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March 3, 2008

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By Hand Delivery

Mr. Anthony Hood  
Chairperson, D.C. Zoning Commission  
441 4th Street, N.W., Second Floor  
Washington, DC 20001

Re: **Zoning Commission Case No. 05-15A, Modification to a  
Consolidated PUD Application for 318 I Street, NE (Square  
775, Lot 50 – Draft Order**

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Dear Chairperson Hood and Members of the Commission:

Enclosed please find the draft order of Broadway I Associates LLC (the "Applicant"), for the above referenced case, as requested at the February 7, 2008 public hearing for the case.

The Applicant also notes on the record that it has reached an agreement with ANC 6C to enhance the amenities package proffered as part of the modification application. The Applicant agrees to add the amenities detailed on Exhibit A to Exhibit 35 of the record (ANC 6C's February 22, 2008 letter to the Commission). Those additions to the amenities package are included in the attached draft Findings of Fact and Conclusions of Law.

If you have any questions or comments, please do not hesitate to call or email Allison at (202)663-8853 or Jeff at (202)663-8715.

Sincerely,

Allison C. Prince

*Jeffrey C. Utz*  
Jeffrey C. Utz

Enclosure

ZONING COMMISSION  
District of Columbia

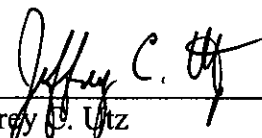
CASE NO. 05-15A

EXHIBIT NO. 37

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ZONING COMMISSION  
District of Columbia  
CASE NO.05-15A  
EXHIBIT NO.37

**CERTIFICATE OF SERVICE**

I certify that on this 3<sup>rd</sup> day of March 2008, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.

  
\_\_\_\_\_  
Jeffrey C. Utz

Arthur Jackson  
Office of Planning  
801 N. Capitol Street, NE  
Suite 4000  
Washington, DC 20002

ANC 6C (eight copies)  
P.O. Box 77876  
Washington, DC 20013-7787

ANC 6C05 Commissioner Alan Kimber  
228 Parker St., NE  
Washington DC

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2008 MAR -3 PM 3:21

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 05-15A Case No. 05-15A

(Application for the Modification to the Consolidated Review and Approval of a  
Planned Unit Development by Broadway I Associates, LLC  
for the Property located at 318 I Street, NE (Square 775, Lot 50))

\_\_\_\_\_, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 7, 2008, to consider an application from Broadway I Associates, LLC (the "Applicant") to modify the approved planned unit development for Lot 50 (formerly Lots 1, 22, 23, 32, 826, and 827) in Square 775 located at 318 I Street, NE. The Zoning Commission considered the application pursuant to Chapters 24 and 30 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. For the reasons stated below, the Zoning Commission hereby approves the application.

### **FINDINGS OF FACT**

#### **The Applications, Parties, and Hearing**

1. On July 2, 2007, the Applicant filed an application ("Application") with the Commission for review and approval of modifications to an approved PUD in Square 775, Lot 50 (the "Property"). (Exhibits 1 and 2).
2. The PUD was originally approved in Zoning Commission Order No. 05-15 dated July 21, 2006.
3. The Zoning Commission approved a residential development with approximately 160,000 square feet of residential use, including 9,120 square feet of affordable housing, a height of 65 feet, and a floor area ratio ("FAR") of 5.65. A parking ratio of one parking space to each residential unit was approved for the PUD, with a minimum of 12 additional visitor spaces.
4. The Applicant submitted the Application to modify the Order to make the project more financially viable given recent changes to the real estate market. (Exhibits 1 and 2).
5. The Application requests modification to the PUD to: increase the approved unit count for the PUD from 125 to 140 units to approximately 166 to 180 units; to increase the height of the project from 65 to no more than 70 feet; to decrease the lot occupancy from 85% to no more than 80%; to reduce parking below a 1:1 ratio of parking spaces to

140 to 180 parking spaces; and to revise the building plans and elevations. (Exhibits 1 and 2).

6. The Office of Planning submitted its setdown report on August 31, 2007. (Exhibit 10).

7. At the September 10, 2007 Zoning Commission meeting, the Commission set the case down for a public hearing.

8. The Applicant submitted its pre-hearing submission on November 28, 2007 and its 20-day filing to the Commission on January 18, 2008. (Exhibits 12 and 23, respectively).

9. The Office of Planning submitted its final report on January 28, 2008. (Exhibit 24).

10. A duly noticed public hearing was held on February 7, 2008. There were no requests for party status. No parties or persons testified in support or in opposition of the modification to the PUD. ANC 6C, the ANC in which the Property is located, is automatically a party to this application.

11. The ANC appeared at the public hearing and requested an additional two weeks to work with the Applicant to finalize the amenities package. The Zoning Commission agreed to leave the record open for two weeks to allow for such communication.

12. The Zoning Commission took proposed action on March 10, 2007 approve the application by a vote of \_\_\_\_\_.

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

14. The Commission took final action to approve Case No. 05-15A on April 14, 2008, by vote of \_\_\_\_\_.

### **The Property**

15. The Property is in the C-2-B Zone District. The Property consists of approximately of 28,353 square feet of land and is located in the Near Northeast neighborhood of Ward 6 at the northwest corner of 4<sup>th</sup> and I Streets, NE. The Property was most recently used by the Uptown Bakery as a wholesale bakery establishment and accessory parking lot for the many trucks owned by the bakery. (Exhibit 2).

16. 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 and Moderate Density Commercial land use categories as shown on the District of Columbia

Generalized Land Use Map. The properties to the north, east, and south of the Property in Square 775 are included in the Moderate Density Residential land use category. The square directly to the west of the Property is located in the Low Density Commercial/Moderate Density Residential land use categories. The properties further to the south – on H Street – are in the Moderate Density Commercial/Medium Density Residential land use categories. The properties further to the west, which include the Station Place PUD site, are located in the High Density Commercial land use category. Prior to the recent revision to the Generalized Land Use Map, the Property was previously located in the Moderate Density Residential land use category. (Exhibit 2).

### **Modifications to the PUD**

17. The unit count for the entire PUD will increase to a total of approximately 166 to 180 units, rather than the previously approved maximum of 125 to 140 units. The real estate market has demonstrated a preference for smaller units rather than larger ones. Increasing the overall unit count will enable the Applicant to reduce the size of the units as necessary. (Exhibit 2).

18. The parking spaces will be altered from 1 parking space for each unit to 140 to 180 spaces. 12 visitor parking spaces will be also be provided. Access to the below-grade parking garage will remain from the public alley located on I Street, NE, in the middle of the block between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE. (Exhibit 2).

19. The reduction of the parking ratio will have a minimal effect on parking and traffic, if any. (Exhibit 2).

20. As a result of creating small units, the building foot print was reduced such that the lot occupancy decreased from 85% to no more than 80%. (Exhibit 2).

21. The facades and floor plans of the building will be modified pursuant to the plans submitted on July 2, 2007 (Exhibit 2), as modified by the Applicant's pre-hearing statement on November 28, 2007 (Exhibit 12), as modified by the Applicant's 20-day filing on January 18, 2008 (Exhibit 23), as modified by the Applicant's perspectives and drawings presented at the hearing and submitted into the record on February 7, 2008 (Exhibit 30).

22. The roof plan will include two roof structures and will require relief from Sections 411.3 and 711.1 as a result. In addition, as discussed at the February 7, 2008 public hearing, the Applicant requests flexibility in finalizing its design of the pergola and penthouse elements, in order to make modifications to lessen the appearance of height and soften the visual effect of the penthouse, including flexibility from the requirements of §§ 411.5 and 771.1 to have multiple heights to aesthetically refine and articulate rooftop structures for scale and compositional purposes. (Applicant's testimony and Exhibit 30).

23. The project includes extensive landscape and streetscape improvements on the Property. As under Order No. 05-15, the project reinvigorates the alley space by carefully cultivating the interior of the Property. The project entails the repaving of the

north/south alley and the eastern extensions of that system in consultation with DDOT. The Applicant also will pave the northwest corner of the Property in similar materials to effectively create a central, urban courtyard around a tree planter as an amenity for residents of the project and the square. The Applicant will work closely with the DDOT to implement the proposed alley and 4<sup>th</sup> and I Streets streetscape improvements adjacent to the site. (Applicant's testimony and Exhibit 2).

24. The modifications will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study Addendum filed on November 28, 2007 as Exhibit E to Exhibit 12 and DDOT's Report filed on February 1, 2008 (Exhibit 25).

25. 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 (maximum FAR of 6.0 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 FAR of 3.5 with a limit of 1.5 of non-residential FAR. (Exhibit 2).

26. The project design and massing are compatible with the surrounding area. As shown on the perspectives submitted by the Applicant at the February 7, 2008 hearing, special attention has been paid to the scale and massing of the surrounding area, particularly on 4<sup>th</sup> Street, NE, so that the project complements the residential neighborhood. In addition, the project acts as a bridging element to between the low scale Near Northwest neighborhoods to the larger structures to the south and west of the project, including the 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 design appropriate for the neighborhood. The 70 foot height of the project is mitigated by a setback on the upper floor of the building and appropriate architectural treatment of the eastern façade adjacent to the lower scale smaller buildings. The Applicant requests flexibility to further refine the brick patterning to further enrich the façade's piers, as discussed at the February 7, 2008 public hearing. (Applicant's testimony, Exhibit 2, and Exhibit 30).

27. As detailed in Exhibit E of Exhibit 2 in the record, no adverse environmental impact will result from the construction of the modified 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 property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the project. (Exhibit 2).

28. The project will not have an adverse impact on the public facilities that it 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, NE, 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 has been 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. (Exhibit 2).

29. 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 exact requirements of the Zoning Regulations. Specifically, the Applicant seeks a roof structure relief to allow multiple roof structures. Under 11 DCMR §§ 411.3 and 711.1, buildings are required to provide only one roof structure. Multiple roof structures will allow the Applicant to reduce the perception of height at the Property and create a more attractive roof plan. (Applicant's testimony, Exhibit 2, and Exhibit 30).

30. At the February 7, 2008 public hearing, the Commission accepted Phil Esocoff of Esocoff and Associates as an expert in the field of architecture and urban design based on a review of their resumes (submitted as an exhibit the Applicant's November 28, 2007 pre-hearing submission).

### **Public Benefits and Amenities**

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

- a. Housing: The greatest benefit to the neighborhood and the District as a whole is the creation of new housing opportunities consistent with the Zoning Regulations and the Comprehensive Plan. With the modification, the Applicant will be able to provide even more housing units than were originally approved. In addition, the project will create approximately 13 affordable residential units in the Near Northeast neighborhood. The units will comprise approximately 9,186 square feet of gross floor area that 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 has distributed the affordable units throughout the building and evenly across the sizes and configurations of units offered at the property. In addition, the project is an amenity in that it proposes the construction of an entirely residential project on a commercially-zoned site. (Exhibits 2 and 29).
- b. Urban Design, Architecture, Site Planning, and Green Building Practices: The significant architectural quality and superior urban design in the development exceeds that of most matter-of-right projects. The landscaping of the open courtyard will be an attractive amenity for the building's residents and neighbors. The enhanced streetscape will similarly be an amenity for the building's residents and the neighborhood. In addition, the Applicant is included a high degree of green building elements in the

project, as detailed in its list of “Low Impact Development” characteristics submitted as Exhibit 28 to the record. (Exhibits 2 and 28).

- c. Site Planning – The proposed project involves substantial 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 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, including upgrades to the public alley system and the streetscape. (Exhibit 2).
- d. 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 of I Street, NE. The pedestrian entrance is on I Street at the corner of the property near 4<sup>th</sup> Street, NE, and the first floor residences facing the streets have their own individual entrances. (Exhibit 2).
- e. Revenue for the District – The Applicant noted that the addition of approximately 166 to 180 new households will result in the generation of additional tax revenues for the District of Columbia. (Exhibit 2).
- f. Employment and Training Opportunities – The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services (“DOES”), and will enter into a Memorandum of Understanding with the Office of Local Business Development (“OLBD”), or any substitute agreement stipulated by the relevant District agency. (Exhibit 2).
- g. 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 2).
- h. Monetary Contributions to Neighborhood Organizations: The Applicant has already contributed \$25,000 to the H Street Main Street’s Ready to Work Program, which was a condition of approval of Case No. 05-15 and a request of ANC 6C. The Applicant has agreed to contribute \$10,000 to the Friends of J.O. Wilson in order to provide grounds improvements to the J.O. Wilson Elementary School. (Exhibits 31, and \_\_\_ [36?]).
- i. Provision of a Construction Management Plan and Citizen’s Council and Traffic Calming Measures – The Applicant has agreed to provide a citizen’s council and construction management plan to address issues and concerns that arise during construction. In addition, the Applicant has agreed to work with DDOT and the general contractor to try to route construction traffic in



such a way as to lessen the impact on the surrounding community. (Exhibits 35 and \_\_\_ [36?]).

- j. Encourage General Contractor to Hold Job Fair – The Applicant has agreed to encourage the project’s general contractor to hold one or more job fairs in the neighborhood in an effort to solicit interest from community residents in construction and/or permanent employment opportunities. (Exhibits 35 and \_\_\_ [36?]).
- k. Community Reception – The Applicant has agreed to hold a community reception as part of the grand opening for the project. (Exhibits 35 and \_\_\_ [36?]).
- l. Availability of Parking for Neighborhood – The Applicant has agreed to explore the feasibility of permitting neighborhood residents to lease excess parking spaces in the project not otherwise leased by tenants, subject to availability from time to time. (Exhibits 35 and \_\_\_ [36?]).

32. The Commission finds that the modification is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing, transportation measures, and uses of special value to the neighborhood. The amount of amenities proffered is in accordance with the additional density requested in this application modification.

### **Compliance with PUD Standards**

33. In evaluating a PUD modification application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” 11 DCMR § 2403.8. Given the level of project amenities and public benefits, and the fact that the modifications are of a minor nature, the Commission finds that the development incentives are appropriate to approve the modifications.

### **Comprehensive Plan and Public Policies**

34. The proposed PUD is consistent with and fosters the goals and policies enumerated in the newly-adopted District of Columbia Comprehensive Plan (“Comprehensive Plan”).

- a. Land Use – The Land Use Element of the Comprehensive Plan seeks to stimulate the construction of housing, particularly around Metrorail stations and on infill sites. (Sections 306.12 and 307.4 of the Comprehensive Plan). The proposed modification project offers just such a project that will address the “gap” in the urban fabric that currently detracts from the character of a residential neighborhood. The proposed development complements the established character of the area and will not create sharp changes in the

physical development pattern. The 4<sup>th</sup> and I Street facades, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create a sense of scale and visual interest and weave the project into the surrounding community. Further, the project takes advantage of the site's proximity to the Union Station Metro Station. (Exhibit 2).

- b. Transportation - The Transportation Element of the Comprehensive Plan seeks to encourage the implementation of bicycle facilities in new residential buildings (Section 409.11). The project has been planned to be responsive to such focus on bicycle facilities. The project will include a great deal of bicycle parking, on at least two levels of the parking garage that will facilitate the greater use of bicycles by the residents of the project, and direct them away from the use of cars and taxis. (Exhibit 2).
- c. Housing - The Housing Element of the Comprehensive Plan seeks to stimulate the development of new housing to meet the needs of present and future District residents, particularly on underutilized land (Sections 503.2 and 503.4). In addition, the Comprehensive Plan seeks to require the design of high-quality affordable housing (Section 503.6) and to stimulate such housing stock through the use of density bonuses (Section 504.14). The creation of approximately 166 to 180 new residential units on a site that is currently an underutilized industrial and commercial property, fenced off from the remainder of the neighborhood with a barbed wire fence, including a substantial 9,186 square foot affordable housing allocation, fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. The creation of a significant residential development on the Subject 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, and hopefully new, commercial uses on nearby H Street, NE. Perhaps most importantly, the project will provide additional housing without displacing any current residents of the District. (Exhibit 2).
- d. Environmental - The Environmental Element of the Comprehensive Plan seeks to enhance the planting and maintenance of street trees (Section 603.4) and to encourage the use of landscaping to beautify the city (Section 603.7). As part of its project design, the project architects have implemented a high degree of landscaping and hardscaping. In addition, the project will include several new street trees along both 4<sup>th</sup> and I Streets, NE. The result will be a site that is significantly more attractive than it is now, but also a site that is greatly more environmentally-beneficial. (Exhibit 2).
- e. Economic Development - The Economic Development Element of the Comprehensive Plan seeks to stimulate neighborhood commercial vitality (Section 713.5) and to encourage local hiring incentives (Section 717.20). The project will achieve these economic development policies. As a result

of altering an underutilized site to an active well-designed residential site with approximately 166 – 180 households, the project will stimulate the vitality of the area. The project will bring residents close to the H Street corridor and will assist in creating a critical mass of residents able to support the desired new commercial uses on that corridor, and elsewhere in the Near Northeast neighborhood. The project will also include both a Local Small and Disadvantaged Business Entity Memorandum of Understanding with LBOC that will require the greater inclusion of LSDBE entities in the project and a First Source Agreement with DOES that will require the employment of District residents. (Exhibit 2).

- f. Urban Design - The Urban Design Element of the Comprehensive Plan seeks to strengthen neighborhood character and identity (Section 910.6) and create attractive facades with well-designed buildings (Section 910.12). The proposed project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a prominent residential building will both complement and enhance the established residential neighborhood that surrounds the site. (Exhibit 2).
- g. Capitol Hill Area Element - The proposed PUD is consistent with the goals and policies of the Capitol Hill Area Element (Section 1502) in many ways. It is particularly more in alignment with the Capitol Hill Area Element than the current industrial/commercial bakery and larger-scale delivery operation. The project will “reinforce the fabric of the neighborhood and provide needed housing” on a site that is “already zoned for commercial use” (Section 1507.2(b)), allow for a greater critical mass of residents to assist in the continued revitalization of H Street and other desirable retail destinations in the neighborhood (Section 1507.2(d)), reinforce the residential nature of the neighborhood (Section 1507.2(e)), reinforce and complement the “unique urban design” of the area and the neighborhood and reconcile “issues relating to scale, texture, materials, and context” in the neighborhood (Section 1507.2(h)), allay concerns about affordable housing (Section 1507.2(i)) both by the creation of affordable housing in the project and offering another option for housing with several configurations of units and increasing the supply of housing on Capitol Hill and in the Near Northeast Neighborhood, and address concerns about parking (Section 1507.2(j)) since the building will be “over parked” according to the Zoning Regulation requirements, including some visitor spaces. In addition, the project enhances and protects Capitol Hill’s system of historic alleys (Section 1608.8) and converts non-residential structures to housing (Section 1608.10). (Exhibit 2).
- h. Generalized Land Use Map - The recently-revised and adopted Generalized Land Use Map includes the Subject Property in the Moderate Density Residential Land Use Category. In Zoning Commission Case No. 821, the Property was rezoned from C-M-1 to C-2-B, in large part, because the Office of Planning 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 PUD is also consistent with the Generalized Land Use Map, which recommends the subject site for Low Density Commercial and Moderate Density Residential land uses. The PUD will be developed under the existing C-2-B Zone District. (Exhibit 2).

### **Office of Planning Report**

35. By report submitted on January 28, 2008, OP recommended approval of Application No. 05-15A. OP stated that the proposed benefits and amenities proposed by the Applicant exceed the requested flexibility. OP also requested additional information on the affordable housing square footage breakdown, execution of the First Source Employment and Minority Business Opportunity Commission Program Agreements, a checklist of Leadership in Environmental Engineering and Design (LEED) features of the project, and documentation of the \$25,000 contribution to the community. (OP Testimony and Exhibit 24).

36. The OP report submitted on January 28, 2008 stated that OP believes that the land use impact of the project would be favorable to the District and that the proposed PUD modification will achieve multiple goals of the Comprehensive Plan. (OP Testimony and Exhibit 24).

### **ANC 6C Resolution**

37. By letter dated February 5, 2008, ANC 6C stated that it opposed the proposed modification to the project because the proposal was "taking too much from the community ... and not offering sufficient amenities in return." The ANC also designated Alan Kimber to continue discussions with the Applicant regarding amenities and possibly support the project, pending additional discussion. By letter dated February 22, 2008, ANC 6C stated that it no longer opposed the application for modifications to the PUD, subject to the agreement from the Applicant to include certain amenities in the project, as detailed on Exhibit 35. (Exhibits 26 and 35).

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2

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

3. The modifications to the approved PUD continue to implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The modified PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The height and density will not cause a significant adverse effect on any nearby properties and will enable the critical concentration of residents required to transform this underutilized area. Mixed use is appropriate for the Property; the uses are permitted as a matter-of-right for the designated zone districts. As demonstrated in the Traffic Study submitted by the Applicant and the report from DDOT submitted into the record, the modification will not cause adverse traffic impacts and the Property is located in close proximity to mass transit. The PUD, as modified, is appropriately designed to complement and respect the existing adjacent buildings with respect to height and mass. The approval of the application for a modification would not cause any potential adverse effects on the surrounding area.

5. The Commission finds that the additional height of the project – 70 feet rather than 65 feet – is an appropriate height and 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 create a design along 4<sup>th</sup> Street, NE, that is consistent with townhouses and townhouse neighborhoods throughout the Near Northeast Neighborhood, Capitol Hill, and the District.

6. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance or special exception 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 §§ 411.3 and 771.1 regarding the number of roof structures, and if necessary the requirements of §§ 411.5 and 771.1 regarding the uniform height of roof structures, can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The proposed roof structures result in a more attractive design solution for the proposed project.

7. The benefits and amenities provided by the PUD, are reasonable for the development proposed in Application No. 05-15A and commensurate with the amount of bonus density gained through this application.

8. The modification application seeks to increase the unit count of the PUD to a maximum of approximately 166 to 180 units, to have approximately 140 to 180 parking spaces (with an additional 12 visitor parking spaces), to increase the height to no more

than 70 feet (from 65 feet), and to decrease the lot occupancy from 85% to no more than 80%.

9. 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 that it will rely on for service.

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

11. Approval of the PUD modification application is not inconsistent with the Comprehensive Plan. Specifically, the Commission believes that the proposed project will provide a signature residential project of appropriate height that, along with the Senate Square project, provide a critical mass of new residents that will revitalize the commercial corridor of H Street, NE.

12. 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 which will help to enliven and revitalize the Near Northeast neighborhood of Ward 6.

13. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 6C voted not to oppose the project, if the Applicant agreed to certain additions to the project's amenities package.

14. The application to modify the PUD and remain consistent with the existing zoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

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

### **DECISION**

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this order, of Application No. 05-15A for modifications to the original consolidated review and PUD approved by Zoning Commission Order No. 05-15 for property located in Square

775, Lot 50. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans and materials prepared by Esocoff & Associates, submitted on July 2, 2007 (Exhibit 2), as modified by the Applicant's pre-hearing statement on November 28, 2007 (Exhibit 12), as modified by the Applicant's 20-day filing on January 18, 2008 (Exhibit 23), as modified by the Applicant's perspectives and drawings presented at the hearing and submitted into the record on February 7, 2008 (Exhibit 30), 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 maximum of approximately 166 to 180 residential units. The entire project will include no more than 160,000 square feet of gross floor area resulting in a FAR of no more than 5.65. The new building will not exceed a height of 70 feet and the total lot occupancy of the project will not exceed 80%.
3. Approximately 140 to 180 parking spaces shall be provided in the project and an additional 12 non-sellable parking spaces shall be reserved for visitors. At no time shall the fully-constructed project have less than a .9 to 1 ratio of all parking spaces on the Property (including the visitor spaces).
4. The project will include a minimum of approximately 9,186 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. As under the approval under Zoning Commission Order 05-15, the period of affordability will be twenty years. 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 or any other relevant government agency to make such changes comply with the same. The unit types and locations shall be as shown on pp. 12 and 13 of Exhibit A to the Applicant's 20 day submission (Exhibit 23) and further described on Exhibit 29 to the record.
5. The Applicant shall be bound by the First Source Employment Agreement it has entered into with the Department of Employment Services.
6. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development or any agreement having a similar effect as stipulated by any successor entity to the Office of Local Business Development.
7. The Applicant shall continue to have flexibility with the design of the PUD in the following areas:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
  - c. To make modifications to the design of the roof structures and the pergola, in order to lessen the appearance of height and soften the visual effect of the penthouse, including flexibility to have multiple heights to aesthetically refine and articulate rooftop structures for scale and compositional purposes;
  - d. To make modifications to the façade's brick patterning to further enrich the brick piers;
  - e. 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; and
  - f. To make alterations to the parking garage design provided that the parking garage contains a minimum number of parking spaces consistent with this Order, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.
8. The conditions of Zoning Commission Order No. 05-15 shall remain in full force and effect unless otherwise modified by this Order.
  9. Application No. 05-15A shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit for the buildings as specified in 11 DCMR § 2409.1.
  10. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated.



Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

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

Vote: \_\_\_\_\_

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

\_\_\_\_\_  
Anthony Hood  
Chairman  
Zoning Commission

\_\_\_\_\_  
Jerrily R. Kress, FAIA  
Director  
Office of Zoning

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW****ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-15A  
Case No. 05-15A**

**(Application for the Modification to the Consolidated Review and Approval of a  
Planned Unit Development by Broadway I Associates, LLC  
for the Property located at 318 I Street, NE (Square 775, Lot 50))**

\_\_\_\_\_, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 7, 2008, to consider an application from Broadway I Associates, LLC (the "Applicant") to modify the approved planned unit development for Lot 50 (formerly Lots 1, 22, 23, 32, 826, and 827) in Square 775 located at 318 I Street, NE. The Zoning Commission considered the application pursuant to Chapters 24 and 30 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. For the reasons stated below, the Zoning Commission hereby approves the application.

**FINDINGS OF FACT****The Applications, Parties, and Hearing**

1. On July 2, 2007, the Applicant filed an application ("Application") with the Commission for review and approval of modifications to an approved PUD in Square 775, Lot 50 (the "Property"). (Exhibits 1 and 2).
2. The PUD was originally approved in Zoning Commission Order No. 05-15 dated July 21, 2006.
3. The Zoning Commission approved a residential development with approximately 160,000 square feet of residential use, including 9,120 square feet of affordable housing, a height of 65 feet, and a floor area ratio ("FAR") of 5.65. A parking ratio of one parking space to each residential unit was approved for the PUD, with a minimum of 12 additional visitor spaces.
4. The Applicant submitted the Application to modify the Order to make the project more financially viable given recent changes to the real estate market. (Exhibits 1 and 2).
5. The Application requests modification to the PUD to: increase the approved unit count for the PUD from 125 to 140 units to approximately 166 to 180 units; to increase the height of the project from 65 to no more than 70 feet; to decrease the lot occupancy from 85% to no more than 80%; to reduce parking below a 1:1 ratio of parking spaces to

140 to 180 parking spaces; and to revise the building plans and elevations. (Exhibits 1 and 2).

6. The Office of Planning submitted its setdown report on August 31, 2007. (Exhibit 10).

7. At the September 10, 2007 Zoning Commission meeting, the Commission set the case down for a public hearing.

8. The Applicant submitted its pre-hearing submission on November 28, 2007 and its 20-day filing to the Commission on January 18, 2008. (Exhibits 12 and 23, respectively).

9. The Office of Planning submitted its final report on January 28, 2008. (Exhibit 24).

10. A duly noticed public hearing was held on February 7, 2008. There were no requests for party status. No parties or persons testified in support or in opposition of the modification to the PUD. ANC 6C, the ANC in which the Property is located, is automatically a party to this application.

11. The ANC appeared at the public hearing and requested an additional two weeks to work with the Applicant to finalize the amenities package. The Zoning Commission agreed to leave the record open for two weeks to allow for such communication.

12. The Zoning Commission took proposed action on March 10, 2007 approve the application by a vote of \_\_\_\_\_.

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

14. The Commission took final action to approve Case No. 05-15A on April 14, 2008, by vote of \_\_\_\_\_.

### **The Property**

15. The Property is in the C-2-B Zone District. The Property consists of approximately of 28,353 square feet of land and is located in the Near Northeast neighborhood of Ward 6 at the northwest corner of 4<sup>th</sup> and I Streets, NE. The Property was most recently used by the Uptown Bakery as a wholesale bakery establishment and accessory parking lot for the many trucks owned by the bakery. (Exhibit 2).

16. 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 and Moderate Density Commercial land use categories as shown on the District of Columbia

Generalized Land Use Map. The properties to the north, east, and south of the Property in Square 775 are included in the Moderate Density Residential land use category. The square directly to the west of the Property is located in the Low Density Commercial/Moderate Density Residential land use categories. The properties further to the south – on H Street – are in the Moderate Density Commercial/Medium Density Residential land use categories. The properties further to the west, which include the Station Place PUD site, are located in the High Density Commercial land use category. Prior to the recent revision to the Generalized Land Use Map, the Property was previously located in the Moderate Density Residential land use category. (Exhibit 2).

### **Modifications to the PUD**

17. The unit count for the entire PUD will increase to a total of approximately 166 to 180 units, rather than the previously approved maximum of 125 to 140 units. The real estate market has demonstrated a preference for smaller units rather than larger ones. Increasing the overall unit count will enable the Applicant to reduce the size of the units as necessary. (Exhibit 2).

18. The parking spaces will be altered from 1 parking space for each unit to 140 to 180 spaces. 12 visitor parking spaces will be also be provided. Access to the below-grade parking garage will remain from the public alley located on I Street, NE, in the middle of the block between 3<sup>rd</sup> and 4<sup>th</sup> Streets, NE. (Exhibit 2).

19. The reduction of the parking ratio will have a minimal effect on parking and traffic, if any. (Exhibit 2).

20. As a result of creating small units, the building foot print was reduced such that the lot occupancy decreased from 85% to no more than 80%. (Exhibit 2).

21. The facades and floor plans of the building will be modified pursuant to the plans submitted on July 2, 2007 (Exhibit 2), as modified by the Applicant's pre-hearing statement on November 28, 2007 (Exhibit 12), as modified by the Applicant's 20-day filing on January 18, 2008 (Exhibit 23), as modified by the Applicant's perspectives and drawings presented at the hearing and submitted into the record on February 7, 2008 (Exhibit 30).

22. The roof plan will include two roof structures and will require relief from Sections 411.3 and 711.1 as a result. In addition, as discussed at the February 7, 2008 public hearing, the Applicant requests flexibility in finalizing its design of the pergola and penthouse elements, in order to make modifications to lessen the appearance of height and soften the visual effect of the penthouse, including flexibility from the requirements of §§ 411.5 and 771.1 to have multiple heights to aesthetically refine and articulate rooftop structures for scale and compositional purposes. (Applicant's testimony and Exhibit 30).

23. The project includes extensive landscape and streetscape improvements on the Property. As under Order No. 05-15, the project reinvigorates the alley space by carefully cultivating the interior of the Property. The project entails the repaving of the

north/south alley and the eastern extensions of that system in consultation with DDOT. The Applicant also will pave the northwest corner of the Property in similar materials to effectively create a central, urban courtyard around a tree planter as an amenity for residents of the project and the square. The Applicant will work closely with the DDOT to implement the proposed alley and 4<sup>th</sup> and I Streets streetscape improvements adjacent to the site. (Applicant's testimony and Exhibit 2).

24. The modifications will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study Addendum filed on November 28, 2007 as Exhibit E to Exhibit 12 and DDOT's Report filed on February 1, 2008 (Exhibit 25).

25. 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 (maximum FAR of 6.0 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 FAR of 3.5 with a limit of 1.5 of non-residential FAR. (Exhibit 2).

26. The project design and massing are compatible with the surrounding area. As shown on the perspectives submitted by the Applicant at the February 7, 2008 hearing, special attention has been paid to the scale and massing of the surrounding area, particularly on 4<sup>th</sup> Street, NE, so that the project complements the residential neighborhood. In addition, the project acts as a bridging element to between the low scale Near Northwest neighborhoods to the larger structures to the south and west of the project, including the 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 design appropriate for the neighborhood. The 70 foot height of the project is mitigated by a setback on the upper floor of the building and appropriate architectural treatment of the eastern façade adjacent to the lower scale smaller buildings. The Applicant requests flexibility to further refine the brick patterning to further enrich the façade's piers, as discussed at the February 7, 2008 public hearing. (Applicant's testimony, Exhibit 2, and Exhibit 30).

27. As detailed in Exhibit E of Exhibit 2 in the record, no adverse environmental impact will result from the construction of the modified 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 property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the project. (Exhibit 2).

28. The project will not have an adverse impact on the public facilities that it 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, NE, 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 has been 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. (Exhibit 2).

29. 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 exact requirements of the Zoning Regulations. Specifically, the Applicant seeks a roof structure relief to allow multiple roof structures. Under 11 DCMR §§ 411.3 and 711.1, buildings are required to provide only one roof structure. Multiple roof structures will allow the Applicant to reduce the perception of height at the Property and create a more attractive roof plan. (Applicant's testimony, Exhibit 2, and Exhibit 30).

30. At the February 7, 2008 public hearing, the Commission accepted Phil Esocoff of Esocoff and Associates as an expert in the field of architecture and urban design based on a review of their resumes (submitted as an exhibit the Applicant's November 28, 2007 pre-hearing submission).

### **Public Benefits and Amenities**

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

- a. Housing: The greatest benefit to the neighborhood and the District as a whole is the creation of new housing opportunities consistent with the Zoning Regulations and the Comprehensive Plan. With the modification, the Applicant will be able to provide even more housing units than were originally approved. In addition, the project will create approximately 13 affordable residential units in the Near Northeast neighborhood. The units will comprise approximately 9,186 square feet of gross floor area that 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 has distributed the affordable units throughout the building and evenly across the sizes and configurations of units offered at the property. In addition, the project is an amenity in that it proposes the construction of an entirely residential project on a commercially-zoned site. (Exhibits 2 and 29).
- b. Urban Design, Architecture, Site Planning, and Green Building Practices: The significant architectural quality and superior urban design in the development exceeds that of most matter-of-right projects. The landscaping of the open courtyard will be an attractive amenity for the building's residents and neighbors. The enhanced streetscape will similarly be an amenity for the building's residents and the neighborhood. In addition, the Applicant is included a high degree of green building elements in the

project, as detailed in its list of “Low Impact Development” characteristics submitted as Exhibit 28 to the record. (Exhibits 2 and 28).

- c. Site Planning – The proposed project involves substantial 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 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, including upgrades to the public alley system and the streetscape. (Exhibit 2).
- d. 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 of I Street, NE. The pedestrian entrance is on I Street at the corner of the property near 4<sup>th</sup> Street, NE, and the first floor residences facing the streets have their own individual entrances. (Exhibit 2).
- e. Revenue for the District – The Applicant noted that the addition of approximately 166 to 180 new households will result in the generation of additional tax revenues for the District of Columbia. (Exhibit 2).
- f. Employment and Training Opportunities – The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services (“DOES”), and will enter into a Memorandum of Understanding with the Office of Local Business Development (“OLBD”), or any substitute agreement stipulated by the relevant District agency. (Exhibit 2).
- g. 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 2).
- h. Monetary Contributions to Neighborhood Organizations: The Applicant has already contributed \$25,000 to the H Street Main Street’s Ready to Work Program, which was a condition of approval of Case No. 05-15 and a request of ANC 6C. The Applicant has agreed to contribute \$10,000 to the Friends of J.O. Wilson in order to provide grounds improvements to the J.O. Wilson Elementary School. (Exhibits 31, and \_\_ [36?]).
- i. Provision of a Construction Management Plan and Citizen’s Council and Traffic Calming Measures – The Applicant has agreed to provide a citizen’s council and construction management plan to address issues and concerns that arise during construction. In addition, the Applicant has agreed to work with DDOT and the general contractor to try to route construction traffic in

such a way as to lessen the impact on the surrounding community. (Exhibits 35 and \_\_ [36?]).

- j. Encourage General Contractor to Hold Job Fair – The Applicant has agreed to encourage the project’s general contractor to hold one or more job fairs in the neighborhood in an effort to solicit interest from community residents in construction and/or permanent employment opportunities. (Exhibits 35 and \_\_ [36?]).
- k. Community Reception – The Applicant has agreed to hold a community reception as part of the grand opening for the project. (Exhibits 35 and \_\_ [36?]).
- l. Availability of Parking for Neighborhood – The Applicant has agreed to explore the feasibility of permitting neighborhood residents to lease excess parking spaces in the project not otherwise leased by tenants, subject to availability from time to time. (Exhibits 35 and \_\_ [36?]).

32. The Commission finds that the modification is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing, transportation measures, and uses of special value to the neighborhood. The amount of amenities proffered is in accordance with the additional density requested in this application modification.

#### **Compliance with PUD Standards**

33. In evaluating a PUD modification application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” 11 DCMR § 2403.8. Given the level of project amenities and public benefits, and the fact that the modifications are of a minor nature, the Commission finds that the development incentives are appropriate to approve the modifications.

#### **Comprehensive Plan and Public Policies**

34. The proposed PUD is consistent with and fosters the goals and policies enumerated in the newly-adopted District of Columbia Comprehensive Plan ("Comprehensive Plan").

- a. Land Use – The Land Use Element of the Comprehensive Plan seeks to stimulate the construction of housing, particularly around Metrorail stations and on infill sites. (Sections 306.12 and 307.4 of the Comprehensive Plan). The proposed modification project offers just such a project that will address the “gap” in the urban fabric that currently detracts from the character of a residential neighborhood. The proposed development complements the established character of the area and will not create sharp changes in the



physical development pattern. The 4<sup>th</sup> and I Street facades, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create a sense of scale and visual interest and weave the project into the surrounding community. Further, the project takes advantage of the site's proximity to the Union Station Metro Station. (Exhibit 2).

- b. Transportation - The Transportation Element of the Comprehensive Plan seeks to encourage the implementation of bicycle facilities in new residential buildings (Section 409.11). The project has been planned to be responsive to such focus on bicycle facilities. The project will include a great deal of bicycle parking, on at least two levels of the parking garage that will facilitate the greater use of bicycles by the residents of the project, and direct them away from the use of cars and taxis. (Exhibit 2).
- c. Housing - The Housing Element of the Comprehensive Plan seeks to stimulate the development of new housing to meet the needs of present and future District residents, particularly on underutilized land (Sections 503.2 and 503.4). In addition, the Comprehensive Plan seeks to require the design of high-quality affordable housing (Section 503.6) and to stimulate such housing stock through the use of density bonuses (Section 504.14). The creation of approximately 166 to 180 new residential units on a site that is currently an underutilized industrial and commercial property, fenced off from the remainder of the neighborhood with a barbed wire fence, including a substantial 9,186 square foot affordable housing allocation, fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. The creation of a significant residential development on the Subject 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, and hopefully new, commercial uses on nearby H Street, NE. Perhaps most importantly, the project will provide additional housing without displacing any current residents of the District. (Exhibit 2).
- d. Environmental - The Environmental Element of the Comprehensive Plan seeks to enhance the planting and maintenance of street trees (Section 603.4) and to encourage the use of landscaping to beautify the city (Section 603.7). As part of its project design, the project architects have implemented a high degree of landscaping and hardscaping. In addition, the project will include several new street trees along both 4<sup>th</sup> and I Streets, NE. The result will be a site that is significantly more attractive than it is now, but also a site that is greatly more environmentally-beneficial. (Exhibit 2).
- e. Economic Development - The Economic Development Element of the Comprehensive Plan seeks to stimulate neighborhood commercial vitality (Section 713.5) and to encourage local hiring incentives (Section 717.20). The project will achieve these economic development policies. As a result

of altering an underutilized site to an active well-designed residential site with approximately 166 – 180 households, the project will stimulate the vitality of the area. The project will bring residents close to the H Street corridor and will assist in creating a critical mass of residents able to support the desired new commercial uses on that corridor, and elsewhere in the Near Northeast neighborhood. The project will also include both a Local Small and Disadvantaged Business Entity Memorandum of Understanding with LBOC that will require the greater inclusion of LSDBE entities in the project and a First Source Agreement with DOES that will require the employment of District residents. (Exhibit 2).

- f. Urban Design - The Urban Design Element of the Comprehensive Plan seeks to strengthen neighborhood character and identity (Section 910.6) and create attractive facades with well-designed buildings (Section 910.12). The proposed project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a prominent residential building will both complement and enhance the established residential neighborhood that surrounds the site. (Exhibit 2).
- g. Capitol Hill Area Element - The proposed PUD is consistent with the goals and policies of the Capitol Hill Area Element (Section 1502) in many ways. It is particularly more in alignment with the Capitol Hill Area Element than the current industrial/commercial bakery and larger-scale delivery operation. The project will “reinforce the fabric of the neighborhood and provide needed housing” on a site that is “already zoned for commercial use” (Section 1507.2(b)), allow for a greater critical mass of residents to assist in the continued revitalization of H Street and other desirable retail destinations in the neighborhood (Section 1507.2(d)), reinforce the residential nature of the neighborhood (Section 1507.2(e)), reinforce and complement the “unique urban design” of the area and the neighborhood and reconcile “issues relating to scale, texture, materials, and context” in the neighborhood (Section 1507.2(h)), allay concerns about affordable housing (Section 1507.2(i)) both by the creation of affordable housing in the project and offering another option for housing with several configurations of units and increasing the supply of housing on Capitol Hill and in the Near Northeast Neighborhood, and address concerns about parking (Section 1507.2(j)) since the building will be “over parked” according to the Zoning Regulation requirements, including some visitor spaces. In addition, the project enhances and protects Capitol Hill’s system of historic alleys (Section 1608.8) and converts non-residential structures to housing (Section 1608.10). (Exhibit 2).
- h. Generalized Land Use Map - The recently-revised and adopted Generalized Land Use Map includes the Subject Property in the Moderate Density Residential Land Use Category. In Zoning Commission Case No. 821, the Property was rezoned from C-M-1 to C-2-B, in large part, because the Office of Planning 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 PUD is also consistent with the Generalized Land Use Map, which recommends the subject site for Low Density Commercial and Moderate Density Residential land uses. The PUD will be developed under the existing C-2-B Zone District. (Exhibit 2).

### **Office of Planning Report**

35. By report submitted on January 28, 2008, OP recommended approval of Application No. 05-15A. OP stated that the proposed benefits and amenities proposed by the Applicant exceed the requested flexibility. OP also requested additional information on the affordable housing square footage breakdown, execution of the First Source Employment and Minority Business Opportunity Commission Program Agreements, a checklist of Leadership in Environmental Engineering and Design (LEED) features of the project, and documentation of the \$25,000 contribution to the community. (OP Testimony and Exhibit 24).

36. The OP report submitted on January 28, 2008 stated that OP believes that the land use impact of the project would be favorable to the District and that the proposed PUD modification will achieve multiple goals of the Comprehensive Plan. (OP Testimony and Exhibit 24).

### **ANC 6C Resolution**

37. By letter dated February 5, 2008, ANC 6C stated that it opposed the proposed modification to the project because the proposal was "taking too much from the community ... and not offering sufficient amenities in return." The ANC also designated Alan Kimber to continue discussions with the Applicant regarding amenities and possibly support the project, pending additional discussion. By letter dated February 22, 2008, ANC 6C stated that it no longer opposed the application for modifications to the PUD, subject to the agreement from the Applicant to include certain amenities in the project, as detailed on Exhibit 35. (Exhibits 26 and 35).

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2

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

3. The modifications to the approved PUD continue to implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The modified PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The height and density will not cause a significant adverse effect on any nearby properties and will enable the critical concentration of residents required to transform this underutilized area. Mixed use is appropriate for the Property; the uses are permitted as a matter-of-right for the designated zone districts. As demonstrated in the Traffic Study submitted by the Applicant and the report from DDOT submitted into the record, the modification will not cause adverse traffic impacts and the Property is located in close proximity to mass transit. The PUD, as modified, is appropriately designed to complement and respect the existing adjacent buildings with respect to height and mass. The approval of the application for a modification would not cause any potential adverse effects on the surrounding area.

5. The Commission finds that the additional height of the project – 70 feet rather than 65 feet – is an appropriate height and 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 create a design along 4<sup>th</sup> Street, NE, that is consistent with townhouses and townhouse neighborhoods throughout the Near Northeast Neighborhood, Capitol Hill, and the District.

6. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance or special exception 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 §§ 411.3 and 771.1 regarding the number of roof structures, and if necessary the requirements of §§ 411.5 and 771.1 regarding the uniform height of roof structures, can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The proposed roof structures result in a more attractive design solution for the proposed project.

7. The benefits and amenities provided by the PUD, are reasonable for the development proposed in Application No. 05-15A and commensurate with the amount of bonus density gained through this application.

8. The modification application seeks to increase the unit count of the PUD to a maximum of approximately 166 to 180 units, to have approximately 140 to 180 parking spaces (with an additional 12 visitor parking spaces), to increase the height to no more

than 70 feet (from 65 feet), and to decrease the lot occupancy from 85% to no more than 80%.

9. 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 that it will rely on for service.

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

11. Approval of the PUD modification application is not inconsistent with the Comprehensive Plan. Specifically, the Commission believes that the proposed project will provide a signature residential project of appropriate height that, along with the Senate Square project, provide a critical mass of new residents that will revitalize the commercial corridor of H Street, NE.

12. 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 which will help to enliven and revitalize the Near Northeast neighborhood of Ward 6.

13. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 6C voted not to oppose the project, if the Applicant agreed to certain additions to the project's amenities package.

14. The application to modify the PUD and remain consistent with the existing zoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

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

### **DECISION**

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this order, of Application No. 05-15A for modifications to the original consolidated review and PUD approved by Zoning Commission Order No. 05-15 for property located in Square

775, Lot 50. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans and materials prepared by Esocoff & Associates, submitted on July 2, 2007 (Exhibit 2), as modified by the Applicant's pre-hearing statement on November 28, 2007 (Exhibit 12), as modified by the Applicant's 20-day filing on January 18, 2008 (Exhibit 23), as modified by the Applicant's perspectives and drawings presented at the hearing and submitted into the record on February 7, 2008 (Exhibit 30), 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 maximum of approximately 166 to 180 residential units. The entire project will include no more than 160,000 square feet of gross floor area resulting in a FAR of no more than 5.65. The new building will not exceed a height of 70 feet and the total lot occupancy of the project will not exceed 80%.
3. Approximately 140 to 180 parking spaces shall be provided in the project and an additional 12 non-sellable parking spaces shall be reserved for visitors. At no time shall the fully-constructed project have less than a .9 to 1 ratio of all parking spaces on the Property (including the visitor spaces).
4. The project will include a minimum of approximately 9,186 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. As under the approval under Zoning Commission Order 05-15, the period of affordability will be twenty years. 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 or any other relevant government agency to make such changes comply with the same. The unit types and locations shall be as shown on pp. 12 and 13 of Exhibit A to the Applicant's 20 day submission (Exhibit 23) and further described on Exhibit 29 to the record.
5. The Applicant shall be bound by the First Source Employment Agreement it has entered into with the Department of Employment Services.
6. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development or any agreement having a similar effect as stipulated by any successor entity to the Office of Local Business Development.
7. The Applicant shall continue to have flexibility with the design of the PUD in the following areas:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
  - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
  - c. To make modifications to the design of the roof structures and the pergola, in order to lessen the appearance of height and soften the visual effect of the penthouse, including flexibility to have multiple heights to aesthetically refine and articulate rooftop structures for scale and compositional purposes;
  - d. To make modifications to the façade's brick patterning to further enrich the brick piers;
  - e. 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; and
  - f. To make alterations to the parking garage design provided that the parking garage contains a minimum number of parking spaces consistent with this Order, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.
8. The conditions of Zoning Commission Order No. 05-15 shall remain in full force and effect unless otherwise modified by this Order.
  9. Application No. 05-15A shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit for the buildings as specified in 11 DCMR § 2409.1.
  10. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated.

Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

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

Vote: \_\_\_\_\_

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

\_\_\_\_\_  
Anthony Hood  
Chairman  
Zoning Commission

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Jerrily R. Kress, FAIA  
Director  
Office of Zoning