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December 8, 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. 04-22A; Approval to Modify an
Approved Planned Unit Development for Property Located at 220 H
Street, NE (Square 751, Lot 13)**

Dear Chairperson Mitten and Members of the Zoning Commission:

Enclosed please find an original and twenty copies of Broadway Capitol 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,

Paul Tummonds/ck

Paul A. Tummonds

Enclosure

cc: Travis Parker, Office of Planning
ANC 6C
David Weldler

RECEIVED
D.C. OFFICE OF ZONING
2006 DEC -8 PM 2:14

ZONING COMMISSION
District of Columbia

CASE NO. 04-22A
EXHIBIT NO. 27

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 04-22A

Case No. 04-22A

Approval to Modify an Approved Planned Unit Development for Property Located at 201 and 225 I Street, NE; Square 751, Lots 802 and 803) January 8, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 6, 2006, to consider an application from Broadway Capitol, LLC (the "Applicant") to modify an approved planned unit development ("PUD") for property located in Lots 802 and 803 in Square 751 also known as 201 and 225 I Street, NE (the "Property"). The application was assigned Z.C. Case No. 04-22A. The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia 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

1. On July 12, 2006, the Applicant filed an application with the Zoning Commission ("Commission") for review and approval of modifications to the PUD approved by Zoning Commission Order No. 04-22. (Exhibit 1).
2. The modification application proposed modifying the approved roof plan to include architectural embellishments, enhanced and enlarged green roof areas, a consolidation and reduction in the number of vent chimneys, and a more refined treatment of roof top areas for various types of recreational use. (Exhibit 1). The modification application was placed on the Zoning Commission's September 2006 Consent Calendar.
3. The parties to the original PUD and Zoning Map amendment application submitted letters to the Zoning Commission responding to the Applicant's proposal. The Stanton Park Neighborhood Association submitted a letter in support of the modifications, but expressed concern regarding the size of the proposed penthouses. (Exhibit 7). On August 31, 2006, the Advisory Neighborhood Commission ("ANC") 6C filed a letter requesting postponement of the Zoning Commission's consideration of the application given its inability to review the application in time. (Exhibit 5).
4. On September 9, 2006, the Applicant requested that the Commission defer making a decision on the minor modification application until ANC 6C had an opportunity to review the modification application. (Exhibit 9).
5. A review of the application was subsequently postponed to the Zoning Commission's October 16, 2006, public meeting.

**ZONING COMMISSION
District of Columbia**

CASE NO. _____

EXHIBIT NO. _____

6. Prior to the Zoning Commission's October 16, 2006, public meeting, the Near Northeast Citizens Against Crime and Drugs and the ANC 6C submitted letters to the Zoning Commission in support of the modification application. (Exhibits 11 and 10, respectively).

7. At its October 16, 2006, public meeting, the Zoning Commission set the case down for a public hearing to be held on December 6, 2006, noting that the proposed modifications could not be considered "minor" for purposes of being decided on their Consent Calendar. In the interest of expediting the case, the Zoning Commission waived the requirement to file a supplemental filing pursuant to 11 DCMR Section 3013.1.

8. On November 16, 2006, the Applicant submitted a supplemental filing that presented and discussed in detail the proposed modifications to the approved PUD. (Exhibit 14).

9. A public hearing was held on December 6, 2006. The Applicant's architect presented testimony regarding the proposed modifications to the approved PUD project. No other parties or persons spoke in support of the modification at the Zoning Commission hearing. There were no parties in opposition to the modification at the Zoning Commission hearing. At the close of the hearing, the Zoning Commission took proposed action to unanimously approve the modifications by a vote of 5-0-0.

10. The Zoning Commission took final action to approve the application in Case No. 04-22A on January 8, 2007, by a vote of _____.

Modification Application

11. The PUD was first approved on March 24, 2005, pursuant to Zoning Commission Order No. 04-22. The PUD Order approved rezoning the site from the C-3-A and the C-3-B Zone Districts to the C-3-C Zone District. The Commission approved the construction of approximately 465-500 residential units with approximately 500-525 parking spaces and 19,852 square feet for affordable housing. The entire project was approved to include 599,134 square feet of gross floor area resulting in a density of approximately 5.73 FAR. The height of the residential buildings were approved for 110 feet and a lot occupancy of 65%. This application only requests approval to modify the roof plan and the façade of the approved PUD.

12. The modification of the roof level design includes the elimination of the horizontal elements initially approved by the Zoning Commission and substitutes a pair of vertical towers at the south end of the west tower to mark the gateway to the H Street corridor. These towers are within the definition of tower in the 1910 Height Act.

13. The application also modifies the size and configuration of the mechanical penthouses, increasing the floor area ratio ("FAR") of the penthouses by 0.4%. The increased FAR is needed to enclose the higher quality, energy efficient systems used in

the buildings. The penthouses are setback from the exterior walls of the buildings at least one foot per foot of vertical height.

14. The modified roof plan provides for a series of brick-faced, vent shafts and exhaust fans for toilet, kitchen and dryer exhausts that are permitted by the 1910 Height Act. The shafts and exhaust fans are set back more than one foot per foot of height from all edges of the roof. A “green screen” is provided between the piers. The green screen will be held in place by a horizontal element that spans between the vent shaft piers.

15. The application modifies the façade of the building, including the windows, balconies, and materials. The windows are subdivided into additional panes and the quality of the window system will be upgraded. The number of balconies are reduced as a result of refining the interior plans for each unit. The Applicant will use a screen-wall approach that allows the location of the window glazing to be at the brick line or inset without disrupting the general aesthetic expression of the facades. Finally, the masonry colors are adjusted to be more compatible with existing historic buildings in the area. The quality of the bricks and the natural and cast stone is the same as in the original PUD, but the colors are refined to comport with surrounding buildings.

16. The following public benefits and project amenities will be enhanced as a result of the modifications.

- Historic Preservation of Private or Public Structures, Places, or Parks – The Applicant is refining the materials it is using in the façade of the building to enhance the historical significance of the Capital Children’s Museum building and to be compatible with Daniel Burnham’s railway cargo building, which is located across 2nd Street to the west. (Exhibit 14, p. 3.)

- Urban Design and Architecture – The Applicant proposed the modifications to enhance the architecture and design of the building and to emphasize the building’s status as the gateway to H Street. The Applicant is introducing vertical towers to mark the entrance into the H Street corridor and it is refining the color palette of the materials to make the building compatible with other significant buildings in its vicinity. (Exhibit 14, pp. 1-3).

- Site Planning – The roof plan has been modified to provide residents and their guests with open and inviting spaces for entertainment and relaxation. (Exhibit 14, p. 2).

- Environmental Benefits – The roof elements will incorporate a green screen to act as a fence between the piers. Additionally, the quality of the window system will be upgraded as a part of these modifications. (Exhibit 14, p. 2).

GOVERNMENT REPORTS

17. The Office of Planning ("OP"), in its report dated September 1, 2006, stated that it considered the proposed changes to be minor in nature and it did not object to the new roof plan as it appeared to meet the intent of the previous approval and the overall changes have no effect on the zoning relief requested. (Exhibit 6).

ADVISORY NEIGHBORHOOD COMMISSION REPORT

18. Advisory Neighborhood Commission 6C adopted a unanimous resolution in support of the project at its regularly scheduled and publicly noticed meeting on October 11, 2006. The ANC, in its written resolution dated October 12, 2006, requested that the Applicant address safety and cleanup issues associated with the construction of the buildings. (Exhibit 10).

NCPC ACTION

19. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC). By letter dated _____, the Executive Director of NCPC noted that pursuant to the Executive Director's Delegated Action authority, the Executive Director found that the proposed PUD modification application would not adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit ____.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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

3. The Commission agrees with the testimony of the project architect and concludes that the proposed modifications are consistent with the Zoning Regulations, the 1910 Height Act and the intent of the original PUD approval.

4. The proposed modifications will not cause a significant adverse effect on any nearby properties. The modifications are appropriate and complement the existing adjacent buildings.
5. In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission takes note of ANC 6C's resolution in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled.
6. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
7. Notice of the public hearing was provided in accordance with the Zoning Regulations.
8. The Applicant 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**, consistent with this order, of Application No. 04-22A for modification to the original PUD approved by Zoning Commission Order No. 04-22, for the property located in Lots 802 and 803 in Square 751. The approval of this PUD and Zoning Map Amendment is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 14.
2. The conditions of approval of Zoning Commission Order No. 04-22 shall remain in full force and effect except as otherwise modified by this Order.
3. The modifications approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit and construction of the project must start within three years of the date of the effective date of this order pursuant to 11 DCMR §§2408.8 and 2408.9.
4. 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 the burden, it is hereby **ORDERED** that the application be **GRANTED**.

VOTE: 5-0-0

In accordance with the provisions of 11 DCMR 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