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THE CESAR CHAVEZ PUBLIC CHARTER SCHOOLS FOR PUBLIC POLICY

NOTICE FOR SOLICITATION OF PROPOSALS TO PROVIDE SCHOOL FEEDING SERVICES

The Cesar Chavez Public Charter Schools for Public Policy, in accordance with section 2204 (c) (1) (A) of the DC School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals for the delivery of meals to children enrolled at its two schools for the 2006-07 school year with a possible extension of (4) one year renewals. Collectively, the campuses serve 1100 students grades 6-12.

The Cesar Chavez Public Charter High Schools for Public Policy will receive bids until September 1, 2006 at 5:00 p.m. All meals must meet, but are not restricted to, minimum National School Breakfast, Lunch, and Snack meal pattern requirements. Meal pattern requirements and all necessary forms may be obtained from:

Christy Gill
709 12th Street, SE
Washington, D.C. 20003
(202)547-3975

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DEPARTMENT OF HEALTH

NOTICE OF CERTIFICATION

The Director, Department of Health, pursuant to the authority set forth in Reorganization Plan No 4 of 1996, hereby gives notice of certification of two new drugs to the formulary of the District of Columbia Acquired Immunodeficiency Syndrome Drug Assistance Program ("ADAP"). The two new drugs that have been certified by the Food and Drug Administration (FDA) and are now certified for inclusion in the ADAP program are Atripla (Efavirenz Emtricitabine Tenofovir), approved by the FDA July 12, 2006, and Prezista (Darunavir Ethanolate), approved by the FDA June 23, 2006. Atripla is a fixed-dose combination tablet containing efavirenz, emtricitabine, and tenofovir disoproxil fumarate. Prezista is an inhibitor of the human immunodeficiency virus (HIV) protease.

The AIDS Drug Assistance Program (ADAP) is designed to assist low income individuals with Acquired Immunodeficiency Syndrome (AIDS) or related illnesses to purchase certain physician-prescribed, life-sustaining drugs that have been approved by the U.S. Food and Drug Administration for the treatment of AIDS and related illnesses. Rules for this Program may be found at Chapter 20 of Title 29 of the DCMR.

If there are any questions, please contact Christy Pleze-Best, Public Health Analyst AIDS Drug Assistance Program, Administration for HIV Policy and Programs on (202) 671-4900.

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DISTRICT OF COLUMBIA REGISTER

**Department of Housing and Community Development
Notice of Funding Availability**

Jalal Greene, Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for \$45 million in funding under the Community Development Block Grant (CDBG), the Home Investment Partnerships (HOME), the Housing Production Trust Fund (HPTF) program and the Low Income Housing Tax Credits (LIHTC) program, administered by DHCD. CDBG, HOME, and HPTF funds for this NOFA are being made available from anticipated FY 2007 budget funds. LIHTC credits are being made available from the FY 2007 LIHTC allocation. This NOFA is being conducted pursuant to the FY 2007 (October 1, 2006 to September 30, 2007) Consolidated Action Plan prepared for submission to the U.S. Department of Housing and Urban Development (HUD).

The District is interested in financing projects that focus on the following categories:

1) Elderly Housing; 2) Special Needs Housing; 3) Preservation of Housing Affected by Expiring Federal Subsidies; 4) New/Substantial Rehabilitation of Housing (5 or more units); 5) Homeownership; and 6) Community Facilities to Serve Low to Moderate Income Persons.

The competitive Request for Proposals (RFP) will be released on September 15, 2006 and the deadline for submission is Friday, November 17, 2006, at 4:00 p.m. E.S.T. The RFP package, including all application materials and the reference guidebook can be obtained from DHCD, Development Finance Division, 801 North Capitol Street, N.E., Washington, D.C. 20002, second floor reception desk. This material will also be available from the DHCD website, www.dhcd.dc.gov on or about Friday, October 06, 2006.

The reference guidebook contains technical information on the CDBG, HOME, LIHTC, and HPTF programs, as well as other information that may be useful in completing the application. **Proposals for the First Right Purchase Assistance Program will also be accepted under this RFP. However, DHCD will continue to accept additional funding requests for this program until all of these program funds have been committed.** For additional information, contact DHCD's Development Finance Division at (202) 442-7280.

Completed applications must be delivered on or before 4:00 p.m. E.S.T., Friday, November 17, 2006 to DHCD, Development Finance Division, 801 North Capitol Street, N.E., Second Floor Reception Desk, Washington, D.C., 20002.

**NO APPLICATIONS WILL BE ACCEPTED AFTER THE FILING DEADLINE FOR
SUBMISSION**

A Pre-Proposal Conference will be held on Wednesday, September 27, 2006, from 9:00 a.m. to 12:00 p.m., at the Department of Housing and Community Development, 801 North Capitol Street, N.E., 9th Floor Boardroom, Washington, D. C. 20002.

Anthony A. Williams, Mayor
Government of the District of Columbia
Stanley Jackson, Deputy Mayor for Planning and Economic Development
Jalal Greene, Director
Department of Housing and Community Development

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REQUEST FOR PROPOSALS

The Elsie Whitlow Stokes Community Freedom Public Charter School in the District of Columbia is seeking competitive proposals for Architectural-Engineering Design Services for renovations of a 32,100 structure to accommodate the charter school. The estimated construction budget is \$2.3 million. A copy of the RFP can be obtained on or after August 16, 2006. All proposals must be submitted by 5:00pm on August 30, 2006. The RFP can be obtained by contacting Brad Noyes of Brailsford & Dunlavey at (202) 289-4455 or bnoyes@facilityplanners.com

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. Order 975
Case Number 00-27
Zoning Map Amendment – Square 37, Lots 810, 811, 831, 836, 837, and 855
July 12, 2004

ORDER DENYING MAP AMENDMENT PETITION

On October 10, 2000, a petition was submitted to the Office of Zoning on behalf of James Pedas, the co-owner of Lot 855 in Square 37 (the "Petitioner"). The petition requested a map amendment rezoning Lots 810, 811, 831, 836, 837, and 855 in Square 37 ("Subject Properties") from R-5-B to a classification more consistent with the Generalized Land Use Map of the District of Columbia Comprehensive Plan ("Land Use Map"). The Land Use Map designates the area for a combination of high-density residential and medium-density commercial development. The petition suggested that a more appropriate classification was C-2-C, CR, or R-5-E.

At the initial set down meeting for this case, held November 19, 2001, the Commission postponed scheduling a public hearing on the matter until after it considered a proposal submitted by the Office of Planning ("OP") to create a floating overlay zone called the High-Density Residential Retail Overlay ("HDRR"). The Commission believed the HDRR Overlay would address some of the issues raised by the petitioner's map amendment request. However, after several hearings and revisions to the proposed overlay text, the Zoning Commission voted to deny the petition to create the HDRR Overlay at its public meeting held on January 12, 2004. Order No. 972 published on May 7, 2004, 51 DCR 4912, made the denial effective.

At the same January 12, 2004 public meeting the Commission denied the HDRR Overlay petition, the Commission set this map amendment case down for a public hearing. On April 23, 2004, the Zoning Commission advertised that the public hearing would be held on June 10, 2004. The notice was published in the *D.C. Register* at 51 DCR 4070. The public hearing notice erroneously noted that the case would be heard in accordance with the "contested case" provisions of the Zoning Regulations.

The case was initiated in furtherance of the Comprehensive Plan. Pursuant to Zoning Regulation § 3010.4, the "rulemaking" provisions of the Zoning Regulations apply to petitions for map amendments proposed in furtherance of the Comprehensive Plan, not the "contested case" provisions. Accordingly, the Commission heard and decided this case pursuant to its "rulemaking" standards.

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Area Description and Existing Zoning

The six parcels that make up the Subject Properties comprise the southern half of Square 37, bounded by M Street to the north, L Street to the south, and 23rd and 24th Streets to the east and west respectively, located in the District's West End neighborhood in the Northwest quadrant of the District of Columbia. South of the existing alley between 23rd Street and 24th Street is Lot 855, developed with a parking lot, and Lots 810, 811, and 831 developed with two-story row houses, and the Tiverton, a 46-unit four-story apartment building. These properties are privately owned. Lots 836 and 837, at the southern end of the Square (immediately north of L Street, N.W.) are owned by the District and are improved with the West End Public Library and the Metropolitan Police Department Special Operations Division building.

The Subject Properties are zoned R-5-B.

The area to the north the Subject Properties consists of three lots developed with the Westin Grand Hotel (2350 M Street, N.W.), an office building housing the European Union (2300 M. Street, N.W.), and a condominium apartment building (1140 23rd Street, N.W.). These lots are zoned C-2-C. South of L Street in Square 38 are six lots developed with two story row houses containing apartments, zoned R-5-B. To the east is the Millennium (Ritz-Carlton) Planned Unit Development (1100 23rd Street, N.W.), which contains condominiums, a hotel, a restaurant, and a health club. The underlying zoning is CR. To the west is the former site of the Columbia Hospital for Women, currently being developed as a planned unit development into a mixed-use building containing 235 residential units and up to 28,000 square feet of ground floor retail. The underlying zoning for this parcel is C-2-C.

Public Hearing

On June 10, 2004, the Zoning Commission held a public hearing on the map amendment proposal.

William Durkin, Richard Harps, Louis Slade, and Lindsley Williams testified on behalf of the Petitioner. Mr. Durkin stated that the Petitioner favored rezoning the Subject Properties from R-5-B to R-5-E, and that such a change in zoning was consistent with the Comprehensive Plan. Mr. Harps testified that such a change in zoning would likely result in an increase in tax revenue for the District. Mr. Slade discussed the impact such a change in zoning would likely have on traffic. Mr. Williams testified that a more intensive residential zoning designation was more consistent with the Land Use Map.

Arthur Jackson testified on behalf of the Office of Planning ("OP"). He testified that OP supported zoning consistency, but that consistency with the Generalized Land Use Map without taking into account other Comprehensive Plan policies could result in excessive commercial and office development in the area. He further testified that because commercial and office uses predominate in the northern half of Square 37, and because two planned unit developments in the Subject Property's immediate neighborhood include high-density residential and commercial uses, the land uses in the area already conformed with the Land Use Map, when considered in

the aggregate. He recommended rezoning Lots 831, 810, 811, and 836 from R-5-B to R-5-D, and lots 837 and 855 from R-5-B to R-5-E.

Dorothy Miller, Chairperson of Advisory Neighborhood Commission ("ANC") 2A, testified that the ANC voted unanimously to oppose a change from the current R-5-B classification. ANC 2A also submitted its resolution pertaining to the case into the record. In the resolution, ANC 2A stated that it supported maintaining the existing R-5-B designation for a number of reasons, including that the ANC favored maintaining the existing designation to encourage townhouse development, and that such development would enhance the attractiveness of the neighborhood, limit additional traffic congestion, and provide a variety of housing opportunities. The ANC also commented in its written submission that the neighborhood already suffered from what it termed "too much consistency in its zoning at the present time, resulting in sterile and monotonous blocks of 90 foot or higher buildings with office and hotel use dominating, compromising the overall attractiveness of the West End as a residential neighborhood and creating night dark and dead zones." The resolution also expressed concern that an upzoning would lead to the loss of affordable housing in the area and threaten the existence of the West End Library.

At the hearing, extensive testimony was received from the community in opposition to a change from the existing R-5-B zoning classification. Tenants in the Gibson and Tiverton apartment buildings expressed their concern that an upzoning would result in redevelopment of the existing affordably priced units to higher priced units that they could not afford. Other community members expressed a concern that an increase in residential intensity would reduce the light and air available to neighborhood residents, and would exacerbate crowded traffic and parking conditions. Community members further expressed a desire to maintain a variety of different intensities of development in the neighborhood, as a way of maintaining a variety of building heights and land uses, which they viewed favorably.

Consistency with the Comprehensive Plan

Under § 492(b)(1) of the Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02 (2001)), zoning maps and regulations, and amendments thereto, shall not be inconsistent with the Comprehensive Plan for the National Capital.

The District Elements of the Comprehensive Plan are comprised of several elements with overlapping goals; the various elements should be studied and interpreted in concert with each other and interpreted broadly, and the interpretation of any element should take into account the objectives and policies of other elements. 10 DCMR § 112.1. Since the Land Use Element of the Comprehensive Plan integrates the policies and objectives of all other elements, it should be given greater weight than the other elements. *Id.* However, the Land Use Element does not identify or fix every use, height, and density on every block in the District, rather, the text and the maps construct a guiding framework within which public and private land use and zoning decisions are to be made. 10 DCMR § 1100.11. The interpretation of the District Elements should be guided by the major themes set forth in § 101.1. 10 DCMR § 112.2. The major themes are supported by the District Elements of the Plan. *Id.* The Commission must look to the Comprehensive Plan as a whole when determining whether a proposed modification to the

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zoning map is "not inconsistent" with the Comprehensive Plan. See *Blagden Alley Assoc. v. District of Columbia Zoning Comm.*, 590 A.2d 139, 147 (D.C. 1990).

One, therefore, shall turn first to the Land Use Element of the Plan. The Generalized Land Use Map designates the Subject Property for *both* high-density residential and medium-density commercial uses.

The existing zoning permits only medium density residential and does not allow commercial uses. The existing R-5-B designation, therefore, does not permit the full extent of uses contemplated by the Land Use Map. However, there are other several components of the Land Use Element that support maintaining the existing R-5-B designation.

The first residential objective of the Land Use Element is to "to conserve and enhance the essentially satisfactory qualities of the District's many stable residential neighborhoods including those qualities that make them unique." 10 DCMR § 1102.1(a). In addition, a policy in support of the residential neighborhood objectives is to "[c]onserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of housing, building, and zoning codes and the *maintenance of the general level of existing residential uses, densities, and heights.*" 10 DCMR § 104.1(b) (emphasis added). The West End neighborhood is a stable residential neighborhood. Thus, the Land Use Element makes it an objective to conserve and enhance the neighborhood's satisfactory qualities, and a policy in support of that objective is to maintain the level of existing residential uses, densities, and heights.

In addition, there are other elements of the Comprehensive Plan that support a finding that the current R-5-B zoning designation is not inconsistent with the Plan. One major theme of the Plan is the preservation of existing residential neighborhoods. 10 DCMR § 101.1(a). One of the District Elements of the Plan is the maintenance and improvement of the residential character of neighborhoods. 10 DCMR § 102. In this Element, the Comprehensive Plan spells out that "[m]any city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced." 10 DCMR § 102.2.

By judging, balancing, and reconciling the various elements of the Comprehensive Plan cited above, the Commission believes the existing zoning is "not inconsistent" with the Comprehensive Plan.

DECISION

The Zoning Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01 (2001)) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." D.C. Official Code § 6-641.01. Section 2 of the Zoning Act provides that the "zoning regulations

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shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." D.C. Official Code § 6-641.02. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. D.C. Official Code § 6-641.03. The District of Columbia Court of Appeals has interpreted these statutes as granting the Commission a broad general authority over zoning matters. *Blagden Alley Assoc. v. District of Columbia Zoning Comm.*, 590 A.2d 139, 142 (D.C. 1991) (citing *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Commission*, 355 A.2d 550, 556 (D.C. 1976)).

In amending the zoning maps, the Commission is constrained by the limitation in the District Charter that the zoning map be "not inconsistent" with the Comprehensive Plan. § 492(b)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, effective December 24, 1973 (Pub.L.No. 93-198; 87 Stat. 774; D.C. Official Code § 6-641.02 (2001)).

The Commission is faced with a difficult decision in this case, because the zoning designations suggested by the petitioners are arguably more consistent with the Comprehensive Plan's Land Use Map than the existing designation. However, several factors weigh in favor of maintaining the existing zoning designation: (1) the present zoning designation is not inconsistent with the Comprehensive Plan as a whole; (2) evidence was presented at the hearing that the community overwhelmingly supported maintaining the present character of the neighborhood; (3) evidence was presented that rezoning the area to the more intensive zoning designations suggested by the Petitioner would likely lead to redevelopment of the area, displacement of residents, and a reduction in the supply of affordable housing; and (4) evidence was presented that maintaining a variety of zoning classifications in the neighborhood would contribute to diversity of building heights and land uses, and that such variety was viewed favorably by the community.

While it may be true that a C-2-C, CR, or R-5-E zoning designation would be more consistent with the Comprehensive Plan's Land Use Map, § 492(b) does not require that the Commission adopt the designation most consistent with the Land Use Map. The Commission's obligation is to designate zone districts that further the goals established by §§ 1 and 2 of the Zoning Act, subject to the limitation that the designation is "not inconsistent" with the Comprehensive Plan as a whole. The Commission concluded above that the present zoning is "not inconsistent" with the Comprehensive Plan.

ANC 2A, as well as many residents who live in the area, expressed overwhelming support for maintaining the existing R-5-B zoning. The community representatives expressed several reasons for maintaining the current zoning including: that an up-zoning will provide an incentive to redevelop the properties and displace the current residents and that the current affordable

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housing units will be replaced with either office uses or more expensive housing beyond the reach of most District residents.

The Commission concurs with the community representatives that the requested up-zoning is likely to displace existing residents, and is likely lead to production of either non-residential space (if the new designation would permit it) or in the production of housing units that are not affordable to low- or middle-income residents. In addition, the Commission also concurs with the community representatives that the existing zoning designation contributes to the diversity of building heights and land uses in the West End neighborhood, and that this diversity positively contributes to the neighborhood and to the general welfare of the District.

In light of the foregoing, the Commission concludes that a change in the zoning designation was not in the best interest of the District of Columbia.

Great Weight Given to Recommendation of ANC 2A

Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Official Code § 1-309.10(d)(3)(A)), requires the Commission to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give "great weight," the Commission must articulate with particularity and precision why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

In this case, the ANC 2A recommended that the Commission maintain the existing zoning designation. In its resolution, ANC 2A stated that it supported maintaining the existing R-5-B designation for a number of reasons, including that the ANC favored maintaining the existing designation to encourage townhouse development, and that such development would enhance the attractiveness of the neighborhood by being lower scale, limit additional traffic congestion, and provide a variety of housing opportunities. The ANC also commented in its written submission that the neighborhood already suffered from what it termed "too much consistency in its zoning at the present time, resulting in sterile and monotonous blocks of 90 foot or higher buildings with office and hotel use dominating, compromising the overall attractiveness of the West End as a residential neighborhood and creating night dark and dead zones." The resolution also expressed concern that an up-zoning would lead to the loss of affordable housing in the area and threaten the existence of the West End Library.

The Commission carefully considered the ANC's advice and, as described more fully above, agrees with ANC 2A's concern that up-zoning the property would encourage more intensive development to the detriment of the neighborhood.

Great Weight Given to Recommendation of the Office of Planning

The Office of Planning, in its final report dated June 1, 2004, recommended rezoning Lots 831, 810, 811, and 836 from R-5-B to R-5-D and Lots 837 and 855 from R-5-B and R-5-E. OP listed several reasons for this recommendation in its report, including that: no single zone district that matches the prescribed land use pattern for the area; that the new zoning designations would

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eliminate non-conforming aspects of existing multi-family development dwellings; commercial zoning would increase traffic congestion; and, given the dominant commercial and office uses in the northern half of the square, residential zone districts would most effectively achieve the mix of uses called for in the area by the Comprehensive Plan.

The Commission carefully considered OP's recommendation and has given it great weight. The Commission agrees with the OP recommendation to the extent that additional commercial zoning in the square would be undesirable. As described above, however, the Commission decided not to rezone the Subject Properties to the more intensive residential designations because: (1) the present zoning designation is not inconsistent with the Comprehensive Plan as a whole; (2) the more intensive zoning designations suggested by the Petitioner would likely lead to redevelopment of the area, displacement of residents, and a reduction in the supply of affordable housing; and (3) maintaining a variety of zoning classifications in the neighborhood would contribute diversity of building heights and land uses.

At the public meeting held July 12, 2004, the Zoning Commission voted to **DENY** the petition by a vote of **4-0-1**. (Anthony J. Hood, Kevin L. Hildebrand, Gregory N. Jeffries, and John G. Parsons to deny; Carol J. Mitten, having not participated, not voting.)

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on _____.

ZONING COMMISSION ORDER NO. 668-I
Z.C. Case No. 00-35A
(Modification to PUD @ 500 5th Street, N.W.)
January 9, 2006

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police, and John W. and Vinard Paris (collectively, the "Applicant") for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for Lots 15-19, 24, 25, and 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy of ninety-nine percent (99%). The approved PUD was subject to certain guidelines, conditions, and standards.

By letter dated October 3, 1990, counsel for the Applicant requested the Zoning Commission to modify the second sentence in Condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved the Applicant's request and modified Condition No. 6 to read as follows:

"The applicant shall provide two lanes 'in' and either one or two lanes 'out' for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the Applicant's second extension request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, until July 27, 1994, with construction to start no later than July 27, 1995.

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, until July 27, 1996, with construction to start not later than July 27, 1997.

By letter dated March 10, 1994, the Applicant requested a modification of the existing PUD to include, as alternative development, Lots 833 and 842 at the northern end of Square 488. Lots 833 and 842 were unzoned District of Columbia property developed with a fire station. The

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Applicant requested that the unzoned property be zoned C-3-C to be consistent with the zoning of the remainder of the square, as approved by the Commission in Z.C. Order No. 668.

By Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved the modification to the PUD and the map amendment to C-3-C for Lots 833 and 842. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station) of 448,525 square feet, a density of 7.64 FAR, height of 120 feet, and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a stacked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B, and 668-C.

The validity of Z.C. Order No. 668-D was for two years, that is until December 9, 1996, to file for a building permit, with construction to commence not later than December 9, 1997.

By letter dated September 21, 1995, counsel for the Applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B, 668-C be extended to July 27, 1998, to file for a building permit, with construction to commence no later than July 27, 1999, and Z.C. Order No. 668-D to be extended to December 9, 1998, to file for a building permit, and construction to commence no later than December 9, 1999.

The Applicant's motion for extension stated, in part, the following as the basis for the extension.

1. The Applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt almost all new private construction projects in the past six years. The Applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.
2. The unfavorable market conditions and the Applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without hearing.

By Z.C. Order No. 668-E, dated February 12, 1996, the Commission granted the Applicant's motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years, that is, until July 27, 1998, to file for a building permit, with construction to begin no later than July 27, 1999. Additionally, by Z.C. Order No. 668-E, the Commission extended Order No. 668-D for a period of two years, until December 9, 1998, to file for a building permit with construction to begin no later than December 9, 1999.

By correspondence dated September 17, 1997, counsel for the Applicant filed a motion requesting the Commission to further extend the validity of Zoning Commission Order Nos. 668, 668-A, 668-B, 668-C, and 668-E for five-years (until July 27, 2003), and for Order No. 668-D, until December 9, 2003, pursuant to § 2408 of the Zoning Regulations.

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Finding that the Applicant had demonstrated good cause for the extension and that the rationale for granting approval for the PUD had not changed, the Zoning Commission, by Z.C. Order No. 668-F dated February 9, 1998, granted an extension of the validity of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668E for a period of two years until July 27, 2000, and for Z.C. Order No. 668-D until December 9, 2000. The extension was based upon the Zoning Commission's finding of a willingness on the part of the Applicant to go forward with the development of the project as soon as market conditions improved, as well as the Applicant's diligent, good-faith efforts to secure financing by negotiating the air rights agreement with the District of Columbia Redevelopment Land Agency ("RLA") to improve the marketability of the project.

On February 23, 1999, the Applicant submitted a request for a minor modification to the concourse level, or cellar, of the approved PUD to allow for parking and office space or parking only. The proposed change resulted in an increase in the available off-street parking spaces from 313 vehicles to 425 vehicles. The Zoning Commission approved the minor modification in its Order No. 668-F-1, effective October 12, 2001.

By correspondence dated December 6, 2000, NAS filed for a five (5) year extension of the validity of Z.C. Order Nos. 668-D, 668-E, and 668-F, so as to allow time to coordinate bond financing for the development of the Air Rights Property. The additional time was also needed to allow further study of the ability of the existing fire station to support the proposed construction in the Air Rights Property, which study had been hindered by the District's difficulty in locating and providing NAS with building plans (including "as-built" plans) for the existing fire station. Z.C. Order No. 668-G (April 6, 2001) extended the validity of Order Nos. 668-D, 668-E, and 668-F until December 9, 2005, with construction to begin no later than December 9, 2006.

On November 19, 2001, the Applicant filed an application for a minor modification to the PUD to allow for an interactive science museum as an alternative to all or a portion of the retail requirement of the approved PUD. The Zoning Commission granted the minor modification effective July 26, 2002 in Order No. 668-H. The validity period of the modified PUD was not altered, thus a building permit application on the modified PUD was to be made prior to December 9, 2005 and construction to begin no later than December 9, 2006.

By letter dated October 11, 2005, the Applicant filed for a five (5) year extension of the validity of Zoning Commission Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H.

The motion notes that the criteria for determining whether the PUD should be extended is whether the Applicant has demonstrated that there is good cause for the extension and whether there has been a substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD under 11 DCMR § 2408.10(b) and (c).

The motion states that the Applicant meets the criteria for good cause for the extension, because construction of the first phase of the project is complete and the building has been occupied by the Applicant. At the time of the 2001 time extension, the Applicant needed additional time to analyze the ability of the existing fire station, adjacent to the completed first phase of the

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development, to support the additional proposed construction. The application indicates that additional time is needed to coordinate development proposals and resolve the issue regarding replacement or construction over the existing fire station. The Applicant has been negotiating with RLARC, owner of the air rights above the fire station (and successor to RLA), and with the District Government on the possible purchase of the fire station building. The Applicant is also exploring incorporating the existing fire station into the PUD or relocating the fire station. The air rights contract with RLARC must be amended, because construction of the PUD was financed in part by District of Columbia bonds. However, those amendments have been tabled pending the resolution of the issues surrounding the fire station. Until then, the Applicant is unable to obtain financing.

Paragraph 2408.11(a) of the Zoning Regulations specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criterion for establishing good cause.

The Applicant's motion also stated that there were no changes impacting the PUD since Order No. 668-G was issued granting the extension to December 9, 2005:

Copies of the motion for extension were served by counsel for the Applicant on Advisory Neighborhood Commission ("ANC") 6C, within whose jurisdiction the property is now situated. ANC 6C, at their public meeting of November 9, 2005, voted unanimously to support the application of the National Academy of Sciences for an extension of time to complete their PUD.

By memorandum dated December 22, 2005, the District of Columbia Office of Planning ("OP") recommended approval of the extension.

By letter dated October 7, 2005, the RLA Revitalization Corporation ("RLARC") supported the request for the extension noting that they have been working with the Applicant to respond to the interests of the D.C. Fire Emergency Services Department, whose firehouse sits underneath the air rights parcel, and is close to finalizing development options for the air rights parcel that will resolve many of the issues that have plagued the Applicant's ability to proceed under the second phase of the PUD approved by the Zoning Commission.

Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On January 9, 2006, at its regular monthly meeting, the Commission considered the Applicant's request for a five-year extension of the validity of Z.C. Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H; the OP report and recommendations; the ANC recommendations; and the RLARC letter.

The Commission concurred with OP that an extension of the Orders should be granted. The Commission found that the Applicant had met the requirements under § 2408.10.

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The Commission determined that the reasons advanced by the Applicant for the extension request constitute good cause and that the request was timely filed pursuant to § 2408.10 of the Zoning Regulations.

The Commission determined that the extension of time, as requested by the Applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the Applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H be approved for a period of FIVE YEARS, until December 9, 2010. Prior to the expiration of that time, the Applicant shall file for a building permit, and construction shall begin no later than December 9, 2011.

This Order was **ADOPTED** by the Zoning Commission at its public meeting on January 9, 2006, by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand, and John G. Parsons to **ADOPT**; Carol J. Mitten not voting having recused herself).

In accordance with the provisions of 11 DCMR § 3028.8, this Order is final and effective upon publication in the *D.C. Register*; that is on _____.

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