

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS****CONSTRUCTION CODES COORDINATING BOARD****NOTICE OF SCHEDULED MEETING**

The Construction Codes Coordinating Board will be holding a scheduled meeting on Thursday, February 25, 2010 at 10:00 am. The meeting will be held at 941 North Capitol Street, NE, Suite 9500, Washington, D.C. 20002.

Draft board meeting agendas are available on the website of the Department of Consumer and Regulatory Affairs at [dcra.dc.gov](http://dcra.dc.gov), by clicking on the "Construction Codes Coordinating Board (CCCB)" tab on the main page.

The meeting schedules for the Construction Codes Coordinating Board's subcommittees, the Technical Advisory Groups, are also posted on the DCRA website at the same address and link noted above.

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The following is a listing of raze permit applications filed with the Permit Operations Division of the Department of Consumer and Regulatory Affairs:

Application Date	Address	Lot	Square	Use
January 25, 2010	3030 Chain Bridge Road, NW	14	1427	Single-family dwelling emergency raze
January 27, 2010	1450 Foxhall Road, NW	979	1363	Single-family dwelling
January 27, 2010	2610 Georgia Avenue, NW	37	2884	Single-family dwelling

For further information, please contact Mr. Tyrone Thomas at the Permit Operations Division via email at [Tyrone.Thomas2@dcra.gov](mailto:Tyrone.Thomas2@dcra.gov) or Ms. Cheryl Randall Thomas, Manager of the Permit Center, at (202) 442-4534.

DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

**Certification of Filling Vacancies**  
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics “Board” from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

William E. Brown, Jr.  
Single-Member District 1A06

## DISTRICT OF COLUMBIA

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## NOTICE OF SOLICITATION OF OFFERS

The Department of Housing and Community Development (Department) released its 3rd Solicitation for Offers (SFO) for the development of several District-owned properties in the Bellevue neighborhood on December 18, 2009. **Please note that the submission date for the bids has been extended from 3 pm, Monday, February 15, 2010, to 3 pm, Monday, March 1, 2010. All questions regarding the solicitation must be received by 3pm, Monday, February 22<sup>nd</sup>, 2010.**

The Department is seeking offers for the development of single and multifamily housing units, including affordable units, to be built on the Development Sites in the following seven locations:

**Development Site #1:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6170, 0804	10 Brandywine St, SE	Vacant Lot	8	R-5-A	No	Bellevue	\$184,690

**Development Site #2:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6239, 0060	62 Forrester St, SW	Vacant Lot	8	R-2	No	Bellevue	\$77,140

**Development Site #3:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6239, 0082	105 Galveston Pl, SW	Vacant Building	8	R-2	No	Bellevue	\$251,400

**Development Site #4:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6240, 0054	35 Forrester St, SW	Vacant Building	8	R-2	No	Bellevue	\$243,330

**Development Site #5:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6240, 0063	61 Forrester St, SW	Vacant Building	8	R-2	No	Bellevue	\$312,920

**Development Site #6:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6240, 0060	53 Forrester St, SW	Vacant Building	8	R-2	No	Bellevue	\$311,270

**Development Site #7:**

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood	Assessed Value
6240, 0803	157 Forrester St, SW	Vacant Lot	8	R-2	No	Bellevue	\$238,310

The Solicitation for Offers, including application materials is available on DHCD's Website at [www.dhcd.dc.gov](http://www.dhcd.dc.gov) and is available (in print and in CD format) at DHCD's Housing Resource Center located at 1800 Martin Luther King Jr., Ave. SE.

Hard Copies of the Solicitation materials will be available upon request. For further information and questions, please contact Adarsh Hathi, Realty Project Manager at [Adarsh.hathi@dc.gov](mailto:Adarsh.hathi@dc.gov) or (202) 478-1351.

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

**Request for Modification of Approved Plans of Application No. 17741-A of Fort Lincoln – Eastern Avenue LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a special exception under Section 353 (New Residential Development) and Section 2516 (Theoretical Lot) and variance relief from the floor area ratio under Section 2516, to construct 54 residential dwelling units (27 stacked townhouses in four separate buildings) in the R-5-A and R-5-D Districts on property bounded by Bladensburg Road, N.E., Eastern Avenue, N.E. and Fort Lincoln Drive, N.E. (Square 4325, Lots 44, 802 and Parcel 174/15).<sup>1</sup>

<b>ORIGINAL HEARING DATE:</b>	April 1, 2008
<b>ORIGINAL DECISION DATE:</b>	April 8, 2008
<b>FINAL ORDER ISSUANCE DATE (original application):</b>	April 9, 2008
<b>MODIFICATION DECISION DATE:</b>	February 2, 2010

**SUMMARY ORDER ON MODIFICATION**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 2113.2. (Exhibit 5).

**Background.**

On April 8, 2008, the Board of Zoning Adjustment (Board or BZA) approved Fort Lincoln – Eastern Avenue, LLC’s (the Applicant) request for special exception approval under Section 353 (New Residential Development) and Section 2516 (Theoretical Lot) and variance relief from the floor area ratio and side yard requirements under Section 2516, to construct 56 residential dwelling units (28 stacked townhouses in four separate buildings) in the R-5-A and R-5-D Districts. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on April 9, 2008 (BZA Order No. 17741). (Exhibit 31).

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<sup>1</sup> Due to the Board’s approval of the modification of plans, the relief requested and granted has changed, resulting in elimination of the request for side yard relief and decreasing the number of residential dwelling units to 54, from 56, and the number of stacked townhouses to 27, from 28. Accordingly, the caption for the case has been altered to reflect these changes.

**BZA APPLICATION NO. 17741-A****PAGE NO. 2**The Modification.

On January 5, 2010, the Applicant filed with the Board a request for minor modification of the plans approved in BZA Order No. 17741. The project proposed in the minor modification application will create a community of stacked townhouse condominiums with 54 units (in 27 stacked townhouse condominiums), compared to the 56 units approved in the original application. The proposed minor modifications do not impact the vehicular and pedestrian circulation patterns of the originally approved project and do not impact the bioretention areas/raingardens or the tot lot proposed in the originally approved project.

The zoning relief requested in the minor modification application is the same as in the original application, except that the BZA-approved side yard relief for one of the theoretical lots in Order No. 17741 is no longer necessary. The Applicant is seeking special exception approval in order to construct 28 residential units in two buildings, consisting of 14 stacked townhouse condominiums, on the portion of the property that is located in the R-5-A Zone District, pursuant to Section 353 (the remaining 26 units are located in the R-5-D Zone District, and are not subject to Section 353). In addition, on the entire property, the Applicant is seeking special exception approval in order to construct more than one building on a single record lot pursuant to 11 DCMR § 2516. The Applicant is seeking variance relief from Subsection 2516.4 regarding the requirement that each theoretical lot satisfy all bulk requirements. The proposed lots in the R-5-A Zone District do not satisfy the maximum FAR requirement (Section 402).

The Office of Planning (OP) submitted a report in support of the minor modification application. The OP report noted that:

The proposed modifications are not significant and are consistent with the intent of the original application and BZA approval. The proposed modification would continue to meet the variance from the FAR requirement and Special Exception requirements. OP therefore has no objection to the changes being processed as a minor modification.

(Exhibit 34).

The site of this application is located within the jurisdiction of ANC 5A. ANC 5A, which supported the project approved in BZA Order No. 17741, was the only party in the original application. A copy of the minor modification application was served on ANC 5A on January 5, 2010. ANC 5A did not participate in this application. Accordingly, a decision by the Board to grant this minor modification application would not be adverse to any party.

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Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof for minor modification approval enumerated in 11 DCMR § 3129. The Board finds that the minor modification application was filed in a timely manner, on the appropriate parties, and does not change the material facts upon which the Board based its original approval of the application.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibits 9 and 33C – Plans) be **GRANTED**.

**VOTE: (April 8, 2008) APPROVING APPLICATION 17741:**

**4:0:1** (Ruthanne G. Miller, Shane L. Dettman, Mary Oates Walter, and Michael G. Turnbull, to approve. No other Board member participating or voting.)

**VOTE: (February 2, 2010) APPROVING MODIFICATION OF PLANS:**

**3:0:2** (Marc D. Loud, Shane L. Dettman, and Meridith H. Moldenhauer, to approve. No other Board members participating or voting.)

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

A majority of Board members approved issuance of this order.

**FINAL DATE OF ORDER:** February 5, 2010

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

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

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING

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BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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.

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

**Application No. 17996-B of Protestant Episcopal Cathedral Foundation, on behalf of Beauvoir School**, pursuant to 11 DCMR § 3104.1, for a special exception under section 206 to increase the number of faculty and staff of an existing private school to 109, in the R-1-B District at premises 3500 Woodley Road, N.W. (Square 1944, Lot 25).<sup>1</sup>

<b>HEARING DATE:</b>	November 24, 2009
<b>DECISION DATE:</b>	November 24, 2009 (Bench Decision)
<b>MOTION FOR RECONSIDERATION:</b>	February 2, 2010
<b>DECISION DATE:</b>	February 2, 2010

**SUMMARY ORDER ON RECONSIDERATION**

Background.

On November 24, 2009, the Board of Zoning Adjustment (“Board” or “BZA”) approved the Applicant’s original request for a special exception under § 206 to modify an existing private school use to increase the number of faculty and staff to 109 from its previous level of 85, while keeping the student enrollment the same, e.g. 400. The Board heard and approved the original application on November 24, 2009 and on December 22, 2009, the Board issued BZA Order No. 17996, granting the relief requested under § 206, with conditions. The original application had requested relief for both the private school and the child development center located on the same site. During its deliberations, the Board separated the two requests for relief and issued two separate orders, each of which contained conditions. BZA Order No. 17996 addressed the special exception for the private school; the child development center is the subject of BZA No. 17996-A. On December 30, 2010, the Applicant filed a timely motion for reconsideration of Condition No. 3 of the final summary order in Application No. 17996. (Exhibit 39). The Applicant maintains that Beauvoir School and Advisory Neighborhood Commission (“ANC”) 3C intended Condition No. 3 in Order No. 17996 to apply only to the proposed child development center, which was approved under a companion case in BZA Order No. 17996-A, and not the elementary school. By

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<sup>1</sup> The application originally filed as BZA No. 17996 was amended and bifurcated to reflect that the Applicant sought special exception relief for two different principal uses (private school under section 206 and child development center under section 205) at a single site. The Beauvoir School has been operating under BZA Order 16274 which authorized a private school under section 206 for up to 400 students and up to 85 faculty and staff. The Applicant is now asking to increase the number of faculty and staff to 109, while keeping student enrollment the same, e.g. 400. BZA Order No. 17996 and this order address only the modification of the existing special exception for the private school use; the child development center is the subject of BZA No. 17996-A.

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letter dated January 22, 2010, ANC 3C submitted its resolution dated January 19, 2010, clarifying that it recommended that Condition No. 3 be imposed in connection with the child development center. (Exhibit 40). The Board waived the requirements of 11 DCMR § 3126.5 to accept the ANC submission.

The Board determined that the Applicant had met its burden of proof under 11 DCMR § 3126 for reconsideration and accordingly granted the motion to remove Condition No. 3 from BZA Order No. 17996 as reflected below. In all other respects, this final summary order, modifying Order No. 17996, and the final summary order in BZA Application No. 17996-A remain the same.

### **SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6).

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C filed a report, dated October 21, 2009, indicating that, at a publicly-noticed meeting held on October 19, 2009, at which a quorum was present, the ANC voted unanimously to support the application with conditions. The ANC also requested that the Board separate the enrollment and faculty maximum numbers for the elementary school and the child development center in its order.<sup>2</sup> The ANC's report was filed on a timely basis and met the requirements of subsection 3115.1 of the Zoning Regulations. (Exhibit 28). The Office of Planning (OP) submitted a timely report recommending approval of the application with conditions as set forth in the OP report as well as subject to the recommendations of the District Department of Transportation (DDOT). (Exhibit 29). DDOT filed a report that recommended conditional approval of the application. (Exhibit 27).<sup>3</sup>

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case

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<sup>2</sup> The Board adopted this last ANC request to show the private school and child development center's enrollment and faculty maximum numbers separately by means of issuing two separate orders: BZA Order No. 17996, which is modified by this order, to reflect the private school's enrollment and faculty maximum numbers, with conditions, and BZA No. 17996-A for the child development center, again with conditions.

<sup>3</sup> The record also reflects that the Office of the State Superintendent of Education (OSSE), Compliance Care Licensing Unit, recommended that the application (as to the child development center) be granted. (Exhibit 24). Moreover, the site is a designated historic landmark and several buildings are on the National Register and the DC Historic Site list. (*See*, Exhibit 29).

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pursuant to § 3104.1, for special exception under section 206. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 206, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED AS CONDITIONED**:

- 1) The number of students at Beauvoir School shall not exceed 400.
- 2) The number of faculty and staff at Beauvoir School shall not exceed 109.
- 3) The Applicant shall provide 126 parking spaces, 73 of which shall be designated for Beauvoir School and 48 of which shall be shared between Beauvoir School and the child development center (CDC) at the same location, and shall comply with the submitted parking plan.
- 4) On an annual basis, starting in October, 2010, the Applicant shall submit a report to ANC 3C showing the location of all the parking spaces on the entire PECF Close together with any changes to the 126 parking spaces that constitute the parking “bank” of Beauvoir School and the CDC.

**VOTE on Original Application (November 24, 2009): 4-0-1**

(Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, Anthony J. Hood to APPROVE. No other Board members (vacant) present, or voting.)

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**VOTE on Motion for Reconsideration (February 2, 2010): 4-0-1**

(Meridith H. Moldenhauer, Marc D. Loud, Shane L. Dettman, Anthony J. Hood to APPROVE. No other Board member participating, nor voting.)

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

The majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 5, 2010

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

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

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

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

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

**Application No. 18023 of Rose-Marie Harris**, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to continue the use of four (4) unit apartment house under subsection 320.3, in the R-3 District at premises 3139 N Street, N.W. (Square 1232, Lot 59).

**HEARING DATE:** February 2, 2010  
**DECISION DATE:** February 2, 2010 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6).

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report in support of the application. The ANC's report indicated that at the ANC's duly noticed, regularly scheduled meeting on January 11, 2010, where a quorum was present, the ANC voted unanimously to support the application. (Exhibit 25). The Office of Planning (OP) submitted a report and testified in support of the application. (Exhibit 24).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for a use variance under subsection 320.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 320.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the

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public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED**.

**VOTE:**       **5-0-0** (Shane L. Dettman, Marc D. Loud, Meridith H. Moldenhauer, Nicole C. Sorg, and Konrad W. Schlater to Approve.)

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

A majority of Board members approved issuance of this order.

**FINAL DATE OF ORDER:** February 5, 2010

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.

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

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

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 ALSO PROHIBITED BY THE ACT. IN

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

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

**Application No. 18025 of Saint John's College Inc.**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the installation of three (3) Cricket telecommunications antennas on an existing stealth flag pole and related ground equipment under sections 2706 and 2712, in the R-1-A District at premises 2607 Military Road, N.W. (Square 2308, Lots 805 and 807).

**HEARING DATE:** February 2, 2010

**DECISION DATE:** February 2, 2010 (Bench Decision)

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 22).

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (ANC) 3G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. The ANC submitted a letter in support of the application. The ANC's report indicated that at the ANC's regularly scheduled meeting on November 9, 2009, where a quorum was present, the ANC voted 5-2 to support the application. (Exhibit 27). The Office of Planning (OP) submitted a report and testified in support of the application. (Exhibit 29). The Board considered testimony and letters in opposition to the application. (Exhibits 31 and 32).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to section 3104.1, for special exception under sections 2706 and 2712. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 2706, and 2712, as the requested relief

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can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit No. 13 (Plans), is hereby **GRANTED**.

**VOTE:** **4-0-1** (Meridith H. Moldenhauer, Marc D. Loud, Shane L. Dettman, and Nicole C. Sorg to Approve. No other Board member participating or voting.)

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

A majority of Board members approved issuance of this order.

**FINAL DATE OF ORDER:** February 5, 2010

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.

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

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

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,

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GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

**Application No. 18026 of Sheila Gudiswitz**, pursuant to 11 DCMR § 3104.1, for a special exception to construct a rear terrace (deck) and stair addition to an existing one-family row dwelling under section 223, not meeting the lot area and width (section 401) lot occupancy (section 403) and rear yard (section 404) requirements in the R-4 District at premises 1845 Ingleside Terrace, N.W. (Square 2617, Lot 148).

**HEARING DATE:** February 2, 2010

**DECISION DATE:** February 2, 2010

**SUMMARY ORDER**

**SELF-CERTIFIED**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 1D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1D, which is automatically a party to this application. The Office of Planning (OP) submitted a report and testified in support of the application.

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

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

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

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conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit No. 8 (Plans) is hereby **GRANTED**.

**VOTE:**       **4-0-1** (Shane L. Dettman, Marc D. Loud, Meridith H. Moldenhauer, and Nicole C. Sorg to Approve. The Zoning Commission member not present, not voting)

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** February 3, 2010

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

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

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON

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

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

**Application No. 18030 of Kemba A. Maish**, pursuant to 11 DCMR § 3104.1, for a special exception to construct an accessory detached garage serving a one-family row dwelling under section 223, not meeting the lot occupancy requirements (section 403), in the R-3 District at premises 4619 5th Street, N.W. (Square 3249, Lot 78).

**HEARING DATE:** February 2, 2010

**DECISION DATE:** February 2, 2010

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR'S OFFICE**

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

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C submitted a letter in support of the application. The Office of Planning (OP) submitted a report and testified in support of the application.

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

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

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit No. 8 (Plans) is hereby **GRANTED**.

**VOTE:**       **4-0-1** (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer and Nicole C. Sorg to Approve. The Zoning Commission member not present, not voting)

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

Each concurring member approved the issuance of this order.

**FINAL DATE OF ORDER:** February 3, 2010

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

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

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

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

**ZONING COMMISSION NOTICE OF FILING**  
**Z.C. Case No. 07-07B**  
**(Modification to a Previously-Approved PUD @**  
**Square 441, Lots 21, 66, 97, 814, 815, 855, and 857)**  
**February 8, 2010**

**THIS CASE IS OF INTEREST TO ANC 1B**

On February 1, 2010, the Office of Zoning received an application from Broadcast Center Partners, LLC and the District of Columbia (collectively, the “Applicant”) for approval of a modification to a previously-approved PUD for the above-referenced property.

The property that is the subject of this application consists of Square 441, Lots 21, 66, 97, 814, 815, 855, and 857 in Northwest Washington, D.C. (Ward 1) and is located on 7<sup>th</sup> Street between S and T Streets, N.W. The property is zoned ARTS/C-2-C through a PUD related map amendment (the underlying zoning is ARTS/C-2-B).

The Applicant proposes to modify the PUD as follows: increasing the total proportion of commercial office space; increasing the total amount of parking to accommodate the increase in commercial uses; and changing the types of uses in some of the ground-floor space.

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 09-08**

**Z.C. Case No. 09-08**

**Brookland Artspace Lofts, LLC**

**(Consolidated Approval for a Planned Unit Development for Property Located in Square 3831, Lot 47 (“Northern Parcel”) and First-Stage Approval for Property Located in Square 3832, Lot 803 and a One Block Portion of Kearny Street (“Southern Parcel”) (Northern Parcel and Southern Parcel Collectively Referred to as, “Property”) and PUD-Related Map Amendment for Property)**

**October 19, 2009**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on July 23, 2009, to consider an application from Brookland Artspace Lofts, LLC (“Applicant”) for consolidated review and approval of a planned unit development and related zoning map amendment for property located at 3305-3313 8<sup>th</sup> Street, NE (Square 3831, Lot 47) (“Northern Parcel”) and First-Stage review and approval of a planned unit development and designation of the appropriate zoning classification for property located at 3225 8<sup>th</sup> Street, N.E. (Square 3832, Lot 803) and a one-block portion of Kearny Street immediately east of 8<sup>th</sup> Street, N.E. (collectively, “Southern Parcel”). The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. 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**

**The Application and Procedural Action**

1. The project site consists of Square 3831, Lot 47 and Square 3832, Lot 803 (“Property”). The Property is bounded by 8<sup>th</sup> Street, N.E. to the west, railroad tracks to the east, and private property to the north and south. The Property is bisected by Kearny Street, which dead-ends at the railroad tracks. The Property is approximately one quarter mile from the Brookland/CUA Metrorail Station. In total, the Property is approximately 25,017 square feet in size. The Northern Parcel has a land area of approximately 14,375 square feet, the parcel south of Kearny Street is approximately 6,727 square feet in size and Kearny Street consists of approximately 3,915 square feet. (Exhibit 4, pp. 3-4; Exhibit 25, pp. 2-4.)
2. The Applicant initially filed its application on April 20, 2009. (Exhibit 4, Exhibit C.) It was set down for a public hearing at the Commission’s public meeting on May 11, 2009. The Commission simultaneously granted the Applicant’s request for a waiver of hearing fees for the residential portion of the project pursuant to § 3042.1 of the Zoning Regulations. (May 11 Transcript (“Tr.”), pp. 16-20.)
3. The Commission accepted the Applicant’s initial filing as satisfaction of 11 DCMR § 3013 and scheduled a public hearing for July 23, 2009.

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4. The Applicant timely filed a supplemental submission on July 6, 2009. (Exhibit 25.)
5. A public hearing was held on July 23, 2009. Advisory Neighborhood Commission (“ANC”) 5C was automatically made a party to the application. There were no other parties to the case.
6. The Commission accepted the Applicant’s witness, Laurence Caudle, as an expert in architecture. It heard testimony from Mr. Caudle and the Applicant’s two other witnesses, Heidi Kurtze and Carla Perlo. It also heard testimony from Matt Jesick of the Office of Planning, Jeff Jennings of the District Department of Transportation (“DDOT”), and Silas Grant, a representative of ANC 5C.
7. At the close of the hearing on July 23, 2009, the Commission took proposed action to approve the application. It left the record open to allow DDOT and the ANC to respond to the traffic summary submitted by the Applicant.
8. DDOT submitted additional comments on July 24, 2009.
9. The Commission re-opened the record to include the Applicant’s letter dated September 28, 2009 which attached revised plans responding to DDOT’s comments regarding trash removal, and suggested revised draft conditions regarding the timing and effect of the PUD-related map amendment.
10. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPCC”) pursuant to the District of Columbia Home Rule Act. NCPCC, by action dated September 24, 2009 and sent to the Commission by letter dated October 6, 2009, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.
11. The Commission took final action to approve the application in Case No. 09-08 on October 19, 2009.

### **The Applicant**

12. Brookland Artspace Lofts, LLC, the Applicant, is affiliated with Artspace Projects, Inc. (“Artspace”). Artspace is a non-profit corporation that began in Minnesota in 1979 as an advocate for artists’ space needs. It ultimately transitioned from being an advocate to a developer. Today, it is a nationwide corporation with projects in Minnesota, Oregon, Pennsylvania, Nevada, Texas, Illinois, Washington, Maryland, New York, Florida, and Connecticut. In all, their projects represent more than 720 live-work units for artists. (Exhibit 4, p. 5; Exhibit 25, p. 5.)

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13. The owners of the Property, James R. Epstein of Brookland Studios and Carla Perlo of Dance Place, submitted letters into the record authorizing the application submitted by Brookland Artspace Lofts. (Exhibit 4, Exhibit C.)
14. Heidi Kurtze and Carla Perlo testified on behalf of the Applicant at the public hearing. (July 23, 2009, Tr., pp. 17-25.)

### **The PUD Project**

15. The Property consists of approximately 25,017 square feet of land area and has its primary frontage along 8<sup>th</sup> Street, N.E. The Property is currently located in the C-M-1 Zone District and will be rezoned in a PUD-related map amendment to the C-2-B Zone District. Properties to the north and south of the Property are located in the C-M-1 Zone District and properties to the west are located in the R-4 Zone District. The Property is approximately 1.5 blocks away from The Catholic University of America's south campus, an application for which is pending before the Commission, to rezone portions of the campus to the C-2-B Zone District. (Exhibit 4, pp. 3-4; Exhibit 25, pp. 3-4.)
16. The Property is currently improved with "Brookland Studios" and "Dance Place". The PUD calls for redeveloping both sites. Brookland Studios will be razed and replaced with 41 artist live-work units. Dance Place will be replaced with a state-of-the-art dance studio. The Applicant will request to close Kearny Street to serve as a plaza between both parcels (collectively, "Project"). There will be no improvements on Kearny Street. (Exhibit 4, p. 3; Exhibit 25, p. 3.)
17. The Project will consist of two separate buildings on separate lots. The maximum building height will be 50 feet and the floor area ratio ("FAR") for the entirety of the Project will be 2.7, including a 0.7 FAR dedicated to commercial uses. The lot occupancy for the Project is 77%. The artist live-work units will include a below-grade garage with 23 parking spaces and 16 bicycle spaces. (Exhibit 25, pp. 8-9).
18. Fifty percent of the artist live-work units will be available to households with an income that is 60% or less of the Area Median Income ("AMI") and the other 50% of units will be available to households with an income that is 50% or less of AMI. (Exhibit 4, p.13; Exhibit 25, p. 15.)
19. The artist live-work units will be constructed as a part of the consolidated PUD. The closing of Kearny Street and redevelopment of Dance Place will be included in a second-stage PUD application. (Exhibits 4 and 25, preface.)
20. The artist live-work units will incorporate several "green features," including a green roof and "green screens." It will also include a mosaic on its western façade that the Applicant envisions will be created by the community. (Exhibit 25, pp. 7-8.)

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21. The project design responds to the needs of the users, represents the industrial character of its surroundings, and respects the neighboring residential community. The building heights and project density are consistent with that area of Northeast Washington. (Exhibit 4, pp. 14-16; Exhibit 25, pp. 15-18.)
22. The Applicant submitted a traffic analysis prepared by Gorove Slade which confirmed that the Project will not cause adverse traffic impacts. The analysis stated that because there are only 41 residential units and because the tenants of the units will be working where they reside, the residents will not have typical traffic patterns and will not contribute to peak-hour traffic. The summary concludes that the development will not have an adverse impact on the surrounding roadway or parking network because the development supports residents working in their homes, provides access to convenient bus lines and the Brookland/CUA Metrorail station, and is not projected to generate significant peak hour volumes. (Exhibit 29.)

### **Zoning Map Amendment**

23. The Future Land Use Map designates the Property as appropriate for Production, Distribution and Repair. The Future Land Use Map is not, however, intended to serve as a “general” zoning map nor does it mandate a parcel-by-parcel limitation on permitted development. (Exhibit 4, pp. 14-15; Exhibit 25, p. 16.)
24. The City adopted a Small Area Plan (“SAP”) for the Brookland/ CUA Metro Station area. The SAP calls for new residential infill including artist housing and cultural facilities. Specifically, it seeks new, moderate density residential uses north of Kearny Street and low to moderate density residential and cultural facilities south of Kearny Street. The PUD-related map amendment is consistent with the SAP. (Exhibit 4; p. 15, G; Exhibit 25; pp. 16-18.)
25. The Property is currently located in the C-M-1 Zone District. As a matter-of-right, the C-M-1 Zone District does not permit residential uses. It permits a 3.0 FAR, and a maximum height of 40 feet. (Exhibit 4, p. 8; Exhibit 25, p. 8.)
26. The Property will be rezoned to the C-2-B Zone District with a PUD-related Zoning Map amendment. The PUD guidelines for the C-2-B Zone District allow a 6.0 FAR, with a maximum commercial density of 2.0 FAR, a maximum height of 90 feet, and a lot occupancy of 80% for residential uses and 100% for commercial uses. Id.
27. The requested rezoning to the C-2-B Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. In Zoning Commission Order No. 921, a PUD and Zoning Map amendment case, the Commission clearly articulated the legal standard for reviewing PUD-related Zoning Map amendments:

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A PUD Map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17 (COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

Id. at 16 (COL 6).

28. In this case, the Commission finds that the proposed PUD-related map amendment of the Property to the C-2-B Zone District is appropriate given the superior features of the Project, particularly when compared to the existing uses of the Property and the limited amount of flexibility the Applicant seeks beyond the matter-of-right parameters of the Property's zoning designation. The Commission's conclusion is consistent with OP's recommendation to approve the Project and the PUD-related map amendment.
29. The Commission believes that the Project will enliven a stretch of 8<sup>th</sup> Avenue, N.E. that is currently underutilized. It also finds that the designation of 100% of the units to affordable housing for artists will be an asset for the community.
30. Although the Comprehensive Plan calls for production, distribution, and repair uses, rezoning the Property to the C-2-B Zone District is consistent with surrounding uses and with the SAP for the neighborhood. The rezoning is consistent with the themes, elements, and policies of the Comprehensive Plan as well as the purposes of the Zoning Regulations.

#### **Development Incentives and Flexibility**

31. The Applicant requested the following areas of flexibility from the Zoning Regulations. (Exhibit 4, p. 9; Exhibit 25, pp.9-10.)

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- a. Rear Yard: The Project is required to provide a minimum of 15 feet of rear yard space. It is providing a minimum of six feet, 11 inches on the Northern Parcel and is not providing a rear yard on the Southern Parcel.
  - b. Rooftop Structures: The Project is providing three rooftop structures on the Northern Parcel. The structures will be of varying heights. Pursuant to §§ 411.4 and 411.5, only one roof structure is permitted and it must be a uniform height.
  - c. Parking: The Applicant seeks relief from the parking requirement for the dance studio. Pursuant to § 2101.1, a school is required to provide two parking spaces for every three teachers in addition to one space for every 10 auditorium seats. As such, the dance studio generates a requirement for 24 spaces but only nine spaces will be provided. The Project also requires flexibility to locate the dance studio spaces on the Northern Parcel and to provide compact spaces without meeting the threshold of 25 regulation-sized spaces.
32. The Commission questioned at the hearing whether the Project also required side yard relief for the dance studio. It now finds that side yard relief is not necessary. If Kearny Street is closed during the Second-Stage PUD, the side yard for the dance studio will satisfy the Zoning Regulation requirements.

### **Public Benefits and Amenities**

33. The Applicant, in its written submissions and testimony before the Commission, noted the following benefits and amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403.
- Urban Design, Architecture, and Landscaping: From a sustainability perspective, reducing parking supplies near transit nodes is good and encourages non-auto modes of transportation. The Property is located within walking distance of the Brookland/CUA Metrorail Station and will provide less parking than would otherwise be required under the Zoning Regulations. This is consistent with the Small Area Plan, which calls for “adequate” parking but at “low transit-oriented development parking ratios.”
  - Site Planning: The Project will develop the Property to create superior buildings serving similar needs for the existing buildings. Both properties are currently located in the C-M-1 Zone District. Rezoning the Property to the C-2-B Zone District will allow for a more efficient and higher quality development. The proposed rezoning of the Property is fully consistent with the Brookland/CUA Small Area Plan.
  - Effective and Safe Vehicular and Pedestrian Access: The existing buildings on the Property provide surface parking spaces and four extended curbcuts. The

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Applicant's proposal will reduce the number of curbcuts to two: one will be located on the northern site, the other will remain at Kearny Street. All parking will be provided in a garage, which will improve pedestrian safety and provide more efficient and effective vehicular circulation. It will also provide environmental benefits, such as reducing stormwater runoff from the Property.

- Affordable Housing: The PUD will provide a number of benefits and amenities for the community. The residential component of the project will be entirely affordable. Each of the artist studios will be available to households with an annual income no more than 60% of the AMI; in fact, half of the units will be available to households with an annual income no more than 50% of the AMI.
- Cultural Uses: The PUD will also provide cultural benefits for the community. The dance studio will be open to the greater community and will also host events throughout the year. The artist studios will also be open for events throughout the year to display the artists' work, and provide a modern practice studio, administrative space, and instruction space for Dance Place.
- Green Design: The PUD will incorporate green design principles – a vast improvement over the existing buildings on-site, which were constructed in an era in which building environmentally sound developments was not a priority.
- Consistency with the Comprehensive Plan. The PUD advances the major themes as well as polices and objectives of the elements of the Comprehensive Plan. The Project furthers social and economic development of the District through the creation of 41 new residential units on underutilized land, with a significant affordable housing component and a highly-developed green design program

(Exhibit 4, pp. 12-14; Exhibit 25, pp. 13-15.)

### **Compliance with PUD Standards**

34. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) Given the level of project amenities and public benefits provided and the amount of flexibility requested, the Commission finds that the Project is appropriate. The Commission also finds that the requested areas of flexibility are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this Project.
35. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, site planning, job training and

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employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.

### **Government Agency Reports**

36. By reports dated May 1, 2009, and July 13, 2009, and by testimony at the public hearing, OP recommended approval of the application. OP in its report and in oral testimony indicated that “[t]he proposed development would be acceptable in all public benefit and amenity categories and is particularly strong in the affordable housing; uses of special value to the neighborhood; and efficient land utilization categories. The Office of Planning indicated that the amenities are sufficient for approval of the application, especially given the limited nature of the flexibility sought with the PUD.” (Exhibit 11; Exhibit 26, p. 9.)
37. By its report dated July 24, 2009, and filed on August 4, 2009, DDOT recommended conditional support of the Applicant’s request for a PUD-related map amendment. It recommended additional bike spaces, a transportation demand management (“TDM”) program, regular meetings with the ANC, and removal of a retaining wall. DDOT also cited concerns with relying on the use of Kearny Street. In response to its recommendations, the Applicant will implement TDM measures consistent with DDOT recommendations: it will distribute information about Zipcar to new residents upon buildout and it will distribute bicycle route maps and safety information to all residents upon move-in. Further, the owners of Dance Place currently meet with the ANC on a regular basis and will continue to do so. Finally, the Applicant seeks flexibility to change the location of its trash room to address DDOT’s concerns regarding the use of Kearny Street. (Exhibit 38.)

### **ANC 5C Report**

38. By letter dated July 21, 2009, and by testimony at the public hearing, Single Member District representative Silas Grant indicated that at a duly noticed meeting on July 21, 2009, with a quorum present, ANC 5C voted to support the PUD. Specifically, it noted that the Applicant met with the ANC on three occasions and hosted four additional community meetings and was responsive to community questions. (Exhibits 28 and 33.)

### **Parties/Persons in Support and Opposition**

39. Anne Corbett testified in support of the application, stating that the project would stimulate the economy and improve the quality of life for the District. (Exhibit 36.)

### **Satisfaction of the PUD and Zoning Map Amendment Approval Standards**

40. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-2-B Zone District are appropriate and that

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the proffered amenities and benefits are acceptable. The Commission also credits the testimony of OP that the proposed Project and rezoning are not inconsistent with the Comprehensive Plan, specifically the Small Area Plan for Brookland/CUA Metro Stop.

41. The Commission accords ANC 5C the “great weight” to which it is entitled. In so doing, the Commission fully credits the unique vantage point that ANC 5C holds with respect to the impact of the proposed PUD on the ANC’s constituents. The Commission recognizes that the Applicant has responded to the majority of the ANC’s concerns. The Commission notes that ANC 5C, by resolution, supports this application.
42. The Commission does not share some of the concerns cited by DDOT’s report. It notes that given the development will not have an adverse impact on traffic, it believes requiring the Applicant to subsidize Zipcar and MetroCards is neither necessary nor practical. It also notes that requiring 110 bicycle spaces on-site is excessive for a 41-unit building, particularly in light of the fact that the Applicant is already providing eight times the number of bicycle spaces required under the Zoning Regulations. Finally, the Commission does not believe the six inch tall retaining wall will create pedestrian and vehicular conflicts. The Commission is persuaded, however, that the Applicant should have the flexibility to re-evaluate its trash removal practices in light of DDOT’s testimony that Kearny Street may be closed in the future.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities" (11 DCMR § 2400.1). The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience” (11 DCMR § 2400.2).
2. Under the PUD process, the Commission has the authority to consider the application as a consolidated PUD and as a first-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, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment (11 DCMR § 2405).
3. The development of the Project will implement 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 and that would not be available under matter-of-right development.

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4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The application meets the contiguity requirements of § 2401.3.
6. The proposed height and density will not cause an adverse effect on any nearby properties; the impact of the Project on the surrounding area is not unacceptable. As demonstrated in the Traffic Summary submitted by the Applicant, the Project will not cause adverse traffic impacts.
7. The application can be approved with some flexibility to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.
8. The application seeks a PUD-related zoning map amendment to the C-2-B Zone District, and an increase in height as permitted under the PUD guidelines. The application also seeks flexibility from the parking, rear yard, and rooftop structure requirements. The benefits and amenities provided by the Project, particularly its affordable housing and green design features, are reasonable trade-offs for the requested development flexibility.
9. Approval of the PUD and a change in zoning is not inconsistent with the Comprehensive Plan. The future land use map is a helpful tool, but is not determinative of a property's zoning designation. The Commission finds that rezoning the site to allow residential use is consistent with the Comprehensive Plan, specifically the Upper Northeast Area Element and with the surrounding uses.
10. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, as well as the goals and policies of the Upper Northeast Area Element.
11. The Commission is required under D.C. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 5C voted to support the application. The Commission agrees with the ANC that this Project should be approved and that the proposed uses are appropriate.
12. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04.) The Commission gives OP's recommendation to approve the PUD great weight and concurs with its conclusions.
13. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
14. Notice of the public hearing was provided in accordance with the Zoning Regulations.

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PUD Related Zoning Map Amendments.

15. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9), the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the C-2-B Zone District is appropriate given the superior features of the PUD project.
16. The applications for a PUD and related map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

**DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment for the property located at 3305-3313 8<sup>th</sup> Street, N.E. (Square 3831, Lot 47) and first-stage review and approval and designation of the appropriate zoning classification for property located at 3225 8<sup>th</sup> Street, NE (Square 3832, Lot 803) and a one-block portion of Kearny Street. The approval of this PUD is subject to the following conditions. For the purposes of the following conditions, the term "Applicant" shall be the person owning fee simple title to the Property or that person's agent.

1. The consolidated PUD for the Northern Parcel shall be developed and the first-stage PUD for the Southern Parcel is approved in accordance with the plans prepared by Hickok Cole Architects and marked as Exhibits 4, 25, 32, and 41 in the record, as modified by the guidelines, conditions and standards herein.
2. The first-stage PUD for the Southern Parcel is approved in accordance with the plans prepared by Hickok Cole Architects and marked as Exhibits 4, 25, and 32 in the record as modified by the guidelines, conditions, and standards herein.
3. The second-stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 4, 25, and 32 of the record, as modified by the guidelines, conditions, and standards of this Order and shall include all public benefits described herein.

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4. The Applicant shall submit, as part of the second-stage application for the Southern Parcel, landscape plans, detailed architectural plans, and elevations indicating the design treatment of the dance studio.
5. The change in zoning from the C-M-1 Zone District to the C-2-B Zone District for the Northern Parcel shall be effective upon the recordation of the covenant discussed in Condition No. 12, pursuant to 11 DCMR § 3028.9.
6. The change in zoning from the C-M-1 Zone District to the C-2-B Zone District for the Southern Parcel shall not be effective until approval of an application for a second-stage PUD and upon recordation of a PUD Covenant, pursuant to 11 DCMR § 3028.9.
7. An application for second-stage PUD approval shall address the status of closing Kearny Street. If Kearny Street is not closed by the time of the public hearing for the second-stage PUD, the Commission shall address the implications of removing Kearny Street from the Property.
8. The Project shall have flexibility from the rear yard, parking, and rooftop structure requirements as necessary, per the approved plans.
9. The Applicant will distribute information about Zipcar to new residents upon completion of construction of the Northern Parcel and it will distribute bicycle route maps and safety information to all residents upon their move-in.
10. The Applicant shall have flexibility with the design of the Project in the following areas:
  - a. To vary the location and design of all interior components, including, but not limited to, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structures.
  - b. To vary final selection of the exterior materials within the color ranges and materials types as proposed, without a reduction in quality, based on the availability at the time of construction.
  - c. To make minor refinements to exterior details and dimensions, including belts, courses, sills, bases, cornices, railings, and trim or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.
  - d. To refine and make adjustments to the trash room on the Northern Parcel for the purpose of developing an alternative system for removing trash from the facility, provided the alternative does not use Kearny Street for trash removal. The

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Applicant shall be given the flexibility to alter the garage, including a reduction of up to two parking spaces, should the Applicant need to use it for trash removal.

- e. To refine and make adjustments to its landscape plans pending comments from District entities, including Fire and Emergency Management Services and the District of Columbia Water and Sewer Authority.
11. The Applicant shall reserve 50% of the residential units for households with an income no greater than 60% of AMI and the other 50% of the residential units for households with an income no greater than 50% of AMI.
12. No building permit shall be issued for the Northern Parcel until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Northern Parcel in accordance with this order and any amendment thereof by the Commission.
13. The consolidated PUD approved by the Commission for the Northern Parcel shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed by the Applicant for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin on the Project within three years of the effective date of this order.
14. The first-stage approval for the Southern Parcel is valid for a period of three years, within which time a second-stage application shall be filed.
15. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (“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 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 Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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On September 14, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the applications by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to approve; William W. Keating, III to approve by absentee ballot.)

On October 19, 2009, upon the motion of Vice Chairman Hood as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to adopt.)

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on February 12, 2010.

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DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., February 13, 2009

Plat for Building Permit of: SQUARE 3831 LOT 47

Scale: 1 inch = 20 feet      Recorded in Book 182 Page 4

Receipt No. 01336

Furnished to: P W S P

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

*[Signature]*  
Surveyor, D.C.

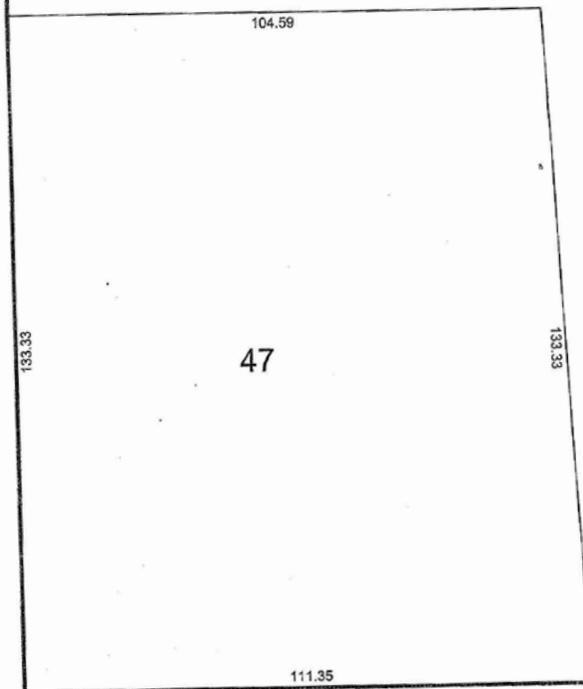
Date: \_\_\_\_\_

By: A.S. *[Signature]*

\_\_\_\_\_  
(Signature of owner or his authorized agent)

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

8th STREET, N.E.



KEARNY STREET

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DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., February 17, 2009

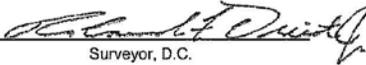
Plat for Building Permit of: SQUARE 3632 LOT 803

Scale: 1 inch = 30 feet Recorded in Book A & T Page 3530 - H

Receipt No. 01337

Furnished to: P W S P

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

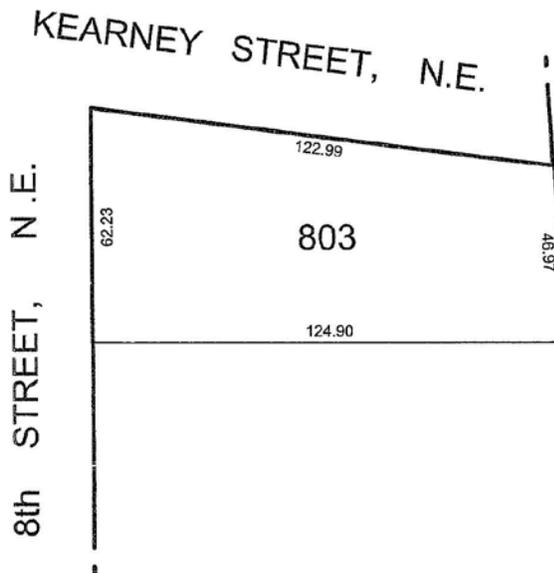
  
Surveyor, D.C.

Date: \_\_\_\_\_

By: A.S. 

\_\_\_\_\_  
(Signature of owner or his authorized agent)

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



**ZONING COMMISSION FOR THE DISTRICT OF CLOUMBIA  
ZONING COMMISSION ORDER NO. 08-14**

**Z.C. Case No. 08-14**

**Consolidated Planned Unit Development and Related Zoning Map Amendment  
(Kelsey Gardens Property Company LLC - Square 421, Lots 67 and 68)  
March 9, 2009**

Pursuant to notice, the Zoning Commission for the District of Columbia, (the "Commission") held a public hearing on October 30, 2008, to consider an application from Kelsey Gardens Property Company LLC (the "Applicant"), owner of Lots 67 and 68 in Square 421, for consolidated review and one-step approval of a planned unit development ("PUD") and related amendment to the Zoning Map from the C-2-A Zone District to the C-2-C Zone District to construct a mixed-use development on the property. The Commission considered the applications pursuant to Chapter 24 and § 102, respectively of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the contested case provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications subject to the specified conditions.

**FINDINGS OF FACT**

**Applications, Parties, and Hearings**

1. On May 1, 2008, the Applicant, as owner of Lots 67 and 68 in Square 421 (the "Subject Property"), filed applications with the Commission requesting consolidated review and one-step approval of a PUD and a related map amendment from the C-2-A Zone District to the C-2-C Zone District for the Subject Property ("Application" or "PUD Application"). (Exhibits 4-7.)
2. The Subject Property has a combined land area of approximately 42,750 square feet and is currently zoned C-2-A. Square 421 is located in the northwest quadrant of the District, and is bounded by Q Street on the north, 7<sup>th</sup> Street on the east, P Street on the south, and 8<sup>th</sup> Street on the west. Square 421 is bisected by an alley running north-south through the property from P Street to Q Street.
3. The Applicant proposes to construct a mixed-use development ("Project") consisting of market-rate rental housing, affordable rental housing, neighborhood-serving retail, and townhouses. The new development will contain approximately 272,820 square feet of gross floor area, a 5.94 floor area ratio ("FAR"), and a maximum building height of 80 feet 10 inches. Approximately 251,430 square feet will be devoted to multifamily residential uses; approximately 14,760 square feet will be devoted to retail uses. In addition, the Project includes townhouses with a total of 13,700 square feet that will be devoted to either residential or office

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- uses. The Project includes 230 parking spaces in a two-level underground parking garage.
4. At its public meeting held on July 14, 2008, the Commission voted to schedule a public hearing on the Application.
  5. On August 1, 2008, the Applicant submitted a Prehearing Statement, along with revised architectural drawings. (Exhibits 16-18.)
  6. On October 14, 2008, the Applicant submitted additional supplemental hearing materials, which included revised architectural drawings, additional drawings of a community-proposed alternative eight-story design, an updated list of community proffers, a LEED checklist, and the resume of Joe Schneider, project architect. (Exhibits 38-43.)
  7. After proper notice, the Commission held a public hearing on the Application on October 30, 2008. The parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 2C, the ANC within which the subject property is located. No requests for party status were submitted.
  8. The Applicant presented three witnesses at the hearing of October 30, 2008, including Joe Schneider, an architect with Lessard Group; Pastor ViCuris Little of the Deliverance Church of God in Christ and a member of the Applicant team; and Rachael Preston, Development Manager with Metropolitan Development.
  9. Rinaldo Washington, Director of Program Services for Emmaus Services for the Aging, testified in support of the project on behalf of Reverend Joseph Williams, Executive Director of Emmaus Services for the Aging. Leroy Thorpe, President of the East Central Civic Association, and Alexander M. Padro, Single Member District Commissioner for ANC 2C01, testified in support of the Project as well.
  10. ANC 2C submitted a report in support of the Application. ANC 2C was fully supportive of the project’s density and mix of uses. The ANC suggested changes to the PUD to allow for loading from P Street, a 20’ alley width, and an eight-story design. (Exhibit 33.)
  11. On November 21, 2008, the Applicant submitted a Post-Hearing Submission, which included updated architectural drawing sheets presenting a modified eight-story building design at the preference of the community and garage access and loading access from the alley, in response to the direction of the Commission. This submission also included a traffic impact study and a transportation management plan provided by O. R. George & Associates Inc. (Exhibits 51-53.)

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12. At a special public meeting on December 8, 2008, the Commission considered the Application but deferred action on the Application and plans that were submitted to the record. The Commission requested additional clarification on the demand for parking in the vicinity of the Subject Property, the loading of the retail, the details of the interior residential corridors, and changes to the façade of the building design and building materials.
13. On January 12, 2009, in response to the Commission's request, the Applicant submitted a supplemental post-hearing submission, which included updated architectural drawing sheets, and a supplemental memo on parking from traffic engineers at O. R. George & Associates, Inc. (Exhibits 56-59.) The Applicant submitted corrected plans on January 16, 2009. (Exhibit 59A.)
14. At a special public meeting on January 26, 2009, the Commission took proposed action to approve the Application. The Commission expressed continued concern about the design of the northern ground floor of the mixed-use building and of the end unit of the P Street townhouse component, and invited the Applicant to submit revised drawings to deal with these design issues.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated January 29, 2009, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 68.)
16. On February 18, 2009, the Applicant submitted an additional post-hearing submission addressing the concerns raised by the Commission when it took proposed action. The submission included a revised design of the interior of the ground floor of the mixed-use building and the elimination of the end townhouse residential unit. The elimination of the townhouse unit does not affect the exterior of the building, but instead is accomplished by a re-configuration of the interior space and a reduction in the overall unit count. (Exhibits 69 and 69A.)
17. The Commission took final action to approve the application with conditions on March 9, 2009.

### **The PUD Site and Area**

18. The PUD site includes the entire west side of 7<sup>th</sup> Street, N.W. between P and Q Streets, as well as a vacant lot located along P Street at the corner of 8<sup>th</sup> Street, N.W. A ten-foot-wide public alley separates the two parts of the site and forms

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the western boundary of the 7<sup>th</sup> Street lot. The Kelsey Gardens Apartments currently occupy the 7<sup>th</sup> Street lot.

19. Surrounding the site are row houses to the west along 8<sup>th</sup> Street, a recently approved 95-foot-high mixed-use PUD project at the old O Street market site to the south, and various low scale commercial uses to the east and north.

### **The PUD Project**

20. The Project will have an overall density of 6.0 FAR and a total gross floor area of approximately 272,818 square feet dedicated to a mixed-use development that includes affordable residential rental units, market-rate residential rental units, and approximately 14,760 square feet of retail. The proposed project includes six townhouses totaling approximately 13,700 square feet with flexibility to rent or sell as residential or offices. (Exhibit 69A3)
21. The height of the project steps down from south-to-north and east-to-west, creating a smooth transition from higher-density development to the south and lower-density rowhouse development to the west. The southern portion of the building, fronting on 7<sup>th</sup> Street, will be built to a height of 80 feet 10 inches at the roofline. The height of the building along 7<sup>th</sup> Street will remain at 80 feet 10 inches for the length of the building then stepping down at Q Street. At the rear of the building, facing the alley to the west between 7<sup>th</sup> and 8<sup>th</sup> Streets, there are five projections of varying lower heights than the 7<sup>th</sup> Street facade. The townhouses are 41 feet high, complementing the existing townhouses along 8<sup>th</sup> Street, N.W.
22. The project includes 230 parking spaces. Thirty-six of the total spaces are separated from the balance of parking by a second security gate; 25 of these spaces are allotted for use by retailers and 11 are allotted for use by residential guests. The remaining 194 parking spaces are secured parking for residents of the development. The project also includes two loading docks. The PUD requests zoning relief with respect to the loading berth requirements. One 55-foot loading berth and one 30-foot loading berth instead of three loading berths are provided. All loading and the garage access will be located in the alley at the southern end of the project off of P Street.

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### **PUD-Related Map Amendment**

23. The Subject Property is currently zoned C-2-A. The C-2-A Zone District is designed to serve commercial and business functions, housing, and mixed uses for segments of the District of Columbia outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone Districts are generally located in low- and medium-density residential areas with access to main highways or rapid transit stops, and include office employment centers, shopping centers, and medium-bulk mixed-use centers. (11 DCMR § 720.3.)
24. The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet, with no limit on the number of stories. (11 DCMR § 770.1.) The C-2-A Zone District permits a maximum density of 2.5 FAR, all of which may be residential, but of which not more than 1.5 FAR may be used for other, non-residential permitted purposes. (11 DCMR § 771.2.) Pursuant to § 772.1 of the Zoning Regulations, no building or portion of a building in the C-2-A Zone District devoted to a residential use may occupy more than 60% of the lot upon which the structure is located. (11 DCMR § 771.2.) There is no lot occupancy limitation for commercial use in the C-2-A Zone District.
25. Development under the PUD guidelines for a C-2-A Zone District would allow a maximum building height of 65 feet and a maximum density of 3.0 FAR, of which not more than 2.0 FAR may be devoted to commercial use, including hotels. (11 DCMR §§ 2405.1 and 2405.2.)
26. The Applicant sought a PUD-related map amendment to the C-2-C Zone District. The C-2-C Zone District permits commercial and residential functions similar to the C-2-A Zone District and with higher-density residential and mixed uses. It permits a maximum height of 90 feet and a maximum density of 6.0 FAR for all uses. The C-2-C Zone District allows a maximum lot occupancy of 80%.
27. Pursuant to § 774 the Zoning Regulations, a minimum 15-foot rear yard must be provided for each structure in the C-2-C Zone District which may be measured from the center line of an abutting alley for the first 20 feet of building height. There is no side yard requirement for a building or structure located in a C-2-C Zone District.
28. The off-street parking requirement of the C-2-C Zone District for an apartment house or multiple dwelling is one parking space per four dwelling units. For a retail establishment in excess of 3,000 square feet, the parking requirement is one additional parking space for each additional 750 square feet of gross floor area and cellar floor area. (11 DCHR § 2101.)

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### **Additional PUD-Related Zoning Flexibility**

29. Under PUD guidelines for the C-2-C Zone District, the maximum permissible building height on the subject property is 90 feet and the maximum density is 6.0 FAR for all uses.
30. The Applicant requested flexibility from the zoning requirements of the proposed C-2-C District in the following areas:
  - (a) Flexibility for courts that do not meet minimum width or depth requirements.
  - (b) Variance from the rear yard requirement.
  - (c) Special exception from the number and height of roof structures.
  - (d) Variance from the setback for roof structures.
  - (e) Variance from the loading requirements (two berths instead of three).

### **Public Benefits and Amenities**

31. As detailed in the Applicant's testimony and written submissions, the following public benefits and amenities will be provided as a result of the PUD:
  - (a) *Housing and Affordable Housing.* The delivery of well over 250,000 square feet of gross floor area dedicated to residential use, including 237 market-rate units and 54 restricted-income units consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The affordable units range in size from one to four bedrooms, providing much needed family housing, and all units are restricted to 60% of the Washington Metropolitan Area Median Income ("AMI"), providing a deep level of affordability.
  - (b) *Sustainable Design and Environmental Benefits.* The PUD provides a green roof over 50% of the roof area, decreasing the building's impact on the public storm water service. The Applicant has committed to achieving a minimum of 26 LEED points based on the standards of the US Green Building Council's Leadership in Energy and Environmental Design New Construction 2.2 program.
  - (c) *Neighborhood-Serving Retail.* The PUD project delivers 14,760 square feet of ground-floor retail. This retail brings economic opportunity to an underserved community. The scale and design of the retail along 7<sup>th</sup> Street also provides

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an activity node for the broader community, with attractive and inviting retail facades, and pedestrian-scaled and -oriented design.

(d) The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. The Applicants have also executed a Certified Business Enterprise (“CBE”) Memorandum of Understanding with the District’s Office of Local Business Development.

(e) *Community Benefits through Contributions to Local-serving Organizations.* The Applicant has committed through letters of intent to contribute \$220,000 to non-profit organizations providing services to Shaw. These organizations include the Shaw Middle School, the Watha T. Daniel Library, Emmaus Services for the Aging, Shaw Main Streets, and The Green Team. These commitments are fully described in Exhibit 41, which is incorporated herein by reference. The Applicant has already made some of the contributions listed in Exhibit 41. The conditions of this order reflect only those contributions that the Applicant has not yet made.

32. The Commission finds that the PUD project is acceptable in all proffered categories of public benefits and amenities, and superior in many.

**Consistency with the Comprehensive Plan and Convention Center Area Strategic Development Small Area Action Plan**

33. The Comprehensive Plan for the National Capital: District Elements (“Comprehensive Plan”), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), Future Land Use Map designates the southern portion of the Subject Property as being located in a mixed-use, medium-density residential and moderate-density commercial category, while the remainder of the site is designated as low-density commercial and moderate-density residential. The Comprehensive Plan’s Generalized Policy Map includes the Subject Property in a Main Street Mixed Use Corridor, the key objective of which is a pedestrian-oriented environment with traditional store fronts and residential units on the upper floors, fostering economic and housing opportunities, serving neighborhood needs, and supporting transit use.

34. The Commission finds that the Project is consistent with the Future Land Use and Generalized Policy Maps.

35. The Project is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities as follows:

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- (a) *Managing Growth and Change.* The Comprehensive Plan encourages growth that protects the positive aspects of life in the city and reduces negatives such as crime. The principles for managing growth and change also emphasize the inclusion of housing for households of varying sizes, including families, and the inclusion of non-residential uses. The proposed redevelopment of the Subject Property replaces a blighted site that has attracted criminal activity in the past with a productive, urban mixed-use project that delivers family-style housing and commercial uses that will create jobs and opportunities for less-affluent households.
  - (b) *Creating Successful Neighborhoods.* Guiding principles for the Comprehensive Plan in creating successful neighborhoods include the preservation of affordable housing to grow inclusively. There is also an emphasis on including local citizens in the planning process and land use decisions. The PUD delivers a project that is upgrading existing affordable units and providing the residents of those units the opportunity to continue to be a part of their community as it changes around them. The proposed design is the result of collaboration with citizens and their local government representatives.
  - (c) *Increasing Access to Education and Employment.* The project delivers on the guiding principles of expanding the economy by increasing shopping and services for many District neighborhoods by providing local serving retail.
  - (d) *Building Green and Healthy Communities.* The proposed project will utilize building construction that minimizes the use of non-renewable resources and promotes energy and water conservation. The project is also sited and situated to reduce air pollution and facilitate pedestrian and bicycle travel. The green roof of the project will minimize storm water runoff and thereby improve surface and groundwater quality.
36. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- (a) *Land Use Element.* The Land Use Element encourages infill development and development near metro stations and along transit corridors and "Great Streets." The Land Use Element expresses a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference of housing above ground-floor retail uses, and a preference for diverse housing types, including both market-rate and affordable units. The Project is located 700 feet from an entrance to the Shaw/Howard Metrorail Station, includes a mix of residential and commercial uses, with housing located above ground-floor retail, and a mix of market-rate and affordable housing units.

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- (b) *Housing Element.* Housing Element policies are oriented to ensure continued production of housing, including housing for all segments of the District's population.
- i. H-1.1.2 Production Incentives. Applicant's PUD specifically requests conforming production incentives, in response to the Comprehensive Plan policy to provide incentives to meet housing production goals.
  - ii. H-1.1.3 Balanced Growth. The Comprehensive Plan encourages the development of new housing on surplus, vacant, and underutilized land in all parts of the city. The existing Kelsey Gardens site is under-utilized in a neighborhood with housing (and retail) needs. It comprises more than an acre of land and can yield a significant number of affordable and market-rate housing units.
  - iii. H-1.1.4 Mixed-Use Development. Applicant's proposed development on the Seventh Street commercial corridor is within a five-minute walk of a Metrorail station, which responds to the call for mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers and around appropriate Metrorail stations.
  - iv. H-1.1.5 Housing Quality. The Comprehensive Plan requires the design of affordable housing to meet the same architectural standards required of market-rate housing. The affordable dwellings will be scattered throughout the building and they will not be distinguishable from the market-rate units, except that some will have several more bedrooms than the market-rate units.
- (c) *Urban Design Element.* The Applicant's design follows the principles of breaking structures on larger than prevailing neighborhood lots into smaller more varied forms (UD-2.2.8 Large Site Development) by utilizing projecting bays, cornices, varied fenestration, and a variety of building materials and colors to break up the multifamily building façades.
- (d) *Environmental Protection Element.* The Applicant has included a green roof combined with solar reflective roofing, low-flow water fixtures, irrigation efficient landscaping, energy efficient fixtures and appliances, green cleaning products, and a green living educational program for building residents, meeting the principle of encouraging green building methods in new construction and using green methods of operations and maintenance (E-3.2).

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37. The Convention Center Area Strategic Development Small Area Action Plan, adopted by the D.C. Council pursuant to Resolution No. 16-759 on June 20, 2006, is intended to provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the District of Columbia Comprehensive Plan. It addresses affordable housing, retail, and other planning issues within the study area. The PUD site is included in the Convention Center Plan study area.
38. The Convention Center Area Strategic Development Small Area Action Plan articulates the following needs which are addressed by the Project:
  - (a) "Maintain or increase existing number of affordable housing units"
  - (b) "Concentrate multi-unit buildings in areas with good access to mass transit"
  - (c) "Maximize development opportunities on sites suitable for multiple-unit buildings."
39. The Convention Center Area Plan also establishes a number of retail development goals and recommendations addressed by the Project, including the following:
  - (a) Concentrate ground floor retail in locations that reinforce a traditional "main street" pattern of commercial development and creates a unified identity for the community; and
  - (b) Locate retail in areas already zoned for commercial development.
40. The PUD site is located in Sub-Area III: Retail Corridor designated in the Convention Center Area Plan. According to the plan, the vision for this area is "New infill buildings have residential above ground floor retail. Larger projects include affordable units. Parking is located below grade or off alleys." All of these elements are in place in the Project.

#### **Office of Planning Report**

41. By a report dated October 20, 2008 and testimony at the public hearing, the Office of Planning ("OP") recommended approval of the Application. (Exhibit 44.) OP indicated that they preferred the original design alternative featuring a maximum height of 90 feet because (1) the design maintained a greater step down to the north end of the site which OP believed more closely matched the scale of buildings north of Q Street and would have better divided the long block into distinct visual segments; and (2) the design has access to parking and loading from the alley rather than P Street. OP noted that the application is not

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- inconsistent with the Comprehensive Plan including the Convention Center Strategic Development Plan and will further a number of the Plan's Guiding Principles. OP indicated that the proposed amenities are sufficient and commensurate with the amount of relief required for the project. Further, OP indicated that the proffered amenities are acceptable in all categories listed in § 2403.9 and superior in many. OP supported all of the requested zoning flexibility requested. (Exhibit 44.)
42. OP submitted a supplemental report dated November 26, 2009, that responded to the Commission's request that OP contact the D.C. Fire and Emergency Medical Services Department ("DCFEMS") to explore the design implications of its comments detailed in Findings of Fact ("FF") 43. The OP report attached a DCFEMS November 12, 2008 letter stating that DCFEMS had no objections to the design.

#### **Other Government Agency Reports**

43. DCFEMS submitted a letter dated October 9, 2008 indicating that the proposed design was not in compliance with IFC Section 503.1. In a letter dated November 12, 2008, DCFEMS indicated that they have no objections to the proposed design.
44. The D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum dated October 10, 2008. The memorandum reviewed the Project's water, sewer, and storm sewer requirements, suggested installation of a backflow prevention device, and stated that DCWASA would issue a water and sewer availability certificate and recommend the issuance of a building permit if the final plans meet DCWASA requirements.
45. The District Department of Transportation ("DDOT") submitted a memorandum dated October 17, 2008, supporting the project proposal subject to providing additional measures to increase multi-modal transit use and a traffic impact study. (Exhibit 45.)
46. DDOT submitted additional comments dated October 29, 2008, rejecting a community recommendation that parking and loading access be from P Street instead of the alley to the west of the site. (Exhibit 46.)
47. The Applicant responded to DDOT's requests in its post-hearing submission dated November 21, 2008. This submission included a traffic impact study and a transportation management plan. The transportation management plan specifically responded to DDOT requests by opting Kelsey Gardens out of the residential parking permits program and committing to provide two car-share spaces in the parking garage for the project. The Applicant did not commit to

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installing a SmartBike station at the site, due to number of bike racks located in the garage, but agreed to pursue the issue further with DDOT. (Exhibits 51-53.)

48. DDOT provided a memorandum dated December 8, 2008, recommending a more aggressive transportation management plan, including the provision of an annual car-sharing membership for all new residents, an annual SmartBike membership for all new residents, and SmarTrip cards for all new residents. DDOT also recommended reduction of the total parking spaces to a number closer to the minimum required 90 spaces. The memorandum recommended approval of the development with the above implemented multi-modal transit uses. (Exhibit 55.)
49. The Applicant responded to DDOT's memorandum in its supplemental post-hearing submission dated January 12, 2009. This submission included changes to the transportation management plan including providing an annual membership to a car-share program for new residents and providing a SmarTrip card to new residents. The new transportation management plan also promises to maximize the benefits of the parking garage by implementing shared parking strategies. A supplemental memorandum by traffic engineers O. R. George and Associates further clarified the Applicant's reasons for not consenting to reduce the total number of parking spaces. (Exhibit 58.)
50. The Commission agrees with the Applicant and finds that reducing the number of parking spaces to the degree requested by DDOT would be inconsistent with the Applicant's understanding with the community and would likely have an adverse impact on an already congested neighborhood parking situation.

### **ANC Report**

51. By report dated October 2, 2008 and testimony at the public hearing, ANC-2C indicated that at a duly noticed meeting of a quorum of the Commissioners on October 1, 2008, the ANC voted 4-0 to recommend approval of the PUD by the Zoning Commission with changes in loading access (off of P Street instead of the adjacent alley); alley width (20 feet for the entire length of the alley); and building massing (eight stories along 7<sup>th</sup> Street with density deleted from 7<sup>th</sup> Street shifted to the rear projections instead). The ANC advised that the PUD provides both a depth and range of community benefits and serves to eliminate a blighted site in Shaw. (Exhibit 33.)

### **CONCLUSIONS OF THE LAW**

1. The PUD process is an appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides

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- public benefits (11 DCMR § 2400.1) and allows flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
  3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
  4. Approval of this Application is not inconsistent with the *Comprehensive Plan for the National Capital*.
  5. Approval of this Application is consistent with the purposes of the Zoning Regulations and the Zoning Map of the District of Columbia and will promote orderly development in conformity with the Zone Plan as a whole.
  6. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the proposed height and density of buildings will not cause any adverse effect on nearby properties. The proposed residential uses are appropriate on this site, which is well served by a major arterial street, bus lines, and a nearby mass transit station. The impact of the project on the surrounding area will not be adverse, but rather will enhance and promote the revitalization of the area.
  7. The development of the project is compatible with District-wide and neighborhood goals, plans, and programs and is sensitive to environmental protection, public safety, and other significant public objectives.
  8. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. In this Application, the Commission concludes that the requested relief can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The

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Commission concludes that the benefits and amenities provided by the Project are appropriate for the development proposed in this Application.

9. The Commission is required under D.C. Official Code §1-309.10(d) to give great weight to the issues and concerns raised in the recommendations of the affected ANC expressed in its written report. The Commission notes that the affected ANC2C provided reports and testified in support of the Application but recommended changes in the project loading access, alley width, and massing. The Commission concurs with the ANC recommendation regarding alley width and building massing – these changes have been incorporated into the Applicant’s revised design. The Commission does not concur with the ANC’s recommendation regarding loading access. Instead, the Commission finds that DDOT’s and OP’s recommendation that access to the project parking and loading facilities be from the adjacent alley is persuasive and preferable from an urban design and pedestrian safety standpoint.
10. The Commission is required, under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as reflected in FF 41-42 above). The Commission notes that OP recommended approval of the application, but noted two concerns about the application: (1) OP expressed a preference for the original design, which maintained a greater step down to the north end of the site. OP believed this design more closely matched the scale of buildings north of Q Street and better divided the long block (along 7<sup>th</sup> Street) into distinct visual segments than the alternate design presented by the applicant after it re-designed the building to incorporate comments from the community; and (2) the design has access to parking and loading from the alley rather than P Street. The Commission is satisfied that the design is adequate in its articulation and relationship to neighboring buildings such that it does not appear monolithic. The Commission notes that the Applicant modified its design to address OP’s concern by moving the parking and loading access to the alley.
11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

### **DECISION**

In consideration of the Findings of Fact and the Conclusions of the Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and an application for a related amendment to the Zoning Map from the C-2-A to the C-2-C Zone District, subject to the following guidelines, conditions, and standards. References to “Applicant” include its successors and assigns, or the owner of the Subject Property if different. Failure to abide by any of the following conditions shall be grounds for the

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denial of an application for a building permit or certificate of occupancy or the revocation of any permit or certificate issued.

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 52, 59A, and 69A in the record of this case, and as modified by the guidelines, conditions, and standards of this Order.
2. The Project shall be developed with a multi-family building to include ground floor retail space and an adjacent townhouse component devoted to residential and/or office uses depending on market conditions.
3. The maximum building height in the project shall be 80 feet 10 inches for the multi-family building and 41 feet for the townhomes, and the maximum aggregate gross floor area for the PUD shall be 6.0 FAR.
4. In accordance with the plans cited above, the approved multi-family building will include a total of approximately 278 dwelling units with a minimum of 54 of the dwelling units to be affordable to households having 60% or less of Area Median Income in accordance with the requirements of the public agencies providing financial subsidies for this purpose. The approved townhouse component will contain 13 market-rate units.
5. The multi-family building shall contain approximately 14,924 square feet of retail uses consistent with the final ground floor plans contained in Exhibit 69A.
6. There shall be a maximum of 230 off-street parking spaces provided in the Project.
7. The internal corridors in the multi-family building shall be designed consistent with Exhibits 59A and 69A.
8. The Applicant shall achieve a minimum of 26 LEED points based on the standards of the US Green Building Council's Leadership in Energy and Environmental Design New Construction 2.2 program.
9. The Applicant shall have flexibility with 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, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings and that the design of the interior corridors are as provided in Condition 7;

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- (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; and to make minor refinements to exterior details and dimensions, including window frames, glass types, belt courses, sills, bases, cornices, railings, and architectural embellishments, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
  - (c) To vary the location of the affordable units within the Project as long as they are evenly disbursed throughout the building; and
  - (d) Vary up to five percent the total number of residential units provided and vary the unit mix for the market-rate units in the PUD.
10. Prior to issuance of the first Certificate of Occupancy for the Project, the Applicant shall make the following contributions and complete the following tasks:
- (a) Provide and install tree guards matching the new development's at 15 tree boxes on the 8<sup>th</sup> and Q Street sides of the block on which the project is located;
  - (b) \$52,000 to The Green Team, a transitional employment program run by the Columbia Heights/Shaw Family Support Collaborative;
  - (c) \$40,000 to the Watha T. Daniel Library;
  - (d) \$50,000 to Emmaus Services for the Aging;
  - (e) \$30,000 to the Shaw Middle School for the purchase of uniforms, equipment, and travel needs for the marching band;
  - (f) \$10,000 to Bread for the City to support food and clothing bank operations; and
  - (g) \$7,500 to the Gibson Plaza Tenant's Association for its computer lab and related programming needs.
11. The Applicant shall make two annual payments of \$5,000 for the purchase of Thanksgiving dinners to needy families within the ANC 2C's jurisdiction. The payments will be made to either ANC 2C or to the East Central Civic Association. Each payment is due no later than November 1<sup>st</sup> of each year.

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12. Prior to the issuance of the first Certificate of Occupancy for the Project, the Applicant shall contribute \$20,000 to the Shaw Main Streets for its operating budget.
13. The Applicant shall execute a Certified Business Enterprise Utilization Agreement with the District of Columbia's Department of Small and Local Business Development ("DSLBD") to ensure minority vendor participation prior to the issuance of a final PUD order.
14. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant ("PUD Covenant") shall bind the Applicant and all successors in title to construct and use the subject property in accordance with this order, or amendment thereof by the Zoning Commission.
15. This final PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, the Applicant shall file for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.
16. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("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 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 Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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

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On January 26, 2009, upon a motion made by Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull and Peter G. May to approve; third Mayoral appointee position vacant, not voting).

On March 9, 2009, upon motion of Chairman Hood and seconded by Commissioner May, the Zoning Commission **ADOPTED** this ORDER by a vote of 3-1-1 (Anthony J. Hood to approve; Gregory N. Jeffries and Michael G. Turnbull to approve by absentee ballot; Peter G. May opposed; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on February 12, 2010.

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DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., November 6, 2007

Plat for Building Permit of SQUARE 421 LOT 68

Scale: 1 Inch = 50 feet

Recorded in Book 153 Page 4

Receipt No. 01109

Furnished to: SHELDON WILLIAMS

*[Signature]*  
Surveyor, D.C.

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

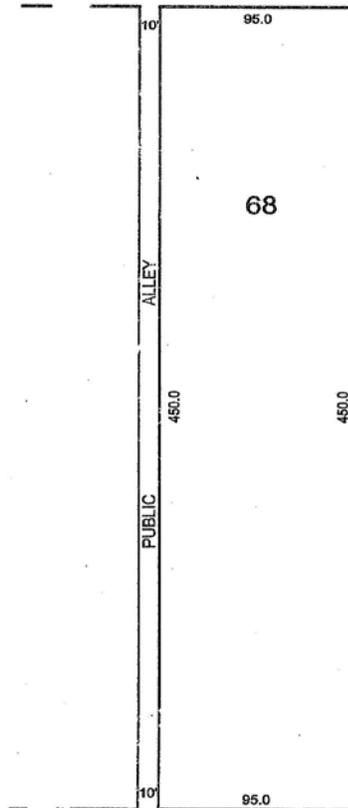
Date: \_\_\_\_\_

By: L.M.A. *[Signature]*

\_\_\_\_\_  
(Signature of owner or his authorized agent)

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

Q STREET, N.W.



N.W.

7TH STREET,

7TH

P STREET, N.W.

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SO-01109(2007)

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DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., November 2, 2007

Plat for Building Permit of: SQUARE 421 LOT 67

Scale: 1 inch = 20 feet Recorded in Book 159 Page 4

Receipt No. 01108

Furnished to: SHELDON WILLIAMS

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

*[Signature]*  
Surveyor, D.C.

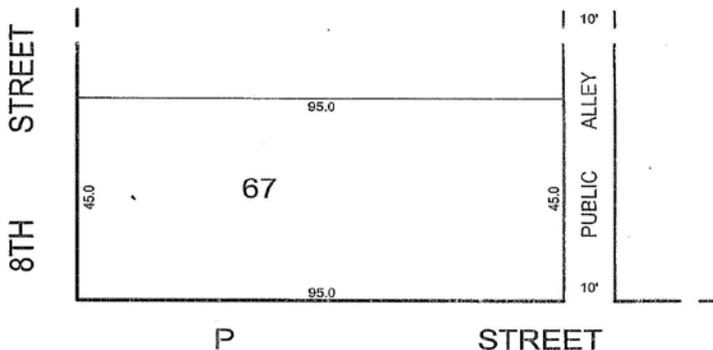
Date: \_\_\_\_\_

By: D.M. *[Signature]*

\_\_\_\_\_  
(Signature of owner or his authorized agent)

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

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