GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 05-15

As Secretary to the Commission, I herby certify that on JUL 14 2006 copies of this Z.C. Order No. 05-15 were mailed first-class, postage prepaid, or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia
CASE NO. 05-15
EXHIBIT NO. 35

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 05-15
Z.C. Case No. 05-15
(Consolidated Planned Unit Development - Broadway I Associates, LLC)
January 9, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 24, 2005, to consider an application from Broadway I Associates, LLC for the consolidated review and approval of a planned unit development application for Lots 1, 22, 23, 32, 826, and 827 in Square 775, located at 318 I Street, N.E. pursuant to Chapter 24 and §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 1, 22, 23, 32, 826, and 827 in Square 775 and has an address of 318 I Street, N.E. (the "Property"). The Property is located in the Near Northeast neighborhood of Ward 6 at the northwest corner of 4th and I Streets, N.E. The Property contains approximately 28,310 square feet of land and is in the C-2-B Zone District. The Property was most recently used by the Uptown Bakery as a wholesale bakery establishment and accessory parking lot. (Exhibit 13, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. v.)

2. On May 23, 2005, Broadway I Associates, LLC (the "Applicant"), filed an application with the Zoning Commission for review and approval of a planned unit development ("PUD"). The Applicant did not seek a Zoning Map amendment. The proposed height and density of the project are significantly less than the maximum provided under the PUD guidelines in the C-2-B Zone District. The PUD project is a proposed condominium building with approximately 140 new residential units. The PUD project will also include approximately 9,120 square feet of affordable housing. (Exhibit 13, Pre-Hearing Statement at p. 1.)

3. At a Special Public Meeting on July 11, 2005, the Commission unanimously voted to set down the application for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on October 24, 2005.

4. At the October 24, 2005, public hearing, the Commission accepted Phil Esocoff of Esocoff and Associates and Martin Wells of Wells & Associates as experts in their respective fields based on a review of their resumes (submitted as Exhibit A to Exhibit 20 in the record).

There were no other preliminary matters before the Commission and no applications for party status. ANC 6C, the Advisory Neighborhood Commission ("ANC") in which the Property is located, is automatically a party to this application.

5. At its public meeting on November 14, 2005, the Zoning Commission took proposed action by a vote of 3-0-2 to approve the application and plans that were submitted to the record.

6. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated November 23, 2005, found that the proposed PUD "would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any federal interests".

7. The Commission took final action to approve the application on January 9, 2006, by a vote of 4-0-1.

PUD APPLICATION AND PROJECT

8. The Property includes the lots in the southeastern portion of Square 775. It is zoned for mixed use (i.e., residential and commercial) and has a long history of non-residential use. The lots in Square 775 to the west of the Property are improved with commercial office buildings that line the entire length of I Street, N.E. between 3rd Street, N.E. and the alley directly to the west of the Property. The square to the west of Square 775 contains commercial buildings along its I Street frontage. The square to the south of the Property is ringed by rowhouses. To the southwest at the intersection of 3rd and H Streets, N.E. is a large commercially-zoned, vacant property (formerly a gas station) that has mixed-use zoning and the former Capital Children's Museum (currently being converted to a residential project). Directly to the east of the Property are rowhouses and single-family homes. To the north of the Property are rowhouses and a few warehouses. (Exhibit 13, Pre-Hearing Statement at p. 3.)

9. The recently approved Station Place PUD is located along the west side of 2nd Street, N.E. between F and H Streets, N.E. The Station Place PUD project included a rezoning to the C-3-C Zone District to allow a commercial office development with retail and service uses of approximately 1,396,950 square feet (5.9 Floor Area Ratio ("FAR")) and a building height of 115.5 feet. In March 2005, the Commission also granted final action to the Capital Children's Museum PUD, which is located along the west side of 3rd Street, N.E. between H and I Streets, N.E. The Capital Children's Museum PUD included a rezoning to the C-3-C Zone District and a residential development of approximately 599,134 square feet (5.72 FAR). The new buildings on that site will have a maximum height of approximately 110 feet, and the existing Capital Children's Museum building, which will be retained, is approximately 64 feet in height. (Exhibit 13, Pre-Hearing Statement at pp. 3-4.)

10. In Zoning Commission Case No. 821, the Property was rezoned from C-M-1 to C-2-B (except for Lots 22, 23, and 32, the small lots at the northern edge of the Property, which

were rezoned from R-4 to C-2-B in that Commission action). These lots were rezoned, in large part, because the Office of Planning ("OP") determined that a mixture of residential and commercial uses at moderate- to medium-density should be encouraged. The previous change in the designation now supports the construction of a high-quality residential project on a site that is currently home to a wholesale bakery and accessory parking lot. (Exhibit 13, Pre-Hearing Statement at p. 19.)

11. The City's planning objectives call for more residential use in the area of the Property. The Property is located in the Moderate-Density Residential land use category shown on the District of Columbia Generalized Land Use Map. The properties to the north and east of the Property in Square 775 are also included in the Moderate-Density Residential land use category. The square directly to the west of the Property and the squares to the south and southeast of the Property are located in the Low-Density Commercial/Moderate-Density Residential land use categories. The properties further to the west, which include the Station Place PUD site and the square to the northwest of the Property, are located in the Production and Technical Employment/Medium-High Density Commercial land use categories. The square directly southwest of the Property is located in the Institutional land use category. (Exhibit 13, Pre-Hearing Statement at p. 4.)

12. The Applicant stated that the proposed project will result in the creation of a unique and inviting residential building with the introduction of approximately 140 residential units. All of the residential units will be for-sale units. The main lobby for the building will be accessed from the I Street entrance. The project will have ground floor access to individual units along I and 4th Streets, N.E. (Exhibit 13, Pre-Hearing Statement at pp. 4-5.)

13. The total gross floor area included in the proposed PUD is approximately 160,000 square feet for a total density of approximately 5.65 FAR. The project's height proposed is approximately 65 feet measured from I Street, N.E., the maximum permitted height under existing zoning. The project's proposed lot occupancy is approximately 85%. The project will be considerably smaller than what is permitted under the C-2-B District PUD guidelines (maximum density of 6.0 FAR and a maximum building height of 90 feet). The C-2-B Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum lot occupancy of 80% for residential uses, and a density of 3.5 FAR with a limit of 1.5 FAR of non-residential density. (Exhibit 13, Pre-Hearing Statement at pp. 8-9.)

14. The building will be primarily brick and masonry with metal windows and precast concrete and stone and metal trim. No EIFS will be used on the project. Along 4th and I Streets, N.E., the design provides soft edges through the secondary massing of bays, balconies, and setbacks. Elevational elements within these bays, ornamental brickwork, and window patterns will further establish an appropriate scale in relation to nearby buildings and an intricate design that will bring richness to a site presently devoid of charm. (Exhibit 13, Pre-Hearing Statement at p. 5.)

15. The roof of the new building will serve as a landscaped recreation space. The roof will feature planters with both trees and shrubs and many clusters of seats arranged to

facilitate resident and guest gatherings. A swimming pool will be one of the primary features on the roof. In addition to being a usable and attractive recreation area, the roof will be a partially "green roof." The green portion of the roof will be constructed in a manner that creates a lush urban park and will feature material that will both absorb rainwater and utilize it to keep the vegetation on the roof green. In addition, the Applicant will add trellises to the roof penthouse to make the space more inviting. (Exhibit 13, Pre-Hearing Statement at pp. 5-6.)

16. The below-grade parking garage will contain approximately 140-170 parking spaces. Access to the garage will be from the public alley located on I Street, NE, in the middle of the block between 3rd and 4th Streets, N.E. as shown on pages 10 and 24 of Exhibit A to Exhibit 13 in the record. Based on community requests, the project will include 12 additional visitor parking spaces in the parking garage. Also, due to District of Columbia Department of Transportation ("DDOT") requests and community concerns, the Applicant will construct the building so as to add 9 feet in width to the north-south alley. This added space will allow easier vehicular access, calm traffic flow around the Property, and increase sightlines. The vehicular entrance and exit opens onto a courtyard that has been designed as an attractive and inviting entry for residents of the project and their guests. Residents of the project will be able to proceed directly from their parking space in the below-grade garage to their units. A pedestrian-only entrance will be located on I Street, N.E. (Exhibit 13, Pre-Hearing Statement at p. 6.)

17. The project will include extensive landscape improvements on the Property. Trees and small rows of grass will be planted down the length of the Property on I and 4th Streets, N.E. The project will reinvigorate the alley space by enhancing the interior of the Property. The project entails the repaving of the north/south alley and the eastern extensions of the alley system in unit pavers in consultation with DDOT and the community. The Applicant also will pave the northwest corner of the Property in similar materials to effectively create a central, urban courtyard around a bosque of trees as an amenity for residents of the project and the square. The trees will be located on the Property – not in public space – and outside the footprint of the garage to ensure their long-term survival and growth. The trees will be surrounded with bollards to protect them from vehicles and include appropriate, aesthetic lighting. Such trees will soften the space and create a livable alley area in great contrast to typical District properties. Small, walled gardens adjoining ground level units of the proposed building will allow individual residents to add varied background greenery to this environment. (Exhibit 13, Pre-Hearing Statement at pp. 6-7.)

18. The courtyard will allow service vehicles to access the project's enclosed loading area as well as the service areas of surrounding neighbors. The loading platform and recycling areas will be enclosed within the building and accessed from the open space in the alley just below the tree bosque. Because the level of service activity for a condominium is low (with trash vehicles arriving at most once a day and moving vans far less frequently), the Applicant intends to develop this service area as a landscaped urban courtyard that occasionally accommodates a service vehicle. Designing the courtyard in the manner proposed, as a communal space that is regularly maintained, will be an effective way to improve security for all

the surrounding residents. (Exhibit 13, Pre-Hearing Statement at pp. 6-7, 9; pp. 11 and 24 of Exhibit A to the Pre-Hearing Statement.)

19. The Applicant will work closely with the DDOT to implement the proposed I Street streetscape improvements adjacent to the site. (Exhibit 13, Pre-Hearing Statement at p. 7.)

20. The project will include approximately 25,200 square feet of residential recreational space (15.75% of the residential space), exceeding the 15% residential recreational space requirement in the C-2-B Zone District. The recreation space will be comprised of space on the roof, in the courtyard, in the lobby, and in a fitness center. (Exhibit 13, Pre-Hearing Statement at p. 8.)

21. The project design and massing are compatible with the surrounding area. As shown on pages 15 and 25 of Exhibit A to Exhibit 13 in the record, special attention has been paid to the scale and massing of the surrounding area, particularly on 4th Street, N.E. so that the project complements the residential neighborhood. In addition, the project acts as a bridging element between the low scale Near Northeast neighborhoods to the larger structures to the south and west of the project, including Station Place and Senate Square projects. The Applicant planned a building with a height lower than the PUD guidelines and greater lot occupancy to make the massing appropriate for the neighborhood. The elevations illustrate the use of two setbacks, at the top of the bay projections and top floor. Along with reproportioning of windows and doors, this strategy has established an appropriate scale relationship with the physically smaller buildings adjoining and surrounding the project. (Exhibit 13, Pre-Hearing Statement at pp. 8-9.)

22. As detailed in Exhibit C of Exhibit 13 in the record, no adverse environmental impact will result from the construction of the project. In addition, the increased use of water and sanitary services that will occur as a result of the project, will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The project's proposed stormwater management and erosion control plans will minimize impact on the adjacent properties and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the project.

23. The project will not have an adverse impact on the public facilities that its occupants will rely on for service. The Property is located within easy walking distance of the Union Station transportation hub, which offers Metrorail, MARC, and VRE service. In addition, numerous Metrobus lines utilize H Street, N.E. which is only one block south of the Property, such that the project is adequately served by public transportation. Bicycle usage by residents of the project will be integrated into the design of the project. Bicycle usage will be supported and encouraged through the provision of secure bike storage areas, including a bike room directly off the alley and more bike storage in the parking garage.

24. The proposed development complies with the broad parameters of the C-2-B Zone District. However, the design scheme proposed for the PUD has created a configuration that does not meet all the requirements of the C-2-B Zone District. Specifically, the Applicant

seeks flexibility to provide a lot occupancy of 85% rather than the 80% lot occupancy required in 11 DCMR § 772.1. This increased lot occupancy will allow for a building height that is more compatible with the neighboring buildings. (Exhibit 13, Pre-Hearing Statement at p. 9.)

25. As its second area of flexibility, the Applicant requests relief from the fifteen-foot (15 ft.) rear yard requirement imposed by 11 DCMR § 774.1. Under 11 DCMR § 2405.5, the Commission may grant such flexibility from the rear yard requirement. The Applicant has designed a proposed landscaped and finished courtyard in lieu of a rear yard.

26. In its Pre-hearing Statement, the Applicant requested relief for two aspects of its parking garage - the requirement of 11 DCMR § 2115.2 that allows no more than 40% of the parking spaces to be compact spaces and the requirement of 11 DCMR § 2117.5 that drive aisles be at least 20 feet wide. At the request of the Commission, the project architect revised the parking garage design to eliminate the necessity for this relief. (Exhibit 13, Pre-Hearing Statement at p. 10.)

27. The project is fully consistent with and fosters the 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:

1. Stabilizing the District's neighborhoods;

2. Respecting and improving the physical character of the District; and

3. Preserving and ensuring community input.

The project is also consistent with many Major Elements of the Comprehensive Plan (including: the Housing and Urban Design Elements), and fulfills the goals and policies of the Ward 6 Plan. The OP report submitted on October 14, 2005 stated that OP believes that the land use impact of the project will be favorable to the District. (Exhibit 13, Pre-Hearing Statement at pp. 15-17; Exhibit 21, OP Report, pp. 4, 9-11.)

28. Testimony and evidence on behalf of the Applicant was provided by Marge Brown, Director of Midatlantic Operations, Broadway Management Company; Phil Esocoff, Esocoff & Associates Architects (who testified as an expert in the field of architecture); and Martin Wells, Wells & Associates (who testified as an expert in the field of traffic and parking engineering).

29. Ms. Brown testified about the Applicant's history and other recent projects in the District. She noted that the Applicant participated in many meetings with neighborhood organizations and residents regarding the proposed project.

30. As addressed in the Applicant's Pre-Hearing Statement and in the testimony of Ms. Brown and Mr. Esocoff, 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 12 affordable residential units in the Near Northeast neighborhood. The units will comprise approximately 9,120 square feet of gross floor area and will be available to potential purchasers with a household income that does not exceed 80% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area. The Applicant submitted a site plan as Exhibit F of Exhibit 20 that shows the proposed location of the affordable units, their sizes and their configurations. This distribution was slightly amended based on requests by OP and is subject to further refinement (with OP approval) as the overall project is finalized. The Applicant submitted Exhibit 27 into the record to reflect the substitution of a one bedroom unit for a studio unit. The Applicant has distributed the affordable units throughout the building and evenly across the sizes and configurations of units offered at the property. (Exhibit 13, Pre-Hearing Statement at p. 12; Exhibit F of Exhibit 20; OP Report Exhibit 21; Exhibit 27, p. 3).

- Urban Design and Architecture – Ms. Brown and Mr. Esocoff noted the significant architectural quality and superior urban design involved in the PUD project are greater than the same found in a matter-of-right project. The following is a list of such design features:

  - the provision of setbacks on the top floor to decrease the perceived height of the building;

  - the provision of direct access units with ornamental metal balconies and flower boxes evoking the traditional townhouse architecture of the community and further adding to the streetscape of the neighborhood;

  - the provision of both parking and loading access to the building from the rear alley system making additional curb-cuts unnecessary for the project and maintaining the existing residential character of both I and 4th Streets;

  - the provision of at-grade bike storage and additional bike storage below-grade;

  - the provision of a 1:1 ratio of parking located in a below-grade garage;

  - the provision of using time-tested, quality methods and materials of deep set windows, ornamental metal railings, brick, and precast concrete lintels and sills on all sides of the building; the provision of a hydronic heat pump system in lieu of a through-wall type system for both aesthetic and acoustic benefits;

  - the provision of windows on the north party wall further enhancing the building's residential character when viewed looking south on 4th Street;

  - the provision of recycling collection on each level of the building to encourage the practice of recycling;

- no through-wall vents along the street facades;
- the provision of a high level of finish on all exposures of the building, including the rear of the building facing the alleys;
- and 100% outside ventilation to corridors and dwelling units.

(Exhibit 13, Pre-Hearing Statement at pp. 12-13.)

➢ Site Planning – The proposed project involves site planning that includes significant landscape and hardscape improvements surrounding the property. As shown in the plans submitted to the Zoning Commission, these improvements would not necessarily be included in a matter-of-right project. These enhanced landscape and hardscape features provide benefits for the residents of the project and the entire neighborhood yet will be maintained by the new building. First, the project will include numerous upgrades to the public alley system that will benefit the nearby neighbors and the District of Columbia. The Applicant will enhance the alley in the following ways:

- increase the width of the alley and existing curb cut on I Street from the existing 15 feet to 20 feet to match DDOT's recommendations for alleys;
- increase the width of the alley along the property's west boundary by 4 feet for a total alley width of 24 feet to allow for both additional vehicular maneuvering room and pedestrian and bicycle traffic;
- repave both the north-south alley from I Street to K Street and the alley system just north and west of the property with brick pavers; and
- provide a landscaped 'piazza' courtyard interior to the block with trees planted in natural soil, benches, aesthetic lighting, and a water feature.

Second, the provision for a streetscape on both I and 4th Streets will meet the DDOT Streetscape Standard Regulations established for other parts of the District. The Applicant is proposing to add brick pavers to the entire street frontage of the project. In addition, the Applicant noted that the proposed project has been designed to provide residents and their guests with open and inviting spaces for entertainment and relaxation. These spaces include the large landscaped courtyard on the interior of the site, the private garden areas, the roof terrace, and a health club. (Exhibit 13, Pre-Hearing Statement at p. 13.)

➢ Effective and Safe Vehicular and Pedestrian Access – The project provides effective and safe vehicular and pedestrian access by separating the two methods of accessing the building. The main vehicular ingress/egress is provided through the enhanced alley off I Street, N.E. The pedestrian entrance is on I Street at the corner of the

property near 4th Street, N.E., and the first floor residences facing the streets have their own individual entrances. The Applicant responded to OP, DDOT, and community concerns to refine the vehicular and pedestrian access plan for the project. (Exhibit 13, Pre-Hearing Statement at p. 13.)

- Environmental Benefits – The project will include numerous environmentally-sensitive features that would not necessarily be included in a matter-of-right project. These attributes include: a green roof system covering part of the building's roof; a landscaped roof terrace reducing the effects of urban heat islands; and the use of storm water retention as much as feasible for site irrigation. (Exhibit 13, Pre-Hearing Statement at pp. 5 and 11.)

- Revenue for the District – The Applicant noted that the addition of approximately 140 new households will result in the generation of additional tax revenues for the District of Columbia. (Exhibit 13, Pre-Hearing Statement at p. 14.)

- 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. (Exhibits D and F to Exhibit 20, Pre-Hearing Statement at p. 14.)

- Consistency with the Comprehensive Plan – 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 13, Pre-Hearing Statement at pp. 14-15.)

31. At the public hearing and in his transportation impact study submitted into the record as Exhibit B to Exhibit 13 in the record and as Exhibit 3 to Exhibit 21 in the record, the Applicant's traffic engineer, Mr. Wells, concluded that the proposed project will have no significant impact on peak-hour levels of service at nearby intersections. Mr. Wells testified that all key intersections around the Property currently operate at an acceptable level of service, but the 4th and K Streets intersection operates near capacity at the PM peak hour due to the high volume of eastbound traffic. The redevelopment of the Property will be adequately accommodated at the key intersections in the study area with traffic signal timing modifications. Mr. Wells stated that the vehicular access to the site through the existing alley along I Street is the preferred location to access the parking garage and the loading area. The transportation study noted that the proposed on- and off-site parking supply would adequately meet the minimum zoning parking requirements and prevailing parking demands in this neighborhood. In addition, the PUD project provides for 12 dedicated, non-sellable visitor parking spaces located in a below-grade garage, in addition to the 1:1 ratio of parking previously noted. These spaces were provided in response to community concerns about parking. At the public hearing, Mr. Wells testified that the visitor spaces would function sufficiently and did not create any adverse conditions for the project. (Exhibit B to Exhibit 13; Exhibit 3 to Exhibit 21.)

32. In response to issues raised by Commissioners during the public hearing, the record of the case was left open for the Applicant to provide the post-hearing materials. The Applicant submitted the required materials on October 31, 2005. (Exhibit 27.)

GOVERNMENT REPORTS

33. OP, in its report dated October 14, 2005 and through its testimony at the public hearing, recommended approval of the project subject to the provision of more information. The OP report noted that the project benefits and amenities are commensurate with the amount of development incentives requested, that the application meets the standards for a PUD, and that the project is not inconsistent with the Comprehensive Plan. The other information requested by OP included: a signed First Source Agreement and LSDBE Memorandum of Understanding; a tabulation of the type, size, and location of the affordable units, summation of the approximate floor area of affordable units, and classification of the affordable units according the DHCD affordability stands; a revised ground-floor plan responding to DDOT's comments (by the time the OP report was submitted, the Applicant had addressed DDOT's concerns); a revised roof plan identifying the portion that would be a "green roof," consistent with LEED standards; and a list of environmentally-sensitive standards and systems incorporated into the development that meet LEED standards. (Exhibit 21, pp. 1-2.)

34. The Fire and Emergency Medical Services Department issued a memorandum that was attached to the OP report. That memorandum stated that D.C. Fire and EMS Department had no objection to the proposal provided that the alley is not less than 20 feet wide for fire department access. (Exhibit 5 of Exhibit 21.)

35. In testimony at the public hearing, representatives of OP noted that the significant amenities of the project include: the construction of an entirely residential project on a commercially-zoned site; the significant affordable housing component of the project; set aside visitor parking; and the site planning and urban design aspects of the project.

36. DDOT submitted a report dated August 8, 2005 that supported the PUD project with a slight modification that the alley be widened. Since the DDOT report was submitted, the Applicant revised the site plan to accommodate DDOT's modification request to widen the alley entrance to incorporate a pedestrian buffer area. (Exhibit 14.)

ADVISORY NEIGHBORHOOD COMMISSION REPORTS

37. Advisory Neighborhood Commission ("ANC") 6C voted to support the project with no conditions at a regularly scheduled and publicly noticed meeting on October 12, 2005. The letter sent by Mark Dixon, Chairman of ANC 6C, on October 19, 2005, states that the Applicant held several community meetings to explain the project and answer questions. The letter stated that the project was generally well received at these meetings and the ANC 6C Zoning and Planning Committee meeting. No one from ANC 6C was present at the public hearing. (Exhibit 23.)

PARTIES AND PERSONS IN SUPPORT

38. In a letter dated October 14, 2005, the Capitol Hill Restoration Society noted its support for the application with the conditions that the Applicant: increase the affordable housing to 17,600 square feet; guarantee that the mix of the unit sizes for the affordable housing will be the same ratio as the mix for the market units; and provide more two bedroom units rather than one bedroom plus den units. (Exhibit 22.)

39. Two neighbors of the Property submitted letters in support of the application. These support letters highlighted the positive community relations of the Applicant and the beneficial impact the project would have on the neighborhood. Both letters highlighted the appropriateness and importance of the change from a heavy industrial use to a vibrant residential use.

40. No persons testified in support of the application at the public hearing.

PARTIES AND PERSONS IN OPPOSITION

41. At the public hearing, one resident of Square 775, Paul Heavey, testified in qualified opposition to the PUD project. Mr. Heavey raised concerns that the project may cast a shadow on his house. The Applicant provided shadow studies to show that the height and mass of the new buildings will not create such adverse shadow impacts on neighboring residential properties.

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

3. 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 that may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance and would otherwise require approval by the Board of Zoning Adjustment. In this application, the Commission finds that the requested flexibility from the requirements of § 772.1 regarding lot occupancy can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The slightly increased lot occupancy allows the project to remain within the matter-of-right height limit of 65 feet. Under 11 DCMR § 2405.5, the Commission also finds

that the PUD project may provide the proposed landscaped and finished courtyard in lieu of the fifteen-foot rear yard requirement imposed by 11 DCMR § 774.1. The courtyard achieves the same goals that the rear yard requirement was created to encourage and will likely have a more positive impact on the surrounding properties.

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

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

6. The Commission agrees with the testimony of the project architect and the representative of the Applicant and finds that this project does in fact provide superior features that benefit the surrounding neighborhood to a greater extent than a matter-of-right development on the Property would provide. The Commission finds that the affordable housing provided in the project, the enhanced design and environmental sensitivity of the project, and the landscape and hardscape improvements provided on the site are significant project amenities of this PUD application.

7. 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 letter in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission agrees with ANC 6C's conclusion that the Applicant has been well received by the community.

8. The Commission notes the support that the project received from Capitol Hill Restoration Society. In response to the issues raised by the Capitol Hill Restoration Society, the Commission finds that the proposed amount and unit mix of affordable housing is sufficient and appropriate.

9. Approval of the PUD is not inconsistent with the Comprehensive Plan. Specifically, the Commission believes that the proposed project will be a residential project of appropriate height that, along with the Senate Square project, will provide a critical mass of new residents that will help revitalize the commercial corridor of H Street, N.E.

10. In response to the issue raised by Paul Heavey regarding the impact of any shadows from the proposed building on Mr. Heavey's solar panels, the Applicant provided detailed shadow studies. These shadow studies demonstrate that there will be no such problem. The Commission notes that abundant light, air, and views still will be available to residents of the square. The Commission concurs with the testimony of the project architect, and the information submitted into the record, that the setting back of the top two floors of the proposed building and the terraces on some of the units effectively reduces the scale of the building and further mitigates the visual impact of the building on surrounding properties.

11. The Commission finds that the project relates well to nearby townhouses. The Commission finds that the treatment of the lower levels of the project, including individual entries on a rhythm and scale similar in frequency and detailing to that of individual row houses, balcony projections, front yards, two-story windows, and significant landscaping creates a design along 4th Street, N.E. that is consistent with townhouses and townhouse neighborhoods throughout the Near Northeast Neighborhood, Capitol Hill, and the District.

12. 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.

13. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

14. The project will achieve numerous goals of the District. The project will create a significant residential development and will improve dramatically the appearance of the site. The proposed height and massing of the project are consistent with recently approved PUD projects in the area and with the District's planning goals for the future of this neighborhood. The Applicant has not sought a height in excess of that permitted as matter of right in recognition of the location of the site east of 3rd Street, N.E. in recognition of the need to achieve compatibility with the surrounding residential neighborhood.

15. The Applicant does not propose any change in zoning and the proposed apartment house use is permitted in the C-2-B Zone District.

16. No adverse environmental impact will result from the construction of the project. In addition, the increased use of water and sanitary services that will occur as a result of the project will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The project will not have an adverse impact on the public facilities on which it will rely for service.

17. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. The instant application will achieve the goals of the PUD process by creating high-quality residential development, with a significant affordable housing component, on the Property that will help to enliven and revitalize the Near Northeast neighborhood of Ward 6.

- Housing and Affordable Housing - Pursuant to 11 DCMR § 2403.9(f), the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 140 new, for-sale, residential units in the Near Northeast neighborhood. In addition, the project will result in the creation of approximately 9,120 square feet of affordable housing.

This amount represents 15% of the additional density received through the PUD process. Given the current strong demand for the production of affordable housing in the District, this is a significant amenity. In addition, the affordable housing units have been distributed sufficiently throughout the building and across the sizes, types, and configurations of the units at the project.

- Urban Design and Architecture - 11 DCMR § 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. As shown in the detailed plans, elevations, and renderings included as Exhibit A in the Pre-Hearing Statement and Exhibit 27, the project exhibits the characteristics of superior urban design and architecture. The courtyard, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create a sense of scale and visual interest. The design includes many design features that would not be found in a matter-of- right project. The result is an exemplary design.

- Site Planning - Pursuant to 11 DCMR § 2403.9(b), "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The project is an efficient design that beneficially maximizes the zoning designation of the Property without negatively impacting the neighboring properties. In addition, the project has been designed to provide residents and their guests with open and inviting spaces for entertainment and relaxation. These spaces include the landscaped courtyard on the interior of the site, the large roof deck, the fitness center, and the private garden areas. Further, the project includes a great deal of parking, including visitor parking at the request of the community.

- Effective and Safe Vehicular and Pedestrian Access - 11 DCMR § 2403.9(c) states that "Effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. Based on the testimony and report of the Applicant's traffic expert and review of the Applicant's submissions, the project provides such effective and safe vehicular and pedestrian access. The project will provide a below-grade parking garage with approximately 140 parking spaces and approximately 12 parking spaces for visitors. This vehicular entrance and exit will be accessed from a public alley off I Street, N.E. and will be appropriately landscaped and buffered from neighboring properties. This entrance opens onto a courtyard that has been designed as an attractive and inviting entry for residents of the project, visitors, and their guests. A pedestrian-only entrance/exit will be constructed on I Street, N.E. Lastly, the street-fronting first floor units will have their own separate entrances. These separate and distinct entrances/exits will mitigate any potential pedestrian and vehicular conflicts.

- Revenue for the District – According to 11 DCMR § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The addition of approximately 140 new households will result in the generation of significant additional tax revenues in the form of

recordation, transfer, property, income, sales, use, and employment taxes for the District.

- First Source Employment Program - According to 11 DCMR § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, the Applicant will voluntarily enter into an agreement to participate in the DOES First Source Employment Program to promote and encourage the hiring of District of Columbia residents.

- Local Business Opportunity Program - Pursuant to 11 DCMR § 2403.9(e), the use of local firms in the development and construction of a project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a Memorandum of Understanding ("MOU") with the OLBD to use the resources of the Local Business Opportunity Commission ("LBOC") to utilize local business enterprises in the development of the project.

- Comprehensive Plan - According to 11 DCMR § 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The project is consistent with and furthers many elements and goals of the Comprehensive Plan.

- Public Benefits of the Project - 11 DCMR §§ 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of the Pre-Hearing Statement, and in the table attached thereto as page 8. It is only as a result of the additional density provided through the PUD process that the Applicant is able to construct such a well-designed project. The architectural detailing of the proposed building and the large open spaces provided in the project set it apart from a matter-of-right residential project. In addition, a matter-of-right project would not provide any affordable housing. The approval of this PUD application will result in the creation of approximately 9,120 square feet of affordable housing.

18. The PUD project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan.

- Stabilizing the District's Neighborhoods - The creation of approximately 140 new residential units will help stabilize the Near Northeast neighborhood. The creation of a significant residential development on the Property is also likely to help stimulate additional residential development and stabilize the neighborhood. The influx of these new residents in this neighborhood will provide the critical mass of customers needed to patronize existing commercial uses on nearby H Street, N.E. Therefore, the project will have a catalytic effect on surrounding areas while respecting the massing and scale of the neighborhood.

- Respecting and Improving the Physical Character of the District - The project has been designed to integrate with the surrounding neighborhood and to dramatically improve the streetscape on 4th and I Streets, N.E. The 4th and I Streets facades, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create an appropriate scale and visual interest. The design of the building blends the structure with the surrounding single-family rowhouses. Due to the Applicant's sensitivity to the height of the surrounding houses, the matter-of-right height limit of 65 feet has been observed.

- Preserving and Ensuring Community Input - Through the PUD process, the Applicant has worked and will continue to work with representatives of ANC 6C, as well as the surrounding neighborhood, to create a new residential building that is a benefit to the neighborhood and the District.

19. The Comprehensive Plan also contains 11 major elements. The project furthers the objectives and policies of several of these elements as follows:

- Housing Element - The creation of approximately 140 residential units on this currently underutilized property fully satisfies the provisions of the Housing Element of the Comprehensive Plan. As previously stated, the project will provide approximately 9,120 square feet of affordable housing. The inclusion of these affordable units in the project is also entirely consistent with the provisions of the Comprehensive Plan.

- Urban Design Element - As shown in the detailed plans, elevations, and renderings included with Exhibit A to the Pre-Hearing Statement and in post-hearing submissions to the Commission submitted as Exhibit 27, the project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a prominent residential building will complement the established residential neighborhood that surrounds the site. As mentioned, the project has been painstakingly designed to complement and enhance the scale of the surrounding neighborhoods, particularly that on 4th Street, N.E. adjacent to the Property. The architects designed a building with lower height than allowed under the PUD guidelines and greater percentage of lot occupancy to create a more appropriate design.

- Generalized Land Use Map - As previously mentioned, the Generalized Land Use Map includes the Property in the Moderate-Density Residential Land Use Category. In Commission Case No. 821, the Property was rezoned from C-M-1 to C-2-B (except for Lots 22, 23, and 32, the small lots at the north of the Property, which were rezoned from R-4 to C-2-B in that Commission action). These lots were rezoned, in large part, because OP determined that a designation permitting high-density residential and mixed uses was more appropriate for the largely residential area. Such a change in the designation supports the construction of a high-quality residential project on a site that is currently home to a wholesale bakery and accessory parking

lot. The project and C-2-B Zone District are consistent with the flexibility that the Moderate- Density Residential Land Use category provides for the Property.

- Ward 6 Goals and Policies - Under 10 DCMR § 1707.1, the Ward 6 Element of the Comprehensive Plan seeks to maintain and strengthen the quality and construction of housing, stimulate production of new housing, and promote low- and moderate-income housing development opportunities. The proposed PUD is consistent with these provisions of the Ward 6 Element of the Comprehensive Plan.

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 and approval of a Planned Unit Development application for Lots 1, 22, 23, 32, 826, and 827 in Square 775. The approval of this PUD 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 13, 20, and 27 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 a minimum of 125 and a maximum of 140 residential units. There will be a minimum of one parking space for each residential unit. The entire project will include approximately 160,000 square feet of gross floor area resulting in a density of approximately 5.65 FAR. The new building will be 65 feet tall and the total lot occupancy of the project will be approximately 85%.

3. The Applicant is required to provide 12 non-sellable visitor spaces in the parking garage.

4. The project will include a minimum of approximately 9,120 square feet of gross floor area available for sale 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 the District of Columbia's Department of Housing and Community Development's ("DHCD") guidelines and policies. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with DHCD to make such changes comply with the same. The unit types and locations shall be as shown on Exhibit C of Exhibit 27. Any changes to the proposed unit types and locations must be approved by OP and in no event shall the total amount of affordable housing be less than 9,120 square feet.

5. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the draft First Source Agreement submitted as Exhibit D to Exhibit 20 of the record.

6. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the draft Memorandum of Understanding submitted as Exhibit E to Exhibit 20 of the record.

7. 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 appearance or 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 without reducing the quality of the materials;

- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, trim, or any other minor changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and

- To make alterations to the parking garage design provided that the parking garage contains a minimum of one parking space for each residential unit and a total of 12 visitor spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.

8. 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.

9. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (the "Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, 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.

10. The Applicant shall contribute $25,000 to the H Street Main Street program for use with the Ready to Work program as designated by ANC 6C. This contribution will fund Ready to Work's clean up efforts in the Capitol Hill Business Improvement District's boundaries and on H Street, N.E. H Street Main Street will be required to report to ANC 6C on the specific use of this contribution.

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

On November 14, 2005, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (Carol J. Mitten, Anthony J. Hood, and Kevin L. Hildebrand to approve; John G. Parsons and Gregory N. Jeffries, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on January 9, 2006, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons to approve; Kevin L. Hildebrand to approve by absentee ballot; Gregory N. Jeffries, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on JUL 21 2006.

Carol J. Mitten
CAROL J. MITTEN
Chairman
Zoning Commission

Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director
Office of Zoning