

IDEA Public Charter High School
1027 45TH street, NE
Washington, DC 20019

NOTICE FOR PROPOSALS TO CATER SCHOOL LUNCH PROGRAM

The IDEA Public Charter School in accordance with section 2204(c)(1)(A) of the District of Columbia School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals to provide meals for lunch for 475 students. The meals must meet federal nutrition requirements and all compliance standards of the USDA National School Lunch Program (NSLP)

Interested providers will state their credentials, provide appropriate licenses and sample menus, made in accordance with federal nutritional and serving requirements. No proposal will be considered without an estimated cost.

IDEA will receive bids until Friday, August 13, 2004 at 3:00 p.m. Meal pattern requirements and all necessary forms may be obtained from the school by writing to IDEA Public Charter School at 1027 45th Street, NE, Washington, DC 20019; or you may call LTC (R) Ed Holloway at 202-399-4750, extension 100.

Ideal Academy Public Charter School

INVITATION OF BIDS

The Ideal Academy Public Charter School will receive bids until Monday, August 23, 2004 at 4pm for the delivery of meals to children enrolled at the school. All meals must meet, but are not restricted to minimum National School Breakfast and Lunch Program meal pattern requirements. Meal pattern requirements and all necessary forms may be obtained from:

**Johnnie Mays
100 Peabody Street, NW
2nd Floor
Washington, DC 20011**

Ideal Academy Public Charter School**INVITATION OF BIDS**

The Ideal Academy Public Charter School, serving students in grades preschool through 8, will receive bids until Monday, August 23, 2004 at 4pm for special education related/support services for its special education students. These services are provided to students in a primarily inclusive setting. Related/support services that may be required include but, may not be limited to the followings:

- Psycho-educational assessments
- Psychological counseling
- Speech/language assessments
- Speech/language therapy
- Physical therapy evaluations
- Physical therapy
- Occupational therapy
- Participation in IEP development
- Participation in multidisciplinary team meetings
- Consultations with teachers/administrators/other professional/parents

The proposal should clearly state the capability for providing the wide range of services needed in a school of over 200 students with a possible 10 -15% requiring some services. Proposal must include hourly and/or flat rate costs for all services with a projection for cost of services for a school year.

The successful providers must possess certification/license in their areas of specialty. Police clearances and tuberculin test results must be provided for all service providers.

Send proposals to:

c/o Zuella Evans, Business Manager
Ideal Academy Public Charter School
Rabaut Building, Second Floor
100 Peabody Street, NW
Washington, DC 20011

Options Public Charter School

Request for Proposal (RFP)

Options Public Charter School is seeking bids for Special Education Support Services for Occupational Therapy and Speech/Language Therapy. Bids will be received until 3:00 P.M. (EST), August 23, 2004. Copies of the bid specifications can be obtained beginning August 9, 2003 at 9:00 A.M, please contact the person below for details. Bids should be sent to:

Dr. Montgomery, Principal, Special Education
Options Public Charter School
800 3rd Street, NE
Washington, DC 20002
Tel: 202-547-1028

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

Application No. 13786-A of Washington Jesuit Academy, pursuant to 11 DCMR § 3129.7 for a minor modification of the Board of Zoning Adjustment's prior approval to establish a private school under § 206 for a maximum of 300 students in the R-5-A Zone District at premises 900 Varnum Street, N.E. (Square 3894, Lot 19).

DECISION DATE: June 8, 2004

SUMMARY ORDER

In BZA Order No. 13786 ("Order"), the Board approved a special exception permitting the Association for Retarded Citizens ("ARC") to establish a private school for 300 students at 900 Varnum Street, N.E. ("Property"). Condition No. 1 of the Order limited approval for operation of the facility to ARC. On May 14, 2004, Washington Jesuit Academy ("WJA"), the current owner of the Property, filed a letter with the Board of Zoning Adjustment ("Board" or BZA") requesting a minor modification of the Order to remove the condition as unlawful and unnecessary. WJA also requested that the Board waive the requirements of 11 DCMR § 3129.3, regarding the time period in which to file a request for a minor modification of a BZA Order, and 11 DCMR § 3129.6, regarding the requirement that only Board members who participated in the original decision or read the record be allowed to vote on the modification.

The site of this application is located within the jurisdiction of ANC 5A. ANC 5A filed a Resolution setting forth its unanimous vote not to oppose the requested modification.

In order for the Board to address the motion for modification, it was necessary for the Board to grant a waiver of 11 DCMR § 3129.3, which requires that "A request for modification of plans shall be filed with the Board not later than six (6) months after the final date of the final order approving the application." The final date of BZA Order No. 13786 was July 13, 1982. By a vote of 5-0-0, the Board approved a motion to waive the requirements of 11 DCMR § 3129.3, so that it could address the merits of this modification application.

Section 3129.6 provides that no member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or has read the record. In this case, the final date of the Order was twenty-two years ago. As a result, no member of the Board participated in the original proceedings. The Board finds that the requested modification does not turn upon the facts presented to the Board in the original application. Accordingly, the Board waives the requirements of § 3129.6.

As directed by 11 DCMR § 3129, the Board has required that the applicant satisfy the burden of proving that the requested modification is a minor request that does not change the material facts the Board relied upon in its approving the application. The proposed modification would not change the capacity, type of use, and area occupied by the school. The operation of the school would continue to comply with the remaining conditions of the Order.

Pursuant to 11 DCMR § 3100.5, 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. No person or entity appeared in opposition to the request for modification or otherwise objected to it. A decision by the Board to grant the motion for minor modification would not be adverse to or prejudice the rights of any party, and is appropriate in this case.

Accordingly, it is hereby **ORDERED** that the motion for modification of the Order is **GRANTED** and Condition No. 1 of the Board's Order dated July 13, 1982 is hereby deleted. In all other respects, the previous Order of the Board shall remain in full force and effect.

VOTE: 5-0-0 TO WAIVE SECTION 3129.3, WHICH REQUIRES ALL MODIFICATIONS TO BE FILED WITHIN SIX (6) MONTHS AFTER THE FINAL ORDER APPROVING THE APPLICATION (Geoffrey H. Griffis (By Proxy), Curtis L. Etherly, Jr., John A. Mann, II, Ruthanne G. Miller, John G. Parsons, to Grant).

VOTE: 4-0-1 TO APPROVE THE MODIFICATION OF BZA ORDER NO. 13786 TO DELETE CONDITION NO. 1 OF THE ORDER (Geoffrey H. Griffis (By Proxy), Curtis L. Etherly, Jr., John A. Mann, II, and John G. Parsons to Grant, Ruthanne G. Miller abstaining from the vote).

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

Each concurring Board Member has approved the issuance of this order.

FINAL DATE OF ORDER: JUL 02 2004

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." JS/rsn

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

Application No. 17160 of Northwest Settlement House, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the off-street parking requirements under subsection 2101.1, and pursuant to 11 DCMR § 3104.1, a special exception to allow a child development center (40 children on-site at any given time and 12 staff) under section 205, and a special exception to allow a community center under section 334, in the R-4 District at premises 448 Ridge Street, N.W. (Square 513, Lots 825, 826, 827 and 828).

HEARING DATE: May 25, 2004
DECISION DATE: July 6, 2004 (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 public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 2C, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in conditional support of the application. The subject property is located within the jurisdiction of ANC 2C. ANC 2C submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 3104.1, 205, and 334, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 403 and 2101.1. No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under §§ 205 and 334, that the requested relief can be granted as in harmony with the

general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2 and §§ 403 and 2101.1, 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 requested 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. It is therefore **ORDERED** that the application is **GRANTED** with the following **CONDITIONS**:

1. Approval shall be for **TEN (10) YEARS** commencing upon issuance of the Certificate of Occupancy.
2. The Applicant shall appoint a liaison to Mount Vernon Square Neighborhood Association and to act as a point of contact for neighbors to discuss any concerns about the Applicant's operations.
3. The child/elderly development center shall not exceed forty (40) students at any given time.
4. The staff of child/elderly development center shall not exceed the equivalent of twelve (12) full time positions. The staff of the community service center shall not exceed the equivalent of six (6) full time positions.
5. The hours of operation for the child/elderly development center shall be from 7:00 a.m. to 6:00 p.m. The hours of operation for the community service center shall be from 9:00 a.m. to 8:00 p.m.
6. The Applicant shall develop a program to encourage employees of the child/elderly development center and the community service center to use nearby Metro bus and Metro rail service.
7. The Applicant shall provide written instructions to parents, teachers and staff about utilizing the four (4) restricted parking spaces in front of the building and to drop off and pick up only from the south side of the Ridge Street, N.W.
8. The Applicant shall ensure that ten (10) off-street parking spaces are available for use by teachers and staff.

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. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and Gregory Jeffries to approve, John A. Mann, II to deny by proxy vote).

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: JUL 0 8 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS

AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

Application No. 17168 of 500 and 502 Florida Avenue LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the court width and area requirements under section 776, a variance from the nonconforming structure provisions under subsection 2001.3, to allow the renovation (including deck addition) of an existing building into a four (4) unit apartment house in the C-2-A District at premises 500 and 502 Florida Avenue, N.W. (Square 475, Lot 19).

Note: The Board determined that the applicant's approved development plans do not require relief from the residential recreation space (section 773), and off-street parking (subsection 2101.1) requirements.

HEARING DATE: June 15, 2004
DECISION DATE: July 6, 2004

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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2C. The ANC 2C submitted a letter in support of the application. The OP submitted two reports recommending approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the 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 ANC and OP reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 772, 776, and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property

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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. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-0-1 (Ruthanne G. Miller, Curtis L. Etherly, Jr., Gregory Jeffries to approve, John A. Mann, II to approve by absentee vote, Geoffrey H. Griffis not voting, not having heard the case).

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

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: JUL 0 8 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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.

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THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

Application No. 17179 of Heritage Foundation, pursuant to 11 DCMR § 3104.1, for a special exception to continue an accessory parking lot (last approved under BZA Order No. 16250) serving single-family dwellings under § 214, and § 1202 (Capitol Interest Overlay), and § 2116.5 (Location of Parking Spaces), and pursuant to 11 DCMR § 3103.2, a variance to allow accessory parking spaces located elsewhere than on the same lot as the dwellings under § 214.1, a variance to allow the accessory parking spaces to be located more than 200 feet from the area to which they are accessory under § 214.3, and a variance to allow the accessory spaces not being contiguous to or separated by an alley from the area to which they are accessory under § 214.4, and a variance from § 2116.5, in the CAP/R-4 District at premises 415, 416, and 424 4th Street, N.E. (Square 780, Lots 43, 62, and 810).

Note: The Board amended the application to include special exception relief under § 1202 and special exception and variance relief under § 2116.5 of the Zoning Regulations.

HEARING DATE: June 29, 2004

DECISION DATE: July 13, 2004

SUMMARY ORDER

PRELIMINARY MATTERS:

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

Notice of Application and Public Hearing: By memorandum dated April 12, 2004, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, Advisory Neighborhood Commission ("ANC") 6C, ANC single member district 6C08, and the Councilmember for Ward 6. The Office of Zoning provided proper and timely notice of the public hearing on the application by publication in the D.C. Register (51 D.C.R. 4067) and by mail to the Applicant, ANC 6C, and the owners of property within 200 feet of the site.

Parties: The subject property of this application is located within the boundaries of ANC 6C, which is automatically a party to this application. The Board denied a request for party status in opposition to the application from Henry Miller, a resident of the 400 block of 4th Street, N.E., who was not present at the hearing.

Persons in support: The Board received letters in support of the application from the Capitol Hill Restoration Society, the Stanton Park Neighborhood Association, Unity Baptist Church, and several residents living near the subject property.

Government Reports: By memorandum dated June 29, 2004 and through testimony at the public hearing, the Office of Planning recommended approval of the application subject to conditions.

ANC Report: By letter dated June 21, 2004, ANC 6C indicated that, at a regularly scheduled public meeting on June 9, 2004, with a quorum present, the ANC voted 7-0 to pass a resolution in support of the application, subject to a term of seven years.

As directed by 11 DCMR §3119.2, the Board has required the Applicant to satisfy the burden of proving the elements necessary to establish the case for a special exception pursuant to §§ 3104.1, 214, 1202, and 2116.5, and for variance relief pursuant to § 3103.2 from §§ 214.1, 214.3, 214.4, and 2116.5. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in opposition to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR § 3100.5, 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. The waiver will not prejudice the rights of any party and is appropriate in this case.

Based upon the record before the Board, and having given great weight to the reports of ANC 6C and the Office of Planning, the Board concludes that the Applicant has met the burden of proof and that the requested relief, including the requested ten-year term, 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.

It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of ten (10) years from the effective date of this Order.
2. The number of parking spaces shall not exceed 55.
3. The lots shall be cleaned daily.
4. All parts of the lots shall be kept free of trash and debris.

5. The Applicant shall maintain a liaison person to ensure that the lots operate with minimal impact on the community. Community residents must be able to reach the contact person to express any concerns about the operation of the lots.
6. The lots shall be available for use between 7 p.m. and 8 a.m. and on weekends and holidays by those community members located within 200 feet.
7. Wheel stops shall be maintained at the top of each parking space.
8. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. The Applicant shall plant a minimum of one additional tree in the landscaped area at the center of each lot. In addition, the Applicant shall consult with a landscape expert to identify a hearty ground-level vegetation suitable for the alley lot location. The Applicant shall then install such vegetation in each of the three primary landscaped areas. The Applicant may also install additional landscaping, if feasible.
9. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a material forming an all-weather impervious surface.
10. No vehicle or any part thereof shall be permitted to project over any lot or building line, or on or over the public space.
11. No other use shall be conducted from or upon the premises and no other structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zone district in which the parking lot is located.
12. Any lighting used to illuminate the accessory parking spaces shall be arranged so that all direct rays are confined to the surface of the parking lot.
13. Signage shall be posted on the property, to include a telephone number, identifying the Heritage Foundation as the point of contact.

VOTE: 3-0-2 (Geoffrey H. Griffis, Ruthanne G. Miller, and John A. Mann, II to approve with conditions; Curtis L. Etherly, Jr. and Zoning Commission member not voting, not having heard the case)

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

Each concurring member has approved the issuance of this Summary Order and has authorized the undersigned to execute this Summary Order on his or her behalf.

FINAL DATE OF ORDER: JUL 14 2004

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

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

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

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. MN/RSN

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

Application No. 17180 of Francis Yates, pursuant to 11 DCMR § 3104.1, for a special exception to construct a sunroom addition to the rear of an existing single-family dwelling under section 223, not meeting the lot occupancy requirements (section 403), the side yard requirements (section 405) and nonconforming structure provisions (subsection 2001.3), in the R-1-B District at premises 6520 8th Street, N.W. (Square 2973, Lot 100).

HEARING DATE: June 29, 2004
DECISION DATE: June 29, 2004 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a report in support of the application. The Office of Planning (OP) submitted a report in conditional 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 § 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further

concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

1. The required side yard setback along the southern property line shall be a minimum of 4 feet.
2. The roof shingles to be installed on the addition shall resemble the shingles on the main dwelling.

VOTE: 4-0-1 (Kevin L. Hildebrand, John A. Mann II, Geoffrey H. Griffis and Ruthanne G. Miller to approve, Curtis L. Etherly, Jr., not present not voting)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 0 2 2004

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.

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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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

Application No. 17181 of Jeffrey Booth, pursuant to 11 DCMR § 3104.1, for a special exception to construct a sunroom addition to the rear of an existing single-family dwelling under section 223, not meeting the lot occupancy requirements (section 403), and rear yard requirements (section 404), in the FBOD/R-3 District at premises 914 ½ 25th Street, N.W. (Square 16, Lot 862).

HEARING DATE: June 29, 2004
DECISION DATE: June 29, 2004 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

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) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC2A, which is automatically a party to this application. ANC 2A did not participate in the application. The Office of Planning (OP) submitted a report in support of the application.

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

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

BZA APPLICATION NO. 17181

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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**.

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Kevin L. Hildebrand to approve, Curtis L. Etherly, Jr., not present not voting)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: JUL 02 2004

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.

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,

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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. RSN

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

Application No. 17186 of TC MidAtlantic Development, Inc. on behalf of Avalon Bay Communities, Inc. and 777 6th LLC, pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements under section 774, and pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure provisions under section 411 (770.6), to permit the construction of a eleven story office building with ground floor retail in the DD/C-2-C District at premises 777 6th Street, N.W. (Square 486, Lots 10 through 13, 36, 804 through 808).

HEARING DATE: July 13, 2004
DECISION DATE: July 13, 2004 (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 public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 6C, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 6C. The ANC submitted a letter in support of the application at the public hearing.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 3104.1 and 411 (770.6), and variances under 11 DCMR § 3103.2 from the strict application of the requirements of § 774. No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under § 411 (770.6), that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect

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adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2 and § 774, 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 requested 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. It is therefore **ORDERED** that the application is **GRANTED**.

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. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3-0-2 (Ruthanne G. Miller, Curtis L. Etherly, Jr., and John A. Mann, II to approve, Carol J. Mitten not present, not voting, Geoffrey H. Griffis recusing himself).

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: JUL 14 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

Application No. 17187 of Greg Stack and Gabrielle Boccher, pursuant to 11 DCMR § 3104.1, for a special exception to allow a two story rear addition to a single-family semi-detached dwelling under section 223, not meeting the lot occupancy (section 403) and side yard (405) requirements in the R-1-B District at premises 4611 Van Ness Street, N.W. (Square 1555, Lot 1).

HEARING DATE: July 13, 2004
DECISION DATE: July 13, 2004 (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) 3E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. ANC 3E submitted a letter in support of the application. The Office of Planning (OP) did not participate in 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 § 223. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, 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 ANC report the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17187

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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** with the following **CONDITION**:

1. The Applicant shall have flexibility for minor adjustments to the placement of windows.

VOTE: 4-0-1 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, and John A. Mann II to approve, Carol J. Mitten not present not voting)

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

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: July 14, 2004

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.

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

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§ 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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

Application No. 17190 of Katharine P. Rigby, pursuant to 11 DCMR § 3103.2, for a variance from the alley setback requirements under subsection 2300.2 (b), to construct an accessory garage at the rear of a single-family row dwelling in the R-5-B District at premises 1816 Belmont Road, N.W. (Square 2552, Lot 36).

HEARING DATE: July 13, 2004
DECISION DATE: July 13, 2004 (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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1C, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 1C. ANC 1C submitted a letter in support of the application. The OP submitted a report recommending denial of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2300.2(b), 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. The waiver will not prejudice the rights of any party,

BZA APPLICATION NO. 17190

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and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 4-1-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller and John A. Mann, II to approve, Kevin L. Hildebrand opposed to the motion).

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

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: JUL 14 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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.

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

BZA APPLICATION NO. 17190

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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. RSN

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

Application No. 17191 of 14th & R Partners LLC, pursuant to 11 DCMR § 3103.2, for a variance from the residential recreation space requirement under section 773, and a variance from the off-street parking requirements under subsection 2101.1, to construct a seven story seven (7) unit residential building with retail on the ground and first floors, in the ARTS/C-3-A District at premises 1634 14th Street, N.W., 1638 14th Street, N.W., and 1402 R Street, N.W. (Square 208, Lots 806, 807, and 808).

HEARING DATE: July 13, 2004
DECISION DATE: July 13, 2004 (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 public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2F, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 2F. ANC 2F submitted a letter in support of the application. The OP submitted a report recommending approval of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 773 and 2101.1, 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.

BZA APPLICATION NO. 17191

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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. The waiver will not prejudice the rights of any party, and is not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED**.

VOTE: 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, John A. Mann, II and Kevin L. Hildebrand to approve)

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

Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: July 14, 2004

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN 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.

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,

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

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION
Z.C. Order No. 03-16
Z.C. Case No. 03-16
(Modification to the Approved Planned Unit Development
for the Watergate Hotel)
June 14, 2004**

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on March 1 and March 4, 2004, to consider an application from Monument Residential LLC, on behalf of BRE/Watergate LLC, for review and approval of a modification to a previously approved Planned Unit Development (the "Application"). The requested modification would allow the option to convert an existing 250-room hotel, currently operating as the Watergate Hotel, to an apartment house of 133 dwelling units. The Zoning Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Application.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On May 7, 2003, Monument Residential LLC ("Monument"), the contract purchaser, on behalf of BRE/Watergate LLC ("BRE"), the owner (together collectively referred to as the "Applicant"), filed an Application for review and approval of a modification to an approved Planned Unit Development ("PUD") for property located at 2650 Virginia Avenue, N.W. (the "Site"). The Site consists of Lot 807 in Square 8 and is currently zoned SP-2. The Application does not request any change in zoning for the Site. At its June 9, 2003, meeting, the Zoning Commission set this case for hearing.
2. Notice was originally given for a public hearing to be held on November 24, 2003. By letter dated November 3, 2003, the Applicant requested that the hearing be postponed until January 29, 2004. The Commission granted that request and proper notice was given again.

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3. At the beginning of the hearing on January 29, 2004, Watergate East, Inc. ("East"), the owner of property abutting the Site and lessor to BRE of certain underground space, described and discussed further herein, requested that the Commission postpone the hearing. East, which is a residential cooperative, advised that its members had participated in a vote to determine East's position regarding the Application and the sale of certain property, that the outcome of the vote was disputed, and that litigation had been filed in the Chancery Court of Delaware to seek the Court's ruling on how the outcome of the vote should be construed. The representatives of East indicated that East could not take a position until the litigation was resolved. The Commission determined to postpone the hearing until March 1, 2004, to await the outcome of the Court's ruling on the matter.
4. The Zoning Commission thereafter held public hearings on March 1 and March 4, 2004.
5. The parties to the case were the Applicant; Advisory Neighborhood Commission ("ANC") 2A, the ANC within which the Site is located; Watergate West, Inc. ("West"), the owner of the adjoining apartment building to the west, which opposed the Application; the Committee of Concerned Owners of Watergate East ("COCO"), which was represented by William B. Wolf, Jr. and which supported the Application; and the Watergate East Committee Against Hotel Conversion to Co-op Apartments, ("Committee Against"), which was represented by Jack H. Olender and which opposed the Application.
6. East applied for party status, but when the hearing commenced on March 1, 2004, East was unable to declare whether it was in support of or opposed to the Application. The Chancellor of the Delaware Court ruled on February 25, 2004, that East was required to conduct a new vote of its members to determine its position regarding the Application. That vote had not occurred by the time of the hearing. Noting that both supporting and opposing positions were represented by COCO and the Committee Against, respectively -- the committees of residents which had been admitted as parties -- the Commission denied East's request for party status.
7. The Commission also received requests for party status from Audrey and William B. Wolf, Jr., and Jill and Frederic W. Schwartz, Jr., both in support of the Application. Mr. and Mrs. Wolf are residents of East and Mr. and Mrs. Schwartz are residents of West. Both requested to be admitted as individual parties, separate from any of the entities that had applied for party status. The Commission found that neither couple demonstrated that their interests were likely to be more significantly, distinctively, or uniquely affected than those of other persons in the general public, especially as compared to other unit owners in the apartment buildings in the Watergate project. The Commission also noted that COCO, as a party in support, would essentially present the positions espoused by the two couples.

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8. At its May 10, 2004, meeting, the Zoning Commission took proposed action by a vote of 3-1-1 to approve with conditions the Application and plans presented at the public hearings.
9. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated June 3, 2004, found that the proposed PUD would not adversely affect the identified federal interests and is not inconsistent with the Comprehensive Plan for the National Capital.
10. The Zoning Commission took final action to approve the Application on June 14, 2004.

The Site and the Area

11. The Site is situated in Ward 2 at 2650 Virginia Avenue, N.W. and consists of Lot 807 in Square 8. The Site is located southwest of the 2600 Virginia Avenue office building. The Property has no street frontage on Virginia Avenue but has access from Virginia Avenue by means of a driveway that runs between the 2600 office building and the Watergate West apartment building at 2700 Virginia Avenue. The Site faces the Rock Creek and Potomac Parkway but has no access from the Parkway. The site contains approximately 37,897 square feet of land area and is developed with a 250-room hotel consisting of three below-grade levels and fourteen stories above grade.
12. The Site is part of the Watergate complex, one of the first PUDs approved after the adoption of the PUD regulations in 1958. The Watergate complex is bounded by Virginia Avenue on the northeast, the Rock Creek and Potomac Parkway on the west, New Hampshire Avenue on the southeast, and F Street on the south. The overall Watergate complex includes three apartment buildings, two office buildings, a hotel, and interior retail spaces.
13. The Watergate complex is situated in the Foggy Bottom neighborhood, in the northwest quadrant of the city. The area is characterized by a mixture of land uses, predominantly in high-rise buildings, including apartment houses, a dormitory for the George Washington University, office buildings, two gasoline service stations, and the Kennedy Center.
14. The buildings that surround the Site are all part of the Watergate complex. To the northwest, east, and southeast are the three existing apartment buildings. To the northeast is one of the two office buildings. To the west and south are the Rock Creek Parkway and the Potomac River.
15. The remainder of the subject square includes only one small parcel, occupied by a gasoline service station at the corner of Virginia Avenue and Rock Creek Parkway. Immediately across Virginia Avenue to the northeast is a high-rise dormitory occupied by

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students of the George Washington University ("GW") and another gasoline service station at the corner of Virginia Avenue and 27th Street. To the southwest, across F Street, is the Kennedy Center for the Performing Arts. To the southeast across New Hampshire Avenue, is the chancery of the Kingdom of Saudi Arabia. Behind the GW dormitory and the chancery are the ramps of the freeway connecting the Whitehurst Freeway and Interstate 66 ("I-66"). Further to the southwest across the freeway is Columbia Plaza, another high-rise mixed-use complex of apartments and offices.

16. The Generalized Land Use Map of the Comprehensive Plan designates the Site in the mixed-use high-density residential, medium-density commercial land use category.
17. The Site is not presently a designated historic landmark nor is it within a historic district. During the course of the proceedings on this case, The Committee to Preserve the Watergate Heritage, Inc., filed an application with the Historic Preservation Review Board to have the entire Watergate complex designated as a historic landmark. No action had been taken on that request by the time the Application was decided by the Zoning Commission.

Zoning and Zoning History

18. The Site is currently zoned SP-2. The SP-2 District permits an apartment house as a matter-of-right; offices and hotels now normally require approval of the Board of Zoning Adjustment as a special exception. The SP-2 District permits a maximum height of ninety (90) feet, with no limit on the number of stories, and a maximum density of 6.0 FAR, no more than 3.5 FAR of which may be used for other than residential purposes. Under the PUD guidelines for the SP-2 District, the maximum height of the project may be ninety (90) feet with a maximum density of 6.5 FAR, no more than 4.5 FAR of which may be devoted to other than residential purposes. Parking for apartments is required at a rate of one space for each four dwelling units.
19. There is no change in zoning requested for the Site.
20. The area southwest of Virginia Avenue is zoned SP-2. The area on the northeast side of Virginia Avenue is zoned R-5-E, with the area northeast of the freeway ramps zoned FB/R-3. The Kennedy Center and the Rock Creek Parkway are Federal property and are not zoned.
21. The original PUD for the Watergate complex was first approved in 1962. The original plan contained a mix of uses and an overall site plan featuring the curvilinear design that is emblematic of the Watergate. The project was divided into four Stages:
 - Stage I was the apartment house now known as Watergate East at 2500 Virginia Avenue, containing 301 apartment units and also including approximately 50,000 square feet of retail and service commercial uses above and below ground;

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- Stage II was the office building and the subject hotel, at 2600 and 2650 Virginia Avenue, respectively, to also include approximately 25,000 square feet of additional retail and service commercial uses;
 - Stage III was the apartment house now known as Watergate West at 2700 Virginia Avenue, containing 143 apartment units; and
 - Stage IV was to be an apartment house located along the New Hampshire Avenue and F Street side of the property and was to contain approximately 850 apartments.
22. The total development was to contain approximately 1,600 dwelling units including 1,300 apartments and 300 hotel rooms, 185,000 square feet of office space, 80,000 square feet of retail and service uses, and 1,250 parking spaces. The total density for the entire site was limited to 4.5 FAR, or approximately 1,887,000 square feet of gross floor area.
 23. The BZA approved the construction of the project in a series of cases for further processing.
 24. The PUD was amended by the Commission in 1968 to change the site plan and uses proposed for Building 1 (Stage IV), to allow up to 260,600 square feet of SP office uses with 325 dwelling units and 24,000 square feet of retail and service commercial uses (Case No. 68-58, order dated December 19, 1968).
 25. The PUD was amended again in 1974 to allow general office use in Building 1 (Stage IV) at 600 New Hampshire Avenue (Order No. 100, Case No. 72-23, November 15, 1974) and in 1976 to allow general office use in the Stage II office building at 2600 Virginia Avenue (Order No. 125, Case No. 75-3, February 12, 1976).
 26. The PUD was amended again in 1989 to allow for a 2,000-square-foot expansion of the health club in the Watergate Hotel on the B-3 level (Order No. 631, Case No. 89-6M, September 11, 1989). In that approval, the Commission summarized the totality of the project as then consisting of "over 500,000 square feet of office space, a 237-room hotel, 644 apartment units, underground parking, the health club, and a significant amount of retail space. There are 1,240 parking spaces located in a 3-level common garage which serves the entire complex."

The PUD Modification

27. The proposed modification to the PUD is to allow the option to convert the existing 250-room hotel, currently operating as the Watergate Hotel, to an apartment house of 133 dwelling units. The proposed new apartment building would be a cooperative, the same form of ownership as the three existing apartment buildings in the Watergate complex.

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- The building would continue to contain a restaurant and a health club. All other uses and buildings in the complex would remain as approved and existing.
28. There are currently ninety-five (95) parking spaces available to the existing hotel. The existing eighty-five (85) below-grade spaces would continue to be available to the apartment house. In addition, the Applicant proposes to increase the number of parking spaces for the apartment house to 146. Eleven (11) spaces would be added on the B-3 level in space that is now part of the health club. Thirty-seven (37) spaces would be added on the B-2 level in space now part of the hotel support area. Seven (7) spaces would be added on the B-1 level in space now part of the hotel bar and storage. Six (6) spaces would be added on the surface in carports.
 29. The new restaurant would contain a maximum of 3,000 square feet, with approximately 120 seats. The restaurant would be located on the B-1 level of the building and would have no street frontage. The nature and type of service of the restaurant use will be determined in consultation with the residents of the Watergate complex. The restaurant is intended to serve the residents of the project. To the extent that there would be persons who drive to the site, valet parking will be provided for patrons of the restaurant.
 30. The proposed modification would not change the exterior components of the existing building in any significant way. The changes necessary to affect the conversion will be mostly internal to the building, resulting in the removal of certain hotel related uses on lower levels and the conversion of the guest rooms on the upper levels to apartments. Exterior changes will include the replacement of existing windows, the removal of induction units in the façade at the balconies and replacement with consistent façade materials, the construction of carports on the surface adjacent to the pool at the rear, the conversion of an existing outdoor asphalt paved area to private terraces for the units on the B-1 level immediately adjacent to that space, and the construction of additional stairways for access from the top floor units to the roof deck.
 31. The exterior changes to the building have been approved in concept by the Commission of Fine Arts.
 32. The changes to the exterior of the building are minor, limited to the addition of carports adjacent to the pool and certain minor additions to the roof to provide for additional roof access. The area where the parking is to be added is already paved and used for parking. The carports are located below the level of the main floor (which for the subject building is one story above the surface at the rear) and the carports are thus not included in lot occupancy. The carports total approximately 1,026 square feet in gross floor area, which increases the overall density of the entire project by 0.0003 FAR and which increases the density in Stage II by 0.02 FAR.
 33. There are already multiple enclosures on the roof for mechanical equipment and building service functions. The Applicant proposes to add stairs to the roof to provide access to

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private roof decks from six units on the top floor of the building. Those stairs will be integrated into and alongside of the existing roof structures; there will be no increase in the total number of roof structures. There will also be stucco screen walls attached to the existing roof structures to provide some privacy for the individual roof terraces. All the stair enclosures and screen walls meet the setback requirements of the Zoning Regulations.

34. The height of the existing roof structures varies, with a maximum for the main elevator penthouse at eighteen feet, four inches above the roof. The height of the new stair enclosures is a maximum of eight feet and the maximum height of the screen walls is six feet, four inches. This would create roof structures having walls of unequal height. The new construction on the roof has been held to the lowest possible height, so as to minimize the mass and visual appearance of the new construction. Raising the height of the new penthouses and screen walls to the same height as the existing penthouses would increase the visibility of those structures.

Development Flexibility

35. Except for the roof structures described above, the proposed modification to the PUD will not result in the need for zoning flexibility. Because of the additional stair enclosures on the roof, the Applicant requires zoning relief from the requirements of § 411 of the Zoning Regulations relating to the number of rooftop enclosures and varying heights of the enclosures.
36. Whereas the proposed modification results in additional parking spaces, those zoning requirements will be satisfied without the need for zoning relief. An apartment house in an SP-2 District requires a minimum of one parking space for each four (4) dwelling units; the proposed 146 spaces for 133 units exceeds that requirement. The carports proposed by the Applicant do not require zoning relief. As accessory structures, they are permitted as a matter of right; although the proposed carports will result in an increase in density, the increase is within the range permitted.

Public Benefits and Project Amenities

37. The following superior benefits and amenities will be created as a result of the modification to the PUD:
- a. Residential development, in an area of the city that needs additional long-term residents, provides significant benefit to the neighborhood and the District as a whole and satisfies the requirements of Chapter 24;
 - b. The exterior configuration of the existing building will be retained, and the project will continue to conform to the overall landscaping and design scheme of

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the Watergate complex. The curvilinear nature of the design remains a distinctive feature, not often duplicated in Washington architecture;

- c. The building will continue to include the health club and a restaurant on the lower levels. These are uses of special value to the existing residents of the Watergate complex; and
- d. By letter dated March 4, 2004, as supplemented by material in the Applicant's post-hearing submission, in consultation with the Office of Planning, the Applicant agreed to provide 3,000 square feet of affordable housing in the District of Columbia, by contributing \$250,000 to an affordable housing provider to renovate existing space not now occupied.

Office of Planning Report

- 38. By report dated January 19, 2004, and by testimony at the public hearing held on March 1, 2004, the Office of Planning ("OP") provided its comments to the Commission on the proposed PUD modification. In its written report, OP advised that it was not able to provide a recommendation to the Zoning Commission, because the Applicant was not able to provide assurance that it had obtained what OP considered to be necessary approvals from the owners within the Watergate complex. OP further stated that, if these approvals are provided, OP would have no objection to the proposed modification to the PUD. As will be discussed later, the Commission has concluded that the concurrence of the other owners is not required for it to consider and approve this modification. The Commission therefore construes OP's position to be in support of the Application.
- 39. OP noted that the Applicant had not demonstrated that that it met all of the specific requirements of the Zoning Regulations for a PUD in the SP-2 District, particularly including rooftop enclosures, residential recreation space, lot occupancy, and parking. In a supplemental submission made on February 18, 2004, and in the report and testimony of the Applicant's land planner, the Applicant addressed the specific compliance issues identified by OP; for example, the requirements relating to residential recreation space (§ 533.4), lot occupancy (§ 532), and parking (§ 2101.1). Except for the roof structures (addressed in Findings No. 33 – 35 of this Order), the proposed PUD modification meets the technical requirements of the Zoning Regulations.
- 40. OP noted that the proposed modification met the specific applicable criteria of Chapter 24 of the Zoning Regulations. OP found that the proposal would have limited, if any, negative impacts on the surrounding area or on the operation of the city as a whole. OP found that the PUD modification would not be inconsistent with the Generalized Land Use Map or with Comprehensive Plan land use or housing objectives. OP found that the proposed modification would not lessen any of the benefits afforded by the original PUD and would provide additional housing.

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District Department of Transportation Report

41. In its report dated February 24, 2004, the District Department of Transportation ("DDOT") reviewed the impact of the proposed modification. DDOT concluded that the proposed conversion of the hotel to apartments will generate fewer automobile trips and will have a positive impact in terms of capacity and level of service in the area road network. DDOT also concluded that the proposed level of parking supply would be adequate to meet the parking demand of this project with little or no spillover into surrounding areas.

ANC 2A Report

42. By resolution dated January 27, 2004, Advisory Neighborhood Commission ("ANC") 2A voted to support the Application for the following reasons:
- a. The conversion would mostly involve interior renovations to the building to change the hotel rooms and facilities to apartment units;
 - b. The building would continue to contain a health club available for use by all residents of the Watergate and a restaurant on the B-1 level of approximately 3,000 square feet, accommodating approximately 120 seats;
 - c. The conversion would involve no substantial change to the exterior appearance of the building, involving some small rooftop additions and six carports to be added to the surface at the rear;
 - d. The Commission of Fine Arts has granted conceptual approval to the exterior alterations;
 - e. The Applicant agreed that the new apartment building would be offered for sale as a cooperative, the same form of ownership as the units in the three existing apartment buildings in the project;
 - f. A majority of the East cooperative members voted to sell to Monument the space that the current owner now rents from East and to support the Application;
 - g. Watergate South, Inc. supports this application;
 - h. The ANC has long desired an increase in the number of permanent residents within the boundaries of the ANC, and the proposed PUD modification would eliminate 250 transient hotel units in favor of 133 apartment units, which would accommodate several hundred permanent residents;
 - i. The change from hotel to apartment house use would likely result in less traffic generated from the building;

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- j. The Comprehensive Plan Generalized Land Use Map includes the subject property in the mixed-use high-density residential, medium-density commercial category, and the proposed change to apartment house use would be not inconsistent with that designation; and
 - k. The property is zoned SP-2, which would permit an apartment houses as a matter-of-right but for the original approval of the PUD.
43. The Zoning Commission afforded the views of the ANC 2A the "great weight" to which they are entitled.

Parties, Persons, and Letters in Support

44. The COCO, represented by William B. Wolf, Jr., supported the Application.
45. The Foggy Bottom Association, through the testimony of Barbara Spillinger, supported the Application.
46. Numerous individual residents from the Watergate cooperatives and from elsewhere in the area testified and wrote letters in support of the Application.
47. Watergate South, Inc., the third of the Watergate cooperatives, by letter dated January 27, 2004, supported the Application.
48. Subsequent to the ruling of the Delaware Court, a second meeting was convened of the members of the East cooperative on April 12, 2004. At that meeting, a majority of the members of East voted to sell to Monument the below-grade space currently leased to the hotel and voted to support the Application.
49. The bases for the support of the Application were generally that:
- a. The addition of permanent residents, in place of transient hotel guests, would be good for the project and good for the city;
 - b. The sale of the below-grade space in East to the Applicant would be beneficial economically to East;
 - c. The Applicant has agreed to set up the new apartment building as a cooperative, the same form of ownership as the existing apartment buildings; and
 - d. The project would continue to include a restaurant and the health club, two uses that are highly valued by Watergate residents.

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Parties, Persons, and Letters in Opposition

50. West and the Committee Against, parties in opposition, consolidated their presentation for testimony at the hearing.
51. Numerous individual residents from the Watergate coops and from elsewhere in the area testified and wrote letters in opposition to the Application.
52. The bases for the opposition to the Application were generally that:
 - a. The project is a mixed-use project that has always had a hotel and the hotel use should be continued;
 - b. The hotel is an amenity to the project and to the residents;
 - c. The Comprehensive Plan calls for the retention of existing hotels;
 - d. The proposed apartment house would generate more traffic than the existing hotel;
 - e. The proposed apartment house would not be as economically advantageous to the District as suggested by the Applicant;
 - f. The Applicant had not guaranteed that the health club and the restaurant would be continued;
 - g. The Applicant had not demonstrated that the hotel was not economically viable and therefore there was no basis to change the use to an apartment house; and
 - h. The Applicant was not registered to do business in the District of Columbia.

Consistency with the Comprehensive Plan

53. Through its land planning expert, the Applicant argued that the project is not inconsistent with the Comprehensive Plan. The Applicant presented the following points:
 - a. The proposed development is consistent with the Generalized Land Use Map, which designates the PUD Site for high-density residential and medium-density commercial uses.
 - b. The Project is consistent with the Comprehensive Plan's major themes as follows:
 - 1) Stabilizing and Improving the District's Neighborhoods: The conversion of a hotel into a multi-family residential building will provide an increased sense of community in the Foggy Bottom neighborhood. It will provide additional

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housing opportunities in an area immediately outside of the Central Employment Area.

- 2) Reaffirming and Strengthening District's Role as an Economic Hub: The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The Project takes advantage of this asset by its proximity to the Foggy Bottom Metrorail Station.
- c. According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. The subject property supports the housing goals of the Comprehensive Plan and furthers the total urban living system of the District through its proximity to the Foggy Bottom Metrorail Station and its provision of multi-family residential units and on-site retail and service uses.
 - d. A basic philosophy of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. The location of the project in proximity to the Foggy Bottom Metrorail Station furthers this goal, as does the mixed-use nature of the development. The project also supports the District's goal of adequate parking through its provision of 146 parking spaces for 133 residential units, a ratio that exceeds the minimum requirement for parking in an SP-2 District, where only thirty-seven spaces would be required for 146 units. The parking is provided in a three-level, below-ground garage.
 - e. The Transportation Element of the Comprehensive Plan also states that reverse commute options that will provide District residents with access to the regional job market should be provided. The proximity of the subject property to I-66 and the Theodore Roosevelt Memorial Bridge, in addition to the Foggy Bottom Metrorail Station, will provide District residents with easy access to suburban job markets.
 - f. The Urban Design Element states that it is the District's goal to "promote the protection, enhancement and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient." As the project involves a use conversion of an existing hotel, the building will maintain its consistency with the surrounding area in terms of materials, height, scale, and massing. The project's

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massing and scale are already sensitive to the established patterns of development in the area.

- g. The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail Stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. The Site furthers this goal due to the subject site's proximity to the Foggy Bottom Metrorail Station.
- h. The Project fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 2, as follows:
- 1) The Ward 2 Economic Development Element seeks to enhance the image of the ward as a place to do business and to reside. The proposed development creates additional residential opportunities in the ward while increasing income and property tax revenues to the District.
 - 2) The Ward 2 Housing Element encourages the provision of new housing to meet the needs of present and future District residents at locations consistent with the District land-use policies and objectives. The proposed development furthers this goal through the development of high-quality housing in a mixed-use area that is in close proximity to Metrorail.
 - 3) The Ward 2 Housing Element further states that the District government shall improve neighborhood-level commercial services throughout the ward while protecting residential neighborhoods from disruptive uses. The proposed development creates both additional housing that will enhance the residential neighborhood and neighborhood-level retail and service uses that will support the residents.
 - 4) Ward 2 is located at the center of the District and at the focal point of the Metrorail system, bus lines, and the city's freeway and arterial street system. Although its location provides great benefits to the residents and employees of Ward 2, it also creates some adverse impacts on quality of life. Parking within the ward is identified as a major problem due to evening visitors, student parking, and the lack of parking provisions for many residential dwellings. This element of the Comprehensive Plan encourages strict adherence to the current parking requirements of the zoning regulations. The proposed development will include 146 parking spaces for 133 residential units, providing adequate parking for the residents of the apartment building.
 - 5) Primary objectives of the Ward 2 Residential Land Use Element include the conservation and enhancement of existing residential neighborhoods and the creation of new residential neighborhoods. Specifically, the Foggy Bottom and

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West End residential neighborhoods are to be maintained and enhanced. The project supports the Residential Land Use Element of the Comprehensive Plan by creating the opportunity for a new residential use that will significantly enhance the character of the neighborhood.

54. West and the Committee Against argued that the proposed elimination of the hotel is contrary to sections of the Ward 2 Plan Element that encourage "continued improvement of existing hotels." The opposition further argued that the PUD is not in a housing priority area and that the loss of hotel jobs is contrary to the economic goals of the Plan.
55. OP testified that the project would not be inconsistent with the Generalized Land Use Map or with Comprehensive Plan land use or housing objectives.
56. The Zoning Commission finds that focusing on the particular sections of the Ward 2 Element of the Plan concerning existing hotels, without reference to other parts of the Plan, does not yield a complete picture of the goals, objectives, and policies of the Plan. While the "continued improvement of existing hotels" is a Ward 2 Plan objective, the Land Use Element of the Plan stresses the promotion of housing. The District Elements of the Comprehensive Plan are set forth in Title 10 of the D.C. Municipal Regulations, and include General Provisions, city-wide elements related to Economic Development, Housing, Environmental Protection, Transportation, Public Facilities, Urban Design, Preservation and Historic Features, Downtown, Human Services, and Land Use, as well as eight ward plans.
57. The General Provisions Element of the Plan instructs how to interpret the District elements:
 - a. "The primary dynamic of the District elements of the Plan is the overlapping of its elements' goals. This overlapping is intentional." (§112.1)
 - b. "District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly." (§111.(a))
 - c. "The interpretation and implementation of any element should necessarily rely upon, and be respectful of, the objectives and policies of other elements." (§112.1(b))
 - d. "An element may be tempered, even defined, by one (1) or more of the other elements. This may occur within one (1) element and between elements. Since the Land Use element integrates the policies and objectives of all other District elements, it should be given greater weight than the other elements." (§112.1(c))

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- e. "The interpretation of the District elements of the Plan should also be guided by the major themes set forth in §101.1, which establish the overall priorities of the District elements of the Plan." (§112.2)
58. Accordingly, the Commission finds that the Plan must be read as a whole, and reliance on a narrow, isolated portion of the Plan to assess compliance is inconsistent with the above-cited provisions.
59. The Commission finds that the broader reading of the entire Comprehensive Plan, both city-wide and Ward 2 Element provisions, places the stronger emphasis on housing. The Housing Element is replete with references to the production of new housing. The Generalized Land Use Map of the Land Use Element designates the site in the mixed-use high-density residential and medium-density commercial category. While a broad range of uses could fit within that designation, including commercial, hotel, and residential, the Commission finds that the density categories (high residential vs. medium commercial) suggest a preference for residential and that changing the hotel to an apartment house would not be inconsistent with this land use designation.
60. The Commission further finds that the overall thrust of the hotel provisions of the Ward 2 Element is to locate hotels at appropriate locations, particularly citing locations near the new Convention Center north of Mount Vernon Square. While §1333.1(a)(1) speaks to encouraging continued improvement of existing hotels, the Commission finds that, considered in the overall context of the Plan, that section cannot be read to prevent the conversion of an existing hotel to another favored use, such as residential.
61. The Commission therefore finds that the proposed PUD modification is not inconsistent with the Comprehensive Plan.

Economic Benefits of the Modification

62. The Applicant submitted a written study performed by Basile Baumann Prost & Associates, Inc. ("BBP"). James Prost presented testimony at the hearing, and BBP submitted additional material as part of the Applicant's post-hearing submission (in total, the "economic analysis") concerning the fiscal and economic benefits that would accrue to the District of Columbia if the Application was approved. The economic analysis compared the economic and fiscal benefits that are derived from the existing hotel operation to those benefits that would result from an apartment house on the site.
63. The economic analysis determined that the existing hotel has 228 on-site jobs and 122 indirect jobs generated by the economic activity that occurs on-site, for a total of 350 jobs. The hotel's employment generates an aggregate annual payroll of more than \$10.8 million and the wages and salaries of employees generate \$5.3 million in consumer expenditures within the District. The economic analysis further determined that the existing hotel generates \$3.2 million annually in tax revenue.

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64. The economic analysis estimated that the renovation of the building necessary to convert it to an apartment house would create 56 direct on-site jobs and 52 indirect jobs and would generate approximately \$460,000 in tax revenue to the District.
65. The economic analysis further estimated that, once completed and fully occupied, the apartment house would create 41 direct on-site jobs and 412 indirect jobs as a result of expenditures by residents in the District, for a total of 453 jobs. The apartment house was estimated to generate \$4.1 million in annual tax revenue, including about half of that total in income taxes paid by residents.
66. On an ongoing basis, after the one-time benefits during the construction period, the economic analysis concluded that converting the hotel into an apartment house would yield a net increase of 103 jobs overall, with most of the new jobs created as a product of residents' expenditures within the District. There would be an estimated increase of \$26 million in consumer expenditures. Annual tax revenue to the District would increase by more than \$900,000.
67. The economic analysis concluded that the conversion of the hotel to an apartment house will meet District economic development and housing objectives, and that the conversion will contribute substantively to the tax revenues and the economy of the District.
68. The conclusions of the economic analysis were consistent with those of the Rivlin Report and other economic studies that taxpaying residential development is highly beneficial to the District and offers a way to increase the overall fiscal stability and tax base of the District.
69. West and the Committee Against argued that the economic analysis overstated the benefits that would result from the apartment house conversion by using unrealistic assumptions about where residents would spend money, what percentage of the residents would pay income taxes to the District, the percentage of future hotel guests who would choose to stay in other hotels in the District, and the ability of present hotel employees to find new jobs in the District. The opponents presented no substantive evidence or expert testimony to contradict the findings of the economic analysis.
70. The Zoning Commission finds that the economic and fiscal benefit to the District from the conversion of the hotel to quality residential use stems from a variety of factors: the significant capital investment and hence construction period benefits; the transfer of the on-site hotel demand, and hence economic impact, to other, better-located hotels in the District; and, primarily from the new permanent households on site, who will live, spend, work, and pay taxes to the District.
71. The Zoning Commission finds that residents who occupy high value units have significant positive economic and fiscal impacts for the city. These residents have high incomes that generate significant local income tax and their units generate high property

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- taxes. These residents make significant local purchases that generate local sales taxes and in turn create demand for retail and other service, and retail and service jobs. These expenditures and jobs in turn create economic spin-offs or multiplier impacts that create an entire cycle of economic benefits. These residents, at the same time, generate relatively minimal new service costs to the District in terms of such high cost public services as education and human services.
72. The Zoning Commission concurs in the importance of bringing new high-income households into the District to grow the District's tax base. This means increasing the income, spending, and wealth of the existing population and enlarging that population. The Commission finds that virtually all economic and development reports on the District note that upper income households with no children contribute significantly and positively to the District's overall economic health.
73. The Zoning Commission finds that the economic analysis was conducted in accordance with standard methodology based upon and accepted and used by the Federal and District governments. The Commission credits the results of the economic analysis and finds no alternative substantive information in the record. The Commission further finds that the results of the analysis are so strongly positive for the city that, even if some of the background assumptions for the economic analysis were changed and the results were further discounted, the fiscal and economic benefits for the city would still be better than what the current use provides.
74. With respect to the potential loss of the existing hotel jobs, the Zoning Commission finds that even if the Commission disapproves this Application, there is no guarantee that the existing hotel will remain in operation. The Commission further finds that the hotel has lost its competitive position in the hotel market to newer, better-located hotels.
75. The Zoning Commission finds that denial of the Application will not cause the hotel's position to improve and will not guarantee the retention of existing jobs.
76. The Commission finds that the hotel market in the District of Columbia is comparatively strong and that there is a substantial likelihood that the existing hotel demand will shift to other hotels nearby and elsewhere in the District of Columbia, causing those hotels to seek additional employees to service that demand.
77. The Commission finds that the total number of direct and indirect jobs, including jobs located in the District and/or jobs held by District residents, generated by the proposed apartment house use, will be more than the number generated by the hotel, even though the type and location of those jobs will be different.

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Ability of the Applicant to Carry-Out the Modification

78. The Committee Against argued that the Applicant was not registered to do business in the District of Columbia and that it was therefore unable to carry out the plan for which it sought approval. The Committee Against likewise argued that, because East had not approved the sale to Monument, the Applicant could not proceed with the development as proposed.
79. The Applicant responded that Monument did not have to be registered to do business in the District just to own real or personal property or to maintain bank accounts, that Monument intended to assign the contract to purchase the property to an affiliated LLC that would actually undertake the development, that such a procedure was typical of real estate development practices, and that the new entity would be registered in the District at such time that it undertakes any activities which would require it to be registered. Notwithstanding its legal position that Monument did not have to be registered in the District, as part of its post-hearing submission, the Applicant advised that Monument was registered with the District of Columbia and submitted a Certificate in Good Standing, dated March 30, 2004, for Monument from the Department of Consumer and Regulatory Affairs.
80. With respect to the ability to proceed if it does not own the below-grade space, the Applicant argued that it has the right under BRE's lease with East to use that space for an additional sixty-one years. The Applicant is prepared to go forward with the development if the space can only be leased for that period, believing that is economically feasible and prudent to do so. However, the vote of East on April 12, 2004, to agree to the sale and support the proposed modification, will allow the Applicant to conclude the purchase from East and eliminate any concern about the ability to go forward.
81. The Zoning Commission finds that the questions about the Applicant's ability to proceed with the project are outside the Commission's purview. Whether a corporation needs to be registered is not a land use matter. Other agencies of the District can determine whether registration is required and take action if a violation is found. In any event, this issue is moot because Monument appears to be in good standing in the District of Columbia.
82. With respect to the leased parking space, the Commission need not determine the rights and obligations under the lease between East and the Applicant. The Applicant has proffered that it will provide sufficient parking for the apartment building and such parking is a condition of approval of this Application. The Commission notes that East's agreement to sell the below-grade space to the Applicant appears to render this question moot in any event.

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Compliance with PUD and Zoning Standards

83. West and the Committee Against argued that the hotel was originally considered as an amenity for the PUD and that eliminating the hotel would undercut the basis for approval of the original PUD. The opponents further argued that the original PUD envisioned a complementary, integrated mix of uses and that removing the hotel from that mix would undermine the integrity of the whole project. The opponents further argued that the Applicant had not proven that keeping the hotel would constitute an economic hardship for its owners.
84. The Applicant observed that, at the time the PUD was approved, the portion of the Zoning Regulations covering PUDs were different from the current Regulations, which were adopted in 1995. The Regulations in 1962 did not contain a balancing test between the development incentives or the degree of flexibility requested by an applicant and the benefits or amenities offered as part of an application. The concept of amenities was not added to the Regulations until 1979 and the balancing of amenities and benefits was not added to the Regulations until 1995. Consequently, the Applicant argued that a hotel could not have been offered as an amenity to satisfy the Regulations in 1962, because amenities were not part of the Regulations. While the mixed-use character of the PUD was integral to its approval, the loss of the hotel use will not change the project's mixed-use character. Because of the continued office building, retail, restaurant, and health club uses, the proposed modification will not result in a project that is purely residential.
85. In its original statement, in its pre-hearing statement, in testimony at the hearing, and its in post-hearing submission, the Applicant further set forth its arguments in support of the proposed modification and demonstrated how the project met the requirements of the Regulations.
86. The Applicant noted that the project as first approved had a much larger residential component than resulted from the project as modified and built. Allowing an increase of 133 apartments would bring the total number of units closer to but still well below the originally contemplated number of residential units.
87. OP reported that the project met the standards of the Regulations except for roof structures and parking for the proposed restaurant and that the proposed modification was acceptable in those two areas as well.
88. The Zoning Commission finds that a hotel was an important component of the project as originally conceived. But the Commission also finds that allowing the hotel to be converted to apartments would strengthen the residential component of the mix of uses. The Commission finds that PUDs are not static. They are dynamic elements, the composition of which is often adjusted to reflect changes in markets, economics, and project and community needs. In the Foggy Bottom community, with the decrease in the number of permanent apartment units and the increase in the number of hotel rooms at

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other locations, the Commission finds that adjusting the mix to increase the number of apartments is an appropriate action in the current climate. The Regulations allow for modification of a PUD precisely because of the need for flexibility. The subject PUD has been modified previously in response to changed conditions.

89. The Zoning Commission finds that the hotel was not an amenity to the overall project, as amenities are now defined and considered in Chapter 24 of the Zoning Regulations. While the hotel may have been discussed in marketing and newspaper accounts as an amenity, that term was not incorporated into the Regulations until much later. Moreover, under current Zoning Regulations, the Watergate Hotel would have required special exception approval, whereas the proposed apartment house use can be commenced as a matter of right. It is counterintuitive to suggest that the preservation of a use that now requires a special except should be favored over the establishment of a use that is permitted by right.
90. The Zoning Commission further finds that the Applicant is not required to prove that keeping the hotel would cause a hardship. This application is not for a variance and the Applicant is not required to establish a practical difficulty or hardship. The Applicant is seeking a modification to an approved planned unit development. Chapter 24 requires that such modifications "meet the requirements for and be processed as a second stage application." 11 DCMR § 2409.9. Nowhere does Chapter 24 mandate an inquiry into an applicant's motivation for undertaking a particular development. Here, the Applicant has proposed an appropriate alternative use that is a "high quality development[] that provide[s] public benefits", 11 DCMR 4200.1. The Applicant has to meet its burden of complying with the standards of Chapter 24, and the Commission finds that the Applicant has met that burden.
91. The Zoning Commission further finds that this Applicant is not required to secure the consent of all property owners for modification of the PUD. The Zoning Regulations do not require the consent of owners and, in practice, the Commission has not required unanimous consent of the owners of property within a PUD before approving a modification. In fact, the Zoning Commission may rezone property over the objection of a property owner, so long as the owner is given an opportunity to be heard. Nothing in this order will result in a zoning change affecting the other owners' properties². Nevertheless, the other owners have been afforded a full opportunity to make their views known, all of which have been discussed at length in this Order. Nothing more is required.

¹ Approval of the original PUD did not require a covenant binding all owners and successors-in-interest to the conditions of approval. Thus, the project owners never recorded such a covenant in the land records. The Commission does not decide here whether it would require the consent of all co-owners if such a covenant were in place. However, the covenant that will be required as a condition of this Order will only required the signature of the owners of the site.

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92. The Commission finds that the Applicant met its burden of proof under the current regulations. The relief that the Applicant seeks relative to the underlying SP-2 District is minor. The proposed apartment house use is normally permitted as a matter-of-right and therefore is a favored use. The existing hotel use is now normally a special exception, and therefore is less favored. The deviations requested by the Applicant are minor, related to the number and height of roof structures. The benefits and amenities proposed by the Applicant, as set forth in Finding No. 37, above, are more than adequate to balance the approval requested.

Traffic Impact

93. Through the report and testimony of its expert traffic consultant, Wells & Associates, the Applicant demonstrated that the proposed change in use would not have an adverse effect on traffic. The Applicant's traffic consultant concluded that the proposed apartment house would generate fewer vehicle trips during the morning and evening peak hours than the existing hotel. The proposed residential use would be served by the same access and circulation systems as the existing hotel. The proposed apartment building would have more than one parking space for each apartment unit, which exceeds the requirements of the Zoning Regulations of one space for every four units. The Applicant's traffic consultant concluded that the public street network will adequately accommodate the proposed residential use and that the trips generated by the proposed use would have an insignificant effect on the traffic volume already present on Virginia Avenue.
94. West and the Committee Against presented their own traffic expert, Joe Mehra. Mr. Mehra argued that the Applicant's traffic analysis was flawed, because it relied on projections of traffic for the Hotel and did not count the actual number of trips at the Hotel driveways. Mr. Mehra's observations of traffic indicated that the hotel actually generated less traffic than was estimated and that the proposed use would therefore generate relatively more traffic than the existing use.
95. DDOT concluded that the proposed conversion of the hotel to apartments will generate fewer automobile trips and will have a positive impact in terms of capacity and level of service in the area road network. DDOT also concluded that the proposed level of parking supply will be adequate to meet the parking demand of this project with little or no spillover into surrounding areas.
96. The Zoning Commission finds that the analysis performed by the Applicant's traffic expert, the conclusions of whom were confirmed by DDOT, is a credible and internally consistent analysis. The Commission is not persuaded by the testimony of the opponents' expert, who counted trip volumes at the existing hotel driveways. In so doing, Mr. Mehra did not count all of the trips that are generated by the existing hotel, excluding trips that end in parking garages, on street, or other than in the driveway areas. Further, Mr. Mehra used estimated values for the proposed apartment house and did not use actual numbers for the existing apartment buildings. The Commission further finds that Wells &

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Associates' conclusion that the 133 proposed apartment units would generate fewer trips than the existing hotel is consistent with the building population of both uses. In total, the existing hotel is occupied by 377 guests and staff on an average day and the proposed apartments would be occupied by only 170 residents and staff on an average day.

97. Accordingly, the Commission finds that the impact on traffic would be lower with the proposed use than with the existing use. The Commission further finds that the number of trips generated would have no significant effect on traffic, given the existing traffic volumes present on Virginia Avenue.

The Health Club and the Restaurant

98. West, the Committee Against and other opponents argued that the conversion of the hotel would result in the loss or diminution of valuable community resources: the hotel itself, the restaurant, and the health club. Much of the opposition concern revolved around the Applicant's perceived failure to guarantee the future operation of the health club.
99. The Applicant's proposal identifies space on the B-1 level for a restaurant and on the B-3 level for the health club. The Applicant will construct the space for the restaurant, and in the case of the health club, will renovate, improve, and fit out the existing space. The future operation of those spaces will not be in the hands of the Applicant. The management, levels of service, and operation of those uses will be determined by the future owners of the new apartment house. The Applicant has provided a mechanism to include the residents of the current apartment houses in making the decisions about the future of those facilities, should the existing cooperatives want to be involved in those decisions.
100. The Zoning Commission finds that the Applicant has made appropriate arrangements to continue the two components of the existing hotel deemed most critical by most of those who testified, namely, the health club and the restaurant. The Commission will require by condition made a part of this Order that the Applicant provide the spaces for the two uses. Future control of the operation of the restaurant will be vested in the Watergate Council, which is comprised of the ownership interests of the apartment and office buildings. Future control of the operation of the health club will be vested in the membership of the club, which includes each of the cooperative share owners of the proposed apartment building and any other share owners of the three existing cooperatives who chose to join the club. As to the hotel, as set forth in Finding No. 87, changing the hotel to an apartment house is an appropriate reinforcement of the residential component of the Watergate complex. There are other existing hotels nearby in the Foggy Bottom/West End area that can accommodate demand for hotel rooms from Watergate residents.

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Response to Issues and Concerns of ANC 2A

101. In its report, ANC 2A supported the Application based on the issues and concerns set forth in Finding No. 41. The Commission concurs with the findings and recommendations of the ANC. In particular, the Zoning Commission gives great credence to the ANC's desire to obtain more permanent residents. Replacing 250 transient hotel units with 133 apartment units will be another step to counter the loss of dwelling units, which has been an issue for the Foggy Bottom neighborhood for some time.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this Application as a modification to the approved 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, density, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. The Zoning Regulations do not require the consent of all owners within an approved PUD in order to modify that PUD.
3. The modification of this PUD project continues to carry 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.
4. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the change in use within the existing building will not cause any adverse effect on any nearby properties. Apartment use for this building is appropriate on this Site, which is located in a zone that otherwise permits multiple dwellings as a matter-of-right. Allowing the hotel to be converted to an apartment house will not upset the mix of uses in the overall PUD. The impact of the project on the surrounding area is not unacceptable. Accordingly, the Application should be approved.
5. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.

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6. The Application does not seek significant development incentives or flexibility beyond what the Zoning Regulations ordinarily require. The amenities and benefits provided are a reasonable trade-off for the change in use, particularly given that the proposed development requests no development incentives from the existing underlying matter-of-right zoning other than minor zoning relief relating to the roof enclosures. The use, height, bulk, and design of the proposed development are appropriate for all sides and all contexts of the building.
7. Approval of the Application is appropriate, because the proposed development is consistent with the present character of the area.
8. Approval of this modification to the approved PUD is not inconsistent with the Comprehensive Plan, including the designation of the Site as mixed-use high-density residential and medium-density commercial.
9. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission has done so and concurs with the ANC's position that the Application should be approved.
10. The approval of the Application will promote the orderly use and development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
12. Ordinarily a covenant is not required as a condition to a PUD modification order. This is because a covenant usually has been recorded pursuant to the original PUD, which subjects the owners, or their successors, to abide by the conditions of all future amendments. However, no such covenant was required or recorded at the time of the original approval of this PUD. Chapter 24 mandates that all non-minor PUD modifications meet the requirements for and be processed as a second stage application, 11 DCMR § 2409.9. Subsection 2409.3 precludes the Zoning Administrator from approving a building permit authorized by a second stage order until a covenant is recorded in accordance with that subsection. Therefore, the Commission must require that such a covenant be recorded with respect to this modification. For the purposes of satisfying § 2409.3's requirements that the "owner or owners" sign the covenant, the Commission concludes that only the owner or owners of the site to which the modification applies must execute the instrument, since they are the only persons who will be bound by the covenant's declarations.

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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 modification to an approved Planned Unit Development for property located at 2650 Virginia Avenue, N.W., in Square 8, Lot 807. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant may convert the existing building to an apartment house to be owned and operated as a cooperative.
2. The conversion shall be accomplished substantially in accordance with the plans and computations dated February 17, 2004, marked as Exhibit No. 55 in the record, as modified by the guidelines, conditions, and standards herein.
3. The apartment house shall contain a maximum of 133 units. The exterior and interior modifications to the existing building shall be those shown on the approved plans.
4. The Applicant shall designate approximately 3,000 square feet of space on the B-1 level for a restaurant, as shown on the plans. The nature of the operation of a restaurant in that space, including hours of operation, shall be determined by the cooperative association to be formed.
5. The Applicant shall include a health club on the B-3 level, as shown on the plans. The health club shall be outfitted initially with the equipment and in the manner shown in the Applicant's Post-hearing submission, marked as Exhibit No. 152 in the record. The operation of the health club in that space, including the hours of operation and the level of services offered, shall be determined by the cooperative association to be formed.
6. The apartment building shall contain at least 146 parking spaces, located as shown on the plans marked as Exhibit No. 55 in the record.
7. Prior to the issuance of a certificate of occupancy for the apartment building, the Applicant shall contribute \$250,000 to Jubilee Housing to assist in providing 3,000 square feet of affordable housing at 1631 Euclid Street, N.W. In the event that Jubilee determines not to proceed with the renovation of that building, the Applicant may contribute the funds to Jubilee for another project or to another non-profit housing provider for the renovation of at least 3,000 square feet of affordable housing in the District of Columbia. If an alternate project receives the funds, the Applicant shall submit a written certification, including plans, to the Zoning Administrator, with a copy to the Zoning Commission, showing the area to be renovated and obligating the housing developer to reserve the units for affordable housing.
8. The Applicant shall have flexibility with the design of the PUD in the following areas:

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- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To combine units to reduce the total number of units but make larger units as a result;
 - c. To vary the number and location of underground parking spaces, not to decrease below a minimum of one parking space for each dwelling unit;
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - e. To make minor modifications to the exterior in response to the final review by the Commission of Fine Arts and review by the Historic Preservation Review Board, if the building is designated a historic landmark; and
 - f. To make minor refinements to exterior details and dimensions, including cornices, railings, and trim, or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.
9. The modification to the PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
 10. No building permit shall be issued for this Planned Unit Development until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners of the modification site and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owners or owners and all successors in title to construct on and use the property that is the subject of this modification, in accordance with this Order or amendment thereof by the Zoning Commission.
 11. 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

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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.

Vote of the Zoning Commission taken at its public meeting on May 10, 2004: 3-1-1 (Carol J. Mitten, John G. Parsons, and Kevin Hildebrand in favor; Anthony J. Hood opposed; Gregory Jeffries not voting, not having heard the case).

The Order was adopted by the Zoning Commission at its public meeting on June 14, 2004, by a vote of 3-1-1 (John G. Parsons, Carol J. Mitten, and Kevin Hildebrand in favor; Anthony J. Hood opposed; Gregory Jeffries not present, not voting).

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-26
Z.C. Case No. 03-26
Consolidated Planned Unit Development for
the Property Located at 14th & V Streets, N.W.
March 11, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 15, 2004, to consider an application from P.N. Hoffman, Inc. (the "Applicant") for consolidated review and approval of a planned unit development ("PUD"). The application was filed on behalf of and with the consent of the Washington Metropolitan Area Transit Authority ("WMATA"), Square 235 LP, George Galich, Helen Galich Marx, and Kathryn Galich Rozansky, the contract sellers of the PUD site. The Commission considered the application pursuant to Chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On July 21, 2003, the Applicant filed an application with the Zoning Commission for consolidated review and approval of a PUD for the property consisting of Lots 59, 60, 178, 203, 801, 815, 816, 817, 818, and 820 in Square 235, located at 14th and V Streets, N.W., Washington, D.C. (the "PUD Site"). The PUD Site contains approximately 78,198 square feet of land area. The PUD Site is "split-zoned": Lots 203, 801, 817, 178, and 820 fronting on 14th Street, N.W. and Lots 59 and 60 fronting on W Street, N.W., are located in the Arts/C-3-A District; the portion of the site situated in the interior of the square, Lots 815, 816, and 818, is located in the R-5-B District. Approximately 2,107 square feet of the PUD Site are located in a portion of the north-south alley to be closed. The western half of the alley that will revert to the PUD Site consists of 1,294 square feet and is in the Arts/C-3-A District. The remaining portion of the alley to be closed is in the R-5-B District, of which 813 square feet will revert to the project.

2. At its public meeting held September 8, 2003, the Zoning Commission voted to schedule a public hearing on the application.
3. After proper notice, the Zoning Commission held a hearing on the application on January 15, 2004. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the property is located.
4. The record contains numerous letters and testimony in support of the project, including ANC 1B, Jim Graham, Councilmember for Ward One, and the Cardozo-Shaw Neighborhood Association ("CSNA").
5. There were no parties or persons in opposition to the project.
6. At its duly noticed meeting held April 3, 2003, ANC 1B voted to support the PUD. ANC 1B found that the project "further[s] the goals and objectives of the city, our neighborhood, and the best interests of historic preservation."
7. At its meeting held on April 10, 2003, the CSNA voted unanimously to formally support the project. CSNA based its support primarily on the numerous meetings between the Applicant and CSNA to discuss many aspects of the project, and the project's community benefits and amenities package.
8. By letters dated April 15 and June 26, 2003, Jim Graham, Councilmember for Ward One, expressed his strong support for the project, noting that: 1) the project would bring renewed vitality to a site currently comprised of vacant lots and abandoned warehouses; 2) utilizing the existing warehouses and creating a pedestrian gallery will add to the livelihood of the neighborhood; and 3) the project supports the goals of transit-oriented development. He further stated that the project "benefits the city and the immediate neighborhood where it is located, along with supporting the goals of transit-oriented development and historic preservation."
9. ANC 1B submitted a report and testified as a party in support of the application at the hearing, and specifically pointed out that the Applicant met with the ANC and single member district commissioners a number of times, and that the CSNA and the 14th and U Main Streets Initiative both support the project as well.
10. Ms. Jill Chodorov, a property owner residing at 1329 V Street, N.W., and Mr. Gray Gardner, a property owner residing at 1343 V Street, N.W., both testified at the hearing as persons in support of the application, but requested additional information and clarification of the PUD project.
11. At the hearing, Ms. Chodorov submitted a letter dated January 2, 2004, on behalf of herself and four other residents of the 1300 block of V Street, N.W., which raised questions primarily regarding the effect of construction-related activities.

12. At the close of the hearing, the Commission held the record open to receive three (3) additional items from the Applicant: 1) an architectural drawing depicting the rear elevation of the 14th Street portion of the proposed building; 2) a letter in response to the issues raised by Ms. Chodorov; and 3) proposed conditions for approval of the PUD. The Applicant submitted these requested materials on January 22, 2004.
13. At its meeting held January 29, 2004, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the application and plans that were submitted to the record and presented at the January 15, 2004, hearing.
14. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated February 26, 2004, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
15. The Zoning Commission took final action to approve the modified application on March 11, 2004.

The PUD Project

Overview

16. The proposed PUD is a mixed-use development of residential, retail, and commercial uses composed of approximately 314,968 square feet of gross floor area. A new nine-story residential building consisting of three (3) sections will be constructed along 14th Street to a height of approximately ninety (90) feet. The two-story warehouse buildings located on the interior alley lots will be retained and renovated for residential use, with two (2) floors added above. The project will include approximately 240 to 300 residential units, a portion of which will be devoted to affordable housing. A landscaped promenade will run between the two (2) warehouse buildings, and a pedestrian bridge will connect the warehouse structures with the new building on 14th Street. The PUD will include a minimum of 234 parking spaces, with a minimum of fifty (50) spaces devoted to serve the retail uses. Any parking spaces provided in excess of the minimum amount will be allocated to residential or retail uses according to need. The proposed development will have an aggregate density of approximately 4.04 floor area ratio ("FAR"). The Applicant requested Commission approval pursuant to § 2405.3 to achieve the 314,968 square feet of density.

Site Description

17. The PUD Site is located in the northwest quadrant of the city. The site contains approximately 78,198 square feet of land area in Square 235, including a portion of a public alley to be closed. The site is "split-zoned," with the portion fronting on 14th

Street located in the Arts/C-3-A District and the remainder of the site located in the R-5-B District.

18. The site is located within the Greater U Street Historic District, an area recognized for its late nineteenth and early twentieth century residential and commercial buildings, and as the center of the African-American community between 1900 and 1950. The existing buildings located on the 14th Street frontage have been deemed non-contributing to the Historic District. The two-story warehouses at the interior of the square, however, contribute to the significance of the Historic District and, thus, are being adaptively reused and incorporated into the design of the new development.
19. The surrounding area is characterized by a mixture of low- and high-rise buildings, both modern and historic, devoted to commercial and residential uses. Within Square 235, to the east of the warehouse buildings and separated by an alley, is the former Harrison Public School, which remains in educational use by the Children's Studio School of the Arts & Humanities, a public charter school, and rises to a height of approximately sixty-five (65) feet along 13th Street. Two (2) alleys abut the warehouses on the north and south, which separate these structures from the rear yards of the neighboring rowhouses. Two-story rowhouses are located on V Street to the south, and three-story rowhouses with English basements line W Street to the north.
20. Diagonally across 14th Street to the southwest is the Reeves Center, a District of Columbia municipal office building. The 110-foot building is the largest in the area. To the south across V Street is the site of the proposed Langston Hughes Condominiums, a mixed-use building permitted to a height of ninety (90) feet but being constructed to a height of seventy-two (72) feet due to project constraints. It consists of eighty (80) residential units and 7,500 square feet of retail space. There are numerous recreational facilities in the area, such as the Harrison Recreation Center, which is located on the south side of V Street, between 13th and 14th Streets, and the Anthony Bowen YMCA building on the north side of W Street between 13th and 14th Streets. One block to the south on U Street, between 13th and 14th Streets, is the Ellington Plaza Apartments, presently under construction. This residential building will be constructed to a height slightly in excess of eighty (80) feet and contain 207 rental units. Existing smaller scale buildings line 14th and U Streets. Retail shops, business services, restaurants, and arts and entertainment related uses can be found along these two corridors.

Project Design and Components

21. The proposed PUD will serve as a prominent new focal point along the 14th Street commercial corridor and transform the interior of the square into an innovative urban residential enclave that incorporates the existing industrial warehouses into a new modern design. The height, massing, and scale of the PUD project have been carefully broken down into four (4) distinct parts to complement the character of the surrounding neighborhood.

22. The project received the unanimous support of the D.C. Historic Preservation Review Board ("HPRB") at its June 26, 2003, meeting with respect to height, massing, and scale.
23. Along 14th Street, the building has been separated into three (3) building masses. The south "building" has been articulated in a modernistic mode that emphasizes transparency and glass. The massing departs from a rectangular form and curves inward at the southern end to accommodate the Metrorail tunnel that traverses the site underground. The north building section is more traditional in its design approach and incorporates more masonry into its façade. The central mass connects the north and south masses in an H-shaped form and is articulated in glass and light-colored masonry. Its distinguishing element is a two-story central gallery to the interior of the site. Entrances to the residential portions of the north and south wings, which will contain approximately 217 units, are located to either side of this gallery. The height of the central wing is articulated to mirror the gallery opening at the street level.
24. Organized in a tripartite composition, the base of the building is unified by large commercial storefront windows, reflecting the retail use at the ground level. The elevations of the upper floors reflect the residential character of the building, and the top two (2) floors are set back to reduce the apparent height of the building. A portion of the central wing is capped with a modernistic arched roof. The south arm's façade is gently curved to echo the curve of the southern end of the building.
25. The gallery at the ground level acts as a dramatic entrance to the interior component of the project. Inspired by historic arcades and the intimate spaces of London mews, the design of the renovated warehouse space will create a distinctive urban area for the neighborhood. The exterior walls of the two-story warehouses will be retained and enhanced, with two (2) floors added to the top. The industrial character of these structures will be incorporated into the new design through the use of materials, forms, and other design elements, such as glass block, overhead hoists, and industrial-type lights and other fixtures. In contrast, the area between the two (2) warehouses will be treated with landscape features to soften the hard edges of the industrial theme and create a more residential setting for the building's occupants. Special paving and tree boxes will further delineate this open arcade area. Pedestrian bridges will span the two (2) buildings at intervals on the second floor level to physically and visually connect and define this space. A prominent stair tower at the end of the mews, which includes a water feature, adds further visual interest to mark this space. The roofs of the two-story additions have been carefully articulated as barrel vaults to minimize the apparent height and eliminate their visibility from V and W Streets.
26. Upon completion, the PUD will revitalize and enhance an important segment of the 14th Street corridor with an architecturally appropriate design that complements the historic district and provides a visual context for the Reeves Center across the street. The provision of neighborhood retail services at street level and a pedestrian promenade to the interior of the square will further enliven the streetscape and significantly contribute to the rebirth of this area.

Matter of Right Development Under Existing Zoning

27. The central portion of the PUD Site is located in the R-5-B District; the portion of the site fronting on 14th Street is located in the Arts/C-3-A District. The R-5-B District is a moderate height and density area that permits all types of urban residential development, including single-family dwellings, semi-detached houses, row dwellings, and apartments. The maximum height permitted in the R-5-B District is fifty (50) feet with no limitation on the number of stories.
28. Residential development may achieve a maximum density of 1.8 FAR.
29. The C-3-A District is a medium-density commercial area designed for office, retail, housing, and mixed-use developments. Buildings may be constructed to a height of sixty-five (65) feet and achieve a density of 4.0 FAR for residential uses and 2.5 FAR for non-residential uses, with a total maximum density of 4.0 FAR for any development.
30. The Arts Overlay allows buildings in an underlying C-3-A District to be developed to a height of seventy-five (75) feet if certain criteria are met. The Overlay also permits preferred uses, including market and below-market housing and a variety of retail and service uses, to be developed to achieve bonus density. A building that includes 3.0 or more FAR devoted to residential use is entitled to a bonus of 0.5 FAR.

Development Incentives and Flexibility

31. The Applicant requested the following areas of flexibility from the Zoning Regulations:
 - a. Loading Berth Requirement. The Applicant proposes to provide two (2) 30-foot loading berths and two (2) 100-square-foot platforms in lieu of the one (1) 55-foot loading berth required under the regulations.
 - b. Retail Parking. The Applicant proposes to provide fifty (50) parking spaces for the retail component of the project in lieu of the seventy (70) parking spaces otherwise required under the regulations.
 - c. Roof Structure Requirements. Section 411.3 of the Zoning Regulations requires all penthouses and mechanical equipment to be placed in one enclosure. Additionally, § 411.5 provides that enclosure walls must be of equal height. Finally, the area of a penthouse may not exceed 0.37 FAR. The Applicant seeks to deviate from these requirements by providing roof structures of unequal height and three (3) separate penthouses for the 14th Street portion of the building and the two (2) renovated warehouses at the interior of the lot. The penthouses on the warehouse portion of the project will also exceed the maximum permitted gross floor area by approximately 2,384 square feet.

- d. Residential Recreation Space. Pursuant to § 773.2 of the Zoning Regulations, residential recreation space must be provided for residential buildings located in commercial districts. The C-3-A District has a requirement that the equivalent of fifteen percent (15%) of the gross floor area devoted to residential use be provided as residential recreation space. The Applicant is providing approximately 21,032 square feet of residential recreation space, or twelve percent (12%) of the gross floor area devoted to residential use.
- e. Street Frontage Requirements. Section 1903.3 of the Uptown Arts Overlay District requires that each new building that fronts on a pedestrian street shall be designed and built so that not less than seventy-five percent (75%) of the streetwall, to a height of not less than fifteen (15) feet, shall be constructed to the property line. The PUD project will be built so that only approximately sixty-six percent (66%) of the streetwall is constructed to the property line due to limitations of the property.
- f. FAR Calculations for Parking Areas. The Applicant initially requested relief from the requirement that first floor areas used for parking spaces are calculated in floor area ratio calculations if more than fifty percent (50%) of the area is enclosed. This request was withdrawn, however, since the HPRB approved the Applicant's request to alter the street level façades of the warehouse buildings so that at least fifty percent (50%) of the perimeter wall is open.
- g. Construction Phasing. The Applicant requests flexibility to construct the PUD project in two (2) phases due to the unusual shape of the site, the care required in protecting the historic warehouse structures, and to provide the least amount of disruption to nearby property owners.
- h. Design. Exterior designs as may be modified by final HPRB approvals, subject to no additional areas of zoning relief being necessary.

Public Benefits and Amenities

32. The following benefits and amenities will be created as a result of the PUD project:

- a. Housing and Affordable Housing. The single greatest benefit to the area, and the city as a whole, is the creation of new housing and home ownership opportunities consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The project will provide a minimum of 240 and a maximum of 300 residential units. Ten (10) of those units, consisting of 8,438 square feet of gross floor area including a core factor (approximately 7,500 net square feet), shall be reserved for sale as affordable housing to residents with an annual income of \$50,000.

- b. Urban Design, Architecture, Landscaping, and Open Space. The high quality of design in the development of the architecture for the project exceeds that of most matter-of-right projects. The innovative conversion of industrial space to residential use, the use of a pedestrian arcade, and landscaping to draw life into the interior of the square, the application of the 14th Street corridor streetscape design guidelines, and the establishment of neighborhood-oriented service retail uses are significant contributions to the urban landscape and complement the character of the 14th and U Streets corridor.
- c. Historic Preservation. The design of the PUD project provides for the adaptive reuse of the historic warehouses at the interior of the square and creates a design that is compatible with and complements the surrounding Greater U Street Historic District. The exceptional quality has been assured through the design review process of the HPRB, which recommended approval of the height and massing of the project in concept at its June 26, 2003, meeting.
- d. Transportation Features. The off-street parking provided exceeds the requirements of the Zoning Regulations. The project proposes approximately 280 dwelling units on the split-zoned site, for which only 140 parking spaces are required. The PUD will, however, provide 184 residential parking spaces. Another fifty (50) spaces will be located at the ground level of the renovated warehouse buildings. Additionally, two (2) to four (4) of the residential parking spaces shall be reserved for a "ZipCar" or "FlexCar" car-sharing programs for residents.
- e. Uses of Special Value to the Neighborhood. The Applicant shall contribute \$50,000, in five (5) \$10,000 increments, to the 14th and U Streets Main Street Initiative for the implementation of the "Green Team," a homeless employment program. An initial \$10,000 payment was made prior to approval of the PUD. Additionally, The Applicant will pay the fee for a one-year membership in the CSNA for each household unit initially purchased, further strengthening the ties of this development with the community.
- f. Environmental Benefits. The Applicant shall design and construct the PUD utilizing the criteria of the LEED (Leadership in Energy and Environmental Design) Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.

Compliance With the Comprehensive Plan

33. The project is not inconsistent with the Comprehensive Plan as follows:
 - a. The Generalized Land Use Map. The proposed development is consistent with the Generalized Land Use Map, which designates the PUD site as mixed-use medium-density commercial and medium-density residential for the 14th Street

frontage. The surrounding areas are also largely designated medium-density residential and moderate-density commercial. The subject site is also located within the U Street Development Opportunity Area. The PUD project is consistent with these land use categories, through its provision of medium-density residential uses and retail development.

- b. The project meets the policy objectives of the Economic Development Element by improving the vacant parcels along 14th Street, a major north-south corridor, and the outmoded and dilapidated warehouses at the interior of the site, creating attractive and functional housing in its place. Also, this project provides residential and retail development outside of the Central Employment Area that will provide both housing and jobs, and will foster economic growth in these corridors consistent with the policies and objectives of the Comprehensive Plan. Moreover, the proposed PUD is in close proximity to the U Street/Cardozo Metrorail Station and provides neighborhood retail that will promote economic development in this community.
- c. The proposed PUD promotes the Housing Element set forth in the Comprehensive Plan. The property is located in close proximity to the U Street/Cardozo Metrorail Station and will further the total urban living system through its access to transportation and shopping. The PUD is also consistent with the District's goal of stimulating a wider range of housing choices and strategies through the production of new units for a variety of household types. A priority under the District's Housing Element of the Comprehensive Plan is to maintain and upgrade the District's affordable rental stock, a goal that is supported by the proposed PUD.
- d. The proposed PUD meets the Urban Design Element goals to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that complements the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development. The massing will, in fact, be a distinctive feature of the development's design. The multi-family residential will create a strong street edge, and a varied roof line will be achieved through set back stories and projecting bays. Along V and W Streets, the buildings' top stories will be set back significantly in order to create a scale more consistent with the adjacent existing rowhouses. Further, the proposed development incorporates a 26-foot-wide space between the two (2) existing warehouse buildings that will be landscaped and extended to the commercial edge of 14th Street. This space will serve as a pedestrian gallery for the renovated warehouses and the new retail on the western portion of the site. Landscaped promenades with bridge connections at the third story will also be provided on the western portion of the site.

- e. The PUD fosters the policies of the Preservation and Historic Features Element. Specifically, the Comprehensive Plan stipulates that appropriate adaptive uses consistent with applicable land use regulations should be encouraged. The proposed PUD also exemplifies the District's preservation goals, in that the structural frames of the existing historic warehouses will be preserved to serve as a reminder of the property's original use. The remainder of the abandoned warehouses will be replaced with viable residential development that will maximize the use of the property while significantly enhancing the surrounding neighborhood.
- f. The proposed PUD meets the goals of the Land Use Element by developing high-quality housing in close proximity to the U Street/Cardozo Metrorail Station. The proposed PUD responds to the goal of promoting the enhancement and revitalization of District neighborhoods for housing and related uses by replacing two (2) older, abandoned warehouses with high quality residential units. The superior design of the proposed development will enhance and revitalize this residential segment of Ward 1, thereby stimulating new development and job opportunities. The proposed PUD also includes appropriate commercial development by including approximately 24,000 square feet of retail space that will serve both the residents of the buildings and the surrounding neighborhood.
- g. The proposed PUD meets the goals of the Environmental Protection Element by being designed and constructed in accordance with the criteria of the LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. Moreover, the project's close proximity to the U Street/Cardozo Metrorail Station will assist in the District's goal of decreasing reliance on automobiles for commuting and other routine trips.
- h. The project is consistent with the Ward 1 Element in the following ways:
 - (i) The proposed PUD furthers the Ward 1 Economic Development Element by bringing people to an area of vacant lots and abandoned warehouses, thus creating a safer environment. The project's close proximity to the U Street/Cardozo Metrorail Station will also help facilitate the Ward's goal of increasing commercial activity near metrorail stations. The retail component of the proposed development will create both jobs and services needed by neighborhood residents and will attract businesses that are compatible with the residential use.
 - (ii) The proposed PUD substantially furthers the goals of the Ward 1 Housing Element through the provision of both market rate and affordable housing units that will be developed above retail services necessary and helpful to urban living. The project will also promote the retention of housing in former industrial areas in Ward 1 by providing for the development of new

housing. Finally, the proposed project meets the Ward's goal of targeting market-rate residential development in the 14th and U Streets corridor.

- (iii) The PUD project directly supports and achieves the objectives of the Ward 1 Environmental Element by promoting land use patterns and transportation services that decrease reliance on automobiles for commuting and routine trips to reduce air pollution. The location of the proposed development in close proximity to the U Street/Cardozo Metrorail Station significantly furthers this objective, as does the inclusion of retail uses that will be utilized by residents of the buildings. The Environmental Element also encourages the elimination of unoccupied and boarded up buildings in Ward 1 in order to address code violations, rodent infestation, and sanitation issues. The proposed PUD supports this policy by replacing two (2) abandoned warehouses. Finally, the proposed building will be designed and constructed in accordance with the criteria of the LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.
- (iv) The proposed PUD meets the objectives of the Ward 1 Transportation Element by supporting land use arrangements that simplify and economize transportation services in Ward 1, including mixed-use zones that permit the co-development of residential and non-residential uses. Such mix of uses is specifically encouraged in the area of the U Street/Cardozo Metrorail Station. The Transportation Element recognizes that parking spaces are inadequate in commercial and residential areas and encourages the development of parking facilities that will not adversely impact residential communities or parkland. The proposed PUD includes an underground parking garage and enclosed parking at grade level, which will provide adequate parking in an unobtrusive manner.

Office of Planning Report

- 34. By report dated January 7, 2004, the Office of Planning ("OP") withheld recommending approval of the PUD application due to concerns about the adequacy of the amenity package. However, after meeting with the Applicant, by supplemental report dated January 8, 2004, and through testimony presented at the public hearing, OP concluded that the benefits and amenities are commensurate with the relief requested and the requirements of the Zoning Commission, and hence recommended approval of the consolidated PUD application. The Commission concurs with this recommendation.
- 35. OP conditioned its approval on the following four (4) items:
 - a. That the floor area totals be resolved by the D.C. Office of the Surveyor on land survey data for individual lots that compose the development site prior to the issuance of the final order;

- b. That a copy of the draft streetscape design guidelines developed for the U Street Initiative be filed into the public record;
 - c. That more specific information about the "Green Team" employment training program and how the LEED criteria will be implemented in the new construction, shall be placed into the public record; and
 - d. That the Applicant submit an executed agreement to participate in the Department of Employment Services' First Source Employment Program and indicate how it plans to utilize local, small, and disadvantaged businesses.
36. In response to OP's recommendations, the Commission finds as follows:
- a. The project shall be a residential and retail development constructed to a maximum height of ninety (90) feet and a density of 4.73 FAR in the Arts/C-3-A District and 3.15 FAR in the R-5-B District, for an aggregate density of 4.04 FAR. The PUD shall consist of approximately 314,968 square feet of gross floor area, of which a minimum of 22,000 square feet and a maximum of 26,000 square feet of floor area shall be devoted to neighborhood-serving retail uses. The final residential gross floor area shall be calculated based on the measured versus record land area computations for the PUD Site as accepted by the Department of Consumer and Regulatory Affairs during review and approval of the building permit.
 - b. The Applicant shall improve the public space surrounding the project with a minimum of granite curbs, tree grates, waste receptacles, and light poles that are approved by the District Department of Transportation ("DDOT") or will meet the streetscape standards of the 14th and U Streets Main Street Initiative, whichever are superior. The Applicant shall work with DDOT and the Initiative to make this streetscape the prototype for the area;
 - c. The Applicant shall contribute \$50,000, in five (5) \$10,000 increments, to the 14th and U Streets Main Street Initiative for the implementation of the "Green Team," a homeless employment program. Further, the Applicant will design and construct the PUD utilizing the criteria of LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings; and
 - d. Prior to the issuance of the building permit for Phase I, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (DOES) and provide an executed copy of the agreement to the Zoning Commission record.

Other Government Agency Reports

37. By report dated January 14, 2004, DDOT indicated its lack of support for the application until such time as the Applicant resubmitted its most current set of site plans and accompanying turning movement diagrams to DDOT for review. DDOT expressed concern that the tracking diagrams initially submitted did not provide enough information for the DDOT Traffic Safety Administration to determine if the proposed design of loading and parking facilities comply with DDOT design or safety standards.
38. On January 23, 2004, the Applicant met with DDOT staff to discuss the concerns DDOT raised in its report dated January 14, 2004. In consultation with DDOT, the Applicant agreed to revise its traffic circulation plan as follows:
- a. At the north warehouse, the width of the drive aisle for the angled parking shall be increased to seventeen (17) feet;
 - b. At the south warehouse, the drive-aisle traffic shall be directed one-way westbound;
 - c. The curb radii at the north-south alley at W and V Streets shall be ten (10) feet;
 - d. The Applicant shall provide handicap-accessible curb ramps at the corners of 14th Street at V and W Streets;
 - e. The Applicant shall repave the entire north-south alley in the western part of the square between V and W Streets;
 - f. In consultation with DDOT, the Applicant shall include a traffic control device at the internal intersection of the east-west pedestrian gallery and the north-south alley;
 - g. Truck traffic through the north-south alley shall be restricted to ingress from W Street and egress at V Street;
 - h. The Applicant shall provide DDOT with a turning diagram for a 30-foot loading truck and a standard solid waste vehicle; and
 - i. DDOT and the Applicant shall revisit the issue of efficient truck circulation after the project has been completed to make any adjustments to parking along either V or W Streets, N.W.
39. By supplemental report dated January 23, 2004, DDOT concluded, and the Commission finds, that the proposed design of loading and parking facilities is adequate.
40. Although not a contested issue, the Commission further finds that the Applicant adequately responded to the issues raised by Ms. Jill Chodorov. (See Findings of Fact 10-12.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the 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, parking, loading, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD as approved by the Commission, including its approval pursuant to § 2405.3, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and neighborhood-serving retail uses for this project are appropriate for this site, which is located between the Central Employment Area and Georgetown, and within immediate proximity to mass transit. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the historic building in terms of height and mass and is complementary to adjacent buildings.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project benefits and amenities, particularly the provision of housing and neighborhood-serving retail, are reasonable for the development proposed on the site. The PUD responds to both the historic building and the surrounding residential and commercial developments.
8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area.

9. Approval of this PUD and change of zoning are not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give "great weight" to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development for the property located at 14th and V Streets, N.W., in Square 235, Lots 59, 60, 178, 203, 801, 815, 816, 817, 818, and 820. This approval is subject to the following conditions:

1. The PUD shall be developed in accordance with the plans prepared by SK&I Architects dated January 15, 2004, and marked as Exhibit 35 in the record, as modified by the guidelines, conditions, and standards herein.
2. The project shall be a residential and retail development constructed to a maximum height of ninety (90) feet and a maximum density of 4.73 FAR in the Arts/C-3-A District and 3.15 FAR in the R-5-B District, for an aggregate density of 4.04 FAR. The PUD shall consist of approximately 314,968 square feet of gross floor area, of which a minimum of 22,000 square feet and a maximum of 26,000 square feet of gross floor area shall be devoted to neighborhood serving retail uses. The final residential gross floor area shall be calculated based on the measured versus record land area computations for the PUD Site as accepted by the Department of Consumer and Regulatory Affairs during review and approval of the building permit.
3. The project shall provide a minimum of 240 and a maximum of 300 residential units. Ten (10) of those units shall be available for sale as affordable housing consisting of 8,438 square feet of gross floor area including a core factor (approximately 7,500 net square feet), to residents with an annual income of \$50,000 and in accordance with the eligibility requirements and enforcement mechanisms submitted by the Applicant to the record as part of Exhibit 24.

4. The PUD shall include a minimum of 234 parking spaces with a minimum of fifty (50) spaces devoted to the retail uses. Any parking spaces provided in excess of the minimum amount may be allocated to residential or retail uses according to need.
5. Two (2) to four (4) of the parking spaces shall be reserved for use by a car-sharing service, such as "Zip Car" or "Flex Car".
6. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the exterior design, materials, and landscaping in accordance with final plans reviewed by the D.C. Historic Preservation Review Board and approved by the Mayor's Agent for Historic Preservation but with no reduction in quality, based on availability at the time of construction;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms;
 - c. To vary the location and arrangement of parking spaces; and
 - d. To refine traffic circulation patterns in consultation with DDOT.
7. The Applicant shall pay the fee for a one-year membership in the CSNA for each household unit initially purchased.
8. The Applicant shall improve the public space surrounding the project with a minimum of granite curbs, tree grates, waste receptacles, and light poles that are approved by DDOT or will meet the streetscape standards of the 14th and U Streets Main Street Initiative, whichever are superior. The Applicant shall work with DDOT and the Initiative to make this streetscape the prototype for the area.
9. The Applicant will design and construct the PUD utilizing the criteria of LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.
10. Prior to the issuance of the certificate of occupancy for the apartment house, the Applicant shall commit \$2,500 to DDOT to be used for the erection of approximately ten signs along 14th Street between Florida Avenue and U Street to designate the Greater U Street Historic District.
11. Prior to the issuance of the building permit for Phase I, the Applicant shall enter into a First Source Employment Agreement with DOES and provide an executed copy of the Agreement to the Zoning Commission record. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services (DOES) in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After completion of construction of this project, the Applicant shall provide a written status

report to the Zoning Commission and the DOES regarding compliance with this agreement.

12. The Applicant shall contribute a total of \$50,000, in five (5) \$10,000 increments, to the 14th and U Streets Main Street Initiative for the implementation of the "Green Team," a homeless employment program. The initial \$10,000 payment was made prior to approval of the PUD. Subsequent payments shall be made no later than the annual anniversary of the effective date of this Order.
13. No building permit shall be issued for this PUD until a portion of the north-south alley in the western segment of Square 235 is closed, consistent with the alley closing application filed with the Surveyor's Office as case S.O. No. 03-2526.
14. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
15. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
16. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. The Applicant shall have the flexibility to construct the project in two phases. Construction of Phase I, the 14th Street segment of the project, shall begin within three (3) years of the effective date of this order. Construction of Phase II, the renovation and addition to the historic warehouses, shall begin no later than six (6) months after completion of Phase I.
17. 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 January 29, 2004, the Zoning Commission approved the application by a vote of 4-0-1 (John G. Parsons, Anthony J. Hood, Peter G. May, and Carol J. Mitten; James H. Hannaham not present, not voting).

The order was adopted by the Zoning Commission at its public meeting on March 11, 2004, by a vote of 3-0-2 (Carol J. Mitten, John G. Parsons, and Anthony J. Hood; James H. Hannaham not present, not voting; Kevin L. Hildebrand, having not heard the case, not voting).

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

ZONING COMMISSION ORDER NO. 03-32
Case No. 03-32
(Amendment to Approved Campus Plan and
Further Processing – Cornell University)
December 11, 2003

Application No. 03-32 of Cornell University (the "Applicant"), pursuant to 11 DCMR §§ 210 and 3035, for an amendment to an approved campus plan and further processing for the campus of Cornell University's Cornell Center, located on the first floor and lower level of the building at the southeast corner of the intersection of 22nd and O Streets, N.W. at premises 2148 O Street, N.W. (Square 69, Lot 821). In accordance with 11 DCMR §§ 210 and 3035, this case was heard by the Zoning Commission under the rules of the Board of Zoning Adjustment, at Chapter 31 of 11 DCMR.

HEARING DATE: December 11, 2003

DECISION DATE: December 11, 2003 (Bench Decision)

SUMMARY ORDER

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

The Applicant requests special exception approval of an amendment to an approved campus plan and further processing under the approved campus plan to permit an expansion of educational and related administrative uses to the basement of an existing building 2148 O Street, N.W. (Square 69, Lot 821).

The Commission provided proper and timely notice of the public hearing on the application by mail sent to the Applicant; Advisory Neighborhood Commission ("ANC") 2B, the ANC in which the subject property is located; and owners of property within 200 feet of the property that is the subject of the application. Notice of the hearing was published in the *D.C. Register* on October 24, 2003 (50 DCR 9023).

ANC 2B was automatically a party to this proceeding. With a quorum present at a duly called public meeting, ANC 2B unanimously approved a motion in support of the application.

By written report dated November 18, 2003, and through testimony at the public hearing, the D.C. Office of Planning recommended approval of the application subject to ten (10) conditions consistent with those previously adopted by the Board of Zoning Adjustment in approving a campus plan for the subject property (BZA Application No. 14623, December 2, 1987).

As directed by 11 DCMR § 3119.2, the Commission required the Applicant to satisfy the burden of proving the elements necessary to establish the case for a special exception under 11 DCMR § 210. No person or entity appeared at the public hearing in opposition to the application or requested to participate as a party in this proceeding. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.

Based on the record before it, the Commission concludes that the Applicant has met the burden of proof under 11 DCMR §§ 210 and 3104.1, and that the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. It is, therefore, **ORDERED** that the application is **GRANTED**, subject to the following **CONDITIONS**:

1. The use of the first floor and lower level shall be limited to the academic and administrative functions of the Cornell in Washington program and other Cornell academically related programs.
2. The Certificate of Occupancy for the first floor and lower level of the building shall be issued for the period of time that Cornell can demonstrate to the Zoning Administrator that the second, third, and fourth floors of the building are occupied only for residential purposes by students and faculty affiliated with the Cornell in Washington program.
3. The Cornell in Washington program shall have a maximum enrollment of 75 students. The maximum number of Cornell in Washington faculty and administrative staff using the first floor and lower level at any given time be eight (8) to ten (10). Additionally, up to approximately ten (10) Cornell researchers or other academically related personnel may occupy the lower level.
4. The University shall continue to implement its program discouraging all students in the program from bringing private automobiles to the Washington metropolitan area.
5. The University shall discourage students who reside in the structure from bringing private automobiles to the Washington metropolitan area. Students who do bring private automobiles shall be required to provide evidence that he/she has arranged for off-street parking for the term of enrollment in the Cornell in Washington program. Further, the University shall not authorize or permit any student to apply for residential parking permit privileges.
6. The University shall strictly enforce its rules and regulations regarding the conduct of the students.

- 7. Social events at the site shall be limited to a maximum attendance of 100 persons and shall relate exclusively to student and faculty activities except for the Cornell Club reception for incoming students at the beginning of each semester.
- 8. The University shall comply with all applicable local and federal laws and regulations regarding access to the building for the handicapped. To the extent that any ramps or other means of handicapped access are deemed required, the Applicant is granted the flexibility under the approved Campus Plan to do so.
- 9. The Cornell-in-Washington program shall in conjunction with the owner, study ways to implement a trash management program. If a more appropriate location for the dumpsters is identified pursuant to that study, the applicant is granted the flexibility under the approved Campus Plan to adjust the location of trash storage, not exclusive of possible interior locations.
- 10. The Cornell Club office space will be moved to the lower level space as shown on the Conceptual Plan for the lower level submitted in this case.

Pursuant to 11 DCMR § 3100.5, the Commission has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Commission be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3-0-2 (Carol J. Mitten, Anthony J. Hood, and Peter G. May to approve; John G. Parsons and James H. Hannaham not present, not voting.)

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN (10) DAYS AFTER IT BECOMES FINAL.

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

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

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 D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

ZONING COMMISSION ORDER NO. 04-06/02-17A
ZONING COMMISSION CASE NO. 04-06
(Modification to a Consolidated Planned Unit Development
and Zoning Map Amendment for 5401 Western Avenue)
March 8, 2004

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on March 8, 2004. At the meeting, the Commission approved an application from Stonebridge Associates 5401 LLC (the "Applicant") for minor modifications to an approved planned unit development ("PUD") and related Zoning Map amendment for the proposed new apartment house at 5401 Western Avenue, N.W., 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 modifications were deemed minor, a public hearing was not conducted.

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

FINDINGS OF FACT

By Z.C. Order No. 02-17, dated August 22, 2003, the Commission approved a PUD and related Zoning Map amendment for property located at the intersection of Western Avenue, N.W. and Military Road, N.W. (the "Site"). The Site consisted of Lot 805 and a portion of Lot 7 in Square 1663. The apartment building approved in Z.C. Order No. 02-17 (the "Project") was to have approximately 182,000 square feet of gross floor area, not to exceed a density of 4.15 FAR, with a maximum building height of 78.75 feet. The roof structure was to be a maximum of 18.5 feet in height above the roof. The Project was to provide a minimum of 1.1 parking spaces per dwelling unit plus four (4) parking spaces for employees and/or staff of the proposed day care center.

On September 22, 2003, the Friendship Heights Organization for Reasonable Development ("FHORD") filed a Petition for Review of Z.C. Order No. 02-17 in the District of Columbia Court of Appeals (Case No. 03-AA-1004). Thereafter, the Applicant entered into settlement discussions with FHORD in an attempt to resolve outstanding issues regarding the Project. FHORD and the Applicant successfully resolved their differences and on February 12, 2004, the parties signed a settlement agreement.

Under the terms of the Agreement, the Applicant agreed to make minor modifications to the Project to reduce the building density, reconfigure the penthouse, impose restrictions on parking, improve the building's design, and enhance the construction management plan. In exchange, FHORD agreed to withdraw its Petition for Review before the D.C. Court of Appeals.

The Applicant, therefore, seeks the Zoning Commission's approval of the following minor modifications:

- To provide not less than 1.1 accessible parking spaces for each proposed dwelling unit, plus four (4) spaces in the garage for the day care center plus eight surface parking spaces adjacent to the day care center, although additional tandem spaces for residents may be provided in the garage;
- To impose conditions on the condominium regime that will be established regarding control of parking in the project;
- To reduce the maximum permitted gross floor area to 173,000 square feet from the approved gross floor area of approximately 182,000 square feet, with a resulting reduction in density from 4.15 FAR to 3.95 FAR on Lot 805, thereby eliminating the necessity for the Commission to approve the five percent (5%) increase in density allowed by § 2405.3;
- To reduce the height of the roof penthouse from 18.5 feet to 10 feet, and approve a reconfigured penthouse with setbacks greater than 1:1 from the edge of the roof;
- To substitute a new exterior design for the building reflecting the reconfigured penthouse; accommodating the reduction in density, the new roof structure configuration, and the reduction in height of the roof structure; and including a water feature in the open space while not resulting in a reduction in the distance from the residential building or the day care building to any neighboring residential building or in a reduction of the amount of open space on the site; and
- To enhance the construction management agreements to provide additional protections for the closest residences to the site.

The requested modifications do not affect the essential elements of the approval given by the Zoning Commission for this project, such as use, height, lot occupancy, setbacks, or number of parking spaces. The change in density is a small reduction and the change in roof structure height is also a reduction with greater setbacks. The request also does not change any of the approved elements of the benefits/amenity package.

These changes resolve the litigation over the Commission's approval of the project and would allow construction of the project to proceed promptly.

Copies of the Request for Minor Modification were delivered to all parties to the approved PUD, including Advisory Neighborhood Commission ("ANC") 3E, FHORD, all of the individuals who were granted party status in the case (Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, and Martin Rojas), and ANC 3/4G. ANC 3E voted unanimously to endorse the proposed modifications as a Consent Calendar item. FHORD and the individual parties likewise supported approval of the modifications as a Consent Calendar item. ANC 3/4G did not submit a written response to the proposed modifications.

The Office of Planning ("OP"), by memorandum dated March 1, 2004, recommended approval of the modifications with certain minor changes to the proposed conditions. On March 8, 2004, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modification to the approved PUD. The Commission included OP's recommendations in the conditions set forth below.

The Commission finds that approving the application is appropriate and is not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modifications are minor and do not change the intent of the previously approved Z.C. Order No. 02-17. Further, the Commission concludes that its decision is in the best interests of the District of Columbia and does not impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

Approval of the modifications is not inconsistent with the Comprehensive Plan. The proposed modifications do not impact the essential elements of the approved PUD, including use, height, lot occupancy, setbacks, or number of parking spaces. The material facts relied upon by the Commission in approving the PUD in Z.C. Order No. 02-17 have not changed. The parties to the case have supported the proposed modifications and have also endorsed action by the Commission on the Consent Calendar. The modifications are of such a nature 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 minor modifications of an approved PUD for the property located at 5401 Western Avenue, N.W. (Lot 805 and a portion of Lot 7 in Square 1663), to modify Z.C. Order No. 02-17 as follows:

1. Condition No. 1 shall be revised to read as follows:

The PUD shall be developed in accordance with the plans, dated February 27, 2004, marked as Exhibit No. 1 of the record in Case No. 04-06, with the day care center developed in accordance with the plans marked as Exhibits 175 and 212 of the record in Case No. 02-17, as modified by the guidelines, conditions, and standards herein.

2. Condition No. 2 shall be revised to read as follows:

The PUD shall be a residential building, consisting of approximately 173,000 square feet of gross floor area, with no more than 125 dwelling units. The Project shall not exceed a density of 3.95 FAR based exclusively on the site area of the Washington Clinic Land. The building shall not exceed a height of 78.75 feet, as measured in accordance with the Zoning Regulations. The Project may include a roof structure with a height not to exceed ten (10) feet as indicated in the Plans and in accordance with the Zoning Regulations. The design of the roof structure shall not enable the inclusion of occupiable space not otherwise permitted by 11 DCMR § 411.

3. Condition No. 3 shall be revised to read as follows:

The Applicant shall provide affordable housing as described in Exhibit 223. The affordable housing shall be constructed on-site and shall comprise no less than five percent (5%) of the additional gross square footage permitted this project by its approval as a planned unit development under this Order. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with DHCD to make such changes to comply with the same.

4. Condition No. 6 of shall be revised to read as follows:

The proposed building shall provide (i) at least 1.1 accessible parking spaces per dwelling unit, although additional tandem spaces for residents may be provided in the garage; (ii) four (4) parking spaces for the Day Care Center; and (iii) eight visitor parking spaces provided in a surface lot in accordance with the Plans and adjacent to the Day Care Center. These eight (8) visitor spaces shall be provided free of charge to visitors, shall be reserved for use by the Day Care Center during the morning drop-off period (weekdays 7:30–9:30 a.m.) and the afternoon pick-up period (weekdays 4:00–6:00 p.m.), and shall be available for visitor/non-resident parking at all other times. Parking spaces shall be offered for sale separately from the affordable dwelling units, and no purchaser of an affordable dwelling unit shall be required to purchase a parking space.

5. Condition No. 9 shall be revised to read as follows:

The Project shall include approximately 24,700 square feet devoted to open, green space that is readily accessible to the public and has no physical barriers to its entry, as depicted on the Plans. The open space shown on the plans shall not be fenced in or enclosed in any way. No playground for the exclusive use of the day care center shall be permitted on the site. Prohibitions against enclosing the open space and a playground for the exclusive use of the day care center shall be included in the declaration of condominium. The Project shall also include a pedestrian path connecting the residential area with the commercial area, as depicted on the Plans. Landscaping improvements shall be in accordance with the Plans, and shall include a fountain or water feature accessible to the public of at least the size shown on the plans. The Applicant or its successors shall maintain all landscaping improvements in good condition.

6. Condition No. 17 shall be revised to read as follows:

The Applicant shall follow the Revised Construction Management Plan filed as Exhibit 212, as supplemented by Exhibit 223, with the following additions:

- A. The Applicant shall contract for construction monitoring services during the course of sheeting/shoring, dewatering, excavation, and the installation of building foundations and below-grade walls. Additionally, the Applicant shall monitor vibrations during its operations and implement a program to evaluate the structural settlement of Surveyed Homes to assure that potentially damaging impacts do not extend to adjacent residential properties. Driving of piles shall be prohibited.
- B. Additionally, prior to the commencement of any blasting at the Site, the Applicant shall have the firm selected to perform the Pre-Construction Surveys perform front-line vibration monitoring by placing vibration monitors on the ground adjacent to the closest structure within the 150-foot monitoring radius, in-line with the blast area, and also at 4228 Military Road, N.W. (Rebold residence) and at 4211 Military Road, N.W. (Kuhn residence). Monitoring shall be observed in real time and, to the extent warranted, immediate action shall be taken to avoid damage to these and other nearby homes.
- C. At least 24 hours prior to any blasting operations on any part of the Site, and with as much prior notice as is practicable, the Applicant shall deliver written notice to the following seventeen (17) addresses:

5343 43rd Street, N.W.
5347 43rd Street, N.W.
5358 43rd Street, N.W.

5360 43rd Street, N.W.
5362 43rd Street, N.W.
5364 43rd Street, N.W.
5366 43rd Street, N.W.
5368 43rd Street, N.W.
4205 Military Road, N.W.
4208 Military Road, N.W.
4211 Military Road, N.W.
4224 Military Road, N.W.
4228 Military Road, N.W.
5360 42nd Place, N.W.
5358 42nd Place, N.W.
5354 42nd Place, N.W.
5339 42nd Place, N.W.

7. Condition No. 19d shall be revised to read as follows:

To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;

8. The following new condition shall apply to the approval of the Project:

- A. As a condition for purchasing a condominium interest in the Project or for entering into a lease to occupy a unit in the Project, each owner or tenant shall agree not to seek or obtain a residential street parking permit so long as the owner or tenant resides at the Project.
- B. Each condominium owner and tenant who will reside in a unit in the Project shall disclose to the condominium board (or developer), prior to purchasing a unit or signing a lease, information about his or her automobile ownership and the automobile ownership of any others who will reside in the unit.
- C. Each condominium owner or tenant shall be given a parking license agreement with the condominium association or developer pursuant to which the owner or tenant can license one or more parking spaces subject to availability of such spaces. If sufficient parking spaces are not available, Paragraph A above shall still apply in full force and effect. The owner or tenant may waive his or her right to license a space if no tenant of the unit owns an automobile. The parking license agreement may assign one or more specific parking spaces per unit and shall set forth the terms and conditions of the parking requirements of the PUD, as modified. In the event that a unit is rented and the unit is subject to a parking license agreement, the lease shall state that (a) there is a particular parking space

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assigned to the unit, (b) the lease is subject to compliance with the parking license agreement, and (c) the monthly parking fee for the space is as stated.

- D. If, following the sale of all condominium units, there are parking spaces in the garage that have not been assigned pursuant to parking license agreements, the developer or condominium board will use commercially reasonable efforts to encourage the lease or sale of those surplus spaces.
- E. In the event subsequent owners or tenants who reside in a unit own automobiles in excess of available parking spaces available under parking license agreements, Paragraph A above shall still apply in full force and effect.

In all other respects, the conditions set forth in Order No. 02-17, dated May 12, 2003, shall remain in effect.

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 modifications until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 02-17 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Order No. 02-17 and Z.C. Order No. 02-17A, 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 Zoning Commission.

The minor PUD modifications 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. Construction shall start within three (3) years of the effective date of this Order.

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.

Vote of the Zoning Commission taken at its public meeting on March 8, 2004, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Kevin Hildebrand to approve; James H. Hannaham not present and not voting).

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 _____.

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
PUBLICATIONS PRICE LIST

DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS (DCMR)

TITLE	SUBJECT	PRICE
1	DCMR MAYOR AND EXECUTIVE AGENCIES (JUNE 2001)	\$16.00
3	DCMR ELECTIONS & ETHICS (JUNE 1998)	\$20.00
4	DCMR HUMAN RIGHTS (MARCH 1995)	\$13.00
5	DCMR BOARD OF EDUCATION (JUNE 1997)	\$26.00
6A	DCMR POLICE PERSONNEL (MAY 1988)	\$8.00
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