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April 27, 2006

Ms. Carol Mitten
Chairperson, DC Zoning Commission
441 4th Street, N.W., Room 210
Washington, DC 20001

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**Re: Z.C. Case No. 04-36 – PUD and Zoning Map Amendment –
Dorchester House Associates, LLC and Kalorama West, LLC
(the “Applicant”) – Proposed Findings of Fact and Conclusions
of Law**

Dear Chairperson Mitten and Members of the Commission:

Enclosed please find the Applicant’s proposed Findings of Fact and Conclusions
of Law.

Sincerely yours,


Paul A. Tummonds, Jr.

Enclosures

cc: Steven Gewirz
John Hoskinson

ZONING COMMISSION
District of Columbia

CASE NO. 04-36

ZONING COMMISSION
District of Columbia
EXHIBIT NO. 123
CASE NO. 04-36
EXHIBIT NO. 123

Certificate of Service

I hereby state that the above-mentioned information was hand-delivered to the parties listed below on April 27, 2006.

Advisory Neighborhood Commission 1C
Alan Roth, Chairperson
1845 Vernon Street, NW
Washington, DC 20009

Reed Cooke Neighborhood Association
c/o Simi Batra
1710 Euclid Street, NW
Washington, DC 20009

Dorchester Tenants Association
c/o Benoit Brookens, Esq.
P.O. Box 2251
Washington, DC 20013-2251
(Delivery was arranged personally with Mr. Brookens)


Paul Tummonds

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 04-36

Case No. 04-36

**(Consolidated Planned Unit Development and Zoning Map Amendment Application
of Dorchester House Associates LLC and Kalorama West, LLC)**

April 27, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on March 30, 2006 and April 13, 2006, to consider an application from Dorchester House Associates LLC and Kalorama West, LLC for the consolidated review and approval of a planned unit development and Zoning Map Amendment application for lots 815 and 816 (record lot 35) in Square 2572, pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022.

FINDINGS OF FACT

1. The project site consists of lots 815 and 816 (record lot 35) in Square 2572 has an address of 2480 16th Street, NW and is located in the Adams Morgan neighborhood of Ward 1 (the "Property"). The Property consists of approximately 158,150 square feet of land area and has frontage along 16th Street, Kalorama Road, 17th Street and Euclid Street. The Property is currently split-zoned with the eastern half of the site located in the R-5-D District and the western half of the site located in the R-5-B District. The eastern half of the Property is improved with the Dorchester House Apartment building. (Exhibit 23, Supplemental Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. 1)

2. On December 16, 2004, Dorchester House Associates LLC and Kalorama West, LLC (the "Applicant") filed an application with the Zoning Commission ("Commission") for review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia. The Applicant sought a Zoning Map amendment to the R-5-D District for the western half of the Property, so that the entire Property will be included in the R-5-D District. (Exhibit 23, Pre-Hearing Statement at p. v-vi.)

3. At a Public Meeting on March 14, 2005, the Commission unanimously voted to set down the application for a public hearing. Thereafter, on September 15, 2005, the Zoning Commission reconsidered its original decision to set down the above-mentioned application for a public hearing. The Zoning Commission determined that it was necessary to undertake such action to address the issue of whether a trellis connection between the existing Dorchester House Apartment building and the proposed addition to that building was sufficient to consider the buildings to be a single structure. The Zoning

Commission ultimately decided to set this application down in two alternatives. The Applicant was given the opportunity to create a single building on the property through the construction of a "substantial connection" between the existing Dorchester House Apartment building and the new addition, or the Applicant could seek relief to have two buildings on a record lot and adjust the height of the new addition to reflect that it was a separate building. The Applicant revised the project to include a significant and substantial connection between the proposed addition and the Dorchester House Apartment building.

4. The Zoning Commission held public hearings on the above-mentioned application on March 30, 2006 and April 13, 2006, which were conducted in accordance with the provisions of 11 DCMR §3022.

5. At the March 30, 2006 public hearing, the Commission granted party status to the Reed-Cooke Neighborhood Association. The Commission also granted a party status request of the Dorchester House Tenants Association and denied party status requests from various individual residents of the Dorchester House Apartment building and the Dorchester House Rent Roll Back Organization. ANC 1C, the ANC in which the Property is located, is automatically a party to this application.

6. At the April 13, 2006 public hearing, a motion to postpone a decision on this case until the Department of Health can review potential environmental issues related to the Property was made by a person in opposition. The Zoning Commission denied the motion, noting that it does not have jurisdiction relating to matters involving any environmental remediation on the Property.

PUD APPLICATION AND PROJECT

7. The PUD project seeks approval for the construction of an addition to the existing Dorchester House Apartment building. The proposed addition will include approximately 145-151 rental residential units and will be oriented to 17th Street by providing the main entrance on 17th Street (the "Addition"). In total, the project will include approximately 545 rental residential units (the 145-151 units in the Addition and the approximately 394 units in the existing building). The Addition will also include two levels of below-grade parking which will provide a total of approximately 307 parking spaces for the project. The PUD project will also include approximately 30,000 square feet of affordable housing. (Exhibit 23, Pre-Hearing Statement at p. v, 5, and 12.) . . .

8. The general area surrounding the Property includes apartment buildings, rowhouses and Meridian Hill Park. The Euclid Mews townhouses and condominium apartments are located on the north side of the Addition. Low and moderate income rental apartments in two BZA approved projects are located across 17th Street, NW, to the west of the Property. A former roller rink (known as the Citadel building), which is proposed to be a new Harris Teeter grocery store and office building, is located directly south and southeast of the Property. The Property is located in the medium and moderate

density residential land use category as shown on the District of Columbia Generalized Land Use Map (Exhibit 23, Pre-Hearing Statement at p. 1, 4.)

9. The Addition will be six stories in height (58 feet 6 inches as measured from the center of the 17th Street frontage) along 17th Street. It will have two additional floors set back approximately 28 feet from the property line rising to a height of 78 feet. The Addition steps down to the Euclid Mews project to the north and is only 45 feet tall at the northern property line. The Addition will include approximately 145 – 151 rental residential units, primarily comprised of two bedroom and two bedroom plus den units, with a small number of studios and one bedroom units, ranging in size from 450 to 1,200 square feet. The Addition will have a total gross floor area of approximately 182,510 square feet. (Exhibit 23, Pre-Hearing Statement at p. 5.)

10. The existing Dorchester House Apartment building will remain in operation and will not be expanded or reduced in connection with the development of the Addition. The total FAR of the PUD project will be approximately 3.78. The Property will have a lot occupancy of approximately 46.5%. (Exhibit 23, Pre-Hearing Statement at p. 5.)

11. The Addition will include two levels of below-grade parking that will include approximately 307 parking spaces for the residents and guests of both the Dorchester House Apartment building and the Addition. The upper parking level and the Addition's loading berth will be accessed from 17th Street. The loading berth, which will include trash receptacles, will be entirely inside the garage. The lower parking level and the Dorchester House Apartment building's loading berth will be accessed from Kalorama Road, in the same location as the existing surface parking lot's driveway and the existing loading area. The existing loading area will remain partly covered, partly open. (Exhibit 23, Pre-Hearing Statement at p. 6.)

12. The 17th Street facade of the Addition has been designed as a modern respectful addition to the classic Art Deco Dorchester House Apartment building. The building's exterior will include a combination of light and dark brick, pre-cast concrete banding, metal paneling with pre-finished aluminum windows, and pre-cast concrete coping. In response to concerns raised by the Office of Planning and members of the Zoning Commission, modifications to the Addition's facade were made to break up the horizontal planes of the building with vertical elements. In addition, the building was pulled back from the property line along 17th Street a distance of six feet; additional "green" space was provided along 17th Street, along with benches and landscaping adjacent to the Citadel building and the separation of the parking and loading doors from each other was achieved with the introduction of a vertical element to the facade. (Exhibit 23, Pre-Hearing Statement at p. 6-7, Exhibit 108.)

13. The proposed project will include extensive landscape and hardscape improvements. The Applicant noted that currently the east side of 17th Street does not provide a friendly or inviting pedestrian atmosphere. The project will include a general upgrade and softening of the streetscape along 17th Street through the addition of

numerous trees and other landscaping. The PUD project provides a significant landscaped courtyard that will provide recreation space for residents. A significant green roof will also be included on the penthouse level of the Addition. (Exhibit 23, Pre-Hearing Statement at p. 7.)

14. In response to the issues raised by the Zoning Commission at the September 15, 2005 public meeting, the project includes a “substantial” above-grade connection between the Dorchester House Apartment building and the Addition. The proposed connection will include approximately five new residential units and creates a hallway that will allow unimpeded internal circulation between the structures. The connection is two stories tall on the 17th Street side (southwest side) of the hallway linking the structures and three stories tall on the 16th Street side (northeast side) of the hallway. The façade of the connection will be treated in the same manner as the rest of the Addition. (Exhibit 23, Pre-Hearing Statement at p. 7.)

15. The Applicant stated that it is necessary to rezone the Property to the R-5-D Zone District in order to allow the Addition to obtain the requested height. The Applicant also noted that height of the Addition has been reduced from its initial design to prevent shadows on neighboring properties and allow for a better transition to the Addition’s full height. The Addition meets 17th Street with a six story façade that has a height of 58 feet 6 inches, as measured from 17th Street. A roof deck is provided on the terraced setback on the roof of the sixth floor of the Addition overlooking 17th Street. Above the sixth floor, the Addition has been stepped back on 17th Street, to mitigate massing concerns on that street. The height to the roof of these top floors is 78 feet, measured from 17th Street. (Exhibit 23, Pre-Hearing Statement at p. 7-8.)

16. The Applicant provided a site line study which depicts the visual impact that the Addition will have along 17th Street. The site line study showed that the tallest portion of the Addition is not visible from the west side of 17th Street at the ground level. In response to a request from members of the community and ANC 1C, the Applicant also prepared a site line study that depicts the visual impact of the Addition from the intersection of 17th Street and Kalorama Road. This site line study shows that only a small portion of the Proposed Addition is visible from this intersection. (Exhibit 23, Pre-Hearing Statement at p. 8.)

17. The Applicant requests flexibility from the Zoning Regulation’s requirements that: (a) all roof structures be located in a single enclosure, that all roof structures be setback from all exterior walls a distance equal to that height above the roof, and that all roof structures be the same height; (b) a 30 foot rear yard is provided; and (c) all standard parking spaces are to have minimum dimensions of 9 feet by 19 feet and all drive aisles are to be a minimum of 20 feet wide. (Exhibit 23, Pre-Hearing Statement at p. 8-9.)

18. The Applicant stated that the project is fully consistent with and fosters numerous goals and policies stated in the elements of the District of Columbia

Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Promoting Enhanced Public Safety;
- Providing for Diversity and Overall Social Responsibilities;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input.

The project is also consistent with many Major Elements of the Comprehensive Plan (including; the Economic Development, Housing, Urban Design and Land Use Elements), and fulfills numerous goals and policies of the Ward 1 Plan. (Exhibit 23, Pre-Hearing Statement at p. 21-26; March 20, 2006 OP Report, p.2-3.)

19. Testimony and evidence on behalf of the Applicant was provided by John Hoskinson, on behalf of the Applicant; Eric Colbert, of Eric Colbert Associates (who testified as an expert in the field of architecture); and Dan Van Pelt, of Gorove/Slade Associates, Inc., (who testified as an expert in the field of traffic and parking engineering).

20. As addressed in the Applicant's pre-hearing statement and through the testimony of Mr. Hoskinson, Mr. Colbert and Mr. Van Pelt, the following public benefits and project amenities will be created as a result of this project.

- Housing and Affordable Housing – The PUD project will create approximately 145-151 new rental residential units in the Adams Morgan neighborhood. The Applicant will reserve 30% of the bonus density achieved through the approval of this PUD and Zoning Map Amendment application (approximately 30,000 square feet of gross floor area) as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). (Exhibit 23, Pre-Hearing Statement at p. 12, Exhibit B to the Initial Pre-Hearing Statement, Exhibit 17.)

- Urban Design and Architecture – The Applicant noted that the Addition provides a transition from the higher density of 16th Street, NW to the lower-scale residential neighborhood to the west. The architectural character of the project is derived from the historic character of the Reed-Cooke/Adams Morgan neighborhoods and a modernized Art-Deco design. The existing Dorchester House Apartment building was built in 1941 and is a combination of Art Deco and Mid-Century design. The 17th Street facade has been designed with great care and expense and is to be articulated as an elongated retro-1920's design. Mr. Colbert noted that the Addition has been set back from Euclid Mews in response to community concerns to the initial design, such that the height of the Addition is now only four feet higher than Euclid Mews at the Addition's northern edge. (Exhibit 23, Pre-Hearing Statement at p. 12-13.)

- Site Planning – The Applicant noted that the proposed project is carefully designed to fall significantly below the maximum permitted lot occupancy restrictions of

the R-5-D Zone District. The project includes a significant landscaped interior courtyard that provides residents and their guests the opportunity for passive recreation and relaxation on the Property. The area of lot 816, the location of the current surface parking lot, will be much more efficiently utilized with the development of the Addition while increasing the total landscaped area and number of parking spaces on the Property. In addition, the design of the Addition specifically minimizes the negative impacts of noise and odors associated with any residential building. Trash from the Addition will be carefully managed via a compactor room and dumpsters located inside the building, in the upper level of the garage. All cooling towers, compressor units, and other mechanical equipment that must be located outside of the building will be placed on the roof, within enclosure walls. (Exhibit 23, Pre-Hearing Statement at p. 6, 14.)

- Effective and Safe Vehicular and Pedestrian Access – In testimony at the public hearing, Dan Van Pelt, the Applicant's traffic engineer, noted that Gorove/Slade Associates prepared a traffic impact study which addressed the parking and traffic impacts of the project. Mr. Van Pelt noted that the traffic impact study accounted for eight other development projects in the immediate area and their traffic impacts on the community. The traffic impact study concluded that the nearby intersections that currently operate at acceptable levels of service will continue to do so. The traffic impact study noted that the intersection of 16th Street and Euclid Street currently experiences excessive delays. The traffic impact study concludes that retiming of the traffic signal at the intersection of 16th and Euclid Streets can mitigate the current condition. The traffic impact study concluded that the traffic generated by the Addition will not significantly impact the roadway network and there will be no additional mitigation measures necessary to accommodate the site generated traffic. (Exhibit 27, Traffic Impact Study, p. iii, 16-17.)

The traffic impact study also reviewed the impact that the Addition would have on the availability of off-street parking in the area. The traffic impact study concluded that the proposed parking supply of 307 spaces is expected to be sufficient for accommodating all of the future users of the expansion. Therefore, the expansion is not expected to exacerbate the current neighborhood on-street parking situation. Mr. Van Pelt also reviewed the impact of the proposed loading berths for the project and noted that the Applicant has agreed to limit the length of trucks that will come to the Property to 40 feet, which will result in the loss of only two on-street parking spaces. (Exhibit 27, Traffic Impact Study, p. 23-24, Testimony of Dan Van Pelt, Tr. of March 30, 2006 public hearing p. 34-37.)

- Uses of Special Value – Information was presented regarding the community amenities that are included in the project that provide uses of special value to the surrounding neighborhood. The community amenities include:

Jubilee Support Alliance – Contribution of \$100,000 – The Applicant will contribute \$100,000 to the Jubilee Support Alliance for use by Jubilee Housing in the renovation of the Ritz Apartment building which is located at 1631 Euclid Street, NW.

Washington Parks & People – Contribution of \$218,000 – The Applicant will contribute \$20 per unit included in the Addition and the Dorchester House Apartment building for a period of 20 years. The total value of this contribution is \$218,000 and the present value calculation of this contribution is \$137,897. Washington Parks & People will use this contribution for the following programs: enhancing pedestrian connection between the Adams Morgan/Reed-Cooke/Meridian Hill neighborhoods to Rock Creek Park; advancing the Washington Ridge Crossing Escarpment Trail; landscape improvements to the Unity, S and T, Justice, and Rebaud/Romero pocket parks in the general area of the Property; increased park-based curricular and extra-curricular programming for schools and youth based programs in the Adams Morgan/Reed-Cooke/Meridian Hill neighborhoods; and underwriting of community revitalization programming at the Josephine Butler Parks Center.

(Exhibit 100, Exhibit 113.)

- Revenue for the District – The Applicant noted that the addition of approximately 145-151 new households will result in the generation of additional tax revenues for the District of Columbia. (Exhibit 23, p. 17.)

- Consistency with the Comprehensive Plan – As discussed above, the Applicant noted that the project fosters and furthers numerous elements of the Comprehensive Plan as well as numerous major themes of the Comprehensive Plan. (Exhibit 23, p. 21-26.)

- Environmental Benefits – The Applicant noted that there will be numerous environmentally appropriate attributes of the project. The proposed project will address stormwater runoff control by reducing the amount of impervious surface of the parking lot and replacing it with a landscaped area. Altogether, there will be approximately 7,804 additional square feet of landscaped area on the Property after the project is completed. In addition, there will be a increase in open space and an addition of trees both in the garden between the Dorchester House Apartment building and the Addition and along 17th Street. The Applicant also agreed to incorporate the following energy efficient building materials and systems into the project: a green roof on the Addition; low E-glass and bamboo flooring; high efficiency HVAC system and energy efficient light fixtures; low flow showerheads, sinks and toilets; garage exhaust fans that will be controlled by sensors to prevent continuous running; and use of adhesives throughout the addition that will reduce “off-gassing”. (Exhibit 23, Pre-Hearing Statement at p. 16-17, Exhibit 105.)

- Employment and Training Opportunities – the Applicant submitted into the record a Draft First Source Employment Agreement with the Department of Employment Services (DOES), and a draft Memorandum of Understanding with the Office of Local Business Development (OLBD) that the Applicant will enter into upon approval of the application. (Initial Pre-Hearing Statement of the Applicant, Exhibit 17, Exhibit G.)

21. In response to issues raised by Commissioners during the March 30, 2006 public hearing, the Applicant provided the following materials and information to the Zoning Commission on April 12 and April 13, 2006:

- More detailed information on the proposed use of the financial contributions to the Jubilee Support Alliance and Jubilee Housing, and to Washington Parks and People;
- A present value calculation of the financial contribution to Washington Parks and People;
- A revised plan depicting the proposed temporary parking spaces during construction activity on the Property;
- Details on the residential units in the Dorchester House Apartment building that would be impacted by the construction of the proposed connection between the Addition and the existing structure;
- Detailed information on the location of the affordable housing units;
- A sample board that provides a more accurate depiction of the colors and texture of the proposed brick and other materials;
- The location and number of bicycle parking spaces provided in the parking garage; and
- A landscape plan that depicts any proposed fencing on the Property.

(Exhibit 100, 105-108.)

22. In rebuttal testimony, Mr. Hoskinson noted that the Applicant further studied the proposed plan to provide temporary parking spaces during construction and determined that the initial plan did not appropriately address the issue of mitigating construction related impacts on the surrounding community. Mr. Hoskinson noted that the Applicant had submitted for the record a Development and Construction Management Plan and that it was the Applicant's desire to provide financial incentives to existing residents of the Dorchester House Apartment building regarding the parking of their vehicles during the period of construction activity on the Property. Mr. Hoskinson also noted that the Applicant would provide a minimum of five temporary parking spaces reserved for car-sharing companies on the Property during construction. These spaces will be in addition to the permanent car-sharing service spaces that will be included in the project. (Exhibit 100.)

23. In addition, Mr. Hoskinson also provided evidence, which was submitted to the Zoning Commission in a written statement, that a first year teacher in the DC public school system and a rookie police officer would be eligible for the affordable housing units provided in the project. Mr. Hoskinson also provided information regarding the potential location of the affordable housing units in the Addition and the Dorchester House Apartment building. (Exhibits 106 and 107.)

24. Rebuttal evidence was also provided that addressed the project's satisfaction with not only the letter of the 1910 Height Act but also the intent of the 1910 Height Act. Representatives of the Applicant noted that Section 7 of the 1910 Height Act, states "If the building has more than one front, the height shall be measured from the

elevation of the sidewalk opposite the middle of the front that will permit the greater height.” It was noted that if the 16th Street elevation was used to measure the height of the Addition it would have a measured height of only 48 feet 6 inches. (Exhibit 118.)

25. The Applicant also provided rebuttal testimony regarding the project’s consistency with the Comprehensive Plan. In 1985 a Land Use Map was adopted as part of the Comprehensive Plan. In 1989, the City Council adopted an amended Land Use Map which included a street grid. As noted in the DC Council Committee of Whole Report, the purpose of including the street grid in the Land Use Map was to “facilitate readability and understanding of the adopted land use policies. However, the Committee emphasizes that the inclusion of a street grid does not change the required interpretation that the land use policies on the maps are generalized policies that reflect predominant uses in an area.” The Applicant also noted that the Comprehensive Plan itself provides guidance as to interpret its contents. Section 112.1 of the Comprehensive Plan states: “The primary dynamic of the District Elements of the plan is the overlapping of its elements goals. This overlapping is intentional.” “District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly.” “The interpretation and implementation of any element should necessarily rely upon, and be respectful of, the objectives and policies of other elements.” “The interpretation of the District Elements of the Plan should also be guided by the major themes set forth in Section 101.1, which establish the overall priorities of the District Elements of the Plan.”. (Exhibits 119 and 120.)

GOVERNMENT REPORTS

26. The Office of Planning (“OP”), in its report dated March 20, 2006 and through its testimony at the public hearing recommended approval of the project, provided the project did not require relief from the rear yard setback, which is the functional frontage for the proposed new construction, and the resolution of specific details regarding the proffered amenity package. The OP Report noted that the proposal is of high quality and the use will be in character with the neighborhood; the proposal is generally consistent with the Comprehensive Plan and the Generalized Land Use Map; and is also generally consistent with the intent of the Zoning Regulations. OP recommended approval of this proposal, but rejection of the rear yard setback relief provided that the 17th Street façade articulation is maintained but set further back from the property line. (March 20, 2006 OP Report, p.1, 6.)

27. In the written report and in testimony at the Public Hearing, OP noted that they believed the proposed connection between the Addition and the existing Dorchester House Apartment building constitutes a substantial and meaningful connection such that the proposed height of the Addition along 17th Street is consistent with the letter of the 1910 Height Act. In response to questions from the Commission regarding whether the proposed building height along 17th Street is appropriate, the OP representative noted the modifications that have been made to the project, including the setting back of the upper floors, the setting back of the Addition at the northern property line and revisions to the faced treatment, and concluded that the Addition is appropriate on this site. (Testimony of Joel Lawson, Transcript of March 30 public hearing, p. 100, 110-114.)

28. The District Department of Transportation (“DDOT”) submitted a report dated March 21, 2006, which supported the PUD project. The DDOT report noted that it examined the proposal in terms of trip generation and level of service and of the surrounding intersections leading to and from the site, parking and loading, a traffic improvement program aimed at improving access, safety and circulation in the area and the availability of public transportation to service the development. (Exhibit 51.)

29. The DDOT report noted that it concurred with the Applicant’s calculation of the expected vehicular trip generation of the project. The DDOT report also concluded that the amount of parking spaces provided by the project will be more than adequate to accommodate the expected demand and to minimize any parking spill-over on the neighborhood parking supply. The DDOT report also noted that in order to reduce congestion and facilitate truck access and circulation to Citadel site to the south of the Property, DDOT proposed implementing several one-way street designations. The proposed changes include converting Kalorama Road to one-way westbound from 16th Street to 17th Street, and 17th Street to one-way northbound from Kalorama Road to Columbia Road. DDOT’s report also noted the potential need for a traffic control signal at 16th Street and Kalorama Road. However DDOT’s analysis of current traffic indicated that a signal is not currently warranted at that location. (Exhibit 51.)

ADVISORY NEIGHBORHOOD COMMISSION REPORTS

30. Advisory Neighborhood Commission (“ANC”) 1C adopted a unanimous resolution in opposition to the project at a regularly scheduled and publicly noticed meeting on March 1, 2006 and August 3, 2005. The ANC in its written resolution dated March 21, 2006, noted that its opposition to the PUD project and Zoning Map Amendment application was based on the following: (1) The height and density of the proposed project are inconsistent with the current zoning of the parcel on which the applicants seek to construct it, and inappropriate for the area of the community in which it is sought; (2) The inappropriate height and density of the proposed project will have adverse impacts on the surrounding area that are unacceptable and not capable of being mitigated; (3) The proposed map amendment that would enable the height and density being sought by the application is wholly inappropriate for the narrow street on which the affected parcel is located; and (4) The proposed public benefits associated with the project are inadequate given the size of the proposed project and the extent of the zoning

relief being sought, and specifically the proposed affordable housing benefits are completely illusory. (Exhibit 52.)

31. In testimony at the March 30, 2006 public hearing, the Chairman of ANC 1C noted the numerous other development projects in ANC 1C that are currently under construction and the adverse impacts that the total amount of development is having on the community. The ANC representative questioned whether the Applicant's traffic engineer adequately accounted for all of the development activity occurring in the area. The ANC also questioned whether DC police officers and DC public school teachers would be able to afford units in the project. (Testimony of Alan Roth, ANC 1C Chairman, Transcript of March 30, 2006 public hearing, p. 123-149, Exhibits 82-86.)

PARTIES AND PERSONS IN SUPPORT

32. No persons or organizations presented testimony in support of the application.

PARTIES IN OPPOSITION

33. The Reed-Cooke Neighborhood Association ("RCNA"), which was granted party status in this case, presented written statements and testimony at the April 13, 2006 public hearing in opposition to the project. A representative of the RCNA noted that its opposition to the case was primarily based on the proposed height of the Addition and that the proposed project is simply beyond the capacity of the neighborhood to absorb increased traffic and congestion. (Exhibit 76.)

34. The Dorchester Tenant's Association ("DTA"), which was granted party status in this case, presented written statements and testimony at the April 13, 2006 public hearing in opposition to the project. (Exhibit 112.)

PERSONS IN OPPOSITION

35. Numerous letters in opposition to the application were submitted into the record of this case.

36. Two individuals provided testimony in opposition to the applications at the April 13, 2006 public hearing. (Exhibits 115 and 117).

NCPC ACTION

37. At the March 30, 2006 public hearing, Christine Saum (Director, Urban Design and Plan Review Division) of the National Capital Planning Commission ("NCPC") filed a written statement and presented testimony in opposition to the project. Ms. Saum noted that her testimony was only on behalf of the staff of NCPC and that NCPC has not formally reviewed the project. Ms. Saum noted her belief that the height of the Addition would not be consistent with the intent of the 1910 Height Act. Ms. Saum testified that a reasonable person would look at the Addition and the existing

Dorchester House Apartment building and determine that they were two buildings and that a reasonable person would find that the intent of the Height Act is that the maximum allowable height for a building with an entrance on 17th Street is 50 feet. (Exhibit 73.)

38. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC).

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. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested flexibility from the requirements of the roof structure requirements, the rear yard requirements and the parking space width requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

3. The development of this PUD project 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.

4. The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1.

5. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the large amount of affordable housing provided in this project is a significant amenity that will be available for “workforce” DC residents, including DC police officers and DC public school teachers. The Commission believes that the design and site planning of the project, as well as the architectural treatment of the Addition’s façade, will provide not only an impressive architectural addition to the community, but will also provide a safer and more attractive contribution to the community by bringing more eyes and pedestrian traffic to 17th Street, while maintaining the overall feel and appearance of the surrounding Adams Morgan and Reed-Cooke communities.

6. Approval of the PUD and the PUD-related Zoning Map Amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the themes of: promoting enhanced public safety; providing for diversity and overall social responsibilities; and respecting and improving the physical character of the District. The Commission also agrees with the Applicant's statement that the policies enumerated on the Generalized Land Use Map are intended to be generalized policies that reflect predominant uses in an area. The Zoning Commission agrees with the Applicant's statement that the Generalized Land Use Map is not intended to be a Zoning Map.

7. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map Amendment differently from other types of rezoning. PUD-related Zoning Map Amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§2408.8 and 2408.9), the Zoning Map Amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR §2400.7. A PUD-related Zoning Map Amendment is thus a temporary change to existing zoning, that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. The Commission might grant PUD related Zoning Map Amendments in circumstances where it might reject permanent rezoning. In this case, the Commission believes that the proposed rezoning of the Property to the R-5-D District is appropriate given the superior features of the PUD project.

8. In response to issues raised by the party opponents and persons that testified in opposition to the case regarding the proposed visual impact that the PUD project will have, the Commission notes that abundant light, air, and views still will be available to residents who live on, and people who walk along, 17th Street. The Commission concurs with the testimony of the project architect, and the information submitted into the record, that the significant setting back of the top two floors of the proposed building along 17th Street above 58 feet, 6 inches, and the stepping back of the Addition at the northern property line adjacent to the Euclid Mews project, effectively reduces the scale of the Addition and further mitigates the visual impact of the Addition on surrounding properties.

9. The Commission notes that the proposed connection between the Addition and the Dorchester House Apartment building will consist of two and three stories, includes a corridor linking the two structures and also includes approximately five residential units. Based on these factors, the Commission concludes that the proposed connection is a substantial and significant connection such that the Addition and the Dorchester House Apartment building are a single building that will be constructed on a single record lot.

10. The Commission finds that the PUD project is fully consistent with the letter and intent of the 1910 Height Act. The Commission believes that the clear and unambiguous language of Section 7 of the 1910 Height Act allows for projects such as this to measure the allowable building height from the width of the street that permits the greater building height. As noted by the Applicant, if the 16th Street elevation of the Property was used to measure the height of the Addition it would have a measured height of only 48 feet 6 inches. As noted above, the Commission has concluded the Addition and the Dorchester House Apartment building are a single building on a record lot. Therefore, the Commission concludes that the proposed project is consistent with both the letter and express intent of the 1910 Height Act.

11. The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission notes that the one-way traffic circulation system that is proposed by DDOT for the area surrounding the Property is expected to be adopted regardless of whether this project is approved by the Commission.

12. The Commission finds that the Development and Construction Management Plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community. The Commission believes that the Applicant's proposal to mitigate the adverse parking impacts that will occur during construction activity on the Property are appropriate. The Commission encourages the Applicant to fully publicize the large number of car-sharing service parking spaces that will be provided on the Property.

13. 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 1C's resolution in opposition to the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission disagrees with ANC 1C's conclusion that the height and density of the project is inappropriate. As noted above, the Commission finds that the significant setback of the top two floors of the building along 17th Street mitigates the visual impact of the building's height. The Commission also notes that the density of the project is not inconsistent with other buildings in the area and that the proposed lot occupancy of the project will only be 46.5%. The Commission also disagrees with the ANC's position that the adverse impacts created by the project can not be mitigated. The Commission believes that the conditions of approval of this Order (including the inclusion of the Development and Construction Management Plan, the limitation on the size of trucks coming to the Property, the inclusion of additional car-sharing service parking spaces on the Property and the details of the affordable housing program) do adequately mitigate any adverse impacts on the neighborhood that may occur as a result of this application. The Commission also disagrees with the ANC's contention that the Zoning Map Amendment is inappropriate. As noted above, the Commission believes that its interpretation of the

totality of the Comprehensive Plan is correct in concluding that the proposed Zoning Map Amendment application is consistent with the Comprehensive Plan. Finally, the Zoning Commission does not believe that the public benefits of the project are inadequate and that the proposed affordable housing component of the project is illusory, as claimed by the ANC. The Zoning Commission notes that approximately 30,000 square feet of affordable housing will be created as a result of this application. The Commission also notes the evidence presented by the Applicant that DC police officers and DC public school teachers will be able to qualify for the proposed affordable housing. The Commission finds the financial contributions that will be made to the Jubilee Support Alliance/Jubilee Housing and to Washington Parks & People to be a significant community amenity.

14. 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.

15. Notice of the public hearing was provided in accordance with the Zoning Regulations.

16. 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** of the application for consolidated review of a Planned Unit Development and Zoning Map Amendment application from the R-5-B Zone District to the R-5-D Zone District for lots 815 and 816 (record lot 35) in Square 2572. 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 Exhibits 23, 107, and 108 of the record, as modified by the guidelines, conditions and standards of this order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of an all residential project that includes approximately 145-151 new residential units with approximately 307 total parking spaces. The entire project will include approximately 597,974 square feet of gross floor area resulting in a FAR of approximately 3.78. The Addition will have a building height of 58 feet six inches along 17th Street with a 28 foot setback before the Addition reaches its maximum height of 78 feet. The total lot occupancy of the project will be approximately 46.5%.

3. The project will reserve 30% of the bonus density achieved through the approval of this PUD and Zoning Map Amendment application (approximately 30,000 square feet of gross floor area) as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical

Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit B of Exhibit 17 and Exhibit 106 in the record of this case. The location of the affordable units will be generally as enumerated and depicted in Exhibits 106 and 107 in the record of this case.

4. The Applicant will abide by the terms of the Development and Construction Management Plan submitted into the record as Exhibit 100. The Applicant will provide not less than five temporary parking spaces on the Property for use by a car-sharing service (ZipCar or Flexcar) during construction activity on the Property. The Applicant will provide not less than three additional, permanent, parking spaces in the below-grade parking levels for use by a car-sharing service (ZipCar or Flexcar).

5. The Applicant shall include a provision in all lease agreements that limits the size of trucks that can be used for tenant move-in/move-out to 40 feet. The Applicant will also require that all vendors that come to the Property will be limited to trucks that are 40 feet long.

6. The Applicant shall provide the following community amenities no later than the issuance of the building permit for the PUD project.

- The Applicant will contribute \$100,000 to the Jubilee Support Alliance for use by Jubilee Housing in the renovation of the Ritz Apartment building which is located at 1631 Euclid Street, NW.
- The Applicant will contribute \$20 to Washington Parks & People for each unit in the Addition and the Dorchester House Apartment building for a period of 20 years. After the first payment is made prior to the issuance of a building permit for this project, all subsequent annual payments will be made by January .

7. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as part of Exhibit 17 of the record.

8. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as part of Exhibit 17 of the record.

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

- 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;
- 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; and
- 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.

10. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

11. The consolidated PUD 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.

12. The change of zoning from the R-5-B Zone District to the R-5-D Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 10, pursuant to 11 DCMR §3028.9.

13. 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:

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 J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning