GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 05-25

As Secretary to the Commission, I herby certify that on OCT 2 6 2006 copies of this Z.C. Order No. 05-25 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. Celia Barnes Chair
   ANC 5C
   PO Box 77761
   Washington, DC 20013

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 05-25
EXHIBIT NO. 31

ZONING COMMISSION
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EXHIBIT NO.31

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. 05-25
Z.C. Case No. 05-25
Consolidated Planned Unit Development – 4th Street and Rhode Island Avenue, N.E.
H Street Development Corporation
June 12, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 6, 2006, to consider an application from H Street Community Development Corporation (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") under the existing C-3-A Zone District. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). 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 Application, Parties, and Hearing

1. On July 29, 2005, the Applicant filed an application with the Commission for consolidated review and approval of a PUD for the property located on Lot 808 in Square 3629 ("the Subject Property"). The Subject Property consists of approximately 39,190 square feet of land and is located on the east side of 4th Street between Rhode Island Avenue and Edgewood Street, N.E. The Subject Property is zoned C-3-A. The Applicant is not seeking a zoning map amendment in connection with this application.

2. At its public meeting held on October 17, 2005, the Commission voted to schedule a public hearing on the application.

3. On December 6, 2005, the Applicant filed a prehearing statement with the Commission that included the information requested by the Commission and additional information on the application requested by the Office of Planning.

4. On February 14, 2006, the Applicant filed a supplemental prehearing statement that included the civil engineering drawings for the project, a Memorandum of Understanding ("MOU") executed by the Applicant, and a copy of the cover letter transmitting the executed MOU to the Department of Small and Local Business Development.

5. After proper notice, the Commission held a hearing on the application on March 6, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 5C, the ANC within which the property is located.

6. On March 6, 2006, ANC 5C provided the Commission with a resolution dated February 21, 2006 indicating that at a properly noticed meeting with a quorum present, it voted unanimously in support of the PUD application.

7. There were no parties or persons in opposition to the PUD.

8. At its public meeting on April 20, 2006, the Zoning Commission took proposed action by a vote of 3-0-2 (Carol J. Mitten, Kevin Hildebrand, and John G. Parsons to approve; Anthony J. Hood and Gregory N. Jeffries not participating, not voting) to approve the application and plans that were submitted to the record.

9. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by report dated May 10, 2006, found that the proposed PUD would neither affect the federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

10. The Commission took final action to approve the application on June 12, 2006 by a vote of 3-0-2 (Carol J. Mitten, Kevin Hildebrand, and John G. Parsons to approve; Anthony J. Hood and Gregory N. Jeffries not participating, not voting).

The PUD Project

Overview

11. The Applicant proposes to construct a nine-story apartment house containing approximately 170 units, including at least 3,000 square feet of retail space on the ground floor. The project will also include approximately 173,355 square feet devoted to residential use. The proposed density of the building is 4.5 floor area ratio ("FAR"). A minimum of twenty percent (20%) of the residential floor area, or 34,671 square feet, will be devoted to affordable housing. The height of the new building will be 90 feet. The building will contain approximately 128 underground parking spaces.

Site Description

12. The Subject Property is designated as Lot 808 in Square 3629 and contains 39,190 square feet of land. The Subject Property is currently unimproved land. The Subject Property is located in Ward 5 and is approximately four blocks west of the Rhode Island Metro Station. The Generalized Land Use Map of the Comprehensive Plan designates the Subject Property in the moderate-density commercial land use category.

13. The Subject Property is surrounded by a number of zoning districts and land uses. The square in which the Subject Property is located is zoned C-3-A in its entirety and includes a number of commercial uses. However, the square in which the Subject Property is located is bounded by property zoned C-2-A and C-M-2 to the south, property zoned C-M-2 and R-5-D to the north and east, and property zoned R-3 and C-2-A to the west.

Project Design

14. The PUD is envisioned as a future residential anchor of the Rhode Island Avenue corridor. The design of the building will allow for a sufficient number of dwelling units for management efficiency and to support the costs of the substantial concrete and brick masonry structure required for the two levels of below-grade parking, a noncombustible fully sprinkled construction classification, and the necessary multilevel configuration appropriate for both the development of this site and utilization of the allowable and proposed density.

15. The building has been designed to include 3,000 gross square feet of retail uses. Entrances to both the residential and retail uses will be located on 4th Street, the only public street adjacent to the site. All other site boundaries abut private property, where required fire separations have been provided to allow for the enlarged window openings associated with the project and enclosed sunrooms designed into every above-grade apartment. Grade-level apartments have been designed with raised or fenced secured gardens and terraces.

16. The project will include an adequate amount of open space, including approximately 5,500 square feet of private gardens. The project will also include a 5,000-square-foot green roof, approximately 17,000 square feet of private sunrooms, 6,400 square feet of secured garden and recreation space at grade level and on a raised terrace level, a 500-square-foot function space available for community use, and a 1,350-square-foot health club for resident use with an outdoor covered terrace.

17. The use of traditional residential red and light brick masonry facades and garden walls allows the building to blend with its residential neighbors and will result in a long and sustainable upscale appearance. The brick masonry structure is accented by the floor-to-ceiling projected glass windowed sunroom enclosures.

18. The landscaping plan includes a combination of landscaped walks and terraces, green areas with ground cover and a combination of shade trees, smaller ornamental flowering and evergreen trees, and flowering foundation plantings. The plant materials were selected to minimize maintenance, endure both north side shade and south side direct sun, and to survive in the four feet of earth fill provided over the concrete plaza decks above the underground garage.

19. The project will include 128 below-grade parking spaces, which exceeds the zoning requirement. One off-street loading berth and one off-street delivery and trash pick-up space will be provided for the residential use, as well as one off-street locking berth and trash pick-up area for the retail uses.

20. All apartments will comply with Fair Housing accessibility requirements. A number of units will be handicapped adaptable, and five handicapped parking spaces, including one van space, will be provided.

Matter-of-Right Development Under Existing Zoning

21. The Subject Property is zoned C-3-A. The C-3-A District permits medium-density development, with a density incentive for residential development within a general pattern of mixed-use development. 11 DCMR § 740.4. An apartment house is permitted as a matter-of-right in the C-3-A District. 11 DCMR § 741.1. A maximum height of sixty-five (65) feet, with no limitation on the number of stories, is permitted in the C-3-A District. 11 DCMR § 770.1. The C-3-A District permits a maximum density of 4.0 FAR for an apartment house or other residential use, and a maximum density of 2.5 FAR for other permitted uses. 11 DCMR § 771.2. Under the PUD guidelines for the C-3-A District, the maximum permitted height is ninety (90) feet, and the maximum density is 4.5 FAR for residential uses and 3.0 FAR for commercial uses. 11 DCMR §§ 2405.1 and 2405.2.

Development Incentives and Flexibility

22. The Applicant requested the following areas of flexibility from the Zoning Regulations:

    a. Residential Recreation Space: Section 773.3 of the Zoning Regulations provides that, when all or a portion of a building in the C-3-A zone is devoted to a residential use, an area equal to not less than 15% of the residential gross floor area must be provided as residential recreation space. The project will include 173,355 square feet of gross floor area devoted to residential use, and is thus required to include 26,003 square feet of residential recreation space. However, the project only includes 8,250 square feet of qualifying residential recreation space, which amounts to approximately 4.76% of the residential gross floor area.

    b. Court Width Requirements: Section 776.3 of the Zoning Regulations provides that, where a court is provided for a residential building or portion of a building devoted to residential uses, at any elevation in the court, the width of court must be a minimum of four (4) inches per foot of height, measured from the lowest level of the court to that elevation, provided, that in no case can the width of court be less than fifteen (15) feet. The Applicant requests flexibility from this requirement because, as shown on Sheet 11 of the plans, a number of the courts provided are less than the required width.

c. Roof Structure Requirements: Section 411.3 requires that all penthouses and mechanical equipment be placed in one enclosure. However, the Applicant proposes to provide two enclosures: one for a stair tower and one for the elevator penthouse. The stair tower enclosure is ten (10) feet wide and twenty (20) feet in length. The elevator penthouse is approximately twenty-three (23) feet wide and has a height of eighteen (18) feet.

Public Benefits and Amenities

23. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

a. Housing and Affordable Housing. The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. Pursuant to § 771.2 of the Zoning Regulations, commercial uses in the C-3-A zone are permitted to have a density of 2.5 FAR, and residential uses are permitted to have a density of 4.0 FAR. Thus, based upon a land area of approximately 39,190 square feet, as a matter-of-right, the project is permitted to have approximately 97,975 square feet devoted to commercial uses and approximately 58,785 square feet devoted to residential uses. However, in order to help meet the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative, the Applicant is forgoing the right to develop the maximum amount of permissible commercial floor area in exchange for developing an additional 16,595 square feet of residential floor area.

The proposed PUD project will contain a total of approximately 173,355 square feet devoted to residential uses. A minimum of twenty percent (20%) of the residential floor area, or 34,671 square feet, will be devoted to affordable housing. This affordable component will be equally divided among the junior one-bedroom, one-bedroom, and two-bedroom units. The affordable units will be placed and integrated throughout floors one through seven of the development. Eligible tenants will be families and individuals whose annual incomes are at least sixty percent (60%)—but no more than eighty percent (80%)—of the Area Median Income ("AMI"). The Applicant's affordable housing program will ensure that work force housing units are available for residents. The Applicant's affordable housing commitment shall be provided as specified in the Planned Unit Development Inclusionary Housing Commitment Standards included as Exhibit 23 of the record of this case.

b. Urban Design, Architecture, Landscaping, and Open Space. The proposed PUD is intended to enhance the streetscape and surrounding neighborhood. The use of traditional residential brick masonry facades and garden walls will allow the building to blend properly with its residential neighbors. The brick masonry structure will be accented by the floor-to-ceiling projected glass windowed

sunroom enclosures. Moreover, the combination of the open space areas and the landscaping result in attractive interior and exterior spaces.

c. Transportation Features. The project includes an underground parking garage that will contain 128 parking spaces, which exceeds the number of parking spaces required under the Zoning Regulations, so that residents and users of the project will not have to compete for on-street parking spaces. Moreover, the project includes a bicycle storage area within the garage that will accommodate twelve (12) bicycles.

d. Uses of Special Value to the Neighborhood. The Applicant's proposal to provide approximately 3,000 gross square feet of ground floor retail is of special value to the neighborhood, because it will provide much-needed service to residents in the area and the District. Although the space has not been leased yet, the Applicant anticipates that this space will be rented to professional service providers and retailers such as a computer store, fabric store, candy store, ice cream parlor, exercise studio, consignment shop, bookstore, or other compatible neighborhood-oriented retail uses. This retail space is offered as a community benefit, and, in the event that the Applicant is unable to lease all of this retail space, the Applicant proposes to convert this space for residential or residential-related uses. Moreover, as a result of interacting with the Edgewood community on this project, the Applicant is also committed to providing a minimum of 500 square feet of the project for community uses. The programming of this space will be finalized in consultation with Advisory Neighborhood Commission 5C and residents of the Edgewood community.

e. Employment and Training Opportunities. In order to further the District of Columbia's policies regarding the creation of employment opportunities, the Applicant has entered into a Memorandum of Understanding with the District's Department of Small and Local Business Development. Under the terms of the Memorandum, the Applicant commits to make a bona-fide effort to utilize local, small, and disadvantaged business enterprises certified by the District of Columbia Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation in the contracted development costs in connection with the project. The Applicant has also entered into a First Source Employment Agreement with the Department of Employment Services ("DOES") ensuring cooperation with DOES for employee recruitment for jobs created by the PUD with the objective that fifty-one percent (51%) of the employees hired in connection with the development of the project are District of Columbia residents.

f. Green Design Features. The project includes a number of "green design" elements, including the following:

1. Approximately 5,000 square feet of green roof space.

2. The provision of a bicycle storage area within the garage that can accommodate twelve (12) bicycles.

3. The use of thermally-efficient double-glazed windows and storefronts. The use of insulated, weather tight exterior exit and service doors. Full thick-batt insulation in exterior brick-faced cavity walls with three-inch (3") minimum rigid roof insulation and an insulated upper garage ceiling to protect conditioned first floor space.

4. Use of "Energy Star" refrigerators and dishwashers in each unit. The building design also includes a high-efficiency, gas-fired, incremental hot water vessel for each dwelling unit that supplies both domestic hot water and hot water to air handler coils for heating with thermal comfort levels conforming to ASHRAE 55-1992.

5. Use of natural, organic, locally-produced, and post-consumer recyclables. Use of non-toxic low-emitting paints, sealants, composite wood products, carpet, and resilient flooring related to healthy building standards.

6. Planting of additional street trees (Silver Lindens) within the public open space along 4th Street with liriope ground cover at four (4) foot by six (6) foot tree bases, coupled with extensive courtyard landscaping to reduce heat island at grade.

7. The provision of ninety percent (90%) daylight and views from interior spaces, exterior lighting that reduces light pollution, and ozone protection through the elimination of HCFC's and halons from HVAC and fire suppression systems.

8. Use of recycling containers within the trash room for separate collection of paper, glass, and plastic.

Compliance with the Comprehensive Plan

24. The Commission finds that the project is not inconsistent with the Comprehensive Plan as follows:

a. The Generalized Land Use Map for the District of Columbia. The proposed development is consistent with the Generalized Land Use Map, which designates the Subject Property in the moderate-density commercial land use category and the immediate surrounding area in the moderate-density residential land use category.

b. Stabilizing and Improving the District's Neighborhoods. The proposed PUD will include uses of importance to the immediate neighbors of the Subject Property

and the District. The proposed residential use with a ground floor retail use will create a stable and vibrant neighborhood. Moreover, the inclusion of affordable housing units will increase housing opportunities in Ward 5 and the District.

c. Increasing the Quantity and Quality of Employment Opportunities in the District. The Applicant has entered into a Memorandum of Understanding with the District's Department of Small and Local Business Development. The Applicant has also entered into a First Source Employment Agreement with the Department of Employment Services.

d. Respecting and Improving the Physical Character of the District. The Applicant's proposal respects and improves the physical character of the District through the construction of a well-planned and carefully designed development that provides a mix of uses and a range of housing affordability.

e. Reaffirming and Strengthening the District's Role as an Economic Hub. The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. Housing construction for all income levels is paramount to the success of the economic goals of the District. This mixed-income, mixed-use project furthers this theme by incorporating ground-level retail uses along with residential development to promote the economic health and well-being of the region.

25. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

a. Economic Development Element. According to the Economic Development Element of the Comprehensive Plan, the District's overall economic development goals include the generation of a high-performance economy, the creation of job opportunities for District residents, and the expansion of the revenue base. (10 DCMR § 200.5.) The proposed PUD meets each of these goals by creating additional housing that will bring new residents to the area and including approximately 3,000 square feet of retail uses that will attract employers, employees, and additional tax revenue to the area.

b. Housing Element. According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. (10 DCMR § 300.4.) Also as stated in the Housing Element, the District recognizes its obligation to facilitate the availability of adequate, affordable housing to meet the needs of current and future residents. The District strives to stimulate a wider range of housing choices and strategies through the production of new units for a variety of household types. A priority under the Housing Element of the Comprehensive Plan is to maintain and upgrade the District's affordable rental

stock, a goal that is supported by the proposed PUD. (10 DCMR §§ 300.1 – 300.3.)

The proposed PUD meets this goal by providing a total of 173,355 square feet of gross floor area devoted to residential use, of which a minimum of approximately 34,671 square feet of gross floor area will be devoted to affordable housing.

c. Urban Design Element. The Urban Design Element states that it is the District's goal to promote the protection, enhancement and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. (10 DCMR § 701.1.) The Urban Design Element also encourages new construction or renovation/rehabilitation of older buildings in areas with vacant or underused land or structures in order to create a strong, positive physical identity. (10 DCMR § 712.1.) The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. (10 DCMR § 709.1) The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development.

d. Land Use Element. The Land Use Element encourages a substantial amount of new housing in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. (10 DCMR § 1100.2.) Policies designed to support residential neighborhoods include promoting the enhancement and revitalization of District neighborhoods for housing and related uses, ensuring a broad range of residential neighborhood options, and providing wide-ranging assistance for neighborhoods of relatively poor quality by joint public and private action and concentrated governmental attention and resources. (10 DCMR §§ 1104.1 (a), (c), and (e), and 1118.6.) The Subject Property is located within a commercial center designated for new or upgraded multi-neighborhood uses, and the Subject Property is also in close proximity to the Rhode Island Avenue Metrorail Development Opportunity Area.

The proposed PUD responds to these goals with the development of a high-quality mixed-use project that includes housing opportunities for a range of incomes. Moreover, the proposed PUD also includes appropriate commercial development to serve the needs of the District's economy and its neighborhoods through the inclusion of approximately 3,000 square feet of ground floor retail space that will serve both the residents of the development and the surrounding neighborhood.

Office of Planning Report

26. By report dated February 22, 2006, the Office of Planning ("OP") recommended approval of the PUD application. OP found that the proposed PUD is consistent with the intent of the Zoning Regulations, the specific PUD criteria outlined in the Zoning Regulations, and the Comprehensive Plan. OP also found that the benefits and amenities associated with this PUD proposal exceed the degree of zoning relief required and that the proposed development would be an asset to the community. OP recommended approval of the application and the Applicant's proposed amenities package that includes:

    - A minimum of 20% of residential gross floor area dedicated to affordable housing for residents between 60% to 80% of AMI, and subject to the Planned Unit Development Inclusionary Housing Commitment Standards attached to OP's report;

    - An assigned 500-square-foot community meeting space;

    - Environmental benefits, including a 5,000-square-foot green roof area; and

    - First Source Employment Agreement and a Memorandum of Understanding committing the Applicant to award at least 35% of contract value to certified local, small, and disadvantaged businesses in the project's development.

27. The Applicant submitted revisions to the Inclusionary Housing Commitment Standards, marked as Exhibit 23 in the record of this case, which sets forth the manner in which the Applicant would provide affordable housing.

Other Government Agency Reports

28. The D.C. Fire and EMS Department submitted a letter dated December 30, 2005 indicating no objection to the proposed PUD, provided that the construction complies with the current Fire and Building Codes (2000).

29. The Department of Housing and Community Development ("DCHD") submitted a letter, dated January 3, 2006, indicating that DCHD supports the proposed PUD.

30. The District Department of Transportation ("DDOT") submitted a final report, dated February 16, 2006, indicating that DDOT has no objections to the current project proposal.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives,

provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, and loading, yards, or 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. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned projects that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and neighborhood-serving retail uses for this project are appropriate for the PUD site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

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

DECISION

1. In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for consolidated review and approval of a planned unit development ("PUD") under the existing C-3-A District for property located on Lot 808 in Square 3629. This approval is subject to the following guidelines, conditions, and standards.

2. The PUD shall be developed in accordance with the plans prepared by Collins & Kronstadt Leahy Hogan Collins Draper LLP dated November 29, 2005 and marked as Exhibit 13A in the record (the "Plans").

3. The project shall have a maximum density of 4.5 FAR and a maximum gross floor area of 176,355 square feet. The project shall contain approximately 170 residential units, with the flexibility to construct between 153 and 187 residential units.

4. The project may include a minimum of 3,000 square feet of retail space on the ground floor. If the Applicant's good-faith effort to lease the retail space fails, the Applicant may convert this space for residential or residential- related uses.

5. Affordable housing shall be provided as specified in the Planned Unit Development Inclusionary Housing Commitment Standards included as Exhibit 23 in the record of this case. The principal provisions of the Planned Unit Development Inclusionary Housing Commitment Standards are:

   a. the Applicant shall reserve 34,671 square feet of the total marketable residential square footage for units affordable to households earning not less than 60% and not more than 80% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area and adjusted for family size;

   b. the mixture of affordable unit types shall be comparable to the mixture of market rate unit types, such that the proportion of affordable studios and one bedroom units may not exceed the proportional mix of market rate studios and one bedroom units;

   c. the internal square footage of affordable units shall be comparable to market rate units;

   d. the affordable units shall be evenly distributed vertically and horizontally throughout all building and/or phases of the project, except for the 8th and 9th floors, which have been architecturally designed to distinguish them from the other floors and have higher ceiling heights;

   e. the external design and materials of affordable units shall be indistinguishable from market rate units. Internally, appliances and finishes shall be comparable, but may be of different quality; and

f. the first purchaser of each affordable unit shall be required by the Applicant (or its successor in title) to execute a covenant that binds such purchaser and all subsequent purchasers to comply with the affordability requirements specified in the Planned Unit Development Inclusionary Housing Commitment Standards included as Exhibit 23 in the record of this case, which shall be attached to the covenant.

6. The project shall include a minimum of 128 off-street parking spaces.

7. The project shall include a 500-square-foot function space available for community use. The programming of this space shall be finalized in consultation with Advisory Neighborhood Commission 5C and residents of the Edgewood community.

8. Landscaping, streetscape, and open space treatment shall be as shown on Exhibits 13A and 19 in the record of this case.

9. The project shall include the environmental features listed in Finding of Fact 22(f), including, but not limited to 5,000 square feet of "green" roof space.

10. The plans submitted in conjunction with the building permit application for this project shall clearly identify the locations where natural, organic, locally-produced, and post-consumer recyclables are utilized in the proposed building.

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

a. To vary the location and design of all interior components provided that the variations do not materially 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, without reducing the quality of the materials; and

c. To make refinements to exterior materials, details and dimensions, railings, roof, architectural embellishments, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals.

12. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Office of Local Business Development and commit to make a bona-fide effort to utilize local, small, or disadvantaged business enterprises certified by the District of Columbia Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation in the contracted development costs in connection with the development of the project.

13. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve

the objective that fifty-one percent (51%) of the employees hired in connection with the development of the project are District of Columbia residents.

14. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner(s) 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 on and use the property in accordance with this Order or amendment thereof by the Zoning Commission.

15. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

16. The PUD approved by the Zoning Commission 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 as specified in 11 DCMR § 2409.1, and the Applicant must start construction within one year after the permit is obtained.

17. 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.

On April 20, 2006, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (Carol J. Mitten, Kevin Hildebrand, and John G. Parsons to approve; Anthony J. Hood and Gregory N. Jeffries not participating, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on June 12, 2006, by a vote of 3-0-2 (Carol J. Mitten, Kevin Hildebrand, and John G. Parsons to approve; Anthony J. Hood and Gregory N. Jeffries not participating, 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 OCT 27 2006.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning