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Mary Carolyn Brown
202 862 5990
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March 8, 2005

RECEIVED
D.C. OFFICE OF ZONING
2005 MAR -8 PM 2:14

VIA HAND DELIVERY

Ms. Sharon Schellin
Office of Zoning for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: PUD Covenant – Z.C. Order No. 03-26
Square 235, Lots 59, 60, 178, 201-203, 801, 815-818, 823-826, and 828

Dear Sharon:

Enclosed please find a copy of the PUD covenant recorded among the land records for the District of Columbia binding the owner and its successors to the terms and conditions of the PUD in Zoning Commission Order No. 03-26. A copy of this covenant is being provided to you in compliance with Condition Nos. 14 and 15 of the Order and section 2409.3 of the Zoning Regulations.

Should you have any questions, please do not hesitate to contact me at (202) 862-5990.

Very truly yours,

Carolyn Brown

Carolyn Brown

Enclosure

cc: Toye Bello, Zoning Administrator, DCRA

2673739_v1

ZONING COMMISSION
District of Columbia
CASE NO. 03-26
EXHIBIT NO. 54

ZONING COMMISSION
District of Columbia
CASE NO.03-26
EXHIBIT NO.54

PUD COVENANT

THIS COVENANT, made this 3rd day of February, 2005, by and between PNH Union Square, L.L.C., a Delaware limited liability company ("PNH Union Square"); PNH Union Square Warehouse, L.L.C., a District of Columbia limited liability company ("PNH Warehouse"); and PNH Union Square Townhouse, L.L.C., a District of Columbia limited liability company ("PNH Townhouse" and collectively with PNH Union Square and PNH Warehouse known as "Owners"); and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District")..

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WITNESSETH:

WHEREAS, PNH Union Square is the owner of certain real property known as Lots 59, 178, 201, 202, 203, 801, and 817 in Square 235 in the District of Columbia (the "Union Square Parcel"); and

WHEREAS, PNH Warehouse is the owner of certain real property known as Lots 815, 816 and 818 in Square 235 in the District of Columbia (the "Warehouse Parcel"); and

WHEREAS, PNH Townhouse is the owner of certain real property known as Lot 60 in Square 235 in the District of Columbia (the "Townhouse Parcel"); and

WHEREAS, pursuant to D.C. Law No. 15-191, effective September 30, 2004, a portion of the north-south alley in the western portion of Square 235 was closed and recorded in the records of the Office of the Surveyor for the District of Columbia at Book 199, Page 2, on November 17, 2004; and

WHEREAS, the land comprising the closed alley has been designated as Assessment and Taxation Lots 823, 824, 825, 826 and 828, and ownership of these parcels reverting to the abutting land owners, with all of these parcels now being owned by PNH Union Square; and

WHEREAS, the Owners intend to develop their property in Square 235 (the "Subject Site") for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 03-26 effective August 6, 2004; and

WHEREAS, said Chapter 24 further requires that the Owners enter into this Covenant with the District of Columbia assuring Owners' development and use of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission") in Order No. 03-26 and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development under Order No. 03-26 effective August 6, 2004, in Zoning Case No. 03-26 (as the same may be amended and/or modified from time to time, the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. As required by that Order, the Subject Site, including the portion of the public alley now closed, will be developed and used in accordance with the plans approved by said Order and in accordance with the conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or the Zoning Commission may authorize, pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. Owners covenant that they will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Owners should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order, the Zoning Commission may duly consider an application for an extension of time in accordance with 11 DCMR 2408.10.

3. Default. In the event that Owners fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to section 2408.10, the benefits granted by the Order shall terminate pursuant to section 2400.7 of the Zoning Regulations.

4. Future Conveyance. Owners covenant that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer holds title to property constituting all or a portion of the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. Owners shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Owners, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, as of the date first written above, PNH Union Square, L.L.C., intending to be legally bound, has caused this Agreement to be executed by Lamont Hoffman, its managing member, and does hereby constitute and appoint Lamont Hoffman, as its true and lawful attorney-in-fact to acknowledge and deliver this Agreement as its free act and deed for the uses and purposes herein contained.

WITNESS:

PNH UNION SQUARE, L.L.C.,
a Delaware limited liability company

By: _____

DISTRICT OF COLUMBIA, SS:

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Lamont Hoffman, personally well known (or satisfactorily proven by the oath of credible witnesses) to me to be the person whose name is subscribed to the foregoing and annexed PUD Covenant bearing date as of Feb. 3, 2005, who, being by me first duly sworn, did depose and state that (s)he is the _____ and the duly appointed attorney-in-fact for said PNH Union Square, L.L.C., in the foregoing and annexed PUD Covenant, and that he, being duly authorized so to do, executed and delivered the foregoing and annexed PUD covenant in the name and on behalf of said PNH Union Square, L.L.C., and acknowledged the same to be its free act and deed for the uses and purposes contained therein.

WITNESS my hand and official seal this 27 day of Jan, 2005.

_____
Notary Public

[Notarial Seal]

My Commission Expires: _____

Irma Thakkar
Notary Public
District of Columbia
My Commission Exp. 04/30/09

IN WITNESS WHEREOF, as of the date first written above, PNH Union Square Warehouse, L.L.C., intending to be legally bound, has caused this Agreement to be executed by Lamont Hoffman, its managing member, and does hereby constitute and appoint Lamont Hoffman, as its true and lawful attorney-in-fact to acknowledge and deliver this Agreement as its free act and deed for the uses and purposes herein contained.

WITNESS:

PNH UNION SQUARE WAREHOUSE, L.L.C., a District of Columbia limited liability company

By: _____

DISTRICT OF COLUMBIA, SS:

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Lamont Hoffman, personally well known (or satisfactorily proven by the oath of credible witnesses) to me to be the person whose name is subscribed to the foregoing and annexed PUD Covenant bearing date as of Feb. 3, 2005, who, being by me first duly sworn, did depose and state that (s)he is the _____ and the duly appointed attorney-in-fact for said PNH Union Square Warehouse, L.L.C., in the foregoing and annexed PUD Covenant, and that he, being duly authorized so to do, executed and delivered the foregoing and annexed PUD Covenant in the name and on behalf of said PNH Union Square Warehouse, L.L.C., and acknowledged the same to be its free act and deed for the uses and purposes contained therein.

WITNESS my hand and official seal this 27 day of Jan, 2005.

_____
Notary Public

[Notarial Seal]

My Commission Expires:_____

Irma Thakkar
Notary Public
District of Columbia
My Commission Exp. 04/30/09

IN WITNESS WHEREOF, as of the date first written above, PNH Union Square Townhouse, L.L.C., intending to be legally bound, has caused this Agreement to be executed by Lamont Hoffman, its managing member, and does hereby constitute and appoint Lamont Hoffman, as its true and lawful attorney-in-fact to acknowledge and deliver this Agreement as its free act and deed for the uses and purposes herein contained.

WITNESS:

PNH UNION SQUARE TOWNHOUSE, L.L.C., a District of Columbia limited liability company

By: _____

DISTRICT OF COLUMBIA, SS:

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Lamont Hoffman, personally well known (or satisfactorily proven by the oath of credible witnesses) to me to be the person whose name is subscribed to the foregoing and annexed PUD Covenant bearing date as of Feb. 3, 2005, who, being by me first duly sworn, did depose and state that (s)he is the _____ and the duly appointed attorney-in-fact for said PNH Union Square Townhouse, L.L.C., in the foregoing and annexed PUD Covenant, and that he, being duly authorized so to do, executed and delivered the foregoing and annexed PUD Covenant in the name and on behalf of said PNH Union Square Townhouse, L.L.C., and acknowledged the same to be its free act and deed for the uses and purposes contained therein.

WITNESS my hand and official seal this 27 day of Jan, 2005.

_____
Notary Public

[Notarial Seal]

My Commission Expires: _____

Irma Thakkar
Notary Public
District of Columbia
My Commission Exp. 04/30/09

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA,
a Municipal Corporation

Tabatha Braxton

By: Sherry Hobbs Newman
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Sherry Hobbs Newman, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 1st day of March, 2005 and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 1st day of March, 2005.

Tabatha Braxton
Notary Public, D.C.

My commission expires: _____.

TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

APPROVED:

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Assistant ~~Corporation Counsel~~, D.C.
Attorney General

2422529_v1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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

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

FINDINGS OF FACT

The Application, Parties, and Hearing

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

2. At its public meeting held September 8, 2003, the Zoning Commission voted to schedule a public hearing on the application.

3. After proper notice, the Zoning Commission held a hearing on the application on January 15, 2004. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the property is located.

4. The record contains numerous letters and testimony in support of the project, including ANC 1B, Jim Graham, Councilmember for Ward One, and the Cardozo-Shaw Neighborhood Association ("CSNA").

5. There were no parties or persons in opposition to the project.

6. At its duly noticed meeting held April 3, 2003, ANC 1B voted to support the PUD. ANC 1B found that the project "further[s] the goals and objectives of the city, our neighborhood, and the best interests of historic preservation."

7. At its meeting held on April 10, 2003, the CSNA voted unanimously to formally support the project. CSNA based its support primarily on the numerous meetings between the Applicant and CSNA to discuss many aspects of the project, and the project's community benefits and amenities package.

8. By letters dated April 15 and June 26, 2003, Jim Graham, Councilmember for Ward One, expressed his strong support for the project, noting that: 1) the project would bring renewed vitality to a site currently comprised of vacant lots and abandoned warehouses; 2) utilizing the existing warehouses and creating a pedestrian gallery will add to the livelihood of the neighborhood; and 3) the project supports the goals of transit-oriented development. He further stated that the project "benefits the city and the immediate neighborhood where it is located, along with supporting the goals of transit-oriented development and historic preservation."

9. ANC 1B submitted a report and testified as a party in support of the application at the hearing, and specifically pointed out that the Applicant met with the ANC and single member district commissioners a number of times, and that the CSNA and the 14th and U Main Streets Initiative both support the project as well.

10. Ms. Jill Chodorov, a property owner residing at 1329 V Street, N.W., and Mr. Gray Gardner, a property owner residing at 1343 V Street, N.W., both testified at the hearing as persons in support of the application, but requested additional information and clarification of the PUD project.

11. At the hearing, Ms. Chodorov submitted a letter dated January 2, 2004, on behalf of herself and four other residents of the 1300 block of V Street, N.W., which raised questions primarily regarding the effect of construction-related activities.

12. At the close of the hearing, the Commission held the record open to receive three (3) additional items from the Applicant: 1) an architectural drawing depicting the rear elevation of the 14th Street portion of the proposed building; 2) a letter in response to the issues raised by Ms. Chodorov; and 3) proposed conditions for approval of the PUD. The Applicant submitted these requested materials on January 22, 2004.

13. At its meeting held January 29, 2004, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the application and plans that were submitted to the record and presented at the January 15, 2004, hearing.

14. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated February 26, 2004, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

15. The Zoning Commission took final action to approve the modified application on March 11, 2004.

The PUD Project

Overview

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

Site Description

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

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

18. The site is located within the Greater U Street Historic District, an area recognized for its late nineteenth and early twentieth century residential and commercial buildings, and as the center of the African-American community between 1900 and 1950. The existing buildings located on the 14th Street frontage have been deemed non-contributing to the Historic District. The two-story warehouses at the interior of the square, however, contribute to the significance of the Historic District and, thus, are being adaptively reused and incorporated into the design of the new development.

19. The surrounding area is characterized by a mixture of low- and high-rise buildings, both modern and historic, devoted to commercial and residential uses. Within Square 235, to the east of the warehouse buildings and separated by an alley, is the former Harrison Public School, which remains in educational use by the Children's Studio School of the Arts & Humanities, a public charter school, and rises to a height of approximately sixty-five (65) feet along 13th Street. Two (2) alleys abut the warehouses on the north and south, which separate these structures from the rear yards of the neighboring rowhouses. Two-story rowhouses are located on V Street to the south, and three-story rowhouses with English basements line W Street to the north.

20. Diagonally across 14th Street to the southwest is the Reeves Center, a District of Columbia municipal office building. The 110-foot building is the largest in the area. To the south across V Street is the site of the proposed Langston Hughes Condominiums, a mixed-use building permitted to a height of ninety (90) feet but being constructed to a height of seventy-two (72) feet due to project constraints. It consists of eighty (80) residential units and 7,500 square feet of retail space. There are numerous recreational facilities in the area, such as the Harrison Recreation Center, which is located on the south side of V Street, between 13th and 14th Streets, and the Anthony Bowen YMCA building on the north side of W Street between 13th and 14th Streets. One block to the south on U Street, between 13th and 14th Streets, is the Ellington Plaza Apartments, presently under construction. This residential building will be constructed to a height slightly in excess of eighty (80) feet and contain 207 rental units. Existing smaller scale buildings line 14th and U Streets. Retail shops, business services, restaurants, and arts and entertainment related uses can be found along these two corridors.

Project Design and Components

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

22. The project received the unanimous support of the D.C. Historic Preservation Review Board ("HPRB") at its June 26, 2003, meeting with respect to height, massing, and scale.

23. Along 14th Street, the building has been separated into three (3) building masses. The south "building" has been articulated in a modernistic mode that emphasizes transparency and glass. The massing departs from a rectangular form and curves inward at the southern end to accommodate the Metrorail tunnel that traverses the site underground. The north building section is more traditional in its design approach and incorporates more masonry into its façade. The central mass connects the north and south masses in an H-shaped form and is articulated in glass and light-colored masonry. Its distinguishing element is a two-story central gallery to the interior of the site. Entrances to the residential portions of the north and south wings, which will contain approximately 217 units, are located to either side of this gallery. The height of the central wing is articulated to mirror the gallery opening at the street level.

24. Organized in a tripartite composition, the base of the building is unified by large commercial storefront windows, reflecting the retail use at the ground level. The elevations of the upper floors reflect the residential character of the building, and the top two (2) floors are set back to reduce the apparent height of the building. A portion of the central wing is capped with a modernistic arched roof. The south arm's façade is gently curved to echo the curve of the southern end of the building.

25. The gallery at the ground level acts as a dramatic entrance to the interior component of the project. Inspired by historic arcades and the intimate spaces of London mews, the design of the renovated warehouse space will create a distinctive urban area for the neighborhood. The exterior walls of the two-story warehouses will be retained and enhanced, with two (2) floors added to the top. The industrial character of these structures will be incorporated into the new design through the use of materials, forms, and other design elements, such as glass block, overhead hoists, and industrial-type lights and other fixtures. In contrast, the area between the two (2) warehouses will be treated with landscape features to soften the hard edges of the industrial theme and create a more residential setting for the building's occupants. Special paving and tree boxes will further delineate this open arcade area. Pedestrian bridges will span the two (2) buildings at intervals on the second floor level to physically and visually connect and define this space. A prominent stair tower at the end of the mews, which includes a water feature, adds further visual interest to mark this space. The roofs of the two-story additions have been carefully articulated as barrel vaults to minimize the apparent height and eliminate their visibility from V and W Streets.

26. Upon completion, the PUD will revitalize and enhance an important segment of the 14th Street corridor with an architecturally appropriate design that complements the historic district and provides a visual context for the Reeves Center across the street. The provision of neighborhood retail services at street level and a pedestrian promenade to the interior of the square will further enliven the streetscape and significantly contribute to the rebirth of this area.

Matter of Right Development Under Existing Zoning

27. The central portion of the PUD Site is located in the R-5-B District; the portion of the site fronting on 14th Street is located in the Arts/C-3-A District. The R-5-B District is a moderate height and density area that permits all types of urban residential development, including single-family dwellings, semi-detached houses, row dwellings, and apartments. The maximum height permitted in the R-5-B District is fifty (50) feet with no limitation on the number of stories.

28. Residential development may achieve a maximum density of 1.8 FAR.

29. The C-3-A District is a medium-density commercial area designed for office, retail, housing, and mixed-use developments. Buildings may be constructed to a height of sixty-five (65) feet and achieve a density of 4.0 FAR for residential uses and 2.5 FAR for non-residential uses, with a total maximum density of 4.0 FAR for any development.

30. The Arts Overlay allows buildings in an underlying C-3-A District to be developed to a height of seventy-five (75) feet if certain criteria are met. The Overlay also permits preferred uses, including market and below-market housing and a variety of retail and service uses, to be developed to achieve bonus density. A building that includes 3.0 or more FAR devoted to residential use is entitled to a bonus of 0.5 FAR.

Development Incentives and Flexibility

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

    a. Loading Berth Requirement. The Applicant proposes to provide two (2) 30-foot loading berths and two (2) 100-square-foot platforms in lieu of the one (1) 55-foot loading berth required under the regulations.

    b. Retail Parking. The Applicant proposes to provide fifty (50) parking spaces for the retail component of the project in lieu of the seventy (70) parking spaces otherwise required under the regulations.

    c. Roof Structure Requirements. Section 411.3 of the Zoning Regulations requires all penthouses and mechanical equipment to be placed in one enclosure. Additionally, § 411.5 provides that enclosure walls must be of equal height. Finally, the area of a penthouse may not exceed 0.37 FAR. The Applicant seeks to deviate from these requirements by providing roof structures of unequal height and three (3) separate penthouses for the 14th Street portion of the building and the two (2) renovated warehouses at the interior of the lot. The penthouses on the warehouse portion of the project will also exceed the maximum permitted gross floor area by approximately 2,384 square feet.

d. Residential Recreation Space. Pursuant to § 773.2 of the Zoning Regulations, residential recreation space must be provided for residential buildings located in commercial districts. The C-3-A District has a requirement that the equivalent of fifteen percent (15%) of the gross floor area devoted to residential use be provided as residential recreation space. The Applicant is providing approximately 21,032 square feet of residential recreation space, or twelve percent (12%) of the gross floor area devoted to residential use.

e. Street Frontage Requirements. Section 1903.3 of the Uptown Arts Overlay District requires that each new building that fronts on a pedestrian street shall be designed and built so that not less than seventy-five percent (75%) of the streetwall, to a height of not less than fifteen (15) feet, shall be constructed to the property line. The PUD project will be built so that only approximately sixty-six percent (66%) of the streetwall is constructed to the property line due to limitations of the property.

f. FAR Calculations for Parking Areas. The Applicant initially requested relief from the requirement that first floor areas used for parking spaces are calculated in floor area ratio calculations if more than fifty percent (50%) of the area is enclosed. This request was withdrawn, however, since the HPRB approved the Applicant's request to alter the street level façades of the warehouse buildings so that at least fifty percent (50%) of the perimeter wall is open.

g. Construction Phasing. The Applicant requests flexibility to construct the PUD project in two (2) phases due to the unusual shape of the site, the care required in protecting the historic warehouse structures, and to provide the least amount of disruption to nearby property owners.

h. Design. Exterior designs as may be modified by final HPRB approvals, subject to no additional areas of zoning relief being necessary.

Public Benefits and Amenities

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

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

b. Urban Design, Architecture, Landscaping, and Open Space. The high quality of design in the development of the architecture for the project exceeds that of most matter-of-right projects. The innovative conversion of industrial space to residential use, the use of a pedestrian arcade, and landscaping to draw life into the interior of the square, the application of the 14th Street corridor streetscape design guidelines, and the establishment of neighborhood-oriented service retail uses are significant contributions to the urban landscape and complement the character of the 14th and U Streets corridor.

c. Historic Preservation. The design of the PUD project provides for the adaptive reuse of the historic warehouses at the interior of the square and creates a design that is compatible with and complements the surrounding Greater U Street Historic District. The exceptional quality has been assured through the design review process of the HPRB, which recommended approval of the height and massing of the project in concept at its June 26, 2003, meeting.

d. Transportation Features. The off-street parking provided exceeds the requirements of the Zoning Regulations. The project proposes approximately 280 dwelling units on the split-zoned site, for which only 140 parking spaces are required. The PUD will, however, provide 184 residential parking spaces. Another fifty (50) spaces will be located at the ground level of the renovated warehouse buildings. Additionally, two (2) to four (4) of the residential parking spaces shall be reserved for a "ZipCar" or "FlexCar" car-sharing programs for residents.

e. Uses of Special Value to the Neighborhood. The Applicant shall contribute $50,000, in five (5) $10,000 increments, to the 14th and U Streets Main Street Initiative for the implementation of the "Green Team," a homeless employment program. An initial $10,000 payment was made prior to approval of the PUD. Additionally, The Applicant will pay the fee for a one-year membership in the CSNA for each household unit initially purchased, further strengthening the ties of this development with the community.

f. Environmental Benefits. The Applicant shall design and construct the PUD utilizing the criteria of the LEED (Leadership in Energy and Environmental Design) Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.

Compliance With the Comprehensive Plan

33. The project is not inconsistent with the Comprehensive Plan as follows:

a. The Generalized Land Use Map. The proposed development is consistent with the Generalized Land Use Map, which designates the PUD site as mixed-use medium-density commercial and medium-density residential for the 14th Street

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

b. The project meets the policy objectives of the Economic Development Element by improving the vacant parcels along 14th Street, a major north-south corridor, and the outmoded and dilapidated warehouses at the interior of the site, creating attractive and functional housing in its place. Also, this project provides residential and retail development outside of the Central Employment Area that will provide both housing and jobs, and will foster economic growth in these corridors consistent with the policies and objectives of the Comprehensive Plan. Moreover, the proposed PUD is in close proximity to the U Street/Cardozo Metrorail Station and provides neighborhood retail that will promote economic development in this community.

c. The proposed PUD promotes the Housing Element set forth in the Comprehensive Plan. The property is located in close proximity to the U Street/Cardozo Metrorail Station and will further the total urban living system through its access to transportation and shopping. The PUD is also consistent with the District's goal of stimulating a wider range of housing choices and strategies through the production of new units for a variety of household types. A priority under the District's Housing Element of the Comprehensive Plan is to maintain and upgrade the District's affordable rental stock, a goal that is supported by the proposed PUD.

d. The proposed PUD meets the Urban Design Element goals to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that complements the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development. The massing will, in fact, be a distinctive feature of the development's design. The multi-family residential will create a strong street edge, and a varied roof line will be achieved through set back stories and projecting bays. Along V and W Streets, the buildings' top stories will be set back significantly in order to create a scale more consistent with the adjacent existing rowhouses. Further, the proposed development incorporates a 26-foot-wide space between the two (2) existing warehouse buildings that will be landscaped and extended to the commercial edge of 14th Street. This space will serve as a pedestrian gallery for the renovated warehouses and the new retail on the western portion of the site. Landscaped promenades with bridge connections at the third story will also be provided on the western portion of the site.

e. The PUD fosters the policies of the Preservation and Historic Features Element. Specifically, the Comprehensive Plan stipulates that appropriate adaptive uses consistent with applicable land use regulations should be encouraged. The proposed PUD also exemplifies the District's preservation goals, in that the structural frames of the existing historic warehouses will be preserved to serve as a reminder of the property's original use. The remainder of the abandoned warehouses will be replaced with viable residential development that will maximize the use of the property while significantly enhancing the surrounding neighborhood.

f. The proposed PUD meets the goals of the Land Use Element by developing high-quality housing in close proximity to the U Street/Cardozo Metrorail Station. The proposed PUD responds to the goal of promoting the enhancement and revitalization of District neighborhoods for housing and related uses by replacing two (2) older, abandoned warehouses with high quality residential units. The superior design of the proposed development will enhance and revitalize this residential segment of Ward 1, thereby stimulating new development and job opportunities. The proposed PUD also includes appropriate commercial development by including approximately 24,000 square feet of retail space that will serve both the residents of the buildings and the surrounding neighborhood.

g. The proposed PUD meets the goals of the Environmental Protection Element by being designed and constructed in accordance with the criteria of the LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings. Moreover, the project's close proximity to the U Street/Cardozo Metrorail Station will assist in the District's goal of decreasing reliance on automobiles for commuting and other routine trips.

h. The project is consistent with the Ward 1 Element in the following ways:

(i) The proposed PUD furthers the Ward 1 Economic Development Element by bringing people to an area of vacant lots and abandoned warehouses, thus creating a safer environment. The project's close proximity to the U Street/Cardozo Metrorail Station will also help facilitate the Ward's goal of increasing commercial activity near metrorail stations. The retail component of the proposed development will create both jobs and services needed by neighborhood residents and will attract businesses that are compatible with the residential use.

(ii) The proposed PUD substantially furthers the goals of the Ward 1 Housing Element through the provision of both market rate and affordable housing units that will be developed above retail services necessary and helpful to urban living. The project will also promote the retention of housing in former industrial areas in Ward 1 by providing for the development of new

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

(iii) The PUD project directly supports and achieves the objectives of the Ward 1 Environmental Element by promoting land use patterns and transportation services that decrease reliance on automobiles for commuting and routine trips to reduce air pollution. The location of the proposed development in close proximity to the U Street/Cardozo Metrorail Station significantly furthers this objective, as does the inclusion of retail uses that will be utilized by residents of the buildings. The Environmental Element also encourages the elimination of unoccupied and boarded up buildings in Ward 1 in order to address code violations, rodent infestation, and sanitation issues. The proposed PUD supports this policy by replacing two (2) abandoned warehouses. Finally, the proposed building will be designed and constructed in accordance with the criteria of the LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.

(iv) The proposed PUD meets the objectives of the Ward 1 Transportation Element by supporting land use arrangements that simplify and economize transportation services in Ward 1, including mixed-use zones that permit the co-development of residential and non-residential uses. Such mix of uses is specifically encouraged in the area of the U Street/Cardozo Metrorail Station. The Transportation Element recognizes that parking spaces are inadequate in commercial and residential areas and encourages the development of parking facilities that will not adversely impact residential communities or parkland. The proposed PUD includes an underground parking garage and enclosed parking at grade level, which will provide adequate parking in an unobtrusive manner.

Office of Planning Report

34. By report dated January 7, 2004, the Office of Planning ("OP") withheld recommending approval of the PUD application due to concerns about the adequacy of the amenity package. However, after meeting with the Applicant, by supplemental report dated January 8, 2004, and through testimony presented at the public hearing, OP concluded that the benefits and amenities are commensurate with the relief requested and the requirements of the Zoning Commission, and hence recommended approval of the consolidated PUD application. The Commission concurs with this recommendation.

35. OP conditioned its approval on the following four (4) items:

a. That the floor area totals be resolved by the D.C. Office of the Surveyor on land survey data for individual lots that compose the development site prior to the issuance of the final order;

b. That a copy of the draft streetscape design guidelines developed for the U Street Initiative be filed into the public record;

c. That more specific information about the "Green Team" employment training program and how the LEED criteria will be implemented in the new construction, shall be placed into the public record; and

d. That the Applicant submit an executed agreement to participate in the Department of Employment Services' First Source Employment Program and indicate how it plans to utilize local, small, and disadvantaged businesses.

36. In response to OP's recommendations, the Commission finds as follows:

a. The project shall be a residential and retail development constructed to a maximum height of ninety (90) feet and a density of 4.73 FAR in the Arts/C-3-A District and 3.15 FAR in the R-5-B District, for an aggregate density of 4.04 FAR. The PUD shall consist of approximately 314,968 square feet of gross floor area, of which a minimum of 22,000 square feet and a maximum of 26,000 square feet of floor area shall be devoted to neighborhood-serving retail uses. The final residential gross floor area shall be calculated based on the measured versus record land area computations for the PUD Site as accepted by the Department of Consumer and Regulatory Affairs during review and approval of the building permit.

b. The Applicant shall improve the public space surrounding the project with a minimum of granite curbs, tree grates, waste receptacles, and light poles that are approved by the District Department of Transportation ("DDOT") or will meet the streetscape standards of the 14th and U Streets Main Street Initiative, whichever are superior. The Applicant shall work with DDOT and the Initiative to make this streetscape the prototype for the area;

c. The Applicant shall contribute $50,000, in five (5) $10,000 increments, to the 14th and U Streets Main Street Initiative for the implementation of the "Green Team," a homeless employment program. Further, the Applicant will design and construct the PUD utilizing the criteria of LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings; and

d. Prior to the issuance of the building permit for Phase I, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (DOES) and provide an executed copy of the agreement to the Zoning Commission record.

Other Government Agency Reports

37. By report dated January 14, 2004, DDOT indicated its lack of support for the application until such time as the Applicant resubmitted its most current set of site plans and accompanying turning movement diagrams to DDOT for review. DDOT expressed concern that the tracking diagrams initially submitted did not provide enough information for the DDOT Traffic Safety Administration to determine if the proposed design of loading and parking facilities comply with DDOT design or safety standards.

38. On January 23, 2004, the Applicant met with DDOT staff to discuss the concerns DDOT raised in its report dated January 14, 2004. In consultation with DDOT, the Applicant agreed to revise its traffic circulation plan as follows:

    a. At the north warehouse, the width of the drive aisle for the angled parking shall be increased to seventeen (17) feet;

    b. At the south warehouse, the drive-aisle traffic shall be directed one-way westbound;

    c. The curb radii at the north-south alley at W and V Streets shall be ten (10) feet;

    d. The Applicant shall provide handicap-accessible curb ramps at the corners of 14th Street at V and W Streets;

    e. The Applicant shall repave the entire north-south alley in the western part of the square between V and W Streets;

    f. In consultation with DDOT, the Applicant shall include a traffic control device at the internal intersection of the east-west pedestrian gallery and the north-south alley;

    g. Truck traffic through the north-south alley shall be restricted to ingress from W Street and egress at V Street;

    h. The Applicant shall provide DDOT with a turning diagram for a 30-foot loading truck and a standard solid waste vehicle; and

    i. DDOT and the Applicant shall revisit the issue of efficient truck circulation after the project has been completed to make any adjustments to parking along either V or W Streets, N.W.

39. By supplemental report dated January 23, 2004, DDOT concluded, and the Commission finds, that the proposed design of loading and parking facilities is adequate.

40. Although not a contested issue, the Commission further finds that the Applicant adequately responded to the issues raised by Ms. Jill Chodorov. (See Findings of Fact 10-12.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD as approved by the Commission, including its approval pursuant to § 2405.3, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and neighborhood-serving retail uses for this project are appropriate for this site, which is located between the Central Employment Area and Georgetown, and within immediate proximity to mass transit. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the historic building in terms of height and mass and is complementary to adjacent buildings.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The project benefits and amenities, particularly the provision of housing and neighborhood-serving retail, are reasonable for the development proposed on the site. The PUD responds to both the historic building and the surrounding residential and commercial developments.

8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area.

9. Approval of this PUD and change of zoning are not inconsistent with the Comprehensive Plan.

10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give "great weight" to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

11. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

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

1. The PUD shall be developed in accordance with the plans prepared by SK&I Architects dated January 15, 2004, and marked as Exhibit 35 in the record, as modified by the guidelines, conditions, and standards herein.

2. The project shall be a residential and retail development constructed to a maximum height of ninety (90) feet and a maximum density of 4.73 FAR in the Arts/C-3-A District and 3.15 FAR in the R-5-B District, for an aggregate density of 4.04 FAR. The PUD shall consist of approximately 314,968 square feet of gross floor area, of which a minimum of 22,000 square feet and a maximum of 26,000 square feet of gross floor area shall be devoted to neighborhood serving retail uses. The final residential gross floor area shall be calculated based on the measured versus record land area computations for the PUD Site as accepted by the Department of Consumer and Regulatory Affairs during review and approval of the building permit.

3. The project shall provide a minimum of 240 and a maximum of 300 residential units. Ten (10) of those units shall be available for sale as affordable housing consisting of 8,438 square feet of gross floor area including a core factor (approximately 7,500 net square feet), to residents with an annual income of $50,000 and in accordance with the eligibility requirements and enforcement mechanisms submitted by the Applicant to the record as part of Exhibit 24.

4. The PUD shall include a minimum of 234 parking spaces with a minimum of fifty (50) spaces devoted to the retail uses. Any parking spaces provided in excess of the minimum amount may be allocated to residential or retail uses according to need.

5. Two (2) to four (4) of the parking spaces shall be reserved for use by a car-sharing service, such as "Zip Car" or "Flex Car".

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

   a. To vary the exterior design, materials, and landscaping in accordance with final plans reviewed by the D.C. Historic Preservation Review Board and approved by the Mayor's Agent for Historic Preservation but with no reduction in quality, based on availability at the time of construction;

   b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms;

   c. To vary the location and arrangement of parking spaces; and

   d. To refine traffic circulation patterns in consultation with DDOT.

7. The Applicant shall pay the fee for a one-year membership in the CSNA for each household unit initially purchased.

8. The Applicant shall improve the public space surrounding the project with a minimum of granite curbs, tree grates, waste receptacles, and light poles that are approved by DDOT or will meet the streetscape standards of the 14th and U Streets Main Street Initiative, whichever are superior. The Applicant shall work with DDOT and the Initiative to make this streetscape the prototype for the area.

9. The Applicant will design and construct the PUD utilizing the criteria of LEED Green Building Rating System, a voluntary, consensus-based national standard for developing high-performance, sustainable buildings.

10. Prior to the issuance of the certificate of occupancy for the apartment house, the Applicant shall commit $2,500 to DDOT to be used for the erection of approximately ten signs along 14th Street between Florida Avenue and U Street to designate the Greater U Street Historic District.

11. Prior to the issuance of the building permit for Phase I, the Applicant shall enter into a First Source Employment Agreement with DOES and provide an executed copy of the Agreement to the Zoning Commission record. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services (DOES) in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After completion of construction of this project, the Applicant shall provide a written status

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

12. The Applicant shall contribute a total of $50,000, in five (5) $10,000 increments, to the 14th and U Streets Main Street Initiative for the implementation of the "Green Team," a homeless employment program. The initial $10,000 payment was made prior to approval of the PUD. Subsequent payments shall be made no later than the annual anniversary of the effective date of this Order.

13. No building permit shall be issued for this PUD until a portion of the north-south alley in the western segment of Square 235 is closed, consistent with the alley closing application filed with the Surveyor's Office as case S.O. No. 03-2526.

14. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

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

16. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. The Applicant shall have the flexibility to construct the project in two phases. Construction of Phase I, the 14th Street segment of the project, shall begin within three (3) years of the effective date of this order. Construction of Phase II, the renovation and addition to the historic warehouses, shall begin no later than six (6) months after completion of Phase I.

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

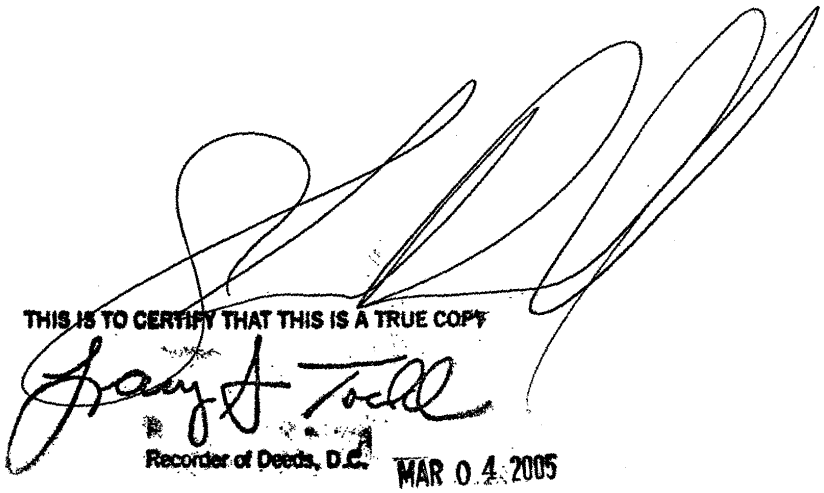
On January 29, 2004, the Zoning Commission approved the application by a vote of 4-0-1 (John G. Parsons, Anthony J. Hood, Peter G. May, and Carol J. Mitten; James H. Hannaham not present, not voting).

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

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on AUG - 6 2004.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning


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