

**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2008

**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE) located at 51 N Street, NE., Washington, D.C., intends to issue a permit to construct and operate one (1) Cummins QSB7-G3 NR3 100 kW diesel emergency generator to the Washington Navy Yard, Navy Bureau of Medicine and Surgery (BUMED) located at 2300 E Street, N.W., Washington D.C. 20037.

The application to construct/operate the generator and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours  
Chief, Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environment  
51 N Street, NE  
Washington D.C. 20002

**No written comments postmarked after December 15, 2008 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

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The application to construct/operate the generator and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

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**DEPARTMENT OF HEALTH  
COMMUNITY HEALTH ADMINISTRATION**

**NOTICE OF FUNDING AVAILABILITY #CHA-RFA-111408**

**Chronic Care Initiative**

The Government of the District of Columbia, Department of Health Community Health Administration is soliciting applications from qualified nonprofit applicants to participate in the Chronic Care Initiative in reshaping the delivery of services for persons affected by cardiovascular disease, hypertension, stroke, diabetes, chronic kidney disease, or chronic obstructive lung disease. This group of conditions includes early risk factors and pre-clinical conditions, through to advanced illness and death.

These funds will be awarded by the District of Columbia Community Health Administration (CHA) using funds authorized by the Community Access to Health Care Amendment Act of 2006 and the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Preventive Health Services Block grant contingent upon the availability of funds.

The Community Access legislation authorizes awards up to \$10 million which will be only partially awarded through this Request for Applications (RFA) depending on the quality of applications. \$250,000 is available from the Preventive Health Services Block Grant to target an initiative focusing on the Latino population. Eligibility is limited to nonprofit organizations serving residents of the District of Columbia. Awards will vary in length and size. See RFA for specifics.

The RFA will be released on Friday, November 14, 2008, and the deadline for submission is Tuesday, December 23, 2008 at 4:45 pm. Applications may be obtained from the Department of Health, 825 North Capitol St., NE – 3<sup>rd</sup> Floor Reception Area. The RFA will also be available on the Office of Partnerships and Grants Services website, [www.opgs.dc.gov](http://www.opgs.dc.gov) under the District Grants Clearinghouse. Two Pre-Application meetings will be held in the District of Columbia at the DC Department of Health Headquarters, 825 North Capitol St, NE, Washington, DC 20002, The first will be on Thursday, November 20, 2008, in conference room 2125 from 2:00pm to 4:00 pm. The second will be in Conference Room 4131 on Thursday, December 4, from 10 am to 12 noon. Potential applicants will have an opportunity to network among themselves at each meeting.

All potential applicants must file a Notice of Intent to Apply (a form for which is included in the RFA packet) by 4:45 pm on Thursday, December 11, 2008.

Please contact Charles Nichols at (202) 442-9342 for additional information.

**DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION REVIEW BOARD**

**NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS**

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

**Designation Case No. 08-19: John Philip Sousa Junior High School**

3650 Ely Place, SE (Square 5439, Parcel 204)

Designated October 23, 2008

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE CONCERNING COVERAGE UNDER THE  
PERFORMANCE MANAGEMENT PROGRAM IN THE  
DEPARTMENT OF SMALL AND LOCAL  
BUSINESS DEVELOPMENT**

Sections 1351 through 1353 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-613.51 *et seq.*) (2001), established a comprehensive performance management system for the District government. Chapter 14 of the *D.C. Personnel Regulations*, Performance Management, implements the guidelines and procedures for the Performance Management Program pursuant to sections 1351 through 1353 of the CMPA.

The majority of non-unionized, non-managerial and non-supervisory Career Service employees in agencies under the personnel authority of the Mayor are not currently covered under the Performance Management Program. However, section 1400.1 (e) of Chapter 14 of the regulations provides that the Director, D.C. Department of Human Resources, may, on an agency-by-agency basis, authorize coverage under the Performance Management Program for this category of employees.

Further, section 1400.2 of the regulations provides that, upon authorizing an agency for coverage pursuant to section 1400.1 (e) of the regulations, the Director, D.C. Department of Human Resources, shall publish such authorization in the *D.C. Register*.

Accordingly, the purpose of this notice is to announce that on October 28, 2008, Brender L. Gregory, Director, D.C. Department of Human Resources, authorized coverage under the Performance Management Program for:

All non-unionized, non-managerial and non-supervisory Career Service employees in the Department of Small and Local Business Development.

Coverage for these employees will be retroactive to **December 3, 2007**.

**DEPARTMENT OF HUMAN SERVICES (DHS)  
OFFICE OF THE DIRECTOR (OD)  
FAMILY SERVICES ADMINISTRATION (FSA)**

**NOTICE OF FUNDING AVAILABILITY**

**District of Columbia Fatherhood Initiative/Community Access Program (DCFI/CAP)**

**IMPORTANT NOTICE**

The Department of Human Services (DHS) has awarded 28 grants intended for this program. This RFA seeks entities that are not currently within the DCFI/CAP program. Therefore, current awardees of the DC Fatherhood Initiative or the DC Fatherhood Initiative/Community Access Program may not apply.

The DC Fatherhood Initiative/Community Access Program (DCFI/CAP) is being made available as a result of DHS' successful award of continuation grant funds through the FY 2009 US Department of Health and Human Services (HHS) Promoting Responsible Fatherhood continuation awards for the implementation of services under the Fatherhood Initiative Community Access Program.

The grant award is made pursuant to the legislative authority of the Deficit Reduction Act of 2005 (Public Law (P.L.) which amends Title IV, Section 403 (a)(2)(C) of the Social Security Act (42 U.S.C. 603 (a)(2)) to authorize competitive grants for States to develop and implement projects that support any of the three authorized activity areas: Healthy Marriage, Responsible Parenting and Economic Stability.

The objective of this effort is to provide a person-centric approach to service delivery that will meet the needs of fathers and their families to ensure that fathers have the fundamental skills necessary to contribute to the financial, emotional and social development of their children. In addition, the programs and services offered attempt to remove the barriers (economic, educational, social, etc.) that negatively impact a father's involvement and support with his family and child(ren).

DHS, through this notice will make available approximately \$ 500,000.00 in FY 2009 to new grantees in an amount not-to-exceed \$50,000.00 each. Applications are requested from all non-governmental private entities including, grass-roots, community- and faith-based organizations that are non-profit social service providers.

Starting Monday, November 17, 2008, applications can be obtained online by visiting the DC Office of Partnerships and Grants Services (OPGS) website at <http://www.opgs.dc.gov>, and following the link entitled: District Grants Clearinghouse or in person from Ms. Betty Ervin, Program Assistant for the Office of Grants Management at 64 New York Avenue, N.E., Washington, DC, 6<sup>th</sup> floor. Please call: (202) 671-4397.

A Pre-Application Conference will be held on Monday, November 24, 2008, from 12:00 PM – 2:00 PM at the Department of Human Services, 64 New York Avenue, N.E., Washington, DC 6<sup>th</sup> floor, Directors Conference Room, DC 20020. ***Please RSVP to Ms. Priscilla Burnett no later than 4:45 PM on Friday, November 21, 2008.***

**The deadline for application submission is December 19, 2009, at 3:30 PM.**

**COMMISSION ON JUDICIAL DISABILITIES AND TENURE****Judicial Tenure Commission Begins Reviews Of  
Judges For Senior Status**

This is to notify members of the bar and the general public that Judge William C. Pryor of the District of Columbia Court of Appeals has requested a recommendation for reappointment as a Senior Judge. In addition, the Commission has begun inquiries into the qualifications of Judges Rufus G. King, III, and Linda D. Turner of the Superior Court of the District of Columbia, who have requested recommendations for initial appointments as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendation and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations and members of the public to submit any information bearing on the qualifications of Judges Pryor, King, and Turner which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, or faxed, by **December 1, 2008**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718

The members of the Commission are:

William P. Lightfoot, Esq., Chairperson  
Hon. Gladys Kessler, Vice Chairperson  
Gary C. Dennis, M.D.  
Noel J. Francisco, Esq.  
Shirley A. Higuchi, Esq.  
Ronald Richardson  
Claudia A. Withers, Esq.

BY: /s/ William P. Lightfoot  
Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF PARKS AND RECREATION

NOTICE OF APPLICATION

Notice is hereby given that, pursuant to the authority set forth in § 9a D.C. Law 3-30; D.C. Official Code § 8-1808.01 (2006 Supp.), dated December 7, 2007, that the District Department of Parks and Recreation is reviewing an application for a dog park at Upshur Park, located at 14<sup>th</sup> Street and Arkansas Avenue, NW (Square 2818 Lot 800 and Square 2820 Lot 801).

The proposed application seeks to install and operate up to a 15,000 square-foot off-leash dog area at Upshur Park. The proposed site is located at the corner of Arkansas and Allison Streets, NW. Interested parties wishing to review the application can review the application in-person at the District Department of Parks and Recreation headquarters at 3149 16<sup>th</sup> Street, NW, 1<sup>st</sup> floor.

Interested persons may submit written comments within thirty (30) days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the issues in dispute or support surrounding the implementation of a dog park. All relevant comments will be considered in reviewing the dog park application. **Written comments postmarked after December 14, 2008 will not be accepted.**

Address written comments to:

Office of Planning & Capital Projects  
District Department of Parks and Recreation  
Attn: Dog Park Comments – Upshur  
3149 16<sup>th</sup> Street, NW  
Washington, DC 20009

For more information, please call (202) 673-7647.

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

**NOTICE OF FILING**

**APPLICATION NO. 17907**

On October 31, 2008, the Foreign Missions/Board of Zoning Adjustment of the District of Columbia, received the above-numbered application from Christopher H. Collins, Esq., with the law firm of Holland & Knight LLP, on behalf of **The Embassy of Spain**, pursuant to 11 DCMR §§ 350.6, 1001 and 4306 of the Foreign Missions Act, to permit a chancery annex (Spanish Cultural Center) in the R-5-D District at premises 2801 16<sup>th</sup> Street, N.W. (Square 2577, Lot 821). The application will be considered by the Board in accordance with the requirements of the Foreign Missions Act, and any appropriate provisions of the Title 11 Zoning Regulations.

This is not a notice of public hearing on the application. That notice will be published at least 40 days in advance of the hearing.

For additional information about this application, contact the Office of Zoning, at 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001, telephone (202) 727-6311.

rsn

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

**Application No. 17759 of Protestant Episcopal Cathedral Foundation of the District of Columbia**, pursuant to 11 DCMR § 3104.1, for a special exception under § 206 to permit additions to buildings and an increase in student enrollment and the number of employees at an existing private school in the R-1-B and R-5-D Districts at premises 3609 Woodley Road, N.W. (Square 1922, Lot 175)<sup>1</sup>

**HEARING DATE:** May 13, 2008

**DECISION DATE:** June 3, 2008

**DECISION AND ORDER**

This application was submitted November 21, 2007 by the Protestant Episcopal Cathedral Foundation of the District of Columbia, the owner of the property that is the subject of the application, on behalf of the National Cathedral School (“NCS”) (hereinafter “Applicant”). Following a public hearing, the Board voted 4-0-1 on June 3, 2008 to grant the application subject to conditions.

**Preliminary Matters**

Application. The application was filed pursuant to 11 DCMR § 3104 for a special exception under 11 DCMR § 206 to permit certain additions to the National Cathedral School, an existing private school in an area zoned R-1-B and R-5-D at 3609 Woodley Road, N.W. (Square 1922, Lot 17). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Public Hearing. By memoranda dated November 26, 2007, the Office of Zoning sent notice of the application to the Office of Planning; the Department of Transportation; the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3C, the ANC for the area within which the subject property is located; and the single-member district ANC 3C09.

A public hearing was scheduled for May 13, 2008. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on February 21, 2008 mailed notice of the hearing to the Applicant, the owners of

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<sup>1</sup> This application was advertised only as a request for special exception approval to permit additions to buildings at an existing private school. The caption as amended reflects that the Applicant also requested permission to increase the caps previously adopted by the Board with respect to student enrollment and to the number of faculty and staff at the subject property.

**BZA APPLICATION NO. 17759****PAGE NO. 2**

property within 200 feet of the subject property, and ANC 3C. Notice was published in the D.C. Register on February 29, 2008 (55 DCR 1939).

Requests for Party Status. In addition to the Applicant, ANC 3C was automatically a party in this proceeding. There were no requests for party status.

Applicant's Case. The Applicant provided testimony and evidence from Kathleen Jamieson, the NCS head of school; Kate Cullen, representing the Protestant Episcopal Cathedral Foundation; Gail Douglass of Hartman-Cox Architects, the project architect; and Louis Slade of Gorove/Slade Associates, a traffic consultant.

The application requested special exception approval of additions and alterations to buildings on the Woodley North campus of NCS, an existing private school. The Applicant described plans to make additions to some of its buildings, to install new windows and building facades, and to complete interior renovations. The planned modifications will entail (i) renovation of the buildings used by the middle school, including making life-safety and accessibility improvements, updating heating and air conditioning, electrical, and fire protection systems, and achieving compliance with current standards regarding energy consumption and building efficiency; (ii) creation of an entrance to the middle school that will provide a central space for middle-school administration and a student commons area; and (iii) development of a science and math "hub."

The Applicant also proposed to increase its total enrollment to a maximum of 585 students, and to increase its number of employees to a maximum of 150 full-time equivalent ("FTE") faculty and staff. According to the Applicant, the proposed increases will not change existing conditions with respect to noise, traffic, or other potentially objectionable conditions.

At the public hearing, the Applicant submitted a list of proposed conditions intended to mitigate any potential adverse impacts associated with the expanded private school use. The conditions generally addressed the number of students, faculty, and staff; parking; and the establishment of a neighborhood liaison committee. The Applicant indicated its agreement with conditions proposed by the Office of Planning and by ANC 3C, with the exception of a proposed condition that would preclude drivers with Zone 3 residential parking permits from parking on the streets in the vicinity of the subject property.

Government Reports. By report dated May 6, 2008 and through testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application subject to certain conditions. OP's proposed conditions would require the Applicant to implement traffic management measures that would (i) prohibit student drop-offs on Woodley Road west of Wisconsin Avenue; (ii) require training the school crossing guard to better coordinate pedestrian traffic at the Woodley Road crosswalk with the red light at Wisconsin Avenue; (iii) require students to park in designated NCS parking spaces in the underground garage located on the nearby Cathedral Close; and (iv) encourage the use of the Hearst and North Road Circles on the

**BZA APPLICATION NO. 17759****PAGE NO. 3**

Close for morning student drop-offs and afternoon pick-ups. OP also proposed a condition requiring a permanent allocation of 175 parking spaces in the garage for use by the Applicant's students and staff during school operating hours, and documentation that the Foundation would allocate the required spaces on a perpetual basis.<sup>2</sup>

ANC Report. At a regularly noticed and scheduled public meeting held April 21, 2008 with a quorum present, ANC 3C voted 6-0 to pass a resolution regarding the application. In the resolution, the ANC noted its "strong exception to the practice of private schools exceeding enrollment and faculty/staff levels as set by the BZA" but indicated no objection "to the enrollment increase or the significant faculty and staff increase over the previous BZA-approved levels," subject to the following conditions:

- (i) an NCS parking policy for students, staff, and visitors that requires parking on the Close, whether in marked surface or underground parking spaces, since adequate parking is available on the Close and new development will produce new demands for limited parking spaces;
- (ii) firm caps on student enrollment at 585 and faculty and staff at 150 FTEs, and an annual reporting requirement of actual levels to ANC 3C in December of each year;
- (iii) a pick-up and drop-off plan that reduces the amount of pick-up and drop-off from public streets and routes it to North Road, where there is a new signal to accommodate the school traffic and a new off-street pick-up and drop-off facility, since the transportation demand management program recently implemented by NCS does not ensure any reduction in traffic problems related to the practice of using public streets for pick-up and drop-off.

ANC 3C also conditioned its "no objection to the application" on assurances that the Applicant would create and implement a construction management agreement that would include a construction liaison committee comprised of the two members of ANC 3C whose single-member districts are contiguous to the construction project and representatives from each of the residential blocks most likely impacted by the construction.

Person in opposition. The Board received a letter and heard testimony from a resident of the 3600 block of Lowell Street who opposed the application on the ground that the Applicant "failed to provide formal and binding assurance that it will address issues" concerning privacy and the Applicant's plans to construct new windows on the Lowell Street side of the Woodley North campus.

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<sup>2</sup> At the hearing, it was determined that such documentation from the Foundation would be unnecessary because the Foundation is the Applicant in this case and is bound by this order.

**BZA APPLICATION NO. 17759****PAGE NO. 4****FINDINGS OF FACT****The Subject Property and Surrounding Area**

1. The subject property is located at 3609 Woodley Road, N.W. (Square 1922, Lot 17). The lot is bounded by Wisconsin Avenue on the west, Lowell Street on the north, 36<sup>th</sup> Street on the east, and Woodley Road on the south. The rectangular parcel has an area of approximately 78,047 square feet (1.8 acres).
2. The site is improved with connected buildings that comprise the Woodley North campus of NCS, a college preparatory school founded in 1900 for girls in grades 4 through 12. The buildings – known as Scott Hall, Founders Hall, Procter Hall, Whitby Hall, and Whitby Center – are organized around a courtyard that opens on the south to Woodley Road.
3. The subject property is immediately north of the 57-acre National Cathedral Close (“Close”). The lower school (grades 4, 5, and 6) is located on the east side of the subject property, while the middle school (grades 7 and 8) occupies three buildings on the west side.
4. The upper school (grades 9 to 12) is located primarily on the Close in Hearst Hall, but also uses part of the Woodley North Campus. Hearst Hall also houses the school’s administrative offices. The NCS athletic facility is located on the Close. In addition, other entities of the Protestant Episcopal Cathedral Foundation are located on the Close, including Beauvoir School (nursery through third grade) and St. Albans School for Boys (grades 4-12).
5. The subject property is located within the Cleveland Park Historic District, although the buildings were constructed after the period of significance (that is, 1880 to 1941) and are non-contributing. On January 24, 2008, the Historic Preservation Review Board (“HPRB”) gave concept approval of the Applicant’s project. The Applicant indicated its intent to continue to work with the Historic Preservation Office during the design phase of the project.
6. Surrounding development in the vicinity of the subject property consists primarily of one-family detached dwellings, with some apartment buildings on Wisconsin Avenue.

**Proposed Expansion of the Private School Use**

7. The Applicant proposed a renovation project for its Woodley North campus as the third and final phase of a 1990 master facilities plan. The project calls for construction of an additional floor on Scott Hall and on portions of Procter Hall, a new entry pavilion on

**BZA APPLICATION NO. 17759****PAGE NO. 5**

Woodley Road, and minor additions to Procter Hall. NCS also plans to renovate the interiors of Scott, Procter, and Founders Halls, which are all 40 to 50 years old; install new windows; and renovate the building exteriors with new facades to create a uniform architectural style.

8. Procter Hall will be renovated as a library. Because planned new windows on the Lowell Street elevation would potentially allow views from the library into a nearby residence across Lowell Street, the Applicant indicated that window coverings would be installed on the library windows on the Lowell Street side.
9. The renovations of Procter Hall will include the replacement of mechanical equipment located outside the building at Lowell Street. The Applicant indicated that enhanced landscaping or other screening elements would be installed on the Lowell Street side of the project to improve the aesthetic appearance of the area, subject to HPRB approval.

**Proposed Increase in Faculty and Staff**

10. The Applicant's number of faculty and staff is limited to 105 full-time equivalent employees ("FTE's"), pursuant to prior BZA orders. (*See* BZA orders No. 14282, issued May 20, 1985, No. 15691, issued March 28, 1994, and No. 16433, issued August 17, 1999). The Applicant is seeking to increase this cap to 150 full-time equivalent employees.
11. The Applicant presently employs 145 FTE's, consisting of approximately 185 faculty and staff. A maximum of 162 faculty or staff members are at the subject property at any given time.<sup>3</sup>
12. For purposes of calculating the number of full-time equivalent employees, the Applicant has determined that a full-time employee in a teaching position would teach at least four sections; therefore, a faculty member hired to teach one or two sections would be considered 25 percent or 50 percent FTE, respectively. For non-faculty staff, the Applicant has determined that a 40-hour work week would constitute full-time employment; a staff person working 20 hours per week would be considered 50 percent FTE.
13. The current operation of the private school use with an excess of 30 FTE's over the authorized cap has not resulted in objectionable conditions to adjoining and nearby

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<sup>3</sup> The Board notes that there is a discrepancy in the record as to the number of FTE's currently employed by NCS. At the hearing Applicant identified the number as 132 at one point and then later twice referred to the number as 144. The ANC identified the number as 144 in its Resolution. However, the Applicant identified the number as 145 in its Statement of the Applicant and this number was affirmed in the post-hearing filings of both the ANC and the Applicant.

**BZA APPLICATION NO. 17759****PAGE NO. 6**

property because of parking, traffic or other impacts generated by the current number of employees.

14. The modest increase in number of FTEs sought in this Application over the current employment level - 5 FTE's, is not likely to create objectionable conditions for adjoining and nearby properties.

**Proposed Increase in Number of Students**

15. The Applicant also seeks an increase in its enrollment cap of 546 students (set forth in prior BZA orders referenced in finding of fact #10) to 585 students. Its current enrollment of 577 students exceeds its authorized cap by 39 students. Applicant is seeking an increase of 8 students over its current enrollment.
16. The current operation of the private school use has not become objectionable to adjoining and nearby property because of the increase in the number of students.
17. No adverse impacts are likely to result from a maximum enrollment of 585 students. The minor increase in number of students over the current enrollment is not likely to increase the intensity of the private school use or create objectionable conditions for adjoining and nearby properties.

**Noise Impacts**

18. The Board credits the Applicant's testimony that the proposed changes will not cause any perceptible increase in noise levels on adjacent or adjoining properties. The renovated buildings and new additions will not generate additional noise, and the number of students and the intensity of activities will not increase significantly over the current levels. The Board finds that the requested special exception will not create adverse noise impacts on neighboring property.

**Traffic Impacts**

19. The Board credits the testimony of the Applicant's traffic consultant that intersections adjacent to the subject property along Woodley Road, 36th Street, and Lowell Street currently operate at acceptable conditions, and will continue to operate at acceptable conditions. The consultant concluded that the Applicant's proposed increases in enrollment and number of employees would result in an "insignificant increase in traffic."
20. The Applicant has taken steps to decrease traffic that it generates, including offering a commuter rewards program to encourage employees to commute via public transportation, bicycle, or on foot.

**BZA APPLICATION NO. 17759****PAGE NO. 7**

21. Effective March 31, 2008, the Applicant implemented new procedures governing student drop-offs and pick-ups. The new procedures were announced in cards mailed to the parents of students and were incorporated into the Applicant's parking policy, which is issued to students and their parents at the beginning of every school year. Student enrollment and re-enrollment contracts will require parents and students who drive to school to agree to all driving and parking rules; failure to comply with the school's policies will be addressed by the head of school (for adults) or through the school's honor code (for students).
22. The new procedures prohibit drop-offs and pick-ups on Woodley Road west of Wisconsin Avenue, on the east side of 36th Street, and in portions of Woodley Road. Permitted drop-off and pick-up locations include the west side of 36th Street, a portion of Lowell Street, the Close garage, and two other locations on the Close, Hearst Circle in front of Hearst Hall and the North Road Circle. Other elements include that drivers must not block crosswalks or intersections; school-related traffic is not permitted to travel north on 36th Street between Woodley Road and Lowell Street during peak drop-off and pick-up times; and parking is not permitted on the west side of 36th Street before 4:00 p.m. or on the south side of Lowell Street between the NCS driveway and 36th Street at any time.
23. The Applicant also proposes to implement recommendations made by its traffic consultant to improve traffic conditions along Woodley Road during the morning drop-off and afternoon pick-up periods. Pursuant to the recommendations, the Applicant will train its crossing guards to coordinate pedestrian traffic at the Woodley Road crosswalk with the red light at Wisconsin Avenue, require students to park in designated NCS off-street parking spaces, and encourage the use of Hearst Circle and North Road circle on the Close for student drop-offs and pick-ups.
24. The Board finds that approval of the requested special exception will not generate objectionable conditions due to traffic. The Applicant is proposing a relatively small increase in enrollment, which will not increase the intensity of use of its facilities significantly. The Applicant offers a benefits program to encourage employees not to commute to the subject property by car, and has recently implemented new traffic procedures designed to minimize traffic impacts associated with student drop-offs and pick-ups.

**Adequate Parking**

25. Title 11 DCMR § 206.3 requires that "[a]mple parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile."

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26. Section 2101 requires that high schools provide “2 [spaces] for each 3 teachers and other employees, plus either 1 for each 20 classroom seats or 1 for each 10 seats in the largest auditorium, gymnasium or area usable for public assembly, whichever is greater.”
27. Pursuant to § 2118.3, “The number of teachers or employees shall be computed on the basis of the greatest number of persons to be employed at any one period during the day or night, including persons having both full-time and part-time employment.”
28. The Applicant presently employs 145 FTE’s, consisting of approximately 185 faculty and staff. A maximum of 162 faculty or staff members are at the subject property at any given time. The Applicant is seeking an increase of 5 FTE’s for a total of 150 FTE’s.
29. Pursuant to §§ 2101 and 2118.3, the athletic center generates a parking requirement of 40 spaces and the maximum number of faculty and staff represented at 162 generates a parking requirement of  $162 \times \frac{2}{3} = 108$ .  $108 + 40 = 148$ , total parking requirement.
30. NCS has 176 parking spaces that have been allocated for its use by the Protestant Episcopal Cathedral Foundation. The spaces are located in the Close garage, on surface roads on the Close, or in other locations adjacent to NCS buildings. A small lot, containing two parking spaces, is located in the northeast corner of the subject property with access from Lowell Street.
31. Pursuant to §§ 2101 and 2118.3, 176 spaces would meet the parking requirements for 204 faculty and staff on campus at one time. ( $176 - 40 = 136$ .  $\frac{2}{3}x = 136$ .  $x = 204$ .)
32. The Close contains a total of 853 parking spaces, including 414 in the underground parking garage, which opened in April, 2007. The Protestant Episcopal Cathedral Foundation allocates the parking spaces available on the Close to its member institutions. The surface parking spaces on the Close are marked to indicate the institution to which the spaces have been allocated, but the garage spaces are not specifically designated to any institution.
33. The Applicant’s allocation of 176 parking spaces includes 149 spaces in the garage. Approximately 60 of the Applicant’s garage spaces are assigned to students who register a vehicle with NCS and receive a parking pass. Students who register a vehicle are expected to park in the garage, with the exception of any students with a residential parking permit for Zone 3.
34. The Applicant currently implements a student/staff parking policy whereby parking stickers are issued to NCS staff and students who drive to school. These drivers are generally required to park on the Close but may use on-street parking only if they comply with traffic and parking regulations, including the Residential Parking Permit program.

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Residential parking restrictions are in effect on the streets in the immediate vicinity of the subject property.

35. The Applicant has adopted a parking policy applicable to upper school students and their parents. Requirements of the policy include that:
- (a) Every vehicle driven to school by an NCS student must display a numbered NCS student hang tag, which can be obtained by registering a car through the NCS business office. Students parking an unregistered car on the Close or in the immediate neighborhood are subject to school disciplinary action.
  - (b) Between 7:00 a.m. and 3:30 p.m. on school days, NCS students must park on the fourth floor of the garage, with their hang tag displayed on the rear view mirror. Students without Zone 3 residential parking permits may not park on restricted neighborhood streets in Zone 3. Students parking on neighborhood streets must agree to obey all posted regulations and must not obstruct private driveways. Neighbors are encouraged to report violators to the dean of students.
  - (c) Outside of school hours (school hours being 7:00 a.m. - 3:30 p.m.) on school days, students are asked to park in the garage or on the Cathedral grounds.
  - (d) Students agree to observe all posted regulations and 'yellow-curb' restrictions on the Close. Any student vehicle parked illegally on the Close may be subject to enforcement by the District or the Foundation.
36. The Board credits the finding of the Applicant's traffic consultant that there is available parking on neighboring streets.
37. The Board credits the conclusion of the Applicant's traffic consultant that the Applicant's proposed increases in enrollment and number of employees would result in "a marginal increase in the parking requirement" that will be met by the existing parking supply.
38. The Board finds that the proposed expansion of the private school use is not likely to become objectionable to adjoining and nearby property because of parking, and that approval of the application will provide for ample parking space to accommodate the students, teachers, and visitors likely to come to the site by automobile. The Applicant's proposal includes elements, including a student/staff parking policy and commuter benefits, that will lessen the likelihood of spillover parking on neighborhood streets surrounding the Close. In addition, the Applicant is proposing a modest increase of only

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5 FTE's from its current number which is not having any adverse impact on nearby property.

39. The Board also finds that Applicant's provision of 176 spaces meets the requirements of Chapter 21's parking requirements provided no more than 204 part-time or full-time employees are employed at any one period during the day or night.

**Harmony with Zoning**

40. The western portion of the subject property, facing Wisconsin Avenue, is zoned R-5-D. The remainder, approximately two-thirds of the parcel, is zoned R-1-B. The purposes of the R-1 district include to stabilize and protect quiet residential areas developed with one-family detached dwellings, and to promote a suitable environment for family life. 11 DCMR §§ 200.1-200.2. The R-1-B zone provides for districts of higher density than the R-1-A zone. 11 DCMR § 200.3. The R-5 districts are general Residence districts designed to permit flexibility of design by permitting, in a single district, all types of urban residential development that conform to the height, density, and area requirements established for the districts. The R-5 districts also permit the construction of institutional and semi-public buildings that are compatible with adjoining residential uses but excluded from the more restrictive Residence districts. 11 DCMR § 350.1. Relatively high height and density are permitted in the R-5-D district. 11 DCMR § 350.2.
41. The modifications proposed by the Applicant will conform to the applicable height, bulk, and lot occupancy requirements of the R-1-B and R-5-D districts.
42. The Board finds that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

**CONCLUSIONS OF LAW AND OPINION**

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1. Pursuant to § 3104.1, the Applicant seeks a special exception under 11 DCMR § 206 to permit certain additions to buildings and to increase enrollment and staff in an expansion of an existing private school on a site zoned R-1-B and R-5-D at 3609 Woodley Road, N.W. (Square 1922, Lot 17).

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In accordance with § 206, a private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. 11 DCMR § 206.2. Ample parking space, not less than that required under chapter 21 of the Zoning Regulations, must be provided “to accommodate the students, teachers, and visitors likely to come to the site by automobile.” 11 DCMR § 206.3. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of the Zoning Regulations and Map. 11 DCMR § 3104.1.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 3C, the Board concludes that the proposed expansion of the existing private school use, as conditioned by the Board, can be located at the subject property so that it is not likely to become objectionable to adjoining and nearby property. The Board has imposed conditions in this order in response to the Applicant’s proposal, recommendations of OP, and issues and concerns raised by ANC 3C to set parameters for the school’s moderately expanded operation to ensure that no objectionable or adverse condition will be created.

The Applicant’s proposal does not involve significant new construction or increased intensity of the existing private school use. Rather, the aging buildings used by the Applicant’s middle school will be renovated and improved, among other things, to enhance life safety and accessibility. The Applicant’s planned increases in enrollment and number of employees are not likely to create objectionable conditions, especially considering that the Applicant has recently implemented improved procedures governing student drop-offs and pick-ups designed to minimize adverse traffic impacts associated with the private school use.

The Board accords the issues and concerns raised by ANC 3C in its resolution approved unanimously at its April 21, 2008, noticed public meeting the “great weight” to which they are entitled and addresses herein the conditions that ANC’s support of the application were contingent upon. The Board adopts most, but not all of the conditions recommended by the ANC.<sup>4</sup>

The Board adopts in this order the ANC’s proposed conditions for a cap on student enrollment at 585 and FTE’s at 150, and reporting of such levels annually to the ANC. The Board adopts in part the ANC’s proposed condition that NCS’ parking policy require students, staff and visitors to park on the Close.

The Board concurs with the ANC that the Applicant’s parking policy should require students and employees who drive to the subject property to park in parking spaces on the Close allocated to NCS, even in the case of vehicles with a residential parking permit for Zone 3. The Applicant did not indicate the number of employees who hold residential parking permits (currently four students have Zone 3 permits), but asserted that its supply of off-street parking was ample to

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<sup>4</sup> See especially Condition No. 3, concerning staff and student enrollment caps, Condition No. 5, concerning parking, and Condition No. 10, concerning the Applicant’s annual reporting requirement.

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accommodate the students and employees who drive to the subject property, and that disciplinary measures would be taken against persons who fail to comply with parking policies required by the school. The Board concludes that vehicles driven regularly to the subject property by students and employees should be parked in the Applicant's off-street parking spaces so as to minimize the potential for any spillover parking on neighborhood streets. The Board declines to adopt the ANC's proposed condition with respect to visitors holding Zone 3 permits, because visitors' vehicles are not registered with the school and are not required to display an identifying sticker that would facilitate enforcement, visitors' trips are less predictable, and the demand for parking generated by visitors is likely of shorter duration, and with greater turnover, than the demand generated by students and employees who drive.

The Board declines to adopt the ANC's proposed condition concerning student pick-up and drop-off, based on its findings that the Applicant's recently improved procedures adequately address the concerns raised by the ANC with respect to potential traffic impacts associated with student drop-offs and pick-ups.<sup>5</sup> The Board does not agree with the ANC that the transportation demand management measures implemented by the Applicant will not reduce traffic problems related to student pick-ups and drop-offs because the measures encourage the use of the Close rather than the nearby streets, and prohibit the use of specific locations that might generate adverse impacts, with violators subject to disciplinary measures by the Applicant. Finally, the Board declines to require a construction management agreement as proposed by the ANC, as construction matters are outside the Board's purview in this proceeding.

For the reasons stated above, the Board concludes that the Applicant has satisfied the requirements for a special exception under 11 DCMR § 206 to permit certain additions to, and to increase the number of students and employees at, the National Cathedral School, an existing private school in an area zoned R-1-B and R-5-D at 3609 Woodley Road, N.W. (Square 1922, Lot 17). Accordingly, it is hereby **ORDERED** that the application, pursuant to Exhibit No. 11, as revised by Exhibit No. 29 – Plans, is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. NCS shall install interior window coverings (shades, draperies or the equivalent) on the new windows on the north side of Proctor Hall that faces Lowell Street, NW.
2. NCS shall enhance the landscaping or install other screening elements on the Lowell Street side of the project, subject to approval by the Historic Preservation Review Board, to screen mechanical equipment and trash.
3. NCS' student enrollment shall not exceed 585 students. NCS shall employ no more than 150 full-time equivalent faculty and staff.
4. The Applicant shall maintain 176 parking spaces on the Cathedral Close or the Woodley North campus for use by NCS faculty, staff, students, and visitors.

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<sup>5</sup>See Findings of Fact No. 21 through No. 23.

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5. NCS shall require faculty, staff, and students who drive to the school to park on the Close in off-street parking allocated to NCS.
6. NCS shall continue to participate in parking demand management activities sponsored by the Protestant Episcopal Cathedral Foundation ("PECF") to reduce parking demand generated by students, faculty and staff. These measures include: encouraging the use of public transportation; making available reduced fare Metro passes; offering credits for bicycle commuters; and other measures as may be provided by PECF from time to time such as remote parking and shuttle service between the Close and nearby Metrorail stations.
7. NCS shall continue to require faculty, staff, and students who drive to school to register their vehicles with the school and to display an identifying sticker on each vehicle so as to facilitate compliance with the parking policy. NCS shall require each parent to agree to the parking policy when that parent signs each year's enrollment contract, including a requirement that individuals who violate the parking policy will be subject to disciplinary action by the school.
8. The Applicant shall provide training for the crossing guard stationed at Woodley Road between 36<sup>th</sup> Street and Wisconsin Avenue to improve coordination of pedestrian traffic at the crosswalk with the red light at Wisconsin Avenue.
9. Visitors who drive to school events and activities shall be directed to park on the Close in off-street parking allocated to the NCS to the extent parking is available. NCS shall inform all visitor schools in writing of the location of visitor parking.
10. NCS shall establish a neighborhood liaison committee composed of NCS staff and neighbors for the purposes of coordinating and discussing traffic and parking issues, and for yearly reporting in December on the actual number of students and the number of faculty and staff employed by the school. NCS shall provide a contact telephone number and e-mail address for persons who wish to report any failure to comply with the conditions adopted in this Order.
11. NCS shall continue its current parking policy addendum established March 31, 2008, but shall have the flexibility to amend any provision after consideration of the proposed change by the liaison committee.
12. The Applicant shall have the flexibility to modify its parking policy and vary the location of parking spaces. The Applicant also shall have the flexibility to modify the design for the proposed renovations and addition, and to introduce landscaping at Lowell Street, provided that the design and landscaping are not inconsistent with the relief granted in this Order and conform to the recommendations of the Historic Preservation Review Board or its delegate.

**BZA APPLICATION NO. 17759****PAGE NO. 14****VOTE: 4-0-1**

(Ruthanne G. Miller, Mary Oates Walker, Shane L. Dettman, and Anthony J. Hood (by absentee vote) voting to approve; Marc D. Loud not participating, not voting)

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

Each concurring member has approved the issuance of this Order.

**FINAL DATE OF ORDER: OCTOBER 31, 2008**

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 § 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.

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

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**ZONING COMMISSION ORDER NO. 05-36A****Z.C. Case No. 05-36A****K Street Developers, LLC****(Second-Stage PUD – 250 K Street, N.E.)****July 28, 2008**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 19, 2008 to consider an application from K Street Developers, LLC (the "Applicant") for review and approval of the second stage of a two-stage planned unit development ("PUD") and related zoning map amendment pursuant to Chapters 24 and 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning (the "Zoning Regulations"). The proposed project is a mixed-use development containing residential uses and ground-floor retail uses. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

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

1. On November 29, 2005, 200 K Street, L.P., the Applicant's predecessor-in-interest, filed an application requesting preliminary and consolidated approval of a PUD, as well as a related map amendment to the C-3-C Zone District for all of Lot 67 in Square 749 (the "Subject Property"). The original application sought to develop the proposed PUD in two phases. The first phase of the development (the "Phase I PUD") was to be located on the eastern portion of the Subject Property, which contains approximately 42,839 square feet of land area (the "Phase I Site"). The second phase of the development (the "Phase II PUD") was to be located on the western portion of the Subject Property, which contains approximately 58,263 square feet of land area (the "Phase II Site"). The Phase I PUD was to contain approximately 236,905 square feet of gross floor area, including 202 residential units and approximately 3,699 square feet of ground-floor retail space. The Phase I PUD was to be constructed to a maximum height of 90 feet and was to include 177 off-street parking spaces in an underground garage. The Phase II PUD was to contain approximately 612,433 square feet of gross floor area, including 500 residential units and approximately 13,798 square feet of residential use. The Phase II PUD was to be constructed to a maximum height of 130 feet from the measuring point on 3<sup>rd</sup> Street, N.E. and was to include 545 off-street parking spaces for use by the building's residents. The Phase I PUD and Phase II PUD would surround an outdoor central plaza that would be available for use by the public between the hours of 11:00 a.m. and 7:00 p.m.
2. Pursuant to Z.C. Corrected Order No. 05-36 (effective October 13, 2006) ("First Stage Order"), the Commission granted consolidated approval for the first phase of the proposed development and preliminary approval for the second phase of the project. That order required the Applicant to file an application for second-stage approval of the Phase II PUD within one year of the effective date of the order.

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3. The Applicant is the owner of the Subject Property.
4. On October 4, 2007, the Applicant filed an application for second-stage approval of the Phase II PUD.
5. The Office of Planning ("OP") filed a preliminary report dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for a public hearing.
6. At its public meeting on December 10, 2007, the Commission voted to schedule a public hearing on the application.
7. On March 7, 2007, the Applicant filed a prehearing statement and revised architectural plans and elevations, dated January 11, 2007. The Applicant's prehearing statement addressed a number of issues raised by OP and the Commission at the public meeting on December 10, 2007.
8. Advisory Neighborhood Commission ("ANC") 6C voted to approve the Phase II PUD at its regularly scheduled meeting on February 13, 2008. The ANC submitted a letter to the Commission, dated May 21, 2008 (Exhibit 36), recommending approval of the application.
9. On April 29, 2008, the Applicant filed supplemental materials in support of the application, including a revised set of architectural plans and elevations, dated April 29, 2008 (Exhibit 26). These revised plans responded to a number of comments received from OP following the submission of the Applicant's prehearing statement.
10. On May 9, 2008, OP filed a report (Exhibit 27) recommending approval of the second-stage PUD, subject to the Applicant's resolution of certain outstanding issues.
11. On May 19, 2008, the District Department of Transportation ("DDOT") filed a report, dated May 14, 2008 (Exhibit 29). In its report, DDOT requested that the Applicant be granted the flexibility to modify the landscaping and other streetscape improvements located in public space in coordination with DDOT. The report stated that DDOT had no objections to the site access or proposed circulation system.
12. After proper notice, the Commission held a public hearing on May 19, 2008. The parties to the case were the Applicant and ANC 6C.
13. The Applicant submitted a number of exhibits at the public hearing on May 19, 2008. These exhibits included revised architectural sheets, a letter from Smart Start, Inc. expressing its continued interest in operating the proposed daycare facility in the new development, written testimony prepared by the Applicant's land use expert, and a

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document demonstrating that the amount of affordable housing provided in the proposed development would be the same regardless of whether that requirement is calculated on a net-to-net basis or on a gross-to-gross basis. The Applicant also submitted an affidavit demonstrating compliance with the posting requirements of 11 DCMR § 3015.4.

14. The Applicant presented eight witnesses at the Commission's hearing on May 19, 2008, including Alan D. Cohen of ADC Builders on behalf of the Applicant; Richard Conrath, Colline Hernandez-Ayala, and Kimberly Lee of GTM Architects (architecture); Jonathan Fitch and Curt Millay of LAB (landscape architecture); Iain Banks of O.R. George & Associates, Inc. (transportation); and Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight LLP (zoning and land use planning). Based upon their professional experience, as evidenced by the resumes submitted for the record and prior appearances before the Commission, Messrs. Conrath, Fitch, Banks, and Sher were qualified by the Commission as experts in their respective fields. At the conclusion of the public hearing, the Commission requested additional materials from the Applicant and scheduled a special public meeting on the application for June 16, 2008 to decide the case.
15. At the Commission's request, the Applicant submitted supplemental materials in support of the application on June 2, 2008. These materials included a revised set of architectural plans and elevations, dated June 2, 2008 (Exhibit 38) (the "Final Plans"). The Final Plans addressed a number of issues raised by the Commission during the public hearing on May 19, 2008. The Applicant also submitted a supplemental transportation memorandum prepared by O.R. George & Associates, Inc., which indicated that any parking demand generated by the retail uses in the proposed project can be adequately accommodated by on-street parking spaces adjacent to the site. In addition, the Applicant submitted materials boards for the Commission's use during the special public meeting on the application. Finally, the Applicant submitted a revised Leadership in Energy and Environmental Design ("LEED") checklist, which indicated that the proposed project would qualify for nineteen points on the U.S. Green Building Council's LEED New Construction 2.2 ("LEED-NC") rating system.
16. At a special public meeting on June 16, 2008, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and the Final Plans.
17. On June 19, 2008, the Applicant submitted a request for modification to the First Stage Order regarding Condition No. 8. The Commission assigned the request Z.C. Case No. 05-36B. The Commission granted the modification request on July 14, 2008. The Commission's order granting the modification requested in Z.C. Case No. 05-36B is published separately. This Order describes the PUD as modified.
18. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act.

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NCPC, by letter dated July 14, 2008, informed the Commission that it considered the Application and took no action on the proposal.

19. The Commission took final action to approve the application on July 28, 2008 by a vote of 3-0-2.

### **The Subject Property, the Surrounding Area, and the Proposed Project**

20. The Subject Property includes all of Lot 67 in Square 749 and contains approximately 101,102 square feet of land area. Square 749 is bounded by 2<sup>nd</sup> Street to the west, L Street to the north, 3<sup>rd</sup> Street to the east, and K Street to the south, in Northeast Washington, D.C. The Subject Property is located within the C-3-C Zone District and falls within the jurisdiction of ANC 6C. The site slopes significantly from northeast to southwest. Ground elevations on the Subject Property range from approximately 54.65 feet at the northeast corner of the site to 35.20 feet at the southwest corner of the site.
21. The Subject Property is located within the North of Massachusetts ("NoMA") planning area. Most of the adjacent property to the east and south is occupied by rowhouses and other residential uses and is zoned C-2-B, while the area to the north is devoted primarily to light industrial uses and is zoned C-M-1 and C-M-3. The properties located further to the east are located within the R-4 Zone District. The Subject Property is located across 2<sup>nd</sup> Street, N.E. from the Metrorail right-of-way to the west and is located two blocks south of the New York Avenue-Florida Avenue-Gallaudet University Metrorail station and five blocks north of Union Station. Consistent with the District's policy objectives for the NoMA planning area, the surrounding area is currently experiencing significant residential and commercial office development. The Subject Property is located within one-half mile of two federal agency headquarter buildings: the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the north and the U.S. Security and Exchange Commission to the south.
22. The PUD is being developed in two separate phases, but will be constructed as a single building for zoning purposes. The Commission granted consolidated approval of the Phase I PUD in Z.C. Corrected Order No. 05-36. The Phase I PUD is located on the eastern portion of the Subject Property and contains 236,905 square feet of gross floor area, including 3,699 square feet of retail space. The Phase I PUD is currently under construction and includes 202 residential units and 177 off-street parking spaces in an underground garage. This portion of the PUD has a maximum height of 90 feet as measured from 3<sup>rd</sup> Street, N.E. The Commission also granted preliminary approval of the Phase II PUD on the western portion of the site. As originally approved, the Phase II PUD contained 612,433 square feet of gross floor area and had a maximum height of 130 feet as measured from 3<sup>rd</sup> Street, N.E. As originally approved by the Commission, the PUD as a whole would contain 849,338 square feet of gross floor area, including 17,497 square feet devoted to retail uses.

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23. In response to the Commission's concerns regarding the perceived height and massing of the Phase II PUD, the Applicant has eliminated one story from that portion of the building and reduced its maximum height from 130 feet to 121 feet. The building will be 12 stories above the measuring point on 3<sup>rd</sup> Street, N.E. and 14 stories above the sidewalk on 2<sup>nd</sup> Street, N.E. and K Street, N.E. Setbacks were also introduced on the upper stories. The reduction in the height of the building and the related setbacks have reduced the total gross floor area of the Phase II PUD from 612,433 square feet to 555,545 square feet. The Phase II PUD will include 415,307 square feet of gross floor contained in approximately 500 residential units, as well as 13,801 square feet of gross floor area devoted to retail uses (including a 3,446-square-foot daycare center). Additionally, the Phase II PUD will contain 13,328 square feet of gross floor area devoted to ancillary residential uses and 113,109 square feet of gross floor area devoted to core and service areas. The Phase II PUD will have a density of 5.49 FAR, resulting in an overall PUD density of 7.84 FAR, less than the 8.4 FAR originally approved.
24. The Phase II PUD has been designed to minimize the negative impacts of the building's height and mass as experienced from the pedestrian level and complement the character of the surrounding neighborhood. Drawing from the local vernacular, the brick veneer, double-story "warehouse" windows, stone cornice, headers, and sills are incorporated into the façade design to integrate the overall building within its surrounding context. The façade will read as separate buildings, rather than as a single, monolithic mass. At certain points along the façade, the massing at the building's upper levels steps back from the property line to reveal a glazed curtain wall system, which reduces the perceived height of the building from the pedestrian level. The building's contrasting exterior colors break up the building into smaller masses and soften the structure's appearance against the skyline. Both phases of the PUD have similar cornice and masonry detailing that will be repeated throughout the entire project.
25. The Phase II PUD will include a four-level underground garage containing 545 vehicle spaces and 55 bicycle spaces. The underground parking garage will be accessed from 2<sup>nd</sup> Street, N.E. The Phase II PUD will also contain two 55-foot loading berths, two 20-foot service/delivery spaces, and two 200-square-foot loading platforms. These loading facilities will also be accessed from 2<sup>nd</sup> Street, N.E. The Applicant intends to work with DDOT and Zipcar to establish car-sharing spaces on the streets surrounding Square 749.
26. The Phase II PUD will incorporate a number of sustainable design features, including a 16,000-square-foot green roof and stormwater management system that will increase the building's energy efficiency and reduce the volume of stormwater runoff from the site. The significant landscaping of the development's central plaza will also reduce runoff by minimizing the percentage of the site covered by impervious surfaces. The daycare center's outdoor play area will be surfaced with a recycled, poured-in-place material topped with a resilient layer. The Applicant intends to use low-emitting wall coverings, carpeting, and adhesives on the interior of the new building and will install low-flow plumbing fixtures in

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the residential units. Finally, the central plaza and building perimeter will be illuminated by energy-efficient LED lighting. Although the building will not be LEED certified, the Commission finds that the proposed project's sustainable design features are superior to what would be provided in a matter-of-right residential development at this location.

27. The Applicant will reserve 10% of the gross floor area devoted to residential units in the Phase II PUD, or approximately 41,558 square feet, for households earning no more than 80% of Area Median Income ("AMI") for the time periods set forth in Z.C. Corrected Order No. 05-36. These affordable housing units will be evenly distributed throughout all but the top four floors of the Phase II PUD and will be comparable in exterior design, materials, and finishes to the market-rate units in the building.
28. The PUD will surround an outdoor central plaza containing approximately 28,476 square feet of area. The elevated eastern portion of the plaza, which contains approximately 10,721 square feet, will be reserved for use by the residents of the Phase I PUD. Approximately 2,050 square feet of area in the southwest corner of the plaza will be used as an outdoor play area for the daycare center. The remaining portions of the western plaza, containing approximately 15,705 square feet, will be open to the public between the hours of 11:00 a.m. and 7:00 p.m. each day for passive recreational use. The central plaza will include significant landscaping, furniture, and public art displays. The central plaza will be accessed by the public through an arched gateway on 2<sup>nd</sup> Street, N.E.

### **Flexibility from the Zoning Regulations**

29. The Applicant requests the following areas of flexibility from the requirements of the C-3-C Zone District and the corresponding PUD standards:
  - a. relief from the off-street parking requirements of 11 DCMR § 2101.1 for the retail uses in the proposed project;
  - b. relief from the prohibition on multiple roof structures set forth in 11 DCMR § 411.3; and
  - c. relief from the roof structure setback requirements of 11 DCMR § 770.6 for two of the four mechanical penthouses on the Phase II PUD.
30. In Z.C. Case No. 05-36, the Commission granted the Applicant flexibility to allow a five-percent increase in the gross floor area of the overall PUD to permit a maximum density of 8.4 FAR. The Commission notes that the overall density for the PUD as a whole has been reduced to 7.84 FAR, which is below the applicable PUD standards for the C-3-C Zone District. The Applicant no longer requires such flexibility.

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31. Under 11 DCMR § 2101.1, the Applicant is required to provide 14 off-street parking spaces for the retail uses in the Phase II PUD. The supplemental memorandum submitted by the Applicant's transportation consultant, dated May 30, 2008 (Exhibit 37), indicates that any parking demand generated by the retail uses in the PUD can be fully accommodated by on-street parking spaces surrounding Square 749. The Applicant has presented evidence, moreover, that the provision of retail parking spaces in the underground garage would entail significant costs and would create serious security and safety risks for the building's residents. The Commission finds that the costs of strict compliance with the off-street parking requirements for the retail uses in the PUD would far exceed any likely benefits.
32. The Zoning Regulations provide that all penthouses and mechanical equipment on a building's roof must be placed within a single enclosure that harmonizes with the main structure in architectural character, material, and color. (11 DCMR § 411.3.) Although the Applicant may provide a separate enclosure for each of the building's two elevator cores, the Phase II PUD will include four separate mechanical penthouses. Multiple enclosures are necessary in this case due to the size of the building, the configuration of the building's mechanical equipment, and location of the planted green roof areas. The Commission further finds that compliance with the single-enclosure requirement in this case would only increase the visibility of the structure from the surrounding streets and would have an adverse visual impact on adjacent properties.
33. Within the C-3-C Zone District, any structure located on a building's roof must be set back from each of the building's exterior walls by a distance at least equal to the structure's height above the roof upon which it sits. (11 DCMR § 770.6.) Although the four mechanical penthouses on the roof of the Phase II PUD will be set back at least that distance from all of the building's street-facing walls, two of the penthouses will not be sufficiently set back from the walls of the building's interior courtyard. The Commission finds that the placement of these penthouses is dictated by the location of the Phase II PUD's stairway and elevator cores, and that it would be impractical to relocate these two enclosures to comply with the setback requirement.

#### **Reports of the D.C. Office of Planning**

34. OP filed a preliminary report on the application dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for public hearing and requested that the Applicant provide additional information and materials on the proposed project prior to the hearing.
35. OP filed its final report on the application (Exhibit 27) on May 9, 2008. The report recommended that the Commission approve the application, subject to the resolution of the following issues:

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- a. OP asked the Applicant to revise the architectural plans to more clearly illustrate the connections between the Phase I PUD and the Phase II PUD to ensure that the entire project would function as a single building for zoning purposes. As illustrated on Sheets A1.02a through A1.09a of the Final Plans, the first and second phases of the development will be connected at every floor. The Commission finds that the Phase I PUD and the Phase II PUD constitute a single building for zoning purposes.
- b. OP asked the Applicant to discuss whether calculating the 10% affordable housing requirement on a net-to-net basis rather than on a gross-to-gross basis would result in less affordable housing. The Applicant's land use expert submitted written testimony, dated May 19, 2008 (Exhibit 31), at the Commission's public hearing. That testimony included an attachment demonstrating that the calculation of the affordable housing requirement on a net-to-net basis does not result in any diminution in the amount of affordable housing that is provided. The Commission finds that the provision of 41,558 square feet of affordable housing in the Phase II PUD satisfies the 10% affordable housing requirement set forth in Z.C. Corrected Order No. 05-36.
- c. OP asked the Applicant to establish a minimum square footage for each type of affordable dwelling unit. Because the size and configuration of the market-rate dwelling units in the proposed development have not been finalized, the Commission will not establish a minimum requirement for the size of the affordable units in the Phase II PUD. During the public hearing on the application, the Applicant testified that the gross floor area of each affordable housing unit would be no less than 95% of the average gross floor area of market-rate units of the same type.
- d. OP asked the Applicant to explain why the core and service areas represented such a high percentage of the development's gross floor area. According to the Final Plans, the building's core and service areas contain approximately 113,109 square feet of gross floor area, which represents approximately 20% of the project's total gross floor area. These areas include the building's elevators, stairs, corridors, administrative areas, loading areas, trash rooms, utility rooms, and storage areas. Although the core and service areas in other buildings typically represent approximately 15% of a building's gross floor area, the Applicant explained that the size and configuration of these areas is dictated by the need for multiple egress stairways and by the location of the central elevator and stair cores. The placement of these circulation cores, in turn, was made necessary by the location of the garage entry previously approved by the Commission in Corrected Order No. 05-36. Furthermore, the covered arched walkway to the central plaza is included in the project's density, along with an indoor swimming pool and two sets of loading berths.
- e. OP asked the Applicant to explain why the eastern portion of the central plaza would not be open to the public and whether any other public benefits would be provided to justify this reduction in public access. The Applicant testified that the elevated eastern

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portion of the central plaza is surrounded by dwelling unit windows. Opening this portion of the central plaza to the public would compromise the privacy and safety of the Phase I PUD's residents.

- f. OP requested that the Applicant continue to work with DDOT to refine the design of the landscaping and other improvements located in public space, and recommended that the Commission grant the Applicant the flexibility to modify the design of the ground floor of the proposed project as well as improvements within the adjacent public space along K Street, N.E.

#### **Report of the District Department of Transportation**

36. DDOT filed a report dated May 14, 2008 (Exhibit 29), recommending approval of the application. In its report, DDOT requested that the Commission grant the Applicant the flexibility to work with DDOT on the final design of the landscaping and other streetscape improvements located in public space adjacent to the proposed project.

#### **Reports of Advisory Neighborhood Commission 6C**

37. ANC 6C submitted a letter to the Commission dated February 19, 2008 (Exhibit 13), reporting that the ANC voted to recommend approval of the proposed project at its regularly scheduled public meeting on February 13, 2008. Although the letter stated that all nine commissioners had participated in the ANC's consideration of the project, it did not indicate the number of commissioners who actually voted in support of the application. The Commission requested that ANC 6C submit an additional letter for the record providing such information.
38. ANC 6C submitted a supplemental letter to the Commission dated May 21, 2008 (Exhibit 36), indicating that the ANC had voted 8-1-0 to recommend approval of the proposed project at its public meeting on February 13, 2008.

#### **Testimony in Support and Opposition**

39. No other parties testified in support of or opposition to the application.

#### **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.)

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2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a two-stage 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 Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The proposed development carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable in a matter-of-right development.
4. The proposed PUD meets the minimum area requirements set forth in § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height and density standards approved by the Commission in Z.C. Corrected Order No. 05-36. Indeed, the Applicant has significantly reduced the height and density of the Phase II PUD below what was approved in Z.C. Corrected Order No. 05-36. The height and density of the proposed project will not cause an adverse impact on any nearby properties. The proposed mixed-use development is appropriate for this site, which is located in close proximity to public transportation and is adequately served by existing public services and facilities.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the present character of the surrounding area and are not inconsistent with the Comprehensive Plan. The Commission concludes that the project's benefits and amenities represent a reasonable tradeoff for the requested development flexibility.
7. Approval of this application is appropriate because the proposed development is consistent with the present character of the area and 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 Zoning Map.
8. Approval of this application and the related map amendment is not inconsistent with the Comprehensive Plan or with the site's designation for medium-density residential land uses on the Future Land Use Map.
9. The Final Plans are consistent with the conditions set forth in the Z.C. Corrected Order No. 05-36, as modified by Z.C. Order No. 05-36B.

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10. Pursuant to 11 DCMR § 2608.2, all other provisions of Chapter 26 of the Zoning Regulations, Inclusionary Zoning, do not apply to this application because it was set down for hearing prior to March 14, 2008.
11. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
12. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the issues and concerns raised by the affected ANC in its written report. The Commission has carefully considered the report submitted by ANC 6C and concurs in its recommendation of approval.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission orders **APPROVAL** of the application for second-stage review and approval of a Planned Unit Development on a portion of Lot 67 in Square 749. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the architectural plans and elevations dated June 2, 2008 and marked as Exhibit 38 of the record in this case (the "Final Plans"), and as modified by the guidelines, conditions, and standards of this Order. The Applicant shall have the flexibility to modify the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators and bathrooms, provided that the variations do not change the exterior configuration of the building;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
  - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railing and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit;
  - d. To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation;

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- e. To increase or decrease the overall number of residential units by no more than five percent, provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Z.C. Corrected Order No. 05-36; and
  - f. To vary the number and location of parking spaces in the underground garage, provided that the total number of parking spaces is no less than 545 vehicle spaces and 55 bicycle spaces.
2. The Phase II PUD shall have an overall density of no more than 5.49 FAR. The development shall contain approximately 555,545 square feet of gross floor area, including 13,801 square feet devoted to retail uses. The retail uses in the building shall include a daycare center containing at least 3,446 square feet of gross floor area.
3. The Phase II PUD shall have a total height of no more than 121 feet, as measured from the measuring point on 3<sup>rd</sup> Street, N.E. identified on Sheet C.6 of the Final Plans. Each floor in the Phase II PUD shall have a minimum floor-to-ceiling height of no less than eight feet, six inches.
4. The Phase II PUD shall provide a green roof covering at least 16,000 square feet of surface area on the building's roof.
5. The ground-floor retail space in the Phase II PUD shall have a clear floor-to-ceiling height of no less than 14 feet.
6. No less than 10% of the gross floor area devoted to residential units in the Phase II PUD shall be reserved for households earning no more 80% of Area Median Income ("AMI") and for the time frames set forth in Z.C. Corrected Order No. 05-36.
7. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve, at a minimum, the goal of 35% percent participation by local, small, and disadvantaged business enterprises in the contracted development costs associated with the design, development, construction, and security for the PUD project.
8. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD project.
9. The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*, ( the "Act").

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This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

10. No building permit shall be issued for the construction of any improvements pursuant to this Phase II PUD until the owner of the Subject Property has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs.
11. 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 §§ 2408.8 and 2409.1. Construction shall begin within three (3) years of the effective date of this Order.

On June 16, 2008, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on July 28, 2008, 2008, by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to adopt; Gregory N. Jeffries and Curtis L. Etherly, Jr., not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon its publication in the *D.C. Register*; that is on November 14 2008.

**ZONING COMMISSION ORDER NO. 05-36B**  
**Z.C. Case No. 05-36B**  
**K Street Developers, LLC**  
**Modification of a Planned Unit Development at 200 K Street, N.E.**  
**July 14, 2008**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 14, 2008. At the meeting, the Commission approved an application from K Street Developers, LLC (the "Applicant") for a modification to an approved planned unit development ("PUD") for property located at 200 K Street, N.E. (Lot 67 in Square 749). Because the modification was deemed minor, a public hearing on the request was not required. 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**

On November 29, 2005, the Applicant filed an application requesting preliminary and consolidated approval of a PUD and a related map amendment to the C-3-C Zone District for all of Lot 67 in Square 749 (the "Subject Property"). In Z.C. Corrected Order No. 05-36 (effective October 13, 2006), the Commission granted consolidated approval for the portion of the project located on the eastern portion of the site ("Phase I") and preliminary approval for the portion of the project located on the western portion of the site ("Phase II"). Condition No. 8 of the Commission's order applied to both phases of the project and required, *inter alia*, the provision of an outdoor central plaza containing approximately 27,000 square feet of land area that would be available for passive recreational use by the public between the hours of 11:00 a.m. and 7:00 p.m.

On October 4, 2007, the Applicant filed an application for second-stage approval of Phase II. As currently designed, the proposed project will include an outdoor central plaza containing approximately 28,476 square feet of land area in both phases. Although the portion of the plaza located within Phase II will be open to the public between the hours of 11:00 a.m. and 7:00 p.m. each day, the Applicant now requests that the use of the elevated terrace located within Phase I be limited to the residents of Phase I. Because the windows of residential units are located at ground level along the perimeter of the elevated terrace, the Applicant claims that public access to that area would compromise the safety and privacy of the building's residents.

During the public hearing on the second-stage PUD application for Phase II on May 19, 2008, the Applicant requested that the Commission provide "flexibility" from Condition No. 8 of Z.C. Corrected Order No. 05-36. The Applicant's proposal to restrict public access to the elevated terrace within the central plaza was discussed extensively during the proceedings on the second-stage PUD application for Phase II, and the Office of Planning ("OP") concluded that the loss of public access to this portion of the plaza was more than offset by other project amenities.

However, because the Applicant seeks to limit public access to the portion of the central plaza located within Phase I and because the proceeding in Z.C. Case No. 05-36A applies only to

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Phase II, the Office of the Attorney General (“OAG”) concluded that the Applicant should file an application for a modification of Z.C. Corrected Order No. 05-36 as to Phase I.

The Applicant therefore requested the modification to Condition No. 8 in Z.C. Corrected Order No. 05-36 as described above. Although, the proposed modification would limit access to the portion of the central plaza located within Phase I to the residents of Phase I, the majority of the central plaza will remain open to the public. No other aspects of the proposed project will be changed, and the Applicant has stated that it will observe all other conditions of Z.C. Corrected Order No. 05-36. The modifications proposed by the Applicant are fully consistent with the central plaza conditions approved in Z.C. Case No. 05-36A.

There was no opposition to this minor modification request. Advisory Neighborhood Commission (“ANC”) 6C, the ANC in which the property is located, was served by the Applicant with a copy of the requested modification but did not submit a written report. The Commission did not request a written report from OP.

On July 14, 2008, at its regular monthly meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the minor modification to Z.C. Corrected Order No. 05-36. The Commission concurs with the Applicant that the approval of the requested modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

### CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission finds that the proposed modification is minor and consistent with the intent of the previously approved PUD in Z.C. Corrected Order No. 05-36. Further, the Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purposes of the Zoning Regulations.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the proposed modification does not impact the essential elements of the approved PUD, including use, height, gross floor area, lot occupancy, setbacks, or number of off-street parking spaces. The material facts relied upon by the Commission in approving the PUD have not changed, and the modification request is of such a minor nature that its consideration as a Consent Calendar item without a public hearing is appropriate.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a minor modification to the approved PUD. Condition No. 8 of Z.C. Corrected Order No. 05-36 is hereby revised to read as follows:

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8. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. ~~¶~~**With the exception of the proposed daycare center's outdoor play area, the portion of the** central plaza **located within the Preliminary PUD** shall be opened to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. **This portion of the** plaza shall be accessible to the public through a 2<sup>nd</sup> Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. **Use of the portion of the central plaza located within the Consolidated PUD shall be limited to the residents of the Consolidated PUD.** In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2<sup>nd</sup> Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 et seq., and Advisory Neighborhood Commission 6C.

Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs ("DCRA") for the minor modification until the Applicant has recorded a "Notice of Modification" of Z.C. Corrected Order No. 05-36 in the land records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Corrected Order No. 05-36 and this Order (Z.C. Order No. 05-36B), 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 by the Zoning Commission.

This application was approved by the Zoning Commission at its public meeting on July 14, 2008, by a vote of 5-0-0 (Anthony J. Hood, Michael G. Turnbull, Gregory N. Jeffries, and Curtis Etherly, Jr. to approve; Peter G. May to approve by absentee ballot).

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 November 14, 2008.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**Z.C. ORDER NO. 07-32**  
**Z.C. Case No. 07-32**  
**Capitol Gateway Overlay Review**  
**NJA Associates LLC and the Washington Metropolitan Area Transit Authority**  
**March 10, 2008**

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on January 31, 2008 to consider an application filed by NJA Associates LLC ("NJA") and the Washington Metropolitan Area Transit Authority ("WMATA") for review and approval of a new development pursuant to the Capitol Gateway ("CG") Overlay District provisions set forth in §§ 1604 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The property that is the subject of this application is designated as Lots 48, 52, 53, 74, and 78 in Square 743-N. WMATA and NJA are collectively referred to as the "Applicants."

In addition, the Applicants sought special exception relief pursuant to § 1610.7 for a waiver of the rear yard requirement of § 774.1.<sup>1</sup> The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

1. On November 9, 2007, the Applicants filed an application for review and approval of a new development with frontage on M Street, S.E. pursuant to the CG Overlay District provisions for property located at 1111 New Jersey Avenue, S.E. The subject property is designated as Lots 48, 52, 53, 74, and 78 in Square 743-N and contains approximately 22,041 square feet of land area. Square 743-N is bounded by L Street on the north, New Jersey Avenue on the east, M Street on the south, and First Street on the west in Southeast Washington, D.C. The square is bisected by a north-south public alley that is approximately 14 feet in width. The site is located within the C-3-C Zone District and also falls within the Capitol South Transferable Development Rights ("TDR") Receiving Zone. The southern portion of the site, including Lots 48, 52-53, 74, and the portion of Lot 78 formerly known as Lots 44-47 and 816-817, is located within the CG Overlay District. The CG Overlay District extends into the subject property to a depth of approximately 150 feet from M Street and covers approximately 60% of the site. The subject property is not listed on the D.C. Inventory of Historic Sites, nor is it located within an historic district. The site is currently improved with a surface parking lot and the east entrance of the Navy Yard Metrorail Station.

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<sup>1</sup> The Board of Zoning Adjustment (the "Board") granted an application for special exception relief from the rear yard requirement for a nearly identical building at this location. *See BZA Application No. 17604 of NJA Associates LLC* (effective December 13, 2007). The project previously approved by the Board did not include any lots that abutted M Street within the CG Overlay District and was thus not subject to review by the Commission. The present application seeks the same relief approved in BZA Order No. 17604.

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2. The Applicants filed a prehearing statement in support of the application on January 11, 2008 (the "Prehearing Statement"), which is marked as Exhibit 13 of the record in this case. The Prehearing Statement included a revised set of architectural plans and elevations, marked as Exhibit 14 of the record.
3. After proper notice, the Commission held a hearing on the application on January 31, 2008. Parties to the case included the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the subject property is located.
4. At its duly noticed meeting on January 14, 2008, ANC 6D voted 7-0-0 to oppose the proposed project. In its report to the Commission, dated January 30, 2008 and marked as Exhibit 17 of the record in this case, the ANC stated that its opposition to the project was based on the Applicants' failure to provide a community benefits package. ANC 6D's report also stated that while it was pleased with the design of the New Jersey Avenue setback and the associated public space treatment, it was concerned that the plans did not include outdoor seating in the New Jersey Avenue setback area.
5. Expert witnesses appearing on behalf of the Applicants included Siti Abdul-Rahman of WDG Architecture (building design), Trini Rodriguez of Parker Rodriguez (landscape architecture), Christopher L. Kabatt of Wells & Associates (transportation), and Lindsley Williams of Holland & Knight LLP (land use and zoning). Robert Donohoe, Jr. of Donohoe Development was also available for questions from the Commission.
6. At the conclusion of the hearing, the Commission directed the Applicants to submit a resume for each of their expert witnesses, as well as a Leadership in Energy and Environmental Design ("LEED") certification checklist. By submission dated February 21, 2008 and marked as Exhibit 21 of the record, the Applicants provided the supplemental materials requested by the Commission. The Commission left the record open until February 21, 2008 for a further report from DDOT. No such report was submitted to the Commission.
7. At its public meeting on March 10, 2008, the Commission took final action to approve both sets of architectural plans and elevations submitted into the record. The Commission determined that the proposed project satisfied all applicable requirements of the CG Overlay District and met the requirements for the requested special exception relief.

### **Project Overview**

8. The Applicants seek to construct an 11-story office building on the subject property. The proposed building will have an overall density of up to 10.0 floor area ratio ("FAR") and will be constructed to a maximum height of 130 feet. The building will contain approximately 220,410 square feet of gross floor area devoted to office and retail,

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service, entertainment, and arts uses. The building's proposed height and density are permitted as a matter-of-right within the Capitol South TDR Receiving Zone in the C-3-C Zone District, subject to the purchase of transferrable development rights.

9. The proposed development will provide three 30-foot loading berths, a 20-foot service/delivery space, and a 300-square-foot loading platform. These loading facilities will be accessed from the north-south public alley along the western boundary of the Subject Property.
10. The development will include an underground parking garage containing approximately 177 parking spaces, 94 of which will be counted towards the off-street parking requirements. The parking satisfies the requirements set forth in Chapter 21 of the Zoning Regulations.
11. In the original architectural plans for the project, dated November 9, 2008 and marked as Exhibit 8 of the record in this case (the "Original Plans"), access to the underground parking garage was provided from New Jersey Avenue. In response to concerns raised by DDOT prior to the public hearing, the Applicants submitted a revised set of architectural plans, dated January 11, 2008 and marked as Exhibit 14 of the record in this case (the "Modified Plans"), which relocated the garage entrance from New Jersey Avenue to the north-south public alley on the west side of the property. During the public hearing on the application, the Applicants requested that the Commission approve both of these alternatives.

#### **Description of the Surrounding Area**

12. The subject property is located on the northwest corner of the intersection of New Jersey Avenue and M Street in Southeast Washington, D.C. The adjacent property to the north is currently improved with the St. Matthew's Baptist Church. The subject property is separated from the western half of Square 743-N by a north-south public alley that is approximately 14 feet in width. A 12-story office building (100 M Street, S.E.) and a 14-story residential building (1100 First Street, S.E.) are currently under construction on the western half of the Square. A large office building completed in 2003 (1100 New Jersey Avenue, S.E.) is located to the east directly across the street from the subject property.
13. Although much of the surrounding property is currently vacant or underutilized, the area is quickly becoming a magnet for both public and private investment due to its proximity to the Anacostia Waterfront, the Southeast Federal Center, and Nationals Park.
14. Much of the surrounding property is zoned C-3-C to the north and west and CR to the south. The areas to the west, north, and east of the subject property are designated by the Future Land Use Map of the Comprehensive Plan for the National Capital: District Elements ("Comprehensive Plan"), adopted through the Comprehensive Plan

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Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300) for high-density commercial use, while the property across M Street to the south is designated for mixed-use development including high-density commercial and high-density residential land uses. The site is located northwest of the new U.S. Department of Transportation headquarters and Southeast Federal Center and west of the Capper/Carrollsborg planned unit development and the proposed Canal Blocks Park.

### **Capitol Gateway Overlay District Design Requirements**

15. The proposed project is subject to the requirements of § 1604 of the Zoning Regulations because the new building will have frontage on M Street, S.E. within the CG Overlay District. The project is also subject to the requirements of § 1610 because the new building will be located on a lot that abuts M Street, S.E. within the CG Overlay District.
16. The proposed project will not involve the construction of any new driveways or curb cuts from M Street. The building's loading facilities will be accessed from the north-south public alley on the west side of the site, and the underground parking garage will be accessed from either New Jersey Avenue or the public alley. (11 DCMR § 1604.2.)
17. The proposed building will be set back approximately 31 feet from the face of the adjacent curb along M Street. (11 DCMR § 1604.3.)
18. The proposed building will provide approximately 5,726 square feet of preferred retail, service, entertainment, and arts uses on the ground floor. This represents approximately 35% of the gross floor area on the building's ground floor. With the exception of areas devoted to building entrances, these preferred uses will occupy 100% of the new building's frontage along M Street. (11 DCMR § 1604.4.)
19. On the ground floor, at least 50% of the building's streetwall along M Street will be covered by commercial entrances and display windows with clear or low-emissivity glass. (11 DCMR § 1604.6.)
20. All portions of the proposed building devoted to ground-floor retail uses will have a clear floor-to-ceiling height of no less than 14 feet. (11 DCMR § 1604.7.)
21. The height, bulk, and design of the proposed building, as well as its landscaping and sidewalk treatment, are consistent with the Zoning Regulations, the Comprehensive Plan, and the general scale of development in the surrounding neighborhood. The new commercial and retail uses in the proposed project will result in an appropriate balance of commercial and residential uses within Square 743-N and the broader vicinity. (11 DCMR § 1610.3(a),(b),(c).)

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22. The proposed development will provide a sidewalk that is over 30 feet in width in order to improve the flow of pedestrian traffic near the Navy Yard Metrorail station. (11 DCMR § 1610.3(c),(d).)
23. Both of the alternative building designs submitted by the Applicants will minimize conflicts between vehicles and pedestrians. (11 DCMR § 1610.3(d).)
24. There will be no unarticulated blank walls on any portion of the building along M Street or New Jersey Avenue. (11 DCMR § 1610.3(e).)
25. The proposed project will be designed in accordance with the standards for LEED-Silver certification and will have no significant impact on the natural environment. The new building will incorporate a number of sustainable design features such as energy-efficient mechanical and electrical systems. The project's proximity to the Navy Yard Metrorail station will also promote increased transit use by the building's occupants. (11 DCMR § 1610.3(f).)
26. The overall project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. With the exception of the requested special exception relief from the rear yard requirement, the proposed project will comply will all applicable zoning requirements. (11 DCMR § 3104.1.)

#### **Special Exception Relief from the Rear Yard Requirement**

27. The Applicants requested special exception relief from the rear yard requirement of § 774.1 pursuant to §§ 1610.7 and 3104.1. Section 774.1 of the Zoning Regulations requires all structures located within the C-3-C Zone District to provide a rear yard with a minimum depth of 2.5 inches for each foot of vertical height between the mean finished grade at the middle of the building's rear wall and the highest point of the building's main roof or parapet. When a lot abuts a public alley in the C-3-C Zone District, the rear yard may be measured from the building's rear wall to the centerline of the adjacent alley under § 774.9. Because the proposed building will rise to a maximum height of 124 feet as measured from the mean finished grade at the rear of the building, the proposed project is required under § 774.1 to provide a rear yard that is 25 feet, 10 inches in depth. The proposed project will have a rear yard that is only seven feet deep.
28. The proposed building will be sufficiently removed from all adjacent structures and will provide adequate light, air, and privacy to building occupants. The minimum distance between the rear wall of the proposed building and the 100 M Street office building across the alley will range between 14 feet and approximately 35 feet. The 100 M Street building is separated from the public alley by a vacant lot that is unlikely to be developed. The 1100 First Street residential building will be separated from the proposed

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building by the public alley and a large courtyard. The distance between the rear wall of the proposed building and the facing windows in the residential building across the alley will range from 50 feet to over 100 feet.

29. The residential units in the 1100 First Street building are located along First Street and L Street. The facing windows of the proposed building and the residential building with the most direct sight lines will be separated from one another by a distance of approximately 100 feet. There are no habitable rooms in either the proposed building or in the office building at 100 M Street.
30. The proposed building will provide adequate off-street service functions such as parking, loading facilities, and vehicular access points. The underground parking garage, spaces, and aisles will satisfy the size, location, access, maintenance, and operational requirements set forth in Chapter 21 of the Zoning Regulations. The loading facilities will comply with the all of the applicable requirements set forth in Chapter 22 of the Zoning Regulations.
31. Under § 774.9(a) of the Zoning Regulations, no rear yard is required below a horizontal plane drawn 20 feet above the mean finished grade at the rear of the building. The requested reduction in the required rear yard will therefore have no effect on vehicular traffic within the alley and will not undermine the efficient provision of public services to the buildings within the square.
32. This application was referred to the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) for review.
33. The requested reduction of the rear yard requirement will have no adverse impacts on neighboring properties. The Applicants have received letters in support of the application from the owners of the adjacent properties at 100 M Street at 1100 First Street. These letters were attached as Exhibit G to the Applicants' Prehearing Statement.

### **Office of Planning Report**

34. By report dated January 21, 2008 and marked as Exhibit 16 of the record in this case, OP recommended approval of the application. The report concluded that the proposed project was consistent with the requirements of the CG Overlay District and that the Applicants had met the requirements for special exception relief from the rear yard requirement of § 774.1. Stephen Rice and Joel Lawson of OP testified in support of the application at the Commission's public hearing on the application.

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**Other Agency Reports**

35. By report dated January 31, 2008 and marked as Exhibit 18 of the record, DDOT requested a number of modifications to the proposed project. First, the report requested that the Applicants place the entrance to the underground parking garage on the public alley along the west side of the property. Second, the report recommended converting the currently uncontrolled public alley into a one-way southbound alley with a right-in, right-out restriction at the alley's intersection with M Street. Third, DDOT requested that deliveries to the proposed project be restricted during peak traffic hours. Fourth, the report suggested the introduction of traffic-calming treatments at the intersection of the public alley and M Street to minimize conflicts between vehicles and pedestrians. Finally, the report recommended that the off-street parking provided in the building be reduced to 97 spaces. In addition to these five recommendations, DDOT expressed concern with the proposed location of utility vaults in public space along New Jersey Avenue. Christopher Delfs, Ward 6 Transportation Planner for DDOT, testified at the public hearing on the application.
36. DDOT submitted a supplemental report dated March 10, 2008 marked as Exhibit 23 of the record. The report stated that DDOT met with the Applicant and performed additional analysis regarding the functionality of the driveway configuration. The DDOT supplemental report concluded "given the new evidence provided by the Applicant's traffic consultant and the shallow depth constraints created by the Metrorail station below the site, DDOT is willing to permit a curb cut on New Jersey Avenue. DDOT maintains its reservations about introducing another conflict point for pedestrians and negatively impacting the streetscape of a ceremonial boulevard. In order to mitigate these issues, DDOT will require the Applicant to work with out Transportation Planning and Policy Administration to reduce the number of parking spaces in the public vault space, design the driveway in a manner that minimizes vehicle turning speeds, and to manage the utility vaults so as not to degrade the public environment."

**CONCLUSIONS OF LAW**

1. The application was submitted pursuant to 11 DCMR §§ 1604.1 and 1610.1 for review and approval by the Commission. The application also requested special exception relief pursuant to 11 DCMR § 1610.7.
2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, the Office of Planning, and owners of property within 200 feet of the site.
3. Pursuant to §§ 1604.1 and 1610.1, the Commission required the Applicants to satisfy all applicable requirements set forth in §§ 1604.2 through 1604.9 and 1610.2 through 1610.3. Pursuant to § 1610.7, the Commission also required the Applicants to meet the

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requirements for special exception relief set forth in §§ 774.2 through 774.6 and 3104.1. The Commission concludes that the Applicants have met their burden.

4. The proposed development is within the applicable height, bulk, and density standards for the C-3-C Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.
5. The requested relief from the rear yard requirement of § 774 is in harmony with the general intent and purpose of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property.
6. The proposed office and retail uses are appropriate for this location and are consistent with the subject property's high-density commercial designation on the Future Land Use Map of the Comprehensive Plan. The project is not inconsistent with the Comprehensive Plan.
7. The proposed project will further the objectives of the CG Overlay District as set forth in § 1600.2 and will promote the desired mix of uses set forth therein.
8. The off-street parking for the project is in compliance with the requirements of Chapter 21.
9. The Commission is required under D.C. Official Code § 1-309.10(d)(3) to give "great weight" to the issues and concerns of the affected ANC raised in its written report by articulating with particularity and precision the reasons why the ANC does or does not offer persuasive advice in a particular case. ANC 6D voted 7-0-0 to oppose the proposed project. ANC 6D's opposition to the application was based on the absence of a community benefits package, and its concern that the plans did not include outdoor seating in the New Jersey Avenue setback area of the building.
10. The Commission does not find the recommendation for denial persuasive. First, because no community benefits package is required as a prerequisite for obtaining the Commission's approval of this development or to grant the special exception relief requested. Unlike a PUD, the Applicants are not asking for zoning relief based upon the public benefits of the project. Instead, the Applicants have proven that they meet the requirement for zoning approval of a project within the CG Overlay as well as the elements for granting a special exception. Nothing more may legally be required of it.
11. Similarly, the Zoning Regulations do not require outdoor seating as recommended by the ANC, and the Applicants showed that they met their burden of proof for approval under Chapter 16 and § 3104 without the provision of such an amenity. Indeed requiring

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outdoor seating would not complement the needs of the ultimate retail tenants, and could impede the flow of pedestrian traffic.

12. Based upon the record before it, Commission concludes that the Applicants have met the burden of satisfying the applicable standards under §§ 1604 and 1610, as well as the independent burden for the requested special exception relief under §§ 1610.7 and 3104.1.

### DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application consistent with this Order. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 48, 52, 53, 74, and 78 in Square 743-N.
2. The project shall be built in accordance with either:
  - (a) the original Architectural Plans and Elevations marked as Exhibit 8 of the record in this case, as modified by the guidelines, conditions, and standards below; or
  - (b) the modified Architectural Plans and Elevations marked as Exhibit 14 of the record in this case, as modified by the guidelines, conditions, and standards below.
3. The project shall include no more than 220,410 square feet of gross floor area, or 10.0 FAR, whichever is less. The distribution of uses and densities shall be as shown on Sheet A-0.1 of the Architectural Plans and Elevations.
4. The overall density on the site shall not exceed 10.0 FAR.
5. Except for roof structures, the maximum height of the new building shall not exceed 130 feet. Roof structures shall be constructed in accordance with Sheet A-4 of the Architectural Plans and Elevations.
6. The landscape treatment shall be in accordance with Sheet L-1 of the Architectural Plans and Elevations.
7. A minimum floor-to-ceiling clear height of 14 feet shall be provided for those areas dedicated to ground-floor retail, service, entertainment, and arts uses.
8. Three 30-foot loading berths, one 300-square-foot loading platform, and one 20-foot service/delivery space shall be provided for the proposed development.

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9. No deliveries to the proposed building will be permitted on weekdays between the hours of 7:00 a.m. and 10:00 a.m. and between 4:00 p.m. and 7:00 p.m.
10. A minimum of 35%, or 5,726 square feet, of the gross floor area of the ground floor shall be devoted to the retail, service, entertainment, and arts uses listed in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of the Zoning Regulations.
11. The Owner is required to comply fully with the provisions of the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.1 et seq. (the "Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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. Violations will be subject to disciplinary action. The failure or refusal of the Owner to comply with the Act shall furnish grounds for the denial or, if issued, the revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 10, 2008, the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Gregory N. Jeffries, Peter G. May, and Anthony J. Hood to approve; Michael G. Turnbull to approve by absentee ballot; Curtis Etherly, Jr. not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on November 14, 2008.

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