

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 05-24

As Secretary to the Commission, I hereby certify that on JUL 14 2006 copies of this Z.C. Order No. 05-24 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Councilmember Vincent C. Gray |
| 2. Cynthia Giordano, Esq.
Arnold & Porter LLP
555 12 th Street, N.W.
Washington, D.C. 20004-1206 | 7. Office of Planning (Ellen
McCarthy) |
| 3. Naomi Robinson, Chair
ANC 7E
5001 Hanna Place, SE, Ste. B
Washington, DC 20019 | 8. Ken Laden, DDOT |
| 4. Commissioner Rosa Hamlett
ANC/SMD 7E03
503 53rd Street, SE
Washington, DC 20019 | 9. Zoning Administrator |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Jill Stern, Esq.
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002. |
| | 11. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:



Sharon S. Schellin

Secretary to the Zoning Commission
Office of Zoning **ZONING COMMISSION**
District of Columbia

CASE NO. 05-24
EXHIBIT NO. 43

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.05-24
EXHIBIT NO.43

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-24

Z.C. Case No. 05-24

(Consolidated PUD –Eastgate Family Housing)

April 20, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on January 12, 2006 to consider an application from the D.C. Housing Authority and the associated private development team of A&R/THC II LLC (collectively, the “Applicant”) for review and approval of a consolidated planned unit development (“PUD”) pursuant to Chapter 24 of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. The proposed development is a mixed-income residential community with various building types and an open space preserve. The public hearing was conducted in accordance with the contested case provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application subject to the specified conditions.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On July 28, 2005, the Applicant submitted an application to the Zoning Commission for a consolidated PUD utilizing the existing R-5-A zoning of the subject property.
2. The application requested approval of the plans and site plans depicting 186 dwelling units, including 158 townhouses, 20 detached single-family dwellings, and eight (8) units in two (2) grandhomes (each having four units). The plans also include an open space preserve, or “Urban Tree Park,” of 2.5 acres on the site.
3. The Office of Zoning received the Applicant’s Pre-Hearing Submissions on October 21 and December 8, 2005.
4. A description of the proposed development and the Notice of Public Hearing were published in the *D.C. Register* on November 18, 2005 (52 DCR 10177). The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject property, as well as to Advisory Neighborhood Commission (“ANC”) 7E.
5. The parties in the case were the Applicant and ANC 7E.

6. The Zoning Commission opened and completed the public hearing on January 12, 2006. At the conclusion of the public hearing, the Zoning Commission requested supplemental information and analysis from the Applicant, which was received on January 26, 2006. Additional information was requested at a public meeting on February 9, 2006. That information, submitted on February 13, 2006, included a new Exhibit A depicting the Applicant's proposed surface for the project's walking trail.
7. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated February 24, 2006, found the proposed PUD would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.
8. The Zoning Commission took proposed action to approve the application on February 13, 2006, by a vote of 4-1-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael Turnbull to approve; John G. Parsons opposed). The Commission took final action on April 20, 2006, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Michael Turnbull John G. Parsons; Gregory N. Jeffries not present, not voting).

The Site and the Area

9. The property that is the subject of this Order consists of approximately 16.03 acres of land area (698,382 square feet) in the Marshall Heights neighborhood. The site is bounded by Fitch Street, 51st Street, F Street, Queen's Stroll Place (Drake Place), and Benning Road, S.E. It is a rolling hillside that changes in grade by approximately 80 feet, rising from Benning Road and Fitch Street to the level of the rest of the neighborhood at its north and east ends. The property is identified as Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320 (the "PUD Site").
10. Surrounding development adjacent to the perimeter streets of the PUD Site is predominantly three- four-story apartment buildings or open spaces, with the exception of a group of six detached houses along Queen's Stroll Place. There is a C-2-A commercial strip on the west frontage of Benning Road between Fitch and F Streets.
11. The majority of the land area of the surrounding neighborhood is zoned R-5-A (low-density general residential) or R-2 (semi-detached dwellings). R-5-A is a low-density apartment house zone that allows a variety of residential building types within a height limit of forty feet (40' or three stories) and a maximum density of 0.9 floor area ratio ("FAR"). With a PUD, the maximum permitted building height is sixty feet (60') and the maximum density FAR is 1.0 FAR. Existing development in the surrounding neighborhood is predominantly detached and semi-detached houses and four-story apartment buildings. There is a C-2-A (low-moderate density commercial) strip directly across Benning Road and C-1 (neighborhood commercial) site about 1,000 feet to the east on Benning Road.
12. Community services such as the Metropolitan Police Boys and Girls Club and the Benning Park Recreation Center are located just to the north and south of the residential area. The largest parcels of land in the neighborhood (other than Eastgate Gardens itself)

accommodate three public schools -- Fletcher-Johnson Middle School, J.C. Nalle Elementary School, and C.W. Harris Elementary School. Numerous places of worship also serve the neighborhood.

The PUD Project

13. The apartment buildings formerly constituting the 230-unit Eastgate Gardens public housing development have been demolished, and the PUD Site is currently vacant.
14. The Applicant plans to develop the PUD Site with 186 dwelling units, including 158 townhouses, 20 detached single-family dwellings, and eight units in two grandhomes (each having four units). The overall goal is to create a stable, mixed-income residential community, with the emphasis on affordable housing. Eighty units (43 percent [43%]) will be in the low-income range, 42 units (23 percent [23%]) will be in the moderate-income range and 64 units (34 percent [34%]) will be market rate. The breakdown of the 186 dwelling units by building type, affordability, and tenure is as follows:

<u>Building Type/Number</u>	<u>Tenure</u>	<u>Affordability</u>
53 townhouse	Rental	At or Below 60% Area Median Income ("AMI")
19 townhouses	Sale	At or Below 60% AMI
42 townhouses	Sale	60-80% AMI
44 townhouses	Sale	Above 80% AMI (Market)
20 detached houses	Sale	Above 80% AMI (Market)
8 grandhome units	Rental	At or Below 60% AMI

15. The site plan is generally described as follows. Two- and three-story townhouses in groups of three to five units will line the perimeter street frontages facing the surrounding neighborhood along F Street, Queen's Stroll Place, 51st Street, and Fitch Street. The only exceptions to this pattern are a short section of open space along Fitch Street and two grandhomes sited at the corner of 51st Street and Queen's Stroll Place. Eighty-six of the townhouses will have garages and 72 will not; all of the detached dwellings will have either a one-car or a two-car garage.
16. The new community will be pedestrian-friendly, with ample sidewalks, street lamps, and ample open spaces. Common areas and the proposed urban tree park will provide a total of 2.88 acres of open space in the 16.03-acre site. Two tot lots are included in the project plans.
17. The interior of the PUD Site will be served by two new streets that are proposed to be public streets, lined with six-foot-wide sidewalks, lighting, and street trees following public street standards. These streets will be continuations of E and F Streets outside the PUD Site. The streets will form a U-shaped loop road where both frontages will be developed with detached single-family houses, so that like housing types will face each other along the street frontages.
18. Five-foot-wide easements will run through the center of rear yards between the two new public streets. The easements will provide access to the dwellings for residents of the for-

sale units and management in the case of rental units, and are needed for maintenance and rear access to yards. Easements are also proposed in other locations, as depicted on the Circulation and Parking Plan (Sheet C-9.0 of the plans). The easements will allow “dry” utilities to be located underground, a major benefit in terms of visual and design quality.

19. One proposed new street will be constructed in the southern part of the PUD Site. It will be curvilinear, running generally east-west, and will connect to 51st Street on the east and Fitch Street on the west. The south frontage will be developed with groups of townhouses and the north frontage with six detached dwellings. An east-west public alley will serve the interior of this block. A tot lot will be located at the western end of the town houses facing the new interior street.
20. A large open space of approximately 2.5 acres is planned for the area to the south and west of the detached houses. This area consists of steeply-sloping land with substantial coverage of mature trees. The Applicant determined that creating streets and new buildings on this part of the PUD Site would be environmentally undesirable. The Applicant submitted plans to preserve the mature trees in this open space and create an Urban Tree Park. A pedestrian path at the upper part of this area will link the two tot lots, together with a sitting area and meadow. In the lower part, the Applicant’s landscape architect will work in cooperation with the Casey Tree Foundation, the Urban Forestry Administration, and the Earth Conservation Corps to re-establish the heavily treed area as a self-sustaining natural woodlands.
21. Building heights will range from just under 23 feet for the two-story detached houses to 33 feet, 6¾ inches for the three-story townhouses. The grandhomes and two-story townhouses will be in the range of 23 to 24 feet high. All of the proposed building heights are within the 60-foot building height allowed for a PUD in the R-5-A zone. Lot occupancy will be 35.15 percent (35.15%) based on the area devoted to residential lots, or 27.23 percent (27.23%) based on the lot areas plus open space. The proposed lot occupancy is within the allowed 40 percent (40%) lot occupancy in the R-5-A District.
22. The Applicant testified that the new residential community will have substantially fewer dwelling units than the previous Eastgate Gardens public housing complex, so that automobile trip generation will be reduced. Metrobus service connecting to the Benning Road Metrorail Station and other destinations is convenient to the PUD Site, with numerous lines along Benning Road and 51st Street.
23. The Commission credits the conclusion of the Applicant’s traffic expert that the proposed PUD will not create any significant adverse traffic impacts. Intersections in the immediate vicinity of the PUD Site currently operate at acceptable levels of service during both the morning and afternoon peak hours, and are expected to continue to operate acceptably upon build-out and occupancy of the Eastgate Family Housing development. The PUD will not create any appreciable roadway capacity, safety, or operational deficiencies, or otherwise be unacceptable in terms of its traffic-related impact on the surrounding area.
24. The proposed PUD will provide ample parking in excess of the R-5-A requirement of one parking space per dwelling unit, in this case a requirement of 186 spaces. There will be

132 spaces in garages and 186 in driveways for a total of 318 off-street parking spaces. In addition, there will be 56 curbside parallel parking spaces on public streets.

Public Benefits and Project Amenities

25. The Application offers the following public benefits and project amenities and other statements of compliance with the PUD Evaluation Standards set forth in 11 DCMR § 2403:
- (a) A new, high-quality, mixed-income residential community will replace the former, deteriorated public housing complex that exhibited social, physical, and environmental problems. The revitalization plan features a housing mix tailored to homeowners and renters with a wide spectrum of incomes, with an emphasis on affordable units. More than half of the units included in the PUD – 97 units or 52 percent (52%) – will be affordable to low-income residents, while 25 units (13 percent [13%]) will be affordable to moderate-income residents and 64 units (34 percent [34%]) will be available at market rates.
 - (b) The development plan exhibits attractive urban design, new landscaping, a 2.5-acre Urban Tree Park, environmental improvements, and renewed street connections with the surrounding neighborhood. An improved street network will be created, and a balanced mixture of housing types and densities is proposed according to planning principles.
 - (c) The site plans, landscape plans, and architectural plans exhibit a high quality of planning and urban design.
 - (d) The Applicant will execute a First-Source Employment Agreement with the Department of Employment Services and a Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development to ensure local, small, and disadvantaged vendor participation.
26. The Commission finds that the Project 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 and affordable housing, job training and employment opportunities, transportation measures, and uses of special value to the neighborhood.

Zoning Flexibility

27. The PUD Site is zoned R-5-A. The Applicant requested flexibility from requirements pertaining to lot occupancy, side yards, rear yards, driveway widths, and multiple buildings on a single lot.
28. In light of the topography of the PUD Site, which varies from flat to undulating to very steep, and to preserve the topography in an environmentally-sensitive manner, the Applicant proposed to reduce rear and side yards and to exceed maximum lot occupancy on many lots in the PUD. Of the 180 lots within the PUD, 75 (or 45 percent [45%]) will

exceed the maximum permitted lot occupancy of 40 percent (40%) and 64 (35 percent [35%]) will have a reduced rear yard. The Commission credits the testimony of the Office of Planning that the Applicant's proposed deviations in side and rear yards would not adversely affect the privacy, light, and air to each unit.

29. A side yard is required on 88 of the 180 lots, but, as proposed, 77 of those lots will not comply with the minimum requirement; most will have side yards of 7.5 feet, but six lots would have side yards of three feet or less.
30. As proposed, driveways for the townhouses along the new streets, Queen's Stroll Place, and F Street will not be 28 feet apart, as required by § 2117.8(d). The Applicant indicated that the distance requirement could not be satisfied by pairing the driveways, because the planned gable roofs over the garages will not permit the merging of rooflines due to drainage concerns.
31. The Applicant also requested flexibility from zoning requirements so as to construct the two grandhome buildings on one record lot. Construction of both grandhomes on one lot will allow the buildings to meet rear yard requirements and to provide on-site parking.
32. The Commission credits the testimony by the Office of Planning that the requested zoning flexibility is commensurate with the public benefits and amenities proffered by the Applicant in the proposed PUD, including affordable housing, urban design and architecture, preservation of open space, an urban park, site planning, pedestrian access, a first-source employment program, and a local business opportunity program.

Comprehensive Plan

33. The PUD project furthers specific public plans and policies, including the Eastgate/Marshall Heights Neighborhood Alliance Plan and the D.C. Office of Planning's Cluster 33 SNAP initiative.
34. The PUD is not inconsistent with the Comprehensive Plan for the National Capital. The PUD Site is a designated Development Opportunity Area and the proposed development will help carry out numerous goals and objectives regarding the development of housing and affordable housing in the District of Columbia. The PUD will advance at least six of the ten Major Themes of the Comprehensive Plan: "Stabilizing and improving the District's neighborhoods;" "Respecting and improving the physical character of the District;" "Preserving and promoting cultural and natural amenities;" "Preserving and ensuring community input;" "Providing for diversity and overall social responsibilities;" and "Promoting enhanced public safety."
35. The scale of development and the existing R-5-A zoning are fully consistent with the land use designation of "Moderate-Density Residential" on the Generalized Land Use Map of the Comprehensive Plan.

Office of Planning Report

36. By report dated January 3, 2006 and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the Application. OP noted that the

Applicant's proposal "meets the PUD evaluation standards outlined in § 2403 and is in accordance with the intent of the Zoning Regulations, the PUD process, and the consolidated PUD."

37. OP stated that, "The proposal is a very important residential development in furtherance of the District's aim to provide a variety of housing types for different income levels. The application is consistent with the requirements of the Zoning Regulations, elements of the Comprehensive Plan, and the Eastgate-Marshall Heights Neighborhood Alliance Master Plan."
38. OP cited public benefits including affordable housing, urban design and architecture, preservation of open space, an urban park, site plan, pedestrian access, and First Source Employment and LSDBE commitments. The OP report also noted that the site is a designated Development Opportunity Area in the Land Use Element of the Comprehensive Plan, which provides additional policy support for the PUD project.

Reports of Other Agencies

39. The District Department of Transportation ("DDOT"), by report dated January 11, 2006, indicated that had no objection to the overall proposal, but recommended changes regarding driveway spacing and roadway design. DDOT stated that the proposed new roadways and alleys must be constructed to DDOT standards and offered to work with the Applicant to ensure such compliance.
40. DDOT also expressed a policy of wider driveway spacing, shared driveways, or fewer driveways in the interest of allowing more curbside parking on the public streets. At the public hearing, the Zoning Commission asked the Applicant to submit a post-hearing report on this and other issues. See the discussion of this item under "Contested Issues."

Advisory Neighborhood Commission 7E

41. Advisory Neighborhood Commission 7E voted to support the PUD project and testified in support at the public hearing and submitted a letter indicating its support.

Public Testimony

42. Several individuals testified in support of the application. There was no testimony in opposition to the application.

Contested Issues

43. The DDOT report recommended that driveway spacing be increased or that fewer driveways or shared driveways be provided in order to increase curbside parking for visitors, delivery vehicles, and overflow parking for residents.
44. In its post-hearing submission dated January 26, 2006, the Applicant responded as follows:

- (a) There will be 345 parking spaces available on the PUD site for 186 dwelling units, a ratio of 1.8 spaces per dwelling. These will include regulation spaces in garages, parking spaces in driveways, plus 40 curbside spaces on streets.
- (b) Because of the ample parking provided, the curbside parking spaces on peripheral streets -- as proposed or if increased -- would only be needed very occasionally, typically when a resident has a large social gathering.
- (c) As stated by OP at the public hearing, elimination of driveways would likely reduce total parking available. Typically, loss of a driveway eliminates the garage parking space and the driveway parking space, while creating only one additional curbside space.
- (d) The Applicant submitted four alternative driveway configurations reflecting implementation of DDOT's recommendations.
- (e) FedEx and United Parcel Service ("UPS") deliveries will occur only occasionally, and these vehicles park for very short periods of time. They will either park curbside (even if partially blocking a driveway for 1-3 minutes typically) or they will double park. This is what they do on neighborhood streets generally.
- (f) Typically, United States Postal Service ("USPS") mail delivery vehicles will park in one (or two) locations within a small community such as this, and the postal worker will handle deliveries on foot.
- (g) Although driveway spacing is relatively close:
 - 1) These driveways serve single-family dwellings (except for the two grandhome buildings) and thus will be sparsely used, unlike multi-family or commercial driveways.
 - 2) The visual effect will be softened by plantings of shade trees, ornamental trees, and shrubs as set forth in the Landscape Plan.
- (h) The Zoning Regulations at § 2117.9(b) authorize a waiver of any parking requirement for groups of three or more row dwellings where no rear access is feasible. The Applicant prefers to meet parking needs to the extent feasible within sound planning principles.

CONCLUSIONS OF LAW

1. The planned unit development process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides public benefits (11 DCMR § 2400.1) and allows flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2).

2. Under the PUD process of the Zoning Regulations, the Zoning Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.
5. Approval of this application is consistent with the purposes of the Zoning Regulations and the Zoning Map of the District of Columbia and will promote orderly development in conformity with the zone plan as a whole.
6. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the proposed height and density of buildings will not cause any adverse effect on nearby properties. The proposed residential uses are appropriate on this site, which is well served by a major arterial street, bus lines, and a nearby mass transit station. The impact of the project on the surrounding area will not be adverse, but rather will enhance and promote the revitalization of the area.
7. The development of the project will be compatible with District-wide and neighborhood goals, plans, and programs and is sensitive to environmental protection, public safety, and other significant policy objectives.
8. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
9. The proposed PUD meets the contiguity requirements of § 2401.3 of the Zoning Regulations.
10. The project benefits and amenities are reasonable for the development proposed on the site and responsive to the needs of the community and the city.
11. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the PUD will be mitigated.
12. The Commission is required under D.C. Code §1-309.10(d) (2001) to give great weight to the issues and concerns raised in the recommendations of the affected ANC. The Commission notes that ANC 7E testified and submitted a report in support of the application.
13. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law stated herein, the Zoning Commission orders **APPROVAL** of the consolidated PUD for property bounded generally by Fitch, F, and 51st Streets, Queen's Stroll Place, and Benning Road, S.E., specifically Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the site plan and architectural and landscape plans submitted as Exhibits 14, 17, 32, and 38 in the record of this case, and as modified by the guidelines, conditions, and standards of this Order.
2. The project shall be developed with residential buildings, accessory parking, and open space as depicted on the approved plans.
3. The maximum building height in the project shall be 35 feet and the maximum aggregate gross floor area shall result in density of 0.80 FAR.
4. In accordance with the plans cited above, the approved PUD shall consist of 186 dwelling units, distributed as follows by building type:

(a) Single-family detached dwellings	20
(b) Single-family townhouses	158
(c) Grandhome units (four units per building)	8
Total dwelling units	186
5. Approximately forty percent (40%) of the dwelling units will be affordable to households having sixty percent (60%) or less of Area Median Income, and approximately twenty percent (20%) will be moderate-income units serving households having incomes between sixty percent (60%) and eighty percent (80%) of AMI, in accordance with the requirements of the public agencies providing financial subsidies for this purpose.
6. There shall be a minimum of 147 on-site parking spaces that conform to zoning standards, plus approximately 158 spaces in driveways and 40 curbside spaces as depicted on the plans, for a total of 345 parking spaces.
7. The Applicant shall have the flexibility to:
 - (a) Vary the location and design of all interior components of the buildings, provided that the variations do not change the exterior configuration or appearance of the buildings;
 - (b) Make minor refinements to exterior details and dimensions needed to comply with the D.C. Building Code and the Americans with Disabilities Act ("ADA") or otherwise necessary to obtain a building permit;

- (c) Erect an entry sign that is consistent with the design character of the development and all applicable laws regarding signs; and
 - (d) Vary the mix of dwelling unit types by up to ten percent (10%).
- 8. The Applicant may erect six-foot wood privacy fences, of the type shown in the Applicant's submission, in the rear yards of the dwelling units, provided that a fence shall not be erected within 10 feet of a rear easement, as described in Finding of Fact No. 18.
- 9. The Urban Tree Park shall be located and designed generally as depicted in the landscape and Urban Tree Park plans in Exhibits 14, 17, 32, and 38 of the record and shall be developed concurrently with the completion of the balance of the PUD. The approved plan is generalized in places in that specific plantings of trees and other plants, selective removal of trees, and other horticultural actions will be decided by the Applicant's Landscape Architect in concert with other public and private entities assisting in the project, as documented in the record. In addition to the pedestrian path depicted on the concept plan for the Urban Tree Park, the Applicant shall have the option, but not the requirement, of designing and creating a meandering path through the park, following a route that takes into account existing and proposed plantings, slope, and other factors determined by the Applicant's design team.
- 10. The Applicant shall execute the following agreements prior to the issuance of a final order:
 - (a) A First-Source Employment Agreement with the Department of Employment Services and
 - (b) A Memorandum of Understanding with the District of Columbia Department of Small and Local Business Development to ensure local, small, disadvantaged vendor participation.
- 11. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the subject property in accordance with this Order, or amendment thereof by the Zoning Commission.
- 12. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a certified copy of the covenant with the Office of Zoning.

13. This final 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, the Applicant shall file for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.
14. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

For the reasons stated above, the Commission concludes that the applicant has met the burden of proof, and it is hereby **ORDERED** that the application be **GRANTED** subject to **CONDITIONS**.

On February 13, 2006, the Zoning Commission **APPROVED** the application by a vote of 4-1-0 (Gregory Jeffries, Anthony J. Hood, Carol J. Mitten, and Michael G. Turnbull to approve; John G. Parsons opposed).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, by a vote of 4-0-1 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, and Michael G. Turnbull to adopt; Gregory Jeffries not present, not voting).

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



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning