GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17373 of Douglas Knoll Cooperative LP, pursuant to 11 DCMR§ 3104.1, for a special exception to allow a child development center (90 children, and 20 staff) under section 205, and pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under section 2101, (last approved under BZA Order No. 16902) in the R-5-A District at premises 2017 Savannah Terrace, S.E. (Square 5894, Lot 40).

HEARING DATE: October 25, 2005
DECISION DATE: October 25, 2005 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 8B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8B, which is automatically a party to this application. ANC 8B did not participate in this application. The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 205. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the Office of Planning report filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board and having given great weight to the Office of Planning report, the Board further concludes that the applicant has met the burden of

NOV 1 8 2005

proving under 11 DCMR §§ 3103.2 and 2101 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for **SEVEN YEARS.**

2. The number of staff shall not exceed 20.

3. The ages of the children shall be 6 weeks to 12 years.

4. No more than 90 children shall be enrolled at the Center.

5. The play area shall be located immediately adjacent to the Center.

6. The Center shall operate Monday through Friday, from 7 a.m. to 6 p.m.

7. Trash removal shall occur at least two times a week.

8. The Center shall schedule delivery of materials and other goods between the hours of 10 a.m. and 2 p.m.

9. The Center shall encourage the use of public transportation by its staff.

10. Drop off and pick up shall take place at the Savannah Terrace, S.E. entrance to the building or at the nearby 22nd Street, SE cul de sac.

11. Staff members or adult volunteers shall escort the children between the pick-up/drop-off points and the building.

12. At least one additional staff member shall be assigned to direct traffic at drop off and pick up times.

13. The Center shall provide adequate lighting for pedestrians using the pathway and or stairs leading to/from the 22nd Street cul de sac. The applicant shall install three pole

light fixtures – one at the top of the stairway, one at the bottom of the stairway and one at or near the middle of the stairway.

VOTE: **4-0-1** (Ruthanne G. Miller, Geoffrey H. Griffis, Curtis L. Etherly, Jr. and John A. Mann, II to approve; No Zoning Commission Member participating)

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

FINAL DATE OF ORDER: NOV 0 3 2005

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

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

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR,

NOV 1 8 2005

RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

TWR

Zoning Commission Order No. 955B
Zoning Commission Case No. 01-09A
(Modification to a Consolidated Planned Unit Development and Zoning Map Amendment for Station Place)
October 17, 2005

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on October 17, 2005. At the meeting, the Zoning Commission approved an application from Second Street Holdings LLC (the "Applicant") requesting a minor modification to an approved planned unit development ("PUD") for Station Place, pursuant to Chapter 24 and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of Subsections 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

Pursuant to Zoning Commission Order No. 955, dated February 11, 2002, the Commission approved a PUD and related Zoning Map amendment for property located on the west side of 2nd Street, between F and H Streets, N.E. (the "Site"). The Site consisted of Lots 178 and 179 in Square 720 and is now known as Lots 824, 825, and 826 in Square 720. The office building approved in Zoning Commission Order 955 is to have approximately 1,396,950 square feet of gross floor area, not to exceed a density of 5.9 FAR, with a maximum building height of 115.5 feet, as measured from F Street or 89.32 feet as measured from the H Street overpass. The project will provide a minimum of 922 parking spaces.

On October 20, 2003, pursuant to Zoning Commission Order No. 03-31 (955-A), the Commission approved an application for a minor modification to the PUD to permit the substitution of four water features with sculptures and planters in the courtyards along 2nd Street, N.E., as indicated in the plans submitted with said application. The circular water features in Courtyards 1 and 2 may be substituted with sculptures. For Courtyard 1, a sculpture depicting a small crowd of people may be constructed in the center of the courtyard in place of the water feature. For Courtyard 2, a sculpture resembling a horizontal body, lying face down and looking forward, may be constructed in the center of the courtyard in place of the water feature. The rectangular water features shown for Courtyards 2 and 3 may be replaced with planters.

The Applicant seeks a minor modification of the PUD in order to devote the western portion of Courtyard 1 as an outdoor playground for a child development center in accordance with the plans prepared by DBI Architects, Inc., dated September 16, 2005, and attached as Exhibit C to the Request for Minor Modification. The playground is intended to serve children attending the daycare facility to be included in Station Place.

The requested minor modification does not affect the essential elements of the approval given by the Commission for the PUD, including use, height, gross floor area, lot occupancy, setbacks or number of parking spaces. Additionally, the modification is consistent with the approved elements of the amenity package.

Copies of the Request for Minor Modification were hand-delivered to all parties to the approved PUD, including Advisory Neighborhood Commission 6C (the successor to Advisory Neighborhood Commission 6A), the Stanton Park Neighborhood Association, the H Street Merchants and Professionals Association, and the Near Northeast Neighborhood Task Force.

On October 17, 2005, at its regular monthly meeting, the Zoning Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modification to the approved PUD.

The Commission concurs with the Applicant that approving the application is appropriate and is not inconsistent with the intent of 11 DCMR, Subsections 2409.9 and 3030.

The Commission further finds that its decision is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zone plan as embodied in the Zoning Regulations and the Zoning Act.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and does not change the intent of the previously approved Zoning Commission Order No. 955. Further, the Commission concludes that its decision is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the proposed modification does not impact the essential elements of the approved PUD, including use, height, gross floor area, lot occupancy, setbacks or number of parking spaces. Other than the incorporation of an outdoor playground in Courtyard 1, no other condition of the approved PUD will be affected. The material facts relied upon by the Commission in approving the PUD in Zoning Commission Order No. 955 have not changed. The modification is minor such that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a minor modification of an approved PUD for the property located on the west side of 2nd Street, between F and H Streets, N.E. (now known as Lot 824, 825, and 826 in Square 720). As such, notwithstanding the previous site plan approvals for the PUD, the western portion of Courtyard 1 may be devoted to an outdoor playground for a child development center in accordance with the plans prepared by DBI Architects, Inc., dated September 16, 2005, and submitted as Exhibit C of the Applicant's Request for Modification.

Pursuant to the intent of 11 DCMR 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs (DCRA) for the minor modification until the Applicant has recorded a "Notice of Modification" of Zoning Commission Order No. 955 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Zoning Commission Order No. 955, Zoning Commission Order No. 03-31 (955-A), and this Order (Zoning Commission Order No. 955B), which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the site in accordance with this order and any amendments thereof.

After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Commission.

The minor PUD modification shall be valid for a period of two (2) years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR §§ 2409.2 and 2409.3 of the Zoning Regulations. Construction shall start within three (3) years of the effective date of this Order.

Vote of the Commission was taken at its public meeting on October 17, 2005, by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Kevin L. Hildebrand to approve).

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

ZONING COMMISSION ORDER NO. 03-22
Case No. 03-22
(Rezoning of Square 1048S)
ORDER DENYING APPLICATION
April 11, 2005

At a properly noticed public meeting held on October 20, 2003, the Zoning Commission for the District of Columbia ("Commission") considered set-down of this application. The application requested the re-zoning of Square 1048S from an M Zone District (General Industry) to an R-5-B Zone District (Residence). Square 1048S, however, is a small, isolated parcel amidst land zoned M and C-M (Commercial-Light Manufacturing). It is located within the Near Southeast Target Area, as designated in the Near Southeast Area Urban Design Framework Plan, and within the area encompassed by the Anacostia Waterfront Initiative. The entire Southeast waterfront area is currently being re-evaluated by planners and developers alike and is in the process of transition.

Due to all these factors, the Commission decided not to set down the application for a public hearing, but to hold the application in abeyance pending a more comprehensive look at the area surrounding the Square by the Office of Planning ("OP"). The Commission asked OP to make recommendations for an area referred to as the "East M Street Target Area," which included Square 1048S and is bounded roughly by 11th Street, S.E. to the west, Water Street, S.E. to the south, Interstate 395 to the north, and Barney Circle and the Sousa Bridge to the east. OP set forth its recommendations for the East M Street Target Area in Zoning Commission Case No. 04-02.

After several unsuccessful attempts to craft a satisfactory and workable zoning plan for the East M Street Target Area, including the zoning for Square 1048S, the Zoning Commission denied set down of this application at its April 11, 2005 meeting.

FINDINGS OF FACT

The Site and the Surrounding Area

1. On approximately June 16, 2003, ADC Builders and the Cohen Companies ("Applicant") filed this application with the Zoning Commission requesting an amendment to the Zoning Map of the District of Columbia changing the current M zoning of Square 1048S to R-5-B zoning.

2. The property address of Square 1048S, which is comprised of one lot (Lot 1), is 1333 M Street, S.E.

3. An M Zone District is a general industrial zone and is the most permissive zone as far as commercial and manufacturing uses are concerned, but it does not permit new residential development.

4. An R-5-B zone district is a residential zone permitting moderate height and density residential development, including row dwellings and multiple dwellings.

5. Square 1048S is a 40,580-square-foot (.93-acre), triangular parcel situated between M Street, S.E. to the north and the right-of-way for Virginia Avenue, S.E. to the south. The Anacostia River is approximately 200 feet south of Square 1048S, with Water Street between the Square and the River. To the immediate west of Square 1048S is a small Federal property, Reservation 129, and to the immediate east is the right-of-way for 14th Street, S.E. and another small Federal parcel, Reservation 299. Also just to the west of Square 1048S are the elevated entrance/exit ramps to the Southeast Freeway/11th Street Bridge, which continue as elevated roadways and slope down to Interstate 395 to the north.

6. At the present time, those parts of Virginia Avenue, S.E. and 14th Street, S.E. bordering Square 1048S are unimproved.

7. Immediately to the north of M Street, S.E. is a railway line and Interstate 395, which runs roughly parallel to the northern boundary of Square 1048S. Continuing northward is L Street, S.E., which constitutes the southern boundary of the nearest residential area, zoned R-5-B and part of the Capitol Hill Neighborhood.

8. Square 1048S is in the center of an M Zone District. Surrounding this M zone on the north, east, and south is land zoned C-M-1. To its west is land zoned C-M-2.

9. The nearest Metro station to Square 1048S is separated from it by the railway line and Interstate 395 to the north.

10. Square 1048S is a former Stewart Petroleum site; it is currently developed with two large oil storage tanks and distribution facilities. The site will require remediation before construction can occur.

11. The Southeast waterfront area planning initiative, entitled the Near Southeast Area Urban Design Framework Plan, places Square 1048S within the Near Southeast Target Area. The Near Southeast Target Area is undergoing transition, with several projects planned or currently being constructed, including the Washington Gas/Maritime Plaza site being developed with office and hotel space, the Southeast Federal Center site, and the new headquarters of the U.S. Department of Transportation.

12. The Square is also within the area of the Anacostia Waterfront Initiative, for which a Memorandum of Understanding was signed by 20 Federal and District agencies. The

agencies have committed themselves to create an active, cohesive, and well-planned Anacostia River waterfront.

13. At some point during the pendency of Case No. 03-22, OP engaged a consultant to study the limited remaining industrially-zoned areas in the District to determine the demand for industrial zones, and potentially, how much land area should be retained in such zones.

The Procedural History

14. The Zoning Commission first considered this application at its meeting held on October 20, 2003. At that meeting, OP recommended changing the zoning of Square 1048S to a CR (commercial/residential) Zone District, instead of the requested R-5-B District. The CR District permits a higher density of development and both residential and commercial uses. The Applicant agreed with OP's recommendation to change the zoning for Square 1048S to CR.

15. At its October 20, 2003 meeting, the Commission held in abeyance the set-down of Case No. 03-22 and requested that OP take a more comprehensive look at the larger area surrounding Square 1048S. OP concentrated on an area surrounding the Square, all of which is within the Near Southeast Target Area, and is roughly bounded by 11th Street, S.E. to the west, Water Street, S.E. to the south, Interstate 395 to the north and Barney Circle and the Sousa Bridge to the east.

16. OP's "more comprehensive look" at the surrounding area became Zoning Commission Case No. 04-02, and the area under study became known as the "East M Street Target Area."

17. OP presented its conclusions at the Zoning Commission meeting held on February 6, 2004. OP no longer recommended CR zoning for Square 1048S, but now recommended W-3 zoning. W-3 is the highest-density waterfront zone, allowing both residential and commercial uses.

18. After some discussion, the Commission, on February 6, 2004, set down for a hearing Case No. 04-02, which included within it Square 1048S. The public notice was to advertise the new zoning for the Square in the alternative, as either W-3 or W-2, a less-dense waterfront district. At the same time, however, the Commission was not satisfied with OP's overall recommendations, and it asked OP to take another look at the East M Street Target Area and present the Commission with more options.

19. The public hearing in Case No. 04-02 was held on June 17, 2004. At the hearing, OP set forth three (3) different scenarios for re-zoning the East M Street Target Area. Also at the hearing, the representative of the Applicant in the instant case, No. 03-22, testified in favor of OP's then-recommendation of re-zoning Square 1048S to W-3, with the Capitol Gateway Overlay (with some minor changes) established over it. During his testimony, the Applicant's representative had the opportunity to address issues relevant to the zoning of the East M Street Target Area, and particularly, those issues relevant to the re-zoning and development of Square 1048S.

20. At the June 17, 2004 hearing, the Commission requested that OP look at this again and provide further information concerning the three (3) scenarios presented at the hearing. This information was submitted prior to the September 13, 2004 Zoning Commission meeting.

21. At its September 13, 2004 meeting, the Commission discussed options for re-zoning the East M Street Target Area, including Square 1048S. The Commission was still not completely satisfied and requested that OP look at this again.

22. At the Zoning Commission meeting in October 25, 2004, OP presented several further ideas for re-zoning to the Commission. The Commission, however, was again not completely satisfied, and after providing OP with more specific guidance, asked that OP develop new scenarios for the Commission to consider.

23. At the Zoning Commission meeting in November 8, 2004, the Commission rejected all of OP's suggested scenarios and attempted to craft its own Square-by-Square zoning proposal for the East M Street Target Area. The Commissioners, however, were not in complete agreement among themselves as to what Squares should be in what zone districts or whether an Overlay should be placed over the area. Also at this meeting, the Chairman recommended, for the first time, amending Chapter 24 of the Zoning Regulations, to add an incentive to develop planned unit developments within areas zoned W-2.

24. On March 17, 2005, the Applicant filed with the Commission a letter requesting expedited action on this application, Case No. 03-22, which, had, at that point, not yet been set down, but had been subsumed within the discussions of Case No. 04-02.

25. On April 1, 2005, OP recommended that Case No. 03-22 be set down for a map amendment for Square 1048S to change the zoning from M to W-2, with R-5-B as an alternative.

26. At its April 11, 2005 meeting, the Commission voted to dismiss case 04-02 and deny the instant application. An Order dismissing the former case has been issued concurrently with this Order.

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01 (2001)) establishes the authority of the Zoning Commission to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia" through regulation of the structures and uses on its land.

2. Section 3 of the Zoning Act of 1938 (52 Stat. 798, as amended, D.C. Official Code § 6-641.03 (2001)) establishes the authority of the Zoning Commission to amend the zoning maps of the District of Columbia.

3. Square 1048S is an isolated, hard-to-access parcel, generally surrounded on two of three sides by highways and railroad track, and on the third side by the Virginia Avenue right-of-way and the Anacostia River.

4. Square 1048S is set in the midst of land zoned M and C-M, currently suitable for, and used for, commercial and industrial uses. It is not particularly close to any residentially-zoned areas, nor is there any reliable way to predict whether any nearby land will be residentially-zoned in the future.

5. Two of the streets bordering the Square exist only on paper and the nearest Metro station is separated from the Square by the railroad track and Interstate 395, therefore, access to the Square would be difficult.

6. The District of Columbia has, over time, lost much of its industrially-zoned land and the Commission concludes that it would be in the best interests of the District to retain the industrially-zoned land it currently has, at least until a more complete analysis of such land and the demand, or potential demand, for it have been completed.

7. The Commission concludes that, at the present time, it is in the best interests of the District of Columbia to retain Square 1048S as land within the District that is zoned for, and suitable for, manufacturing and industrial uses.

8. The Commission therefore concludes that granting this application, thereby changing the zoning of Square 1048S from M to a lesser-restrictive zone, whether R-5-B, CR, or a W Zone District, is not in the best interests of the District of Columbia.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS DENIAL** of set-down of Case No. 03-22, the application for a map amendment to change the zoning of Square 1048S from M to a lesser-restrictive zone, either R-5-B or W-2.

At the public meeting held on April 11, 2005, the Zoning Commission voted to **DENY** set down by a vote of 3-1-1. (Commissioners Carol J. Mitten, John G. Parsons, and Kevin Hildebrand to deny; Commissioner Gregory Jeffries opposed; and Commissioner Anthony J. Hood abstaining.)

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 _____.

ZONING COMMISSION ORDER NO. 03-27
Z.C. Case No. 03-27
(Consolidated Planned Unit Development for 4600 Brandywine Associates, LLC)
December 13, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 14, 2004 to consider an application from 4600 Brandywine Associates, LLC for the consolidated review and approval of a planned unit development application for Lots 817 and 820 in Square 1732, located at the intersection of Wisconsin Avenue and Brandywine Street, N.W., pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. The property that is the subject of this application is located at the intersection of Wisconsin Avenue, N.W. and Brandywine Street, N.W., Lots 817 and 820, Square 1732 (the "Property"). The Property has an address of 4600 – 4614 Wisconsin Avenue, N.W., contains 12,661 square feet of land area and is located in the C-2-A Zone District. The Property is currently improved with buildings that include a billiards parlor, a dry cleaners, a tailor shop and a small office. (Exhibit 26, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. viii.))

2. On July 22, 2003, 4600 Brandywine Associates, LLC (the "Applicant") filed an application with the Zoning Commission ("Commission") for review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia. The proposed PUD project included 43 residential units and approximately 4,500 square feet of ground floor retail along Wisconsin Avenue. The building would have a total height of 65 feet, a floor area ratio ("FAR") of 5.0 and a lot occupancy of approximately 92 percent. The requested Zoning Map amendment sought to rezone the Property to the C-2-B Zone District. (PUD and Zoning Map Amendment Application of the Applicant ("Initial Application") pp. 4-5.)

3. At its March 8, 2004 public meeting, the Commission noted concerns with the Applicant's proposed PUD project and Zoning Map amendment request and voted 2-2-1 regarding the issue of whether to set down the application for a public hearing.

4. Thereafter, the Applicant modified the proposed PUD project and withdrew the Zoning Map amendment request. On May 10, 2004, the Commission set down the revised PUD project for a public hearing.

5. The Zoning Commission held a public hearing on the above-mentioned application on October 14, 2004, which was conducted in accordance with the provisions of 11 DCMR § 3022.

6. Advisory Neighborhood Commission ("ANC") 3E, the ANC in which the Property is located, was automatically a party to this application. At the October 14, 2004 public hearing, the Commission granted party status to ANC 3F, the ANC adjacent to the Property.

PUD Application and Project

7. The Property is located in the Tenleytown neighborhood of Ward 3. It consists of approximately 12,661 square feet of land area at the northwest corner of Wisconsin Avenue and Brandywine Streets, N.W. The Property is located approximately one block (1,000 feet) from the entrance to the Tenleytown Metrorail Station. The Property includes 121 feet of frontage along Wisconsin Avenue and 113 feet of frontage on Brandywine Street. The Property includes a five-foot change in grade from the southern edge of the site to the northern edge of the site along Wisconsin Avenue. (Exhibit 26, Statement p. 1.)

8. The general area surrounding the Property includes a variety of commercial buildings along Wisconsin Avenue. These include the 65-foot-tall office and retail building (which includes Hudson Trail Outfitters on the ground level) located immediately across Brandywine Street from the Property. Across Wisconsin Avenue to the southeast is a strip shopping center that includes a take-out pizza store, a CVS Pharmacy and other retail establishments. Various television and radio antenna towers, a small retail store and Fort Reno Park are located across Wisconsin Avenue to the northeast of the Property. Immediately adjacent to the Property on the west side of Wisconsin Avenue is a commercial building that includes restaurants and retail on the ground level and office uses above. The Martens Volvo site and the Tenley Hill mixed-use PUD/rezoning project are located on Wisconsin Avenue to the north of the Property. The former Sears/Hechinger building, which is being renovated as a mixed-use building, is just one block to the south at the intersection of River Road and Wisconsin Avenue. (Exhibit 26, Statement p. 3.)

9. The Applicant seeks to construct a mixed-use, primarily residential project on the Property. The project will consist of 42 one- and two-bedroom condominium units (including one "affordable" unit) that will be accessed from Brandywine Street. Consistent with the PUD guidelines in the C-2-A District, the building will be approximately 65 feet in height and will have a roof line that is at approximately the same height as the roof line of the office and retail building located immediately south of the Property on Wisconsin Avenue. The project will include a total of 37,983 square feet of

gross floor area, will have a total density of 3.0 FAR and will occupy 60 percent of the Property. The residential portion of the project will include approximately 36,333 square feet of gross floor area. The non-residential portion of the project will include approximately 1,650 square feet of retail space along Wisconsin Avenue focused at the corner of Wisconsin Avenue and Brandywine Streets that will be marketed towards neighborhood oriented retailers, rather than destination oriented retail. (Exhibit 26, Statement pp. 3-5; Exhibit 38.)

10. The project will also include two parking levels below grade, including 44 parking spaces that will be accessed from Brandywine Street. One parking space will be available for each condominium unit and two spaces will be reserved for retail uses and visitor use after business hours. The project will also include a service delivery lay-by space along Brandywine Street. (Exhibit 26, Statement pp. 3-5, Exhibit 38; Testimony of Chris Morrison, Transcript of October 14, 2004 Zoning Commission Public Hearing ("Tr.") p. 19.)

11. The project has a two-story base and has been broken into three distinct elements to sensitively contribute to the existing context of the neighborhood and provide a better transition to the pedestrian scale of the retail frontage. Extensive hardscape and landscape elements, such as decorative paving, terracing and planting, at the ground floor will contribute to a vibrant streetscape for Wisconsin Avenue and Brandywine Street. The building's rich palette of materials, including brick, precast concrete, glass and metal, will also elevate the level of finish in the neighborhood streetscape. (Exhibit 20, Statement pp. 5-6, Exhibit 38; Testimony of Ralph Cunningham and Chris Morrison, Tr. pp. 21-22, 25-27.)

12. The C-2-A District requires that 20 percent of the residential gross floor area be devoted to residential recreation space. The proposed project will provide 4,600 square feet of residential recreation space in a landscaped courtyard in the rear yard of the Property that will be available to all residents of the project. Therefore, the project will provide residential recreation space of 12.66 percent of the residential gross floor area included in the project. In addition, some of the residential units will have balconies, consisting of 2,704 square feet, and the upper units will have access to roof terraces that will include 1,750 square feet. While these areas do not satisfy the strict requirements of the Zoning Regulations for residential recreation space required in a matter-of-right building, they are areas of passive recreation that are available for residents of the project and their guests and serve the intended purpose of providing residential recreation space. (Exhibit 20, Statement pp. 4-5; Testimony of Chris Morrison, Tr. p. 25.)

13. The project includes a 1,000-square-foot community room in the B1 level of the building. However, it is likely that such a community room will not be used or desired by the owners of the units, given the adjacent outdoor and indoor recreational amenities available at and adjacent to the Property. The Applicant requested that the Zoning Commission provide flexibility from the strict requirements of the C-2-A District residential recreation space requirements and give the Applicant the ability to decide the

most appropriate use of the 1,000 square feet of space in the B1 level. (Exhibit 20, Statement p. 5; Tr. p. 27.)

14. The Applicant also requested a waiver from the minimum lot size requirement for a PUD in the C-2-A District, which requires a minimum lot area of 15,000 square feet. The Property consists of 12,661 square feet. The Applicant noted that the Zoning Commission has the authority to grant a waiver of up to 50 percent of the minimum area requirement, if after the public hearing the Commission determines that the project is of exceptional merit and is in the best interest of the city or country. The Applicant testified that the proposed development as a whole, the building and all the project benefits and community amenities, satisfied the exceptional merit standard. (Exhibit 20, Statement pp. viii, ix; Tr. pp. 9-10.)

15. The proposed project also requires flexibility from the strict application of the Zoning Regulations regarding the roof structure and the required set-back from all edges of the roof of the building. The location of a required exit stair on the roof prevents the roof structure from being set back from all edges of the roof of the building, but the roof structure would be set back from all edges of the primary faces of the building. (Testimony of C. Morrison, Tr. p. 25.)

16. The proposed project received recognition from the Washington Smart Growth Alliance ("SGA") Smart Growth Recognition Program as a Smart Growth Project Proposal. The SGA concluded that the proposed project's location of residential units along a major transportation corridor and in close proximity to the Metro station were important factors in receiving such a designation. (Exhibit 26, Statement pp. 7-8 and Ex. E to the Statement.)

17. Testimony and evidence on behalf of the Applicant was provided by Scott Fuller and by Ralph Cunningham and Chris Morrison of Cunningham + Quill Architects, who testified as experts in the field of architecture. Scott Fuller addressed the significant dialogue and correspondence that the Applicant engaged in with the neighboring property owners, the Coalition to Stop Tenleytown Overdevelopment and ANC 3E. Mr. Fuller noted that as a result of that process, the project received the support of ANC 3E and CSTO. Mr. Fuller noted the following revisions to the project that were made in response to community and ANC concerns: the reduction in size of the building; the withdrawal of the Zoning Map amendment application; modifications to the design and appearance of the building; further landscape and hardscape improvements along Wisconsin Avenue; a restriction on the ability of project residents to obtain Residential Permit Parking passes from the District Government; a delivery lay-by parking space; a green roof; and a construction management agreement. (Testimony of S. Fuller, Tr. pp. 12-14.)

18. As addressed in the Applicant's pre-hearing statement and through the testimony of Mr. Fuller, the following public benefits and project amenities will be created as a result of this project:

- Housing – The PUD project consists of 42 residential units, including one affordable unit. The amount of affordable housing provided in this application is equivalent to approximately 18 percent of the increased gross square footage obtained through the PUD process. The Applicant requested flexibility to locate the affordable unit either on the first and terrace level of the project, or an on upper level of the project, depending on demand and market conditions. (Exhibit 26, p. 10; Tr. p. 28, Testimony of S. Fuller, Tr. p. 31.)

- Urban Design and Architecture – The Applicant noted that the proposed project would create a signature building on the Property that would be consistent with the height and mass of adjacent buildings, and would provide a richness of materials and detailing – brick, glass and metal – that are not found in matter-of-right projects in this area. In addition, the building massing will be highly articulated, stepped and sculpted. (Exhibit 26, pp. 10-11; Testimony of C. Morrison, Tr. pp. 25-27.)

- Site Planning – The Applicant noted that the project was carefully designed and sited on the Property to reflect the Washington, D.C. diagonal street pattern, and the proposed height of the project was within the PUD guidelines for the C-2-A District and commensurate with adjacent buildings along Wisconsin Avenue. In addition, the vehicular entrance to the parking garage was located off of Brandywine Street so as to avoid any potential adverse traffic impacts along Wisconsin Avenue, and a service delivery lay-by parking space was also included along Brandywine Street. (Exhibit 26, p. 11; Exhibit 38.)

- Effective and Safe Vehicular and Pedestrian Access – A transportation analysis prepared by the Applicant's traffic engineer concluded that the proposed project will have only a minimal impact on the overall transportation infrastructure in the area near the Property and that the project provides adequate off-street parking and loading facilities. (Exhibit 26, p. 12 and Exhibit F to the Statement.)

- Uses of Special Value - The community amenities included in the project will provide uses of special value to the surrounding neighborhood. The community amenities include:

  Janney Elementary School – The Applicant will make a payment of at least $75,000 to the Janney Elementary School PTA for the replacement of the wooden play equipment on the lower playground, for the provision of additional play equipment for the older students and for necessary stormwater management and soil erosion measures.

  Tenleytown Branch of the D.C. Public Library – The Applicant will make a payment of $25,000 to the Friends of the Tenley Library for a state-of-the-art audio visual room in the renovated Tenley Library.

Wilson Senior High School – The Applicant will make a payment of $20,000 to the Wilson Senior High School PTA for necessary repairs to the school buildings, including repainting of the cupola.

Friends of Ft. Bayard Park – The Applicant will make a $15,000 contribution to the Friends of Ft. Bayard Park to help fund the renovation/rehabilitation of Ft. Bayard Park, as approved by the National Park Service.

D.C. Fire Department - Tenleytown Area – The Applicant will contribute $47,427 for the purchase of a hazardous materials POD for use by the DC Fire and Emergency Medical Services Department. (Exhibit 26, p. 13; Testimony of S. Fuller, Tr. p. 15.)

- Environmental Benefits – The project will include a "green roof" system with engineered soil and plant material that will help reduce the load on the project's storm water management system. (Testimony of S. Fuller, Tr. pp. 14-15, Testimony of C. Morrison, Tr. p. 23.)

- 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. (Exhibit 26, p. 12, Exhibit 31.)

- Development and Construction Management Agreement – Mr. Fuller noted that the Applicant had engaged in discussion with neighboring property owners regarding conditions that would dictate construction activity on the Property. Mr. Fuller submitted a draft Construction Management into the record and noted that the Applicant was willing to have the terms of such an agreement included as conditions of the Commission's approval of this Application. (Testimony of S. Fuller, Tr. p. 15, Exhibit 37.)

19. The project is consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan of the National Capital. 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. (Exhibit 26, Statement pp. 15-17.) The project is also consistent with many Major Elements of the Comprehensive Plan, including the Housing Element, the Urban Design Element, Land Use Element and the Ward 3 Goals and Policies. (Exhibit 26, Statement pp. 17-22.)

20. The Generalized Land Use Map includes the Property in the mixed-use, moderate-density commercial/medium-density residential land use category. The Property is also located in the Tenleytown Metrorail Station Housing Opportunity Area. (Exhibit 26, p. 1; OP Report at pp. 7-8.)

NOV 1 8 2005

21. In response to issues raised by Commissioners and the representative of ANC 3F during the October 14, 2004 public hearing, the record of the case was left open for the Applicant to provide the following materials and information: a design alternative for the proposed retail entrance on Wisconsin Avenue; a revised roof and terrace plan consistent with the rendered elevation submitted at the October 14, 2004 public hearing; and a revised landscape plan that included tree species that the District Department of Transportation has deemed appropriate for planting in public space along Wisconsin Avenue. The Applicant submitted the required materials on October 21, 2004. (Exhibit 50.)

Government Reports

22. The Office of Planning ("OP"), in its report dated October 4, 2004 and through its testimony at the public hearing, recommended approval of the project. The OP report concluded that the PUD project will result in the provision of 42 new dwelling units within a mixed-use building through the redevelopment of a site currently used for commercial purposes only, in close proximity to a Metrorail station. The OP representative noted that the application is consistent with the provisions of the Comprehensive Plan by providing housing units in a Housing Opportunity Area, and that the PUD project will provide for a predominantly residential building within Tenleytown and will avert the development of the site as a medium-density office space, in conformance with the Ward 3 Element of the Comprehensive Plan. (Exhibit 34, p. 14, Testimony of S. Mordfin, Tr. pp. 64-65.)

23. The Office of Planning recommended approval of the request to reduce the amount of residential recreation space required since 81 percent of the units will have private residential recreation space and a 4,600-square-foot terrace will be provided, and due to the site's location approximately one block from Fort Reno Park. (Exhibit 34, p. 14, Testimony of S. Mordfin, Tr. pp. 63-64.)

24. The Office of Planning also noted that it supported the lot area waiver request, because the project will be more than 80 percent residential and because the project will be of exceptional merit and in the best interest of city. The Office of Planning also concluded that the proposed amenities package is commensurate with the relief requested by the Applicant. (Exhibit 34, p. 14, Testimony of S. Mordfin, Tr. pp. 63-64.)

25. The District Department of Transportation ("DDOT") submitted a report dated November 8, 2004 that supported the PUD project. The DDOT report concluded that, from a transportation standpoint, the project will not have an adverse impact on the area road network and that, although a portion of the loading lay-by area encroaches on public space, it does not restrict pedestrian usage of the sidewalk. (Exhibit 52.)

Advisory Neighborhood Commission Reports

26. ANC 3E unanimously adopted a resolution in support of the project at a special public meeting on September 28, 2004. The ANC, in its written resolution and testimony before the Zoning Commission, noted the following modifications to the Applicant's proposal that resulted in the ANC's support: an off-street lay-by parking space on Brandywine Street that will be used for deliveries and moves by residents in and out of the building; a requirement that owners of units in the building may not apply for or be eligible for Residential Parking Permits; an enhanced streetscape at the corner of Brandywine Street and Wisconsin Avenue; one unit of affordable housing located within the building; and plans for a "green" roof. The ANC representative noted that, as a result of these modifications, the ANC determined that development of the building was in the best interest of the community and the District as a whole and that the development would be a positive addition to the Wisconsin Avenue corridor. The ANC representative also stated that the ANC believes this project is a project of exceptional merit. (Exhibit 36; Testimony of Chapman Todd, Tr., pp. 71, 76.)

27. ANC 3F, by written submission and testimony at the October 14, 2004 public hearing, noted its opposition to the application. ANC 3F stated that its opposition resulted from the project's lack of exceptional merit and failure to meet the standards of the Zoning Regulations or Comprehensive Plan. Specifically, ANC 3F requested an enlivened Wisconsin Avenue façade, restoration of the commercial use to the entire Wisconsin Avenue frontage, the inclusion of three affordable housing units, redesign of the Wisconsin Avenue streetscape and landscaping of the project, the inclusion of a rain garden in the project, the provision of spaces in the parking garage for a car-sharing program and a bicycle parking shed. (Exhibits 34 and 45; Testimony of Cathy Wiss, Tr., pp. 77-86.)

28. On October 28, 2004, ANC 3F submitted comments to the Applicant's post-hearing submission. ANC 3F noted that it still objected to the following aspects of the project: the proposed streetscape on Wisconsin Avenue; the amount of commercial space provided in the project; the location of the affordable unit on Wisconsin Avenue; the width of the proposed tree boxes on Wisconsin Avenue; and the species of trees to be included in the project. (Exhibit 51.)

Parties and Persons in Support

29. The Coalition to Stop Tenleytown Overdevelopment ("CSTO"), a neighborhood organization, indicated its support for the project by written submission and testimony at the October 14, 2004 public hearing. The CSTO representative noted that this support was based on the following aspects of the application: retention of the C-2-A Zone District; inclusion of a green roof in the project; prohibition on Residential Parking Permits for project residents; enhanced building design; an off-street lay-by to accommodate deliveries and move-ins; the location of one affordable housing unit on the Wisconsin Avenue side of the building; and an agreement that amenities are to be

coordinated with the ANC in which the project is located. The representative of CSTO also recognized that the Applicant was responsive to neighborhood concerns and was willing to address those concerns and that the Zoning Commission consider the impact on loss of light sunlight to adjacent properties in this and future cases. (Exhibit 42; Testimony of Carolyn Sherman, Tr., pp. 88-91.)

30. Mr. Bruce Lowery, the owner of the property located at 4117 Brandywine Street, N.W., originally applied for party status in opposition to the application. At the October 14, 2004 public hearing, Mr. Lowery withdrew his request for party status in opposition to the application and noted his support for the project. In his written statement, Mr. Lowery noted that his previous concerns regarding loss of sunlight, loading on Brandywine Street and construction related impacts had all been addressed. Mr. Lowery stated that the project is appropriate for the site and will benefit the surrounding Tenleytown neighborhood. Mr. Lowery also testified that he believed the project was a project of exceptional merit. (Exhibits 32, 40 and 41; Testimony of B. Lowery, Tr., p. 95.)

31. Mr. Glen Williamson, a neighboring property owner and Janney Elementary School parent, testified at the public hearing in support of the project. Mr. Williamson noted the contribution to Janney Elementary School that is part of the project's community amenities package as being an important amenity for the School's community. (Exhibit 46; Testimony of G. Williamson, Tr., pp. 93-95.)

32. The adjacent property owner, 4618 Wisconsin Avenue Associates, filed a request for party status in opposition to the application on October 1, 2004. On October 14, 2004, 4618 Wisconsin Avenue Associates filed a letter withdrawing the request for party status in opposition to the application and filed a letter in support of the application. (Exhibits 33, 43 and 49.)

Parties and Persons in Opposition

33. One person, Barbara Simons, provided testimony in opposition to the project at the public hearing. Ms. Simons noted that she agreed with the concerns raised by ANC 3F. Ms. Simons testified that she did not believe the project would have an appropriate presence on Wisconsin Avenue and that the project did not satisfy the exceptional merit standard. (Testimony of B. Simons, Tr., pp. 99-100.)

NCPC Action

34. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission ("NCPC") on November 9, 2004, pursuant to § 492 of the District Charter. On December 2, 2004, NCPC found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia. 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. 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. The Commission finds that this PUD project provides a significant public benefits and community amenities package. The Commission believes 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.

3. The Applicant requested that the Zoning Commission waive the 15,000-square-foot minimum area requirement for this PUD application pursuant to §§ 2401.2(a) and (b) of the Zoning Regulations. The proposed PUD site consists of approximately 12,661 square feet of land area at the northwest corner of Wisconsin Avenue and Brandywine Streets, N.W. This lot area is 84 percent of the minimum area requirement; therefore, the Applicant is seeking a waiver of 2,339 square feet (16 percent). In considering this waiver, the Commission finds that the test is whether the development as a whole (the building and all of the PUD amenities and benefits together) are of exceptional merit and in the best interest of the city or country. In making this determination, the Zoning Commission looks not only at what the PUD provides over a matter-of-right building, but also how much additional density and height are gained through the PUD process, as well as how large a waiver of land area is requested.

4. In this case, pursuant to 11 DCMR §§ 2401.2 (a) and (b), the Commission finds that the granting of this waiver is appropriate as this is a project of exceptional merit and is in the best interest of the city. The project's design, including the landscaping improvements and green roof, and amenities and public benefits package are very strong, and yield a project that is much more desirable than a matter-of-right project. In compliance with § 2401.2(b)(1), the proposed project will have approximately 96 percent of the gross floor area of the development devoted to dwelling units and accessory uses to those dwelling units.

5. In light of the Commission's finding that the proffered design, public benefits and project amenities are all particularly strong, and that the project is supported by the Office of

Planning and ANC 3E (the ANC in which the property is located), the Commission determines that the Applicant has met its burden to demonstrate that the proposed PUD is of exceptional merit and is in the best interest of the city.

6. Under the PUD process of the Zoning Regulations, 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 identified for height, FAR, lot occupancy, yards, or courts. The Commission finds that the requested flexibility from the residential recreation space and roof structure set-back requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

7. The Commission takes note of ANC 3E's resolution in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. In addition, the Commission notes the support that the project has received from CSTO and members of the community.

8. In regards to the issues raised by ANC 3F, the adjacent ANC, at the hearing and in their post-hearing submission dated October 28, 2004 (Exhibit 51), the Commission finds that: the proposed project's Wisconsin Avenue façade and the amount of retail space provided in the project will enliven the area and is appropriate for a mixed-use building; the retail tenant entrance has been relocated to provide an appropriate presence for retail use on Wisconsin Avenue; the species of trees proposed in the Applicant's landscape plan is appropriate; due to the reduction in size of the project, the inclusion of one affordable unit in the project is commensurate with the incentives and flexibility granted for this PUD application; the proposed streetscape design and landscaping is appropriate for this property and is pedestrian-friendly; the proposed "green roof" included in the design of the project will provide environmental benefits to the surrounding community; and the amount of parking spaces provided and inclusion of bicycle parking spaces in this project will benefit the surrounding neighborhood and community.

9. The Commission finds that the project is consistent with numerous themes and elements of the Comprehensive Plan. The Commission concludes that approval of the application will promote orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia. The development of this PUD is compatible with citywide goals, plans and programs and the development patterns in the area. The proposed PUD will allow for appropriate residential and commercial development of underutilized property along a major thoroughfare in close proximity to a Metrorail station in a Housing Opportunity Area. The production of multi-family housing and affordable housing on the Property is consistent with the District's goals of increasing housing opportunities in the District. Further, the Commission concludes that this mixed-use, predominantly residential, development will contribute to the vitality and help strengthen the Tenleytown neighborhood.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review of a Planned Unit Development for Lots 817 and 820 in Square 1732. 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 26, 38 and 50 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 a mixed-use, primarily residential, project that includes 42 residential units[1] occupying approximately 36,333 square feet of gross floor area and ground-floor retail along Wisconsin Avenue, consisting of approximately 1,650 square feet of gross floor area. The PUD project will have a density of approximately 3.0 FAR; a building height of 65 feet; a lot occupancy of 60 percent; and will include approximately 49 parking spaces.

3. The Applicant will provide one affordable housing unit in the proposed PUD. The Applicant is provided the flexibility to locate this affordable housing unit as noted in the plans marked as Exhibits 26, 38 and 50 of the record.

4. The Applicant will enter into a Development and Construction Management Agreement with neighboring property owners that is in substantial conformance with the Development and Construction Management Agreement that was submitted into the record as Exhibit 37.

5. The Applicant will have the flexibility to use the 1,000-square-foot space on the B1 level as a community room for residents of the project or as storage space for the ground-floor retail uses, depending on future market conditions.

6. The Applicant shall provide the following community amenities no later than the date of the issuance of the building permit for the PUD project.

   Janney Elementary School - The Applicant shall make a payment of at least $75,000 to the Janney Elementary School PTA for the replacement of the wooden play equipment on the lower playground, for the provision of additional play equipment for the older students and for necessary stormwater management and soil erosion measures.

[1] The Applicant is granted the flexibility to modify the number of residential units in the project by up to 10 percent in response to future market conditions. In the event that the number of residential units is modified, the number of parking spaces shall be modified proportionately to maintain the ratio of one parking space per dwelling unit.

Tenleytown Branch of the D.C. Public Library - The Applicant shall make a payment of $25,000 to the Friends of the Tenley Library for a state-of-the-art audio visual room in the renovated Tenley Library.

Wilson Senior High School – The Applicant shall make a payment of $20,000 to the Wilson Senior High School PTA for necessary repairs to the school buildings, including repainting of the cupola.

Friends of Ft. Bayard Park – The Applicant shall make a contribution of $15,000 to the Friends of Ft. Bayard Park to help fund the renovation/rehabilitation of Ft. Bayard Park, as approved by the National Park Service.

D.C. Fire Department - Tenleytown Area – The Applicant shall make a contribution of $47,427 to the D.C. Fire and Emergency Medical Services Department for the purchase of a hazardous materials POD.

7. The Applicant shall include language in all documents related to the purchase and sale of the residential units that owners of the units in the building are prohibited from applying for Residential Permit Parking stickers from the District of Columbia.

8. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as part of Exhibit 31 of the record.

9. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as part of Exhibit 31 of the record.

10. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission.

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

12. 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 as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.

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

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 8, 2004, the Zoning Commission approved this application by a vote of 5-0-0 (John G. Parsons, Kevin L. Hildebrand, Anthony J. Hood, Carol J. Mitten and Gregory N. Jeffries to approve).

On December 13, 2004, the Zoning Commission adopted this Order by a vote of 5-0-0 (Anthony J. Hood, John G. Parsons, Carol J. Mitten, Gregory N. Jeffries and Kevin L. Hildebrand to adopt).

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. 03-30
Case No. 03-30
PUD and Related Map Amendment – Square 643 Associates LLC
September 15, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 20, 2005 to consider an application from Square 643 Associates LLC (the "Applicant") for consolidated review and approval of a Planned Unit Development ("PUD") and related map amendment, pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 for contested cases.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On September 8, 2003, the Applicant filed an application for consolidated review and approval of a PUD and related zoning map amendment (the "Application") for a generally rectangular-shaped lot at 734 1st Street, S.W. (Square 643, Lot 830) (the "PUD Site"). The original proposed project was a new, 90-foot apartment house containing 60 units. The Applicant is Square 643 Associates LLC, Stephen Tanner, Managing Partner.

2. On March 8, 2004, the Zoning Commission considered whether to schedule a public hearing on the Application. The Commission expressed concerns about whether the church on the PUD Site might have historic significance and about the fact that the Height Act of 1910 appeared to restrict building height on the PUD Site to 70 feet. The Commission declined to set down the Application without prejudice and requested that the Applicant reconsider and revise the proposed development plan.

3. In the following months, the Applicant conducted additional meetings with community groups and Advisory Neighborhood Commission ("ANC") 6D and retained an architectural historian to evaluate the potential for the church to become a designated historic landmark.

4. In April 2004, the Applicant submitted an application to the Historic Preservation Review Board ("HPRB") to designate the church as a historic

landmark. After public hearing on May 27, 2004, the HPRB designated the Friendship Baptist Church as a historic landmark.

5. In its landmark designation, the HPRB stated in part, "Friendship Baptist Church was erected in 1886-1887 by the congregation of the Virginia Avenue Baptist Church (founded 1875), which then moved to this site. It was among the earliest independent African-American congregations, largely consisting of the formerly enslaved. And despite being relatively early and constructed by a less privileged community, the Italianate Gothic building does demonstrate a certain dignity and architectural pretension (it also has a plain brick, 1930 addition or additions at rear and a 1952 front gabled, brick-faced addition on the north side). For its time, it would not have been considered remarkable, but certainly typical of a successful neighborhood church. By that fact and the fact that the building represents its African-American congregation, it also represents the development of Southwest Washington during the last quarter of the nineteenth century and the first half of the twentieth." The HPRB designation also references the church as "a continuing source of community through the social turmoil" created by the redevelopment of Southwest in the Urban Renewal program of the 1950s and 1960s. The staff report to the HPRB recommended "that only the original church structure and not its additions be considered contributing to a landmark."

6. On July 15, 2004, ANC 6D voted 4-3 to support the application before the HPRB.

7. On July 22, 2004, the Applicant presented revised plans to the HPRB, which provided for preservation and restoration of the church sanctuary structure, demolition of the new additions, and construction of an L-shaped apartment house addition on the north and east sides of the church building. The HPRB granted conceptual design approval.

8. After additional meetings with community groups, the ANC and the Office of Planning, a revised PUD Application was submitted to the Zoning Commission on October 5, 2004. The new project plans incorporated preservation of the church sanctuary structure to be used as nonprofit office space, together with an L-shaped, apartment house addition having 21-30 one- and two-bedroom units. The proposed development would rehabilitate and restore the historic landmark church and construct an apartment house addition four stories high on the north side of the church and seven stories high on the east side of the church.

9. The Applicant requested a zoning map amendment from R-4 to R-5-C, a maximum height of 70 feet for the proposed new construction, a proposed gross floor area of 44,286 square feet (2.66 FAR) and 61 % lot occupancy. The Applicant requested that the Commission grant a special exception to permit 10,000 square feet of the space to be used for nonprofit office space pursuant to § 217 of the Zoning Regulations. The Applicant offered certain operational restrictions on the nonprofit use and requested that non-profit use be allowed

without the need for further public review of the specific occupant. In the alternative, the 10,000 square feet would be additional residential units, hence the requested range of 21-30 total units. The Applicant proffered one affordable apartment unit, and requested some deviation from the side and rear yard requirements, as well as roof structure standards.

10. On October 8, 2004, ANC 6D considered the PUD Application and voted to support it at the Zoning Commission.

11. At its meeting of March 14, 2005, the Zoning Commission decided to schedule a public hearing on the proposed PUD.

12. After proper notice, the Zoning Commission opened and completed the public hearing on June 20, 2005.

13. The only parties in the case are the Applicant and ANC 6D, the boundaries of which include the PUD Site.

14. At its July 25, 2005 meeting, the Zoning Commission took proposed action by a vote of 5-0-0 to approve with conditions the Application and the plans presented at the public hearing.

15. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated July 28, 2005, found that the proposal would neither adversely affect the Federal interest nor be inconsistent with the Comprehensive Plan for the National Capital.

16. The Zoning Commission took final action to approve the Application on September 15, 2005.

The Site and the Surrounding Area

17. The PUD Site is located on the northern frontage of H Street, S.W., just east of the traffic circle at the terminus of Delaware Avenue, S.W. The site is generally rectangular in shape, contains 16,644 square feet of land area and is improved with a vacant church and attached accessory buildings. The church has been vacant for approximately four years and, in May 2005, was designated a historic landmark ("Friendship Baptist Church") upon the application of the property owner.

18. The vacant church on the PUD Site was last used by the Redeemed Temple of Jesus Christ (the "Redeemed Temple") in September 2001. For a time before that, it was used only intermittently, as the Redeemed Temple rented the church to small church groups. For two years, the Redeemed Temple attempted unsuccessfully to sell the church to another religious congregation. Only one church expressed serious interest. Lacking any religious purchaser, the

Redeemed Temple sold the subject property to Square 643 Associates LLC in 2002

19. To the north, west and southwest of the PUD Site is the large, mixed-density Capitol Park IV residential complex of condominium townhouses and flats and four high-rise rental apartment buildings. This planned community has a total of 341 townhouses and duplex units, plus 937 apartment units.

20. Immediately to the east of the PUD Site is a small, unimproved "dogleg" of the Capitol Park IV property, with the Randall Recreation Center beyond. The facilities at this public park include play fields, a swimming pool and tennis courts. This recreation center was formerly the athletic and recreation fields for the former Randall Junior High School. Beyond the recreation center to the east is South Capitol Street.

21. Directly across H Street to the south of the PUD Site is a large three- and four-story building that was formerly the Randall Junior High School and later administrative offices for the public school system. From the mid-1990s until 2005, the occupants have been the Millennium Arts Center (artist studios) and a homeless shelter and drug rehabilitation center. At the present time, the complex is in the process of being offered for reuse and redevelopment, potentially to include the Corcoran School of Art.

22. Fronting on Delaware Avenue to the south of H Street, and immediately west of the Arts Center is the Southwest Clinic. Farther south, on the south frontage of M Street between Delaware Avenue and South Capitol Street are the Friendship Baptist Church, the Bethel Pentecostal Church and the high-rise Best Western Hotel.

23. Farther to the southwest are two large developments – the Greenleaf Gardens low-rise public housing complex and the high-density Waterside Mall, which is currently substantially vacant and awaiting redevelopment. The Waterfront Metrorail Station is on the south side of Waterside Mall and a four-block walk from the PUD Site.

24. The land use pattern described above reflects the planned mixed-density and mixed-use character of the Southwest neighborhood as it exists today – the end result of redevelopment under the Southwest Urban Renewal Plan in the 1950s to 1970s, predominantly. A few older buildings and groups of buildings were left standing, such as the landmark Friendship Baptist Church in this application, Greenleaf Gardens apartments and a few others.

<u>The PUD Project</u>

25. The project will restore the church sanctuary structure, demolish the non-contributing additions and create an L-shaped condominium apartment house

addition to the church. The apartment house is proposed to have 22 one- and two-bedroom units, including one affordable one-bedroom unit for occupancy by a household with an income of 70 percent of Area Median Income. The Pre-Hearing Submission requested flexibility in the number of apartment units in the range of 21-30 units, to allow for the alternative of converting the sanctuary to apartments if non-profit use were not approved.

26. The apartment house addition will be four stories high on the north side and seven stories (70 feet high) on the east side of the church. The proposed residential gross floor area is 34,286 square feet, or 2.06 FAR.

27. The Applicant proposed that non-profit office use would occupy approximately 6,218 square feet of gross floor area in the church building – approximately 2,684 square feet on both the lower and sanctuary (main) levels, with an additional 850 square feet on the mezzanine level inside the church. In addition, the ground floor of the addition to the north would be devoted to the non-profit use, for a total of 10,000 square feet.

28. The total mixed-use density as proposed is 44,286 square feet, or 2.66 FAR. The Applicant stated that this is a moderate level of density that reflects the design prominence accorded the historic church structure in the architectural plans. This density is substantially less than the 4.0 FAR allowed with a PUD in the R-5-C District and is also within the allowed PUD density in the R-5-B District. However, a seventy-foot height is needed to help offset the development constraint presented by preservation of the church and by the fact that the church is sited generally in the middle of the lot.

29. The main church entrance will be used as the entrance to the non-profit office space. The sizeable front courtyard (previously part of the now closed First Street, S.W. right-of-way) will be restored as a cobblestone court, together with designed areas of lawn and concrete pavers. New trees and shrubs will be planted as depicted in the Landscape Plan.

30. A total of at least 32 parking spaces will be provided, including nine (9) for the non-profit office use and twenty-three (23) for the apartments.

31. The Pre-Hearing Statement, dated March 15, 2005, addressed the criteria for approval of non-profit office use in a historic building and requested approval without a requirement to return for a further public hearing regarding the specific tenant. Because of questions by the Zoning Commission and the Office of Planning as to the applicability of § 217 to a non-residential building, the Applicant cited two BZA precedents – Applications numbered 15945 and 14244 – which involved non-residential structures that had never been devoted to a residential use. The Applicant also noted that the Zoning Commission is considering text amendments to allow § 217 or a new § 222 to allow non-profit office use in former school buildings, which are non-residential structures. The

Applicant, however, expressed a willingness for the use to be approved as recommended by the Office of Planning: "[t]he Zoning Commission could provide relief to permit this [non-profit] use as part of the PUD based on the associated community benefit – a preference for this non-conforming use over conforming ones such as residential."

32. The Applicant testified that leasing a small amount of space to a non-profit association will be much more difficult if there is a requirement for a further public hearing and several months of delay. The Applicant proposed several restrictions on the non-profit use as a means of allowing the Zoning Commission to approve non-profit use generically in this PUD. The proffered conditions are as follows:

    a. Daily hours of business will be from 7:00 a.m. to 8:00 p.m.;

    b. The number of employees will not exceed a ratio of 250 square feet of floor area per employee, or 40 employees for the 10,000 square feet of space;

    c. Parking will be provided at a ratio of no less than one space per 1,200 square feet of non-profit space and one space per apartment; and

    d. Lighting will be arranged so that all direct rays are confined within the boundaries of the property.

33. The Applicant requested deviations from the matter-of-right requirements for the rear yard setback on the north side of the site, open court dimensions on the east side, and roof structure standards, as allowed by the PUD regulations at 11 DCMR § 2405.5, based on "the exact circumstances of the project." The need for deviations from standard rear yard setback and court dimensions on the east and north is created by preservation of the church on its footprint and the need to preserve open space in front of the church to maintain and enhance its setting. The rear yard provided on the north side of the property will not adversely affect the residents to the north because of a substantial green area and setback on that property and the fact that the addition is only four stories on the north side of the church. The 70-foot-high wing to the east of the church will create no adverse effect on the light and air of neighbors, because the abutting property is a vacant and unbuildable "dog-leg" of the Capitol Park IV property followed by the large Randall Recreation Center.

34. The project architect described the functionality of the proposed 14-foot-wide driveway into the parking garage vis-à-vis the 20-foot width preferred by the District Department of Transportation. He noted that the 14-foot width complies with the Zoning Regulations. He said the design will include a visual signal control system appropriate for a small parking area such as this. The constraints

imposed by a small site that incorporates preservation of a historic building also dictate the driveway width as proposed.

35. A principal of Woodmark Commercial Services LLC, and an expert in commercial leasing, testified that non-profit associations needing only 10,000 square feet of space have many locations to choose from in the city. He stated that the restrictions as proposed on number of employees, hours of operation, and so on, are already deterrents to a degree and should not be made more restrictive. He emphasized that a requirement for a separate zoning hearing and a several-month delay for such a process would severely hinder leasing efforts for the non-profit space.

Public Benefits and Project Amenities

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

a. Historic Preservation. The landmark church will be preserved as a whole building and devoted to a use that enables the main sanctuary space to remain relatively open physically. Non-profit office use will also allow more people to view the space than would the alternative of dividing the church into residential apartments, which is allowed as a matter of right in the existing R-4 District. The preservation and restoration will be accomplished, despite the difficulties imposed by the church's siting near the middle of the site with little potential density of new construction to support the preservation financially. The Historic Preservation Review Board granted conceptual design approval to the proposed design in 2004. The Applicant is preparing a special historic preservation memoriam either in the form of a plaque on the building, an oral history of Friendship Baptist Church members or similar recognition.

b. Superior Architecture and Urban Design. The elegant apartment additions are sympathetic to and enhance the historic character of the landmark church. The design has received conceptual design approval from the HPRB. The Office of Planning concurs that the architecture and urban design are superior. The Southwest Neighborhood Assembly and a professional city planner residing in the Southwest neighborhood also testified that the architecture and urban design are superior.

c. Mixed-Use – Residential and Non-profit Office. The housing units are important in expanding the housing supply in the neighborhood and the city, in terms of population increase and tax revenue enhancement. The non-profit office use adds daytime population and activity to this somewhat isolated corner of the Southwest neighborhood.

d. Affordable Housing. The apartment house will include one affordable unit for occupancy by a household having seventy percent (70%) of Area Median Income. The rent will be maintained at the affordable level for a period of 20 years, and the unit will have at least 700 square feet of gross floor area. The Applicant stated that an affordable rental unit for 20 years will likely provide a greater contribution to affordable housing than would a condominium unit, which may tend to be occupied by the original owner for the required time period (currently ten years) and then sold at a market rate. Over the 20-year time span proposed for the rental apartment, several households in the qualifying income levels are likely to benefit from the affordable rent levels.

e. Advancement of Comprehensive Plan Policies

1) "Stabilizing and improving the District's neighborhoods" is one of the Major Themes of the Comprehensive Plan. This project will put a long-vacant church building and addition into productive use in a location that needs physical enhancement as well as people activity.

2) "Preserving the historic character of the District," in this case, preserving a very important African-American landmark in the history of Southwest Washington.

3) Advancement of other Major Themes (§101), including: "Respecting and improving the physical character of the District" and "Preserving and ensuring community input."

4) Advances other policies in the Historic Preservation, Housing, Environment and Economic Development Elements of the Plan.

f. LEED ("Leadership in Energy and Environmental Design") Features. The Applicant's architect testified that, because of inclusion of the historic building and other constraints, the building could not feasibly be a LEED-certified building. However, he presented the LEED features offered by the project that exceed normal building practices. These are as follows:

1) Under the category, "Sustainable Sites – Alternative Transportation," the project will include bicycle storage spaces in an amount equal to fifteen percent (15%) of the number of vehicular parking spaces;

2) Under the category, "Water Efficiency – Water Efficient Landscaping," the landscaping will not include any physical, built irrigation system. Plantings were selected that require very little water. Watering will be by hand, and no potable water will be used;

3) Under the category, "Energy and Atmosphere – Fundamental Building Systems Commissioning," a third-party engineering consultant will ensure that specified efficiencies are provided in all building systems;

4) Under the category, "Indoor Environmental Quality – Minimum IAQ Performance," the HVAC system design will create a greater percentage of fresh air exchange than required by code;

5) Under the category, "Indoor Environmental Quality – Low-Emitting Materials, Carpet," this standard stipulates reduced VOC emissions from interior carpeting; and

6) Under the category, "LEED Accredited Professional," the architect will provide a LEED accredited expert to be part of the design team.

g. Economic Development. In addition to creating construction jobs and tax revenues generally, the Applicant will sign and implement First Source Hiring and LSDBE agreements with the District of Columbia government.

h. Litter Control. On a monthly basis, the Applicant will remove litter from the area of the baseball diamonds on the portion of the Randall Recreation Center situated adjacent to the PUD Site.

Report of the Office of Planning

37. By report dated June 10, 2005 and by testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Application, provided that the church sanctuary building would be retained for occupancy as non-profit office space and administration of the affordable housing unit would be through normal, governmental processes. The OP report supported historic preservation and superior architecture and urban design as major public benefits and project amenities. The report also supported non-profit office use, nearly all of the Applicant's proposed operational restrictions on that use, the LEED features, historic preservation plaque, economic development and Comprehensive Plan policy consistency as public benefits/project amenities. OP also supported the proposed affordable housing unit, but preferred that it be an ownership unit with the occupancy controlled by the Department of Housing and Community Development.

Reports of Other Agencies

38. The Department of Employment Services noted that the Applicant had agreed to enter into a First Source Agreement and recommended that this be completed prior to proposed action by the Zoning Commission.

39. The Department of Housing and Community Development recommended approval of the PUD, noted the Department's support for the affordable housing unit and indicated a preference for a condominium affordable unit.

40. The District Department of Transportation recommended approval, as the traffic generated by this development would have no significant impact on surrounding intersections and as the proposed parking will be more than adequate. The Department recommended a 20-foot-wide driveway access to the parking garage rather than 14 feet as proposed in the plans.

41. The Metropolitan Police Department made comments to the Office of Planning via email, indicating concerns about parking for the non-profit use given the proximity to the adjacent recreation fields.

42. The D.C. Water and Sewer Authority noted that sanitary and storm sewer capacity, as well as water supply, would have to be evaluated as part of the approval process for this project.

Advisory Neighborhood Commission 6D

43. Advisory Neighborhood Commission ("ANC") 6D submitted a letter in support of the project dated October 8, 2004. On May 5, 2005, the ANC voted to oppose the Application. At the public hearing, two ANC Commissioners indicated that at the June 13, 2005 meeting, the ANC Commissioners deadlocked 3-3 on a motion to support and accordingly did not have an official position. At its July 11, 2005 meeting, the ANC voted to rescind the June 13, 2005 vote.

Other Community Organizations/Members

44. Ward 6 Council Member Sharon Ambrose submitted a letter in support of the Application dated May 25, 2005, stating in part: "I am fully in support of the proposed use of the church sanctuary and associated space for nonprofit office use. This project combines excellent historic preservation with excellent architecture and will provide a beneficial mixture of uses at this long-vacant site. It is noteworthy that this is whole building preservation, not simply preservation of a façade with new development behind it. This degree of preservation limits the development potential of the site, but the developer is willing to undertake it, to his credit."

45. The Bishop of the Redeemed Temple of Jesus Christ testified in support of the Application. He stated that after 20 years of using the church for religious services and functions, the congregation needed to relocate. After an extended period of marketing the church to religious congregations, the Redeemed Temple sold it to the Applicant in this case. The church has now been vacant for approximately four years. He praised the preservation of the church and the architecture of the residential addition.

46. By letter dated May 24, 2005 and by testimony at the public hearing, the Southwest Neighborhood Assembly ("SWNA") recommended approval of the PUD. SWNA favorably cited whole building preservation, excellent architecture in scale with the historic church, the benefits of both the residential and nonprofit office uses and putting a long-vacant church back into productive use with an excellent design.

47. The single-member district ANC Commissioner testified in support of the Application in terms, expressing a preference for nonprofit office use rather than residential use of the church, the proposed rental format for the affordable unit, and requesting the Applicant help control litter in the immediate vicinity of the PUD project as a project amenity.

48. A city planner residing in Southwest testified in support, stating that the preservation and the design of the new addition are "as good as it gets" by way of preservation combined with new development, and recommended approval. He recommended that any uses allowed in the SP District be allowed as well as nonprofit office use.

49. Four persons, including one ANC Commissioner and members of the Friendship Baptist Church, testified in opposition, expressing concerns about preservation of stained glass windows, parking, history of urban renewal and Friendship Baptist Church and the need to preserve the history of the church.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.

2. 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.

3. 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 efficient and attractive overall planning and design not achievable under matter-of-right development.

4. The Zoning Commission has the authority under the Zoning Regulations to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines and standards that may be exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, yards or courts.

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

6. The development of this PUD is compatible with citywide goals, plans and programs and is sensitive to environmental considerations. The Commission also finds that the proposed PUD is not inconsistent with the Comprehensive Plan.

7. The Zoning Commission finds that the impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is acceptable given the significance, quantity and quality of public benefits cited under "Public Benefits and Project Amenities," above.

8. The proposed PUD can be approved with conditions that ensure that the development will enhance the neighborhood and ensure neighborhood stability.

9. The Commission concludes that special exception relief under § 217 is not available to the Applicant, because the church on the PUD Site was not a residential building. Although the Applicant provided past instances when the BZA appears to have permitted non-profit uses in historic non-residential buildings that never were residential, the Commission finds no basis for ignoring the limitation unequivocally stated in the text. However, a grant of zoning flexibility is appropriate under the circumstances of this PUD, because the preservation of the sanctuary for public view can be accomplished only through a non-residential use. It is not the intent of the Commission normally to allow use flexibility in a PUD, but in this instance it is appropriate given the nexus between the use and this PUD's public benefit and given that non-profit uses are permitted by special exception within the R-5-C zone district, but only in historic residential structures. Allowing the use in a church building that has been designated a historic landmark will not adversely affect the residential character of the surrounding neighborhood.

10. The participation of Advisory Neighborhood Commission 6D in the case did not qualify for "great weight" consideration pursuant to 11 DCMR §§ 3012.5 and 3012.6.

11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1997.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this Application for a Consolidated Planned Unit Development and for a Zoning Map amendment from R-4 to R-5-C for the property located at 734 First Street, S.W. (Lot 830 in Square 643). The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the site plan, architectural plans and landscape plan prepared by the architectural firm of Shalom Baranes and Associates, marked as Exhibits 32 and 45 in the record of this case, as modified by the guidelines, conditions, and standards of this order.

2. The subject property shall be rezoned from R-4 to R-5-C.

3. The development approved in this PUD shall be a mixed-use project comprising the preservation and reuse for non-profit office use of the historic landmark Old Friendship Baptist Church, together with new construction of an L-shaped apartment house addition having 18-27 units.

4. One affordable dwelling unit shall be provided, subject to the following conditions:

   a. The affordable dwelling unit shall have no less than 700 square feet of gross floor area;

   b. The affordable unit shall be a rental unit maintained as affordable for twenty (20) years from the date of this Order;

   c. The rental unit shall be occupied by a household having seventy percent (70%) or less of Area Median Income ("AMI") as established annually by the D.C. Department of Housing and Community Development ("DHCD").

   d. The rent level for the affordable apartment and the qualifying household income level shall be based on the standards for the D.C. Housing Production Trust Fund as maintained by the D.C. Department of Housing and Community Development ("DHCD").

   e. The Applicant shall rent the affordable unit to a household determined to be qualified by DHCD. If DHCD does not make the determination within 30 days, then the Applicant may make the determination.

   f. On or about January 5 of each year, the Applicant and owner shall submit a statement to the Department of Housing and Community Development, copied to the Zoning Administrator, indicating the rent level of the unit and the income level of the resident household.

5. The historic church as well as adjacent floor space on the ground level of the north wing of new construction shall be reserved for occupancy by a non-profit organization for office use, as designated in the approved plans; provided that the non-profit office space shall not exceed 10,000 square feet of gross floor area.

6. Any lease entered into with a non-profit organization for the use of the space described in Condition 5, shall provide that:

   a. Business hours shall not extend beyond 7:00 a.m. to 8:00 p.m.;

   b. The number of employees and volunteers on site shall not exceed 40; and

   c. The public shall be afforded reasonable access to the leased space during normal business hours.

   Any breach of these conditions by the lessee, which is not cured after 30 days, shall be deemed a violation of this order by the Applicant, its successors and assigns.

7. The total floor area ratio (FAR) of the development shall not exceed 2.66 FAR, or 44,286 square feet of gross floor area, including 10,000 square feet devoted to non-profit office use and 34,286 square feet devoted to residential use.

8. The height of the building shall not exceed 70 feet, and the maximum lot occupancy shall not exceed sixty-one percent (61%).

9. The development shall provide a minimum of 32 off-street parking spaces, including 23 spaces for the residential apartments. For the non-profit use, the project shall provide at least 9 parking spaces or 1 space per 1,200 square feet of non-profit space, whichever is greater.

10. Exterior materials shall include brick masonry, aluminum window mullions and an exterior metal panel system as shown in the architectural drawings and PowerPoint presentation.

11. The Applicant shall document to the Zoning Administrator that the LEED features as set forth in Finding of Fact No. 36f are incorporated in the plans by following the accepted LEED application process and procedures as set forth in the "U.S. Green Building Council – LEED NC Version 2.1" publication.

12. Lighting shall be arranged so that all direct rays are confined within the boundaries of the property.

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

   a. To vary the location and design of all interior components of the building, provided that the variations do not significantly change the exterior configuration of the building, and provided that interior partitions within the historic church structure shall not disrupt the exterior

appearance of the structure, as determined by the Historic Preservation Review Board or its staff.

b. To vary the exterior design, materials and landscaping in accordance with final plans reviewed by the D.C. Historic Preservation Review Board but with no reduction in quality, based on availability at the time of construction and within the same color ranges.

c. To make minor refinements to exterior details and dimensions necessary to comply with the D.C. Building Code or otherwise necessary to obtain a final building permit.

d. To vary the location, number and arrangement of parking spaces, so long as the parking ratios set forth in Condition 5d above are maintained.

e. To vary the number of apartment units in the range of 18 to 27 apartments.

14. Prior to issuance of the certificate of occupancy, the Applicant shall complete an oral history project regarding the Friendship Baptist Church with a budget of at least five thousand dollars ($5,000). Upon completion, the historical information shall be provided to the Washingtoniana collection at the Martin Luther King Jr. Library.

15. 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 Office of Local Business Development ("LSDBE") to ensure minority vendor participation.

16. Pursuant to 11 DCMR §§ 2409.3 and 3028.9, no building permit shall be issued for this planned unit development 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 owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("DCRA"). This covenant shall bind the Applicant and all successors in title to construct on and use the subject property in accordance with this Order or any amendment thereof.

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

18. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application shall be filed 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.

19. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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.

On July 25, 2005, the Zoning Commission approved the Applications by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand to approve).

The Order was adopted by the Zoning Commission at its public meeting on September 15, 2005, by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand to adopt).

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 _____.

DISTRICT OF COLUMBIA REGISTER

NOV 1 8 2005

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., August 18, 2003

Plat for Building Permit of SQUARE 643 LOT 830

Scale: 1 inch = 30 feet Recorded in Book A&T Page 3517-G

Receipt No. 06449

Furnished to: CYNTHIA GIORDANO

Surveyor, D.C.

By: L.M.A.

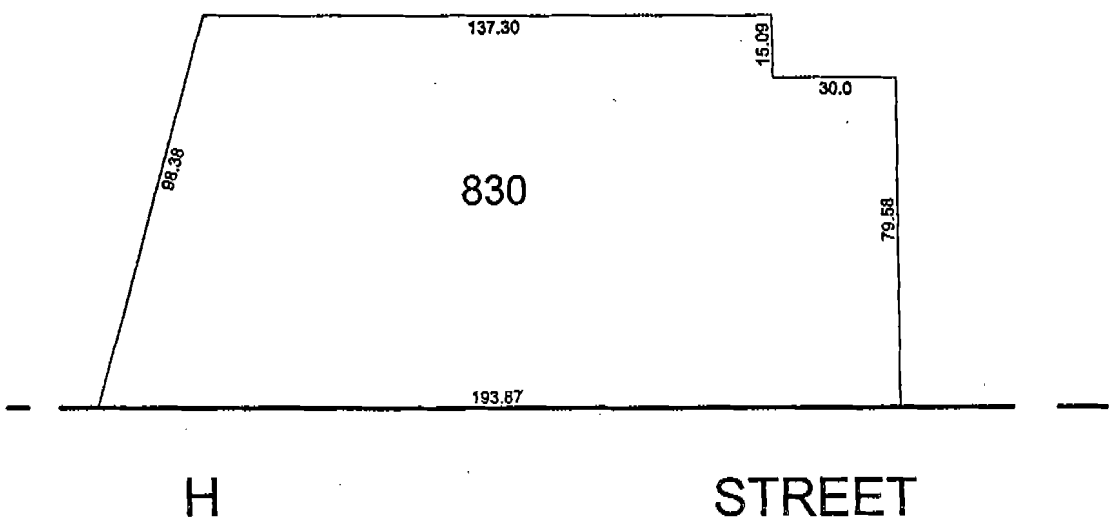
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 9/8/03

(Signature of owner or his authorized agent)

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

RECEIVED
D.C. OFFICE OF ZONING
2005 SEP -8 PM 4:41



Case 03-30
Exhibit 5

10306

SO-06449(2003)

ZONING COMMISSION ORDER NO. 949-B
Case No. 00-36CP/16638
(Campus Plan and Further Processing – American University Order on Remand)
October 17, 2005

Zoning Commission Order No. 949, issued January 8, 2002, approved, with conditions, an application by American University ("University") for special exception approval pursuant to 11 DCMR §§ 210 and 3104 of an updated campus plan and for further processing approval, under the approved campus plan, of certain construction on the University's campus in Northwest Washington, D.C. By Z.C. Order No. 949-A, issued April 30, 2002, the Commission decided two motions for reconsideration. The District of Columbia Court of Appeals subsequently upheld the Commission's decision in major part but remanded the matter solely for the Commission to address a recommendation made by participating Advisory Neighborhood Commissions concerning the University's off-campus parking program. *See Spring Valley-Wesley Heights Citizens Association v. D.C. Zoning Commission*, 856 A.2d 1174 (D.C. 2004).

Procedural History

The Applicant submitted applications for approval of the American University Campus Plan for Years 2000-2010 and further processing applications to construct the Katzen Arts Center, an addition to the Mary Graydon Center, and the enclosure of the driveway underneath the Butler Pavilion and Sports Center Complex. By Order No. 949, the Commission approved the applications subject to conditions necessary to minimize the impacts on neighboring property from existing conditions and any potential impacts from planned future development.

In addition to the Applicant, Advisory Neighborhood Commissions ("ANCs") 3D and 3E were automatically parties to this case. The Commission granted party status to Neighbors for a Livable Community, Spring Valley-Wesley Heights Citizens Association, Fort Gaines Citizens Association, American University Park Citizens Association, and Spring Valley Court Association (collectively, the "Neighborhood Associations"), Tenley Campus Neighbors Association ("TCNA"), Robert Herzstein, and Priscilla Holmes.

Motions for reconsideration of Order No. 949 were filed by TCNA and by the Neighborhood Associations. The University opposed both motions, arguing that all issues raised in the motions had been adequately addressed by the Commission in Order No. 949 and that the motions presented no basis for reversing or modifying the Order. At a public meeting on March 11, 2002, the Commission denied TCNA's motion, which primarily concerned issues pertaining to the University's Tenley campus.

At the same public meeting, the Commission considered the motion for reconsideration filed by the Neighborhood Associations, whose claims of error included an issue concerning University-related parking on neighborhood streets in the vicinity of the campus. As part of its campus plan application, the University had proposed to implement an off-campus parking enforcement program, similar to a program previously adopted by the Board of Zoning Adjustment for the Mount Vernon Campus of George Washington University, that would require the University to take certain measures to discourage students, faculty, staff, visitors, and vendors servicing the campus from parking on the streets adjacent to and surrounding the campus. The Commission found that University-related parking persisted on streets in the neighborhoods surrounding the Main and Tenley Campuses despite the University's efforts to provide adequate on-campus parking and to promote alternative forms of transportation to the campus. Therefore, as a condition of approval of the Campus Plan, in Order No. 949 the Commission adopted Condition No. 7 directing the University to enhance its parking program to address off-campus parking and mitigate adverse impacts associated with University-related parking on neighborhood streets.[1]

The Commission denied the motion for reconsideration submitted by the Neighborhood Associations with respect to most of its claims of error, including the off-campus parking enforcement program.[2] Finding that the Neighborhood Associations had not provided a persuasive reason to revisit its decisions on these issues, the Commission concurred with University that the issues had been fully reviewed during the course of the proceeding and appropriately addressed in Order No. 949.

An appeal of the Commission's decision was filed in the D.C. Court of Appeals by the Spring Valley-Wesley Heights Citizens Association, the Spring Valley Court Association, the Fort

---

[1] Condition No. 7 states:

> The University shall adopt the following program regarding enforcement of student, faculty, staff, and vendor off-campus parking:
>
> (a) The University shall use its best efforts to require all students, faculty, staff, and vendors servicing the campus to park on the campus and shall prohibit, to the extent permitted by law, students, faculty, staff, and vendors from parking on the streets adjacent to and surrounding the campus. The University shall use its best efforts to cause other University-related vehicles to park on the campus. To accomplish these purposes, the University shall have in place a system of administrative actions, contract penalties, fines (which may be adjusted from time to time as needed), and/or termination of contracts for violations.
>
> (b) Construction employees, contractors, and subcontractors shall by contract be prohibited from parking on residential streets, subject to contractual penalties or termination. Visitors to the campus, including attendees of all conferences, shall be encouraged to use on-campus parking and, where feasible, notified in advance to do so.
>
> (c) For conferences and large special events, the Applicant shall work with area institutions in order to provide additional parking as needed.

[2] The motion was granted in part to clarify Order No. 949 with respect to the location of 250 new permanent bleacher seats in a component of the Campus Plan known as Project C, and to incorporate into the conditions of approval certain commitments made by the University during the course of the public hearing with respect to controls on vehicular and pedestrian traffic in designated locations on the campus.

Gaines Citizens Association, Neighbors for a Livable Community, Robert Herzstein, and Priscilla Holmes. The petitioners contended, *inter alia*, that the Commission should have required the University to utilize parking stickers as part of its off-campus parking program, as petitioners and the participating ANCs had recommended.

The Court of Appeals upheld the Commission's conditional approval of the University's Campus Plan except for a remand to address the off-campus parking recommendation of the ANCs. The Court stated that "the Zoning Commission needed to explain in its Order why it rejected the ANC-supported recommendation that students and others affiliated with the University be required to have parking stickers in order to facilitate the enforcement of Condition No. 7." 856 A.2d 1174, 1180.

Decision

The Court of Appeals held that the Commission did not act improperly "in imposing an off-campus parking plan without specifying the means by which it would be enforced." The absence of prescriptive detail, such as the parking sticker regime that petitioners and the ANCs recommended, did "not render the condition ineffective and nugatory," in part because the University remained subject to continuing oversight by the Commission and would "face the prospect of serious consequences if it fails to fulfill its obligations." *Id.* at 1179. Rather, "it was entirely reasonable for the Commission to state a general condition and to leave 'the details and mechanics' of its enforcement to the University." *Id.* at 1180, *citing President & Dirs. of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 77 (D.C. 2003).

The participating ANCs had recommended that, as part of its campus plan approval, the Commission should direct the University to require the use of parking stickers in the off-campus parking enforcement program so that any University-affiliated vehicle could be identified as such. The University's proposal had been modeled after an off-campus parking program already approved for use in another campus plan; that plan did not mandate the use of parking stickers as a means of enforcement, nor did the University add such a mandate to its proposal in this proceeding, stating that parking stickers were not required in order to identify University-affiliated vehicles.

The Commission accorded ANCs 3D and 3E the "great weight" to which they are entitled, and fully credited the unique vantage point that the ANCs hold with respect to the impact of the University's off-campus parking program on their constituents. However, the Commission concludes that the ANCs have not offered persuasive advice with respect to the recommended use of parking stickers that would cause the Commission to find that parking stickers are essential to the successful implementation of the parking enforcement program or that the failure to use parking stickers would create objectionable parking impacts that would adversely affect the use of neighboring property.

Condition No. 7 addresses a range of types of University-affiliated vehicles, encompassing regular, occasional, and potentially one-time visitors to the campus. While parking stickers may

be effective for identification of some types of vehicles that create University-related parking demand (such as that created by students, faculty, and staff), stickers could well prove impractical or ineffective under other circumstances, such as those pertaining to vehicles driven by vendors servicing the campus; by construction employees, contractors, and subcontractors; or by visitors to the campus, including persons attending conferences and other special events. The ANCs did not suggest that parking stickers are the sole means by which all University-related vehicles could be identified, and the University indicated that parking stickers are in fact not required for identification of University-related vehicles.

Condition No. 7 requires the University to use its best efforts to cause all University-related vehicles to park on campus and, to achieve that purpose, to have in place a system of sanctions including administrative actions, contract penalties, fines, and termination of contracts for violations. The Commission was not persuaded by the ANCs that parking stickers would be essential to the effective operation of the University's off-campus parking program, or that any particular enforcement mechanism needed to be specified to ensure the successful implementation of the program. Rather, the University should be accorded the flexibility to decide how best to implement the requirements of Condition No. 7, recognizing that its failure to comply with the condition could prevent the University from carrying out development projects anticipated by the approved campus plan.[3]

For the reasons stated above, the Commission reaffirms its decision in Z.C. Order No. 949 and Z.C. Order No. 949-A not to adopt the recommendation of ANCs 3D and 3E to require the University to use parking stickers as part of its off-campus parking enforcement program.

VOTE: 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Kevin L. Hildebrand to approve).

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

[3] Pursuant to Condition No. 17 of the approved campus plan, no special exception application filed by the University for further processing under the approved campus plan may be granted unless the University proves that it has consistently remained in substantial compliance with the conditions of approval of the plan. Any violation of a condition of Order No. 949 would be grounds for the denial or revocation of a building permit or certificate of occupancy applied for by, or issued to, the University for any University building or use approved under the plan, and might result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Official Code §§ 2-1801.01 to 2-1803.03 (2001).

ZONING COMMISSION ORDER NO. 04-02
Case No. 04-02
(Rezoning of East M Street Target Area/Capitol Gateway II)
July 11, 2005
ORDER DISMISSING PETITION
April 11, 2005

This Zoning Commission Case (No. 04-02) was an attempt to establish a comprehensive and workable new zoning scheme for an area denominated the East M Street Target Area ("Target Area"). The land within the Target Area is currently zoned M (General Industry) and C-M (Commercial-Light Manufacturing), zone districts that permit commercial and manufacturing/industrial uses, but prohibit new residential development. The Target Area is bounded roughly by 11th Street, S.E. to the west, Water Street, S.E. to the south, Interstate 395 to the north, and Barney Circle and the Sousa Bridge to the east.

The instant case arose out of another Zoning Commission Case, No. 03-22, which requested a map amendment for one square within the Target Area. That square, Square 1048S, is currently zoned M, and the Applicants in Case No. 03-22 requested that the square be re-zoned to R-5-B to permit matter-of-right residential construction. When presented with Application No. 03-22, the Zoning Commission decided that rezoning this single square, particularly with a residential zone in the midst of M and C-M zones, was unwise without first taking a more comprehensive look at the surrounding area. Thus, at the Zoning Commission meeting on October 20, 2003, the Commission did not set-down Application No. 03-22, but held its set-down in abeyance and asked the Office of Planning ("OP") to take a "more comprehensive look" at the surrounding area and make recommendations for its re-zoning.

The "more comprehensive look" became Case No. 04-02, and the area studied became known as the East M Street Target Area. On February 6, 2004, OP made its first presentation to the Commission, recommending various W (waterfront) Zone Districts for various parts of the Target Area. After some discussion, the Commission, on February 6, 2004, set down for a hearing Case No. 04-02, and the hearing was held on June 17, 2004. At the hearing, OP set forth three (3) different options for the Commission's consideration. These options had already been extensively analyzed by OP and other interested parties, and included various combinations of W Zone Districts, overlaid with the Capitol Gateway Overlay, with some minor changes proposed to the Overlay. The Commission was not satisfied with any of these options and asked OP to review the area again and provide more information concerning the three (3) options.

At the Zoning Commission meeting in September 13, 2004, OP presented further information to the Commission concerning the re-zoning of the Target Area. The Commission was still not

completely satisfied and requested that OP look at this again. The next month, on October 25, 2004, at the Zoning Commission meeting, OP presented several further ideas for re-zoning to the Commission. The Commission, however, was again not completely satisfied, and after providing OP with more specific guidance, asked that OP develop new scenarios for the Commission to consider.

At the Zoning Commission meeting in November 8, 2004, the Commission rejected all of OP's suggested scenarios and attempted to craft its own square-by-square zoning proposal for the Target Area. The Commissioners, however, were not in complete agreement among themselves as to what squares should be in what zone districts, or whether the Capital Gateway Overlay should be placed over the area. Also at this meeting, the Chairman recommended, for the first time, amending Chapter 24 of the Zoning Regulations, to add an incentive to construct planned unit developments within areas zoned W-2.

Case No. 04-02 was scheduled for proposed action before the Commission on April 11, 2005. At the April 11th meeting, the Chairman stated that she was still "not wholly satisfied with any of the solutions that ha[d] been proffered" for the re-zoning of the Target Area. Further, the Chairman and another Commissioner expressed a concern about re-zoning industrial areas to more restrictive zones. The Commissioners generally felt that the Target Area should not be re-zoned until a more comprehensive study of all the industrially-zoned land in the District had been performed in order to assess the demand for industrial zones and, potentially, how much land should be retained in such zones. Therefore, on April 11, 2005, pursuant to 11 DCMR § 3011, the Commission dismissed Case No. 04-02. At that same meeting, the Commission also denied the Application in Case No. 03-22. Both this Order and the Order denying the application are being issued concurrently.

The Zoning Commission, by a vote of 5-0-0, taken at its public meeting on April 11, 2005, hereby orders **DISMISSAL** of Case No. 04-02. (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Kevin L. Hildebrand, and Gregory Jeffries to dismiss.)

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 _____.