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December 12, 2006

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By Hand Delivery

Carol Mitten
Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Second Floor
Washington, D.C. 20001

**Re: Proposed Order for Case No. 05-17A/05-32A; Approval to Modify
an Approved Planned Unit Development**

Dear Chairperson Mitten and Members of the Zoning Commission:

Enclosed please find an original and twenty copies of Broadway Atlantic LLC's
Proposed Findings of Fact and Conclusions of Law for the above-referenced matter.
Please feel free to contact us should you have any questions.

Best regards,

Allison C. Prince

Enclosure

cc: Travis Parker, Office of Planning
ANC 1B
David Weldler

ZONING COMMISSION
District of Columbia

CASE NO. 05-17A/05-32A
EXHIBIT NO. 22

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-17A/05-32A
Z.C. Cases No. 05-17A/05-32A

**Approval to Modify a Planned Unit Development for
the Property located in the vicinity of the intersection of
Florida Avenue, 9th Street, and V Street
(Square 2873, Lots 1, 232, 852, 853, 859, and 864;
Square 2875, Lots 1106, 1107, 2012, 2026, 2030)**

January 8, 2007

**RECEIVED
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Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 6, 2006, to consider an application from Broadway Atlantic One LLC (the "Applicant") to modify an approved planned unit development ("PUD") in Squares 2873 (Lots 1, 232, 852, 853, 859, and 864) and 2875 (Lots 1106, 1107, 2012, 2026, and 2030). The application was filed on behalf of and with the consent of the owner of the property that is the subject of the application. 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 Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On September 1, 2006 ("Initial Application"), the Applicant filed an application with the Commission for review and approval of modifications to an approved PUD in Squares 2873 (Lots 1, 232, 852, 853, 859, and 864) and 2875 (Lots 1106, 1107, 2012, 2026, and 2030) (the "Property"). (Exhibit 1).
2. The PUD was originally approved by Zoning Commission Order No. 05-17/05-32 on April 20, 2006. The PUD consists of four distinct parcels of land: Square 2875 – Lots 1107, 2012, and 2026 ("Parcel A"); Lot 2030 ("Parcel B") and Lot 1106 ("Parcel D"); and Square 2873 – Lots 1, 232, 852, 853, 859, and 864 ("Parcel C"). Parcels A, C, and D are located in the CR Zone District. Parcel B is located in the ARTS/C-2-B Zone District.
3. The Zoning Commission approved a mixed-use development with approximately 721,444 square feet of residential use, including 29,800 square feet of affordable housing, and approximately 14,794 square feet of retail use.
4. A height of 100 feet and a FAR of 8.0 was approved for Parcel A (the FAR was to be calculated in combination with Parcel D). A height of 90 feet and a FAR of 6.3 was approved for development on Parcel B. Parcel C was approved for development up to 100 feet and a FAR of 8.0. Parcel D was approved for development with a height of 60 feet and a FAR of 8.0, when calculated in combination with Parcel A.

**ZONING COMMISSION
District of Columbia**

5. A parking ratio of one parking space to each unit was approved for the PUD, with a minimum of 9 retail spaces.
6. The Property consists of approximately of 95,516 square feet of land and is located in Ward 1.
7. The Applicant submitted the Initial Application to modify the Order to make the project more financially viable.
8. The Applicant's Initial Application primarily requested relief to modify the PUD to increase the approved unit count for the PUD from 700 units to 781 units; to reduce parking below a 1:1 ratio of parking spaces to units as originally proposed; to remove Parcel D from the PUD; and to devote the entire ground floor on Parcel C to retail use. (Exhibit 1).
9. As a result of the requested modifications, an additional loading area was added to Parcel C and the floor area ratio ("FAR") for Parcel A increased slightly. (Exhibit 1).
10. On September 25, 2006, the Applicant filed a revised modification application ("Revised Modification Application") for the PUD. (Exhibit 1).
11. The Revised Modification Application essentially amended the Initial Application and sought relief to modify the approved PUD to allow for an increase in residential units to 724; to reduce the parking on Parcel C below a 1:1 ratio of parking spaces to units; to remove Parcel D from the PUD; to devote the entire ground floor on Parcel C to retail use; and to submit revised elevations exhibiting the proposed new facades. These revisions resulted in the need for an additional loading area on Parcel C for the increased retail and a slight increase in the FAR of Parcel A. (Exhibit 6).
12. The application was placed on the Zoning Commission's consent calendar for October 16, 2006.
13. Prior to the Zoning Commission meeting, the Applicant presented its application to ANC 1B. At its duly noticed meeting held October 5, 2006, with a quorum present, ANC 1B voted 6-1 to support the approval of the Revised Application. (Exhibit __).
14. At the October 16, 2006, Zoning Commission meeting, the Commission determined that the proposed modifications could not be considered minor enough to be heard on the Commission's consent calendar. The Commission set the case down for a special public hearing to be held on December 6, 2006. The Commission waived the requirements of 11 DCMR Section 3013.1 in order to expedite the hearing date.
15. The Applicant supplemented its two previous filings on November 16, 2006 to specifically request approval for the modified building facades and floor plans in addition to other modifications sought in the Revised Modification Application. (Exhibit __).
16. A duly noticed public hearing was held on December 6, 2006. There were no requests for party status and no parties or persons testified in support or in opposition of the modification to the PUD.

17. The Zoning Commission took proposed action to approve the application by a vote of 5-0-0 at the end of the hearing.

18. The Zoning Commission agreed to leave the record open for two weeks to allow the Applicant to revise its rooftop plan if it so chose.

19. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated _____, found the proposed modification would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capitol.

20. The Commission took final action to approve the applications of Case No. 05-17A/05-32A on January 8, 2007, by vote of _____.

The PUD Project

21. The approved PUD comprises four sites located between Florida Avenue and Eighth Street, N.W. The total land area of the Property is 95,516 square feet. The PUD was initially split into two different cases: Atlantic Plumbing South, which included Parcels A, B, and D and Atlantic Plumbing North, which included Parcel C. The two cases were heard and decided simultaneously for the sake of simplicity.

22. The Generalized Land Use Map recommends the Property for a mix of moderate and medium density residential and commercial uses. The Property currently is improved with a mixture of commercial uses such as parking lots, concrete-block industrial buildings, and warehouses. All of the existing buildings will be demolished. Much of the property to the north and east of the Property is owned by Howard University and is part of the plan for the Howard Town Center. Much of the property to the north is currently devoted to parking lots for Howard University. The Property is just to the north of the U Street Corridor and lies in the northern portion of the Uptown Destination District Plan. The Property also is located within the Howard Gateway housing opportunity area. This area has been designated as a desirable location for the development of housing and residential uses.

Modifications to the PUD

23. The modifications to the PUD deal primarily with Parcel C; however, some of the modifications will affect the entire PUD.

24. The unit count for the entire PUD will increase to a total of 724 units, rather than the previously approved maximum of 700 units. The real estate market has demonstrated a preference for smaller units rather than larger ones. Increasing the overall unit count will enable the Applicant to reduce the size of the units as necessary. (Exhibit 6).

25. The parking ratio for Parcel C will be reduced from 1 parking space for each unit to no less than .89 parking space for each unit. 311 parking spaces will be provided on Parcel C, including 26 parking spaces for the retail component of the Parcel. (Exhibit 6).

26. The reduction of the parking ratio will have a minimal effect on parking and traffic, if any. (Exhibits 1, 6).

27. Parcel D will be eliminated from the PUD. It is the smallest of the properties included in Atlantic Plumbing South, comprising only 4,073 square feet, and is located just north of the 9:30 Club. Zoning Commission Order No. 05-17/05-32 approved 10 units for the property and the option of including retail. The 9:30 Club has since expressed an interest in purchasing the Parcel for use as parking and the Applicant is currently negotiating the sale of the parcel. (Exhibits 1, 6).

28. Removal of Parcel D from the PUD will have a minor effect on the FAR for the building to be located on Parcel A. Zoning Commission Order No. 05/17-05-32 approved a FAR of 8.0 for Parcels A and D combined. The FAR on Parcel A will increase as a result of removing the land area of Parcel D; however there will be no effective increase in density on Parcel A. Parcel A will have a FAR of 8.12. (Exhibits 1, 6).

29. The modifications will also increase the amount of retail use on Parcel C. The ground floor of the building on Parcel C was originally approved for over 4,000 square feet of retail use and approximately 25,000 square feet of residential use. The building will be modified to include approximately 24,000 square feet of retail space on the ground floor and 10,800 square feet of residential service space. The Applicant added an additional loading area to accommodate the increase in retail. (Exhibit 6).

30. To accommodate the increase in the retail, the courtyard will be filled in on the ground floor; thus, the lot occupancy will increase slightly at the ground floor level. The courtyard will be implemented on the remaining floor levels. The FAR of the building will remain the same as the size of the courtyard has been adjusted for the remaining floors. (Exhibit 6).

31. The facades and floor plans of the building on Parcel C will be modified pursuant to the plans submitted on November 16, 2006, as modified by the Applicant's PowerPoint presentation at the hearing on December 6, 2006.

32. The modifications will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study filed on September 1, 2006. (Exhibit 1).

Development Incentives and Flexibility

33. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- a. FAR: The Applicant is seeking density above the matter-of-right for the applicable Zone District. Parcel A will be developed to a FAR of 8.12, which exceeds the maximum 8.0 FAR permitted for a PUD in the CR Zone. The .12 FAR increase, however, represents an increase of less than 2% and is essential for the functioning of the Project. The Commission has the authority to approve a deviation of less than 2% pursuant to 11 DCMR Section 2405.3.

Public Benefits and Amenities

34. The following benefits and amenities will be created as a result of the modifications:

- a. Housing: The greatest benefit to the neighborhood and the District as a whole is the creation of new housing opportunities consistent with the Zoning Regulations, Comprehensive Plan, Mayor's housing initiative, and DUKE Plan. With these modifications, the Applicant will be able to provide additional housing opportunities than it previously was permitted.
- b. Urban Design, Architecture, Site Planning, and "Green Building Practices": The high quality of design in the development of the architecture for the Project exceeds that of most matter-of-right projects. The landscaping of the open courtyard on Parcel C will be an attractive amenity for the building's residents. The bays of the building on Parcel C have been designed to maximize the amount of light reaching the units while maintaining a sophisticated design.
- c. Uses of Special Value: The Project will provide additional ground-floor retail on Parcel C, which will be a significant contribution toward realizing the vision set forth in the DUKE Plan for a cultural, 18-hour destination district. The ground-floor retail is a pedestrian-oriented use that will greatly enhance the street activity of the area.
- d. Monetary Contributions to Neighborhood Organizations: The Applicant has already paid \$20,000 to community organizations of the \$100,000 obligation which was a condition of approval of Case No. 05-17/05-32.

35. The Commission finds that the modifications are 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, housing, transportation measures, and uses of special value to the neighborhood.

Compliance with PUD Standards

36. In evaluating a PUD modification 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, and the fact that the modifications are of a minor nature, the Commission finds that the development incentives are appropriate to approve the modifications. As stated above, the Commission finds that the extra 2% of density permitted under § 2405.3 is appropriate and essential to the functioning of the project on Parcel A.

Comprehensive Plan and Public Policies

37. The PUD, as modified, is consistent with and furthers the goals and policies enumerated in the District of Columbia Comprehensive Plan.

- a. The Generalized Land Use Map: The PUD is consistent with the Generalized Land Use Map, which recommends the subject site for a mix of moderate and medium density residential and commercial uses. The PUD will not be inconsistent with this use category. In addition, the Generalized Land Use Policies Map shows the Property located within the Howard Gateway housing opportunity area, which has been designated as a desirable location for the development of housing and residential uses. The PUD will be developed under the existing CR and ARTS/C-2-B Zone Districts.
 - b. Stabilizing the District's Neighborhoods: The creation of up to 724 new residential units will help enhance and stabilize the U Street/Cardozo neighborhood. The creation of a significant residential development on the site also is likely to attract additional residential and retail development and stabilize the neighborhood.
 - c. Respecting and Improving the Physical Character of the District: The Project has been designed to improve the site's integration with the surrounding neighborhood and to dramatically improve the streetscape on 8th, 9th, and V Streets. The facades, landscaping, and alternating composition of projecting bays, all combine to create a sense of scale and visual interest. The modifications employ traditional, time-tested materials in new and modern ways in a design that is aesthetically enduring and which adds to the fine urban texture of the city. Finally, the construction of a high quality residential project will be an important asset for the community.
 - d. Preserving and Ensuring Community Input: Through the PUD modification process, the Applicant has worked with representatives of ANC 1B, as well as the surrounding neighborhood, to modify the PUD in a manner that is consistent with its original approval.
38. The Project also complies with the major elements of the Comprehensive Plan.
- a. Housing: The creation of up to 724 residential units on this currently underutilized site fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan.
 - b. Urban Design: As shown in the detailed plans, elevations, and renderings included in the Applicant's November 16, 2006 submission (Exhibit ____), as modified by its powerpoint presentation of December 6 (Exhibit ____), the modifications exhibit all of the characteristics of exemplary urban design and architecture.
 - c. Ward 1 Goals and Policies: The Ward 1 Element of the Comprehensive Plan seeks to stimulate production of new housing, maintain and strengthen the quality and construction of housing, and promote low and moderate income housing development opportunities. (See 10 DCMR § 1206.1 and 10 DCMR § 1207.1). The modified PUD is consistent with these provisions of the Ward 1 Elements of the Comprehensive Plan and the "appropriate study" discussed below.
 - d. DUKE Plan: The PUD is located within the area of land studied under the Draft Development Framework for a Cultural Destination District within Washington,

DC's Greater Shaw/U Street Plan ("**DUKE Plan**"). The DUKE Plan has been proposed by the Office of Planning to celebrate and re-create an historical economic, cultural, social and institutional center for the District's African-American community. The DUKE Plan seeks to guide future development of the project area by capitalizing on the area's historic context to restore the neighborhood with 18-hour destinations. Several goals of the DUKE Plan will affect the Property. The DUKE Plan seeks: (1) an increase from moderate to medium density land use designations, (2) the designation of V Street as a neighborhood retail and service center, (3) residential development which includes affordable housing, and (4) the development ground floor retail/entertainment uses and a mix of national and unique, locally-owned retail establishments on 7th, 9th and U Streets, and Florida Avenue. The modifications are consistent with the DUKE Plan.

Office of Planning Report

39. By report dated October 6, 2006, OP recommended approval of Application No. 05-17A/05-32A. OP supported the modifications because of the size and location of the project combined with the traffic mitigation measures that were a part of the original amenity package. OP supported the increase in unit count for Parcel C because it was close to the 2% flexibility allowed to the Zoning Administrator. Overall, OP considered the modifications to be minor in nature and did not raise any objections. At the hearing for the modifications, OP stood on the record. (Exhibit 7).

ANC 1B Resolution

40. By letter dated October 10, 2006, ANC 1B expressed its support for the modifications to the PUD.

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. The modifications to the approved PUD continue to 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.

3. The modified PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The height and density will not cause a significant adverse effect on any nearby properties and will enable the critical concentration of residents required to transform this

underutilized area. Mixed use is appropriate for the Property; the uses are permitted as a matter-of-right for the designated zone districts. As demonstrated in the Traffic Study submitted by the Applicant, the modifications will not cause adverse traffic impacts and the Property is located in close proximity to mass transit. The PUD, as modified, is appropriately designed to complement and respect the existing adjacent buildings with respect to height and mass.

4. The application can be approved to ensure that any potential adverse effects on the surrounding area from the modifications will be mitigated.

5. The benefits and amenities provided by the PUD, are reasonable for the development proposed in Application No. 05-17A/05-32A.

6. The modification application seeks to increase the unit count of the entire PUD to a maximum of 724 units, to reduce the parking ratio of Parcel C to .89 spaces per unit; to remove Parcel D from the PUD and to increase the amount of retail on Parcel C.

7. Approval of the PUD modification application is appropriate because the proposed development is consistent with the present character of the area and the existing zoning.

8. Approval of the PUD modification application is not inconsistent with the Comprehensive Plan.

9. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give “great weight” to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 1B voted in favor of approving Application 05-17A/05-32A. The Commission agrees with the ANC that this Project should be approved.

10. The application to modify the PUD and remain consistent with the existing zoning 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.

11. 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 above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this order, of Application No. 05-17A/05-32A for modifications to the original PUD approved by Zoning Commission Order No. 05-17/05-32 for property located in Square 2875, Lots 1106, 1107, 2012, 2026, 2030 and in Square 2873, Lots 1, 232, 852, 853, 859, and 864. The approval is subject to the following guidelines, conditions, and standards:

1. The modifications in Application 05-17A/05-32A shall be developed in accordance with the plans prepared by Esocoff & Associates, dated November 16, 2006, marked as Exhibit ____ in the record, as modified by the PowerPoint presentation presented during the public hearing on December 6, 2006, marked as Exhibit ____ in the record.

2. Parcel D may be removed from the PUD.
3. Approximately 707,444 square feet of gross floor area shall be devoted to residential use. The Applicant shall have the flexibility to construct up to 724 residential units on the Property.
4. Approximately 34,550 square feet of retail use shall be permitted. The retail use remains required on Parcels A and B in the amounts specified in Zoning Commission Order No. 05-17/05-32. A minimum of 4,243 square feet of retail use is required on Parcel C; however, up to 24,000 square feet of retail use shall be permitted on Parcel C. In the event the Applicant determines that retail is not viable at this location, residential use may be substituted for the retail use on the ground floor, so long as at least 4,243 square feet of the ground floor is reserved for retail use.
5. Parcels A and B shall include parking on-site as set forth in Zoning Commission Order No. 05-17/05-32. Parcel C shall include .89 parking spaces per residential unit. Up to 26 parking spaces shall be provided for the retail portion of the Parcel; however, a minimum of 2 parking spaces shall be reserved for retail use in the event residential use is substituted for retail use pursuant to Paragraph 4. This parking requirement may be satisfied with any combination of full and compact parking spaces.
6. The Applicant shall continue to 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, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - 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;
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
 - d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and
 - e. To make alterations to the parking garage design provided that the parking garage contains a minimum number of parking spaces consistent with this Order, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.

7. The conditions of Zoning Commission Order No. 05-17/05-32 shall remain in full force and effect unless otherwise modified by this Order.
8. Application No. 05-17A/05-32A shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit for one of the buildings as specified in 11 DCMR § 2409.1. The phasing of the three buildings is permitted. The filing of an application for a building permit for one of the three buildings shall vest this order. However, an application for the final building permit must be filed within five years of the issuance of a certificate of occupancy for the first building.
9. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for 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 its burden, it is hereby ORDERED that the application be GRANTED.

Vote: 5-0-0

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

Carol Mitten
Chairman
Zoning Commission

Jerrily R. Kress, FAIA
Director
Office of Zoning