (10%).
8. The Applicant may erect six-foot wood privacy fences, of the type shown in the Applicant's submission, in the rear yards of the dwelling units, provided that a fence shall not be erected within 10 feet of a rear easement, as described in Finding of Fact No. 18.
  9. The Urban Tree Park shall be located and designed generally as depicted in the landscape and Urban Tree Park plans in Exhibits 14, 17, 32, and 38 of the record and shall be developed concurrently with the completion of the balance of the PUD. The approved plan is generalized in places in that specific plantings of trees and other plants, selective removal of trees, and other horticultural actions will be decided by the Applicant's Landscape Architect in concert with other public and private entities assisting in the project, as documented in the record. In addition to the pedestrian path depicted on the concept plan for the Urban Tree Park, the Applicant shall have the option, but not the requirement, of designing and creating a meandering path through the park, following a route that takes into account existing and proposed plantings, slope, and other factors determined by the Applicant's design team.
  10. The Applicant shall execute the following agreements prior to the issuance of a final order:
    - (a) A First-Source Employment Agreement with the Department of Employment Services and
    - (b) A Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development to ensure local, small, disadvantaged vendor participation.
  11. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General 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 and use the subject property in accordance with this Order, or amendment thereof by the Zoning Commission.
  12. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a certified copy of the covenant with the Office of Zoning.

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13. This final 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, the Applicant shall file for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.
14. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

For the reasons stated above, the Commission concludes that the applicant has met the burden of proof, and it is hereby **ORDERED** that the application be **GRANTED** subject to **CONDITIONS**.

On February 13, 2006, the Zoning Commission **APPROVED** the application by a vote of 4-1-0 (Gregory Jeffries, Anthony J. Hood, Carol J. Mitten, and Michael G. Turnbull to approve; John G. Parsons opposed).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, by a vote of 4-0-1 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, and Michael G. Turnbull to adopt; Gregory Jeffries not present, not voting).

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

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**ZONING COMMISSION ORDER NO. 06-09****Z.C. Case No. 06-09****Howard University - Special Exception Under §§ 210 and 3104.1****for Interim Use of Property Near Campus as a Parking Lot****Square 2872, Lots 266-271, 803, 820, 822, 823 and 824****June 12, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on April 27, 2006 to consider an application from the President and Directors of Howard University (the "University" or "Applicant") requesting a special exception under § 210 of the Zoning Regulations for interim use of vacant property near the campus as a parking lot. The subject property is located in an R-5-B District in Square 2872, Lots 266-271, 803, 820, 822, 823 and 824. This square is bounded by Florida Avenue, Sherman Avenue and Barry Place, N.W. Pursuant to Zoning Commission Order No. 932, this case was heard and decided by the Zoning Commission using Board of Zoning Adjustment ("BZA") rules for campus plan cases.

**HEARING DATE:** April 27, 2006

**DECISION DATE:** June 12, 2006

**FINDINGS OF FACT****The Application, Parties and Public Hearing**

1. On February 14, 2006, the University submitted an application to the Zoning Commission to request special exception approval under 11 DCMR §§ 3104.1 and 210 of the Zoning Regulations to allow the use of land in Square 2872, Lots 266-271, 803, 820, 822, 823 and 824 (the "Property") for interim university use as a parking lot. Square 2872 is a triangular-shaped square bound by Florida Avenue on the west and south, Barry Place on the north, and Sherman Avenue on the east, all in Northwest.
2. The Commission 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") 1B and to the owners of property within 200 feet. The Applicant and ANC 1B are the parties in this case.

3. The public hearing on the proposed interim use was held on April 27, 2006.

**The Application and the Applicant's Case**

4. Howard University's Central Campus is located in an urban setting that includes residential, commercial, industrial and institutional uses. The campus is centered on Georgia Avenue and Howard Place and is generally bounded on the north by Harvard Street, on the east by 4<sup>th</sup> Street, on the south by U and V Streets, and on the west by Georgia, Sherman and Florida Avenues, all N.W.
5. The proposed use is a parking lot for university use on a site that is just outside the campus plan boundaries, which end at Sherman Avenue along the east side of the Property. As to the long-term use of the site, the University is to update its campus plan by 2008 and will make a decision in that context. The permanent use is likely to be academic -- instructional, residential or support services.
6. The site proposed for parking lot use is an assemblage of 9,954 square feet of land area. The site constitutes the majority of the property in Square 2872. The remaining buildings on part of the site were demolished in 2006. The site is essentially triangular in shape and is vacant. Part of the site has been used for parking by the University in recent years.
7. The immediate land use context is dominated by several large buildings and sites. To the east of the site, across Sherman Avenue, are two large, high-rise apartment houses, developed and owned by the University and occupied by students and faculty. To the north, across Barry Place, is a large, high-rise apartment house. To the west of this apartment house, across 11<sup>th</sup> Street, is the large campus of Cardozo High School. Directly to the west of the Property (across 10<sup>th</sup> Street) is the Howard University Service Center, a large, brick, industrial-type structure. To the southeast, along the east frontage of Florida Avenue, is underutilized land that will be developed with University uses in the future.
8. Due south of the Property are squares predominantly improved with townhouses, multi-family conversions and scattered, small nonconforming commercial uses. Infill construction of mid-rise apartment buildings is also occurring on vacant lots in this vicinity.
9. As depicted on the Zoning Map, the Property is within an R-5-B District that encompasses 10 or 12 city blocks to the north and west. The two large apartment houses to the east of Sherman Avenue are zoned R-5-E, and CR zoning extends to the south of these in the area formerly zoned light industrial. To the south, beyond the R-5-B zoning, is an area zoned Uptown Arts-Mixed Use (ARTS)/C-2-B.
10. The proposed parking lot will have 23 spaces and will be accessed from Florida Avenue. The parking lot will be surrounded by an ornamental metal fence with brick piers. The plans include new landscaped areas oriented to the corners of the site at Sherman Avenue and Barry Place and at Florida Avenue and Barry Place. The surface will be bituminous concrete, with yellow striping and concrete wheel stops.

11. The lot will primarily serve Howard University service personnel and faculty members, who will be able to park and walk across the street to the west to the University's Service Building or two or three blocks to the east to buildings on the Main Campus of Howard University. Parking will be monitored frequently by campus parking personnel who travel from parking lot to parking lot ticketing cars that do not have permits to park on the lots. The lot will be open from 7:30 a.m. to 5:30 p.m.
12. The Commission credits the Applicant's testimony that the proposed parking lot will not become objectionable to adjoining or nearby property, and will be in harmony with the intent of the Zoning Regulations and Map, for the following reasons:
  - a) Vehicular entry to and egress from the parking lot will be from Florida Avenue, an arterial street.
  - b) The apartment buildings, to the north and east, and nearby row dwellings, are across city streets and have ample separation from the parking use so as to avoid any adverse traffic or noise effects.
  - c) The parking lot will be open only in daytime hours, from 7:30 a.m. to 5:30 p.m., and thus residential neighbors will not be affected by headlights in the evening hours.
  - d) The accessory parking will be surrounded by an attractive fence and will have landscaped areas to improve the aesthetics of the use.
  - e) The parking spaces will serve only staff and faculty of Howard University, which is located immediately to the east of the proposed parking lot. Most of these persons will tend to park and stay a number of hours at the University, thus resulting in only moderate amounts of in-and-out vehicular traffic.
  - f) The immediate proximity to the University makes for an efficient land use pattern, in that the users can walk to the campus, in keeping with the general intent of the Zoning Regulations to allow interim university use near a campus as a special exception.
  - g) In-and-out traffic from the parking lot will generally be less than that created by a building on the same property.
  - h) At 23 spaces, the parking lot is not large, and will accordingly create only a moderate amount of traffic. All in all, the lot will not create any noticeable traffic safety or traffic noise effects.
13. The Applicant also documented compliance with the physical standards for parking lots set forth in § 2303 of the Zoning Regulations, including surface materials, lighting, landscaping, maintenance and exclusive use as parking lot.

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**Report of the Office of Planning**

14. By report dated April 20, 2006 and by testimony at the public hearing, the Office of Planning ("OP") indicated that the application generally met the requirements of the special exception. OP requested documentation that the landscaped area would exceed five percent (5%) of the site and resolution of issues with the District Department of Transportation ("DDOT") regarding DDOT's Bryant Street extension proposal.
15. In a supplemental report dated April 25, 2006, OP reported on a meeting that took place on April 21, 2006 between the University, DDOT and OP representatives. This report stated that DDOT's Bryant Street extension, if it occurs, will not impact the location of the proposed interim parking lot. OP recommended a five-year approval period, recognizing the time required for adoption of the 2008 campus plan, followed by design and further processing of the specific permanent use approved in the campus plan.

**Report of the District Department of Transportation**

16. DDOT initially recommended denial of the application based on the likelihood that the proposed extension of Bryant Street from Georgia Avenue to Florida Avenue would adversely affect traffic conditions at the interim parking site. After the meeting of April 21, 2006, DDOT agreed that the point of intersection with Florida Avenue would not affect access and egress to the proposed parking lot. DDOT also recommended maintaining the current 90-degree driveway angle relative to Florida Avenue. In post-hearing consultations with the Applicant, DDOT confirmed that the plans utilized the existing 90-degree driveway access and would continue this general configuration.

**Report of Advisory Neighborhood Commission 1B**

17. Advisory Neighborhood Commission 1B recommended denial of the application. The ANC had expected to have advance notification from the University of the demolition of remaining buildings on the Property. One of the commissioners expressed concerns that the parking lot would be adverse to residents of row dwellings across Florida Avenue and concerns that the use might stay in place too long.

**Other Community Organizations**

18. The representative of the Cardozo Shaw Neighborhood Association testified in opposition to parking use of the site for environmental, pedestrian safety and land use reasons.
19. In addition to the meeting with DDOT and OP referenced above, the Applicant met twice with members of ANC 1B and the Cardozo Shaw Neighborhood Association.
20. In a post-hearing report dated May 26, 2006, the Applicant summarized the results of the meetings. First, the participants fully reviewed the University's transportation management plan, which has been enhanced with features such as car-sharing stations (e.g. for ZipCar and FlexCar), higher prices for parking on campus, free shuttle bus

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services, telecommuting, Smart Cards and shared parking. Regarding the interim parking lot, the University agreed to use high-quality fencing, plant materials and lighting and to actively promote public safety at the site. The University also agreed to a five-year time limit on the interim parking lot use.

### CONCLUSIONS OF LAW

The University is seeking a special exception pursuant to §§ 3104.1 and 210 of the Zoning Regulations for approval of the interim use of the subject property, located near its main campus, as a university parking lot. Section 210 of the Zoning Regulations allows college or university use by special exception in Residence zones. The Commission may permit the interim use of land or improved property, within a reasonable distance of the university campus, "with any use that the Commission may determine is a proper college or university function," provided that the university use is "located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions." 11 DCMR §§ 210.2, 210.5. Pursuant to § 3104.1 of the Zoning Regulations, a special exception may be approved when "...the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property."

Based on the above Findings of Fact and having given great weight to OP and to the issues and concerns of the affected ANC, the Commission concludes that the Applicant has satisfied the burden of proof and that the application should be granted. The Commission credited the unique vantage point held by the ANC with respect to the effect of the requested special exception on its constituents. However, the Commission was not persuaded by the ANC that the interim use of the property as a university parking lot, subject to the conditions adopted in this Order, would create safety concerns or other adverse impacts on the use of nearby property. The Commission concludes that interim use of the subject property as a university parking lot is not likely to become objectionable to neighboring property and will not tend to affect adversely the use of neighboring property, but will be in harmony with the general purpose and intent of the Zoning Regulations and Map. The five-year limit on approval of the requested special exception will ensure that the subject property will not remain a parking lot indefinitely and will encourage the University to consider the future redevelopment of the subject property in the context of the University's new campus plan, which is expected to be drafted in 2008.

At a public meeting on June 12, 2006, the Commission voted to approve the application, with conditions proposed by the University, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael Turnbull to approve).

For the reasons stated above, the Commission concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception for the interim use, as a university parking lot, of property located near the campus at Square 2872, Lots 266-271, 803, 820, 822, 823 and 824. Accordingly, it is therefore **ORDERED** that the application is **GRANTED** subject to **CONDITIONS**:

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1. Approval shall be granted for a period of five years from the effective date of this Order.
2. The University shall use high-quality fencing and plant materials to create an attractive site viewed from the street and a defined edge between the property and the sidewalk. The University shall use landscaping, structures and lighting to improve safety and shall use best practices in "crime prevention through environmental design."
3. The University shall use the driveway width that currently exists and follow the requirements established by the District Department of Transportation.
4. The University shall ensure that any lighting or activity associated with the interim parking use shall not disturb adjacent residents with excessive noise, traffic, spillover lighting or other disturbances.

**VOTE:** 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to approve).

**BY ORDER OF THE D.C. ZONING COMMISSION**  
Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** \_\_\_\_\_

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES  
PUBLICATIONS PRICE LIST

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001).....	\$16.00
3	DCMR ELECTIONS & ETHICS (JUNE 1998) .....	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995).....	\$13.00
5	DCMR BOARD OF EDUCATION (DECEMBER 2002).....	\$26.00
6A	DCMR POLICE PERSONNEL (MAY 1988).....	\$8.00
7	DCMR EMPLOYMENT BENEFITS (JANUARY 1986).....	\$8.00
8	DCMR UNIVERSITY OF THE DISTRICT OF COLUMBIA (JUNE 1988).....	\$8.00
9	DCMR TAXATION & ASSESSMENTS (APRIL 1998).....	\$20.00
10	DCMR DISTRICT'S COMPREHENSIVE PLAN (PART 1, FEBRUARY 1999).....	\$33.00
10	DCMR PLANNING & DEVELOPMENT (PART 2, MARCH 1994) w/1996 SUPPLEMENT* .....	\$26.00
11	DCMR ZONING (FEBRUARY 2003) .....	\$35.00
12	DCMR CONSTRUCTION CODES SUPPLEMENT (2003) .....	\$25.00
13B	DCMR BOILER & PRESSURE VESSEL CODE (MAY 1984).....	\$7.00
14	DCMR HOUSING (DECEMBER 2004) .....	\$25.00
15	DCMR PUBLIC UTILITIES & CABLE TELEVISION (JUNE 1998).....	\$20.00
16	DCMR CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRINGEMENTS (JULY 1998) W/DECEMBER 1998 SUPPLEMENT .....	\$20.00
17	DCMR BUSINESS, OCCUPATIONS & PROFESSIONS (MAY 1990).....	\$26.00
18	DCMR VEHICLES & TRAFFIC (APRIL 1995) w/1997 SUPPLEMENT* .....	\$26.00
19	DCMR AMUSEMENTS, PARKS & RECREATION (JUNE 2001) .....	\$26.00
20	DCMR ENVIRONMENT - CHAPTERS 1-39 (FEBRUARY 1997) .....	\$20.00
20	DCMR ENVIRONMENT - CHAPTERS 40-70 (FEBRUARY 1997) .....	\$26.00
21	DCMR WATER & SANITATION (FEBRUARY 1998).....	\$20.00
22	DCMR PUBLIC HEALTH & MEDICINE (AUGUST 1986).....	\$26.00
22	DCMR HEALTH CARE & COMMUNITY RESIDENCE FACILITIES SUPPLEMENT (AUGUST 1986 - FEBRUARY 1995) .....	\$13.00
23	DCMR ALCOHOLIC BEVERAGES (AUGUST 2004) .....	\$10.00
24	DCMR PUBLIC SPACE & SAFETY (DECEMBER 1996) .....	\$20.00
25	DCMR FOOD AND FOOD OPERATIONS (AUGUST 2003).....	\$20.00
26	DCMR INSURANCE (FEBRUARY 1985).....	\$9.00
27	DCMR CONTRACTS AND PROCUREMENT (JULY 1988).....	\$22.00
28	DCMR CORRECTIONS, COURTS & CRIMINAL JUSTICE (AUGUST 2004).....	\$10.00
29	DCMR PUBLIC WELFARE (MAY 1987).....	\$8.00
30	DCMR LOTTERY AND CHARITABLE GAMES (MARCH 1997) .....	\$20.00
31	DCMR TAXICABS & PUBLIC VEHICLES FOR HIRE (JULY 2004) .....	\$16.00