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D.C. OFFICE OF ZONING

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2300 N Street, N.W.
Washington, D.C. 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

August 14, 2006

VIA HAND DELIVERY

Phil Feola
202-663-8789
phil.feola@pillsburylaw.com

Carol Mitten
Chairperson, D.C. Zoning Commission
441 Fourth Street, NW, Second Floor
Washington, D.C. 20001

**Re: Zoning Commission Case No. 05-26, 2950 Tilden Street, NW –
Response to Office of Planning's Supplemental Report and
Proposed Zoning Order**

Dear Chairperson Mitten:

In a Supplemental Report dated July 25, 2006, the Office of Planning ("OP") recommends further changes to the Applicant's 5-story proposal which was submitted into the record (Exhibit No. 145) on July 31, 2006. The Applicant is prepared to accommodate a majority of the requested constraints proposed by the OP.

The Applicant can develop the property in accordance with all the conditions suggested by the Office of Planning except for the linear dimension of the courtyard at the rear of the building and the depth of the rear yard. OP suggests a rear yard setback of at least 26 feet. The Applicant's proposal has a rear yard setback of 26 feet (or greater) for much of the property line. For the remainder, the Applicant proposes a minimum of 23 feet which will allow the apartment units to be designed appropriately and still provide adequate space for a "planting" buffer.

The Applicant also requests a variation from the OP recommendation for the east-west dimension of the rear courtyard. OP suggests this dimension should be 91 feet. The Applicant proposes it to be 70 feet. This small difference is critical to the feasibility of the project. Further, the 70 foot dimension does not create an adverse impact because: (a) all units in 3883 Connecticut Avenue (the property which abuts the subject site) with north-only orientations still face the gracious, landscaped courtyard; (b) the Applicant's architect has studied this rear condition and concluded that the difference between a 70-foot width and 91-foot width is minimal in terms of the effect of light and air; and (c) the Board of Directors of the Unit Owners Association of 3883 Connecticut Avenue Condominium, in a letter to its residents dated June 26, 2006 (submitted to the record by ANC 3F as a part of Exhibit 152) stated that the provision of the "56-foot buffer between the unit owners facing the development and the 2950 Tilden Street southern exterior" was one of the considerations factored in its withdrawal of opposition status. The letter was written after the Applicant's submission of the revised courtyard dimensions (70 feet by 56 feet) and mentions no concern regarding this revised linear dimension of the courtyard.

**ZONING COMMISSION
District of Columbia**

CASE NO. 05-26
EXHIBIT NO. 156

To aid in the Zoning Commission's evaluation of the Applicant's proposed compromise with OP Supplement Report, the table below identifies the areas compromise that are achievable.

	Applicant's July 12 th 5-Story Scenario	OP Recommendation	Proposed Resolution
Height	61.4 ft	60 ft	60 ft
Penthouse	Elevator, Stair Only	No Penthouses	No Penthouses
Front Yard Setback (min)	10 ft	10 ft	10 ft
Rear Yard Setback (min)	21.8 ft	26 ft	23 ft
Rear Courtyard (Depth)	56 ft	56 ft	56 ft
Rear Courtyard (Width)	70 ft	91 ft	70 ft
Landscaping	Screening	Screening	Screening
Front Lay-By	35 ft.	19 ft	19 ft

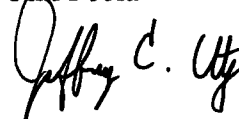
Through numerous iterations over almost three years, the Applicant has demonstrated a sensitivity to the contextual appropriateness of the project and a responsiveness to recommendations from the Office of Planning and the community. The Applicant has reduced the footprint, density and scale of the residential building while maintaining the project amenities. An entire sixth floor and penthouse were removed. Provisions of a green roof, generous courtyards, articulation, a 2:1 parking ratio in addition to contributions to community organizations have been maintained at their prior levels or increased. However, in order to be able to build this project it is critical to maintain the current proposed FAR of 2.52 (87,500 gross square feet).

Enclosed, for the Commission's review and use, is a Proposed Findings of Fact and Conclusions of Law. Thank you for your consideration.

Sincerely,



Phil Feola



Jeffrey Utz

Enclosure

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 05-26

Case No. 05-26

**(Consolidated Planned Unit Development and Amendment to the Zoning Map for
Tilden 800 LLC)
_____, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on June 5, 2006 and June 22, 2006 to consider an application from Tilden 800 LLC for the consolidated review and approval of a planned unit development and an amendment to the Zoning Map of the District of Columbia from the R-2 to the R-5-C District for Lot 800 in Square 2234 located at 2950 Tilden Street, NW, pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022.

FINDINGS OF FACT

1. The property that is the subject of these applications, located at 2950 Tilden Street, NW (Lot 800, Square 2234) (the "Subject Property" or "Property"), is owned by Tilden 800 LLC (hereinafter the "applicant"). The applicant filed an application with the Zoning Commission ("Commission") on July 29, 2005 for review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia.

2. The Zoning Commission unanimously agreed to set the case down for a public hearing at its January 9, 2006 public meeting. The Zoning Commission held public hearings on the above-mentioned applications on June 5, 2006 and June 22, 2006, which were conducted in accordance with the provisions of 11 DCMR §3022.

3. At the June 5, 2006 public hearing, the Commission granted party status to the Tilden Coalition, as a party in opposition, and the Unit Owners Association of 3883 Connecticut Avenue, as a party in opposition. Advisory Neighborhood Commission ("ANC") 3F, in which the property is located, is automatically a party to this application. The Commission denied an application for party status the 3016 Tilden Street, NW Cooperative because it did not show that it was uniquely affected by this application. (June 5, 2006 Transcript ("Transcript One"), pp. 7 – 10.)

4. The Subject Property is located in the Cleveland Park/Forest Hills neighborhood of Ward 3. The Subject Property consists of approximately 34,686 square feet of land area with frontage on Tilden Street, NW and is currently vacant. It is located 232 feet to the east of Tilden Street's intersection with Connecticut Avenue, NW on the south side of Tilden Street, NW. Tilden Street, NW is an east/west connector street that

runs through the Rock Creek National Park. East of the site is the Embassy of Kuwait; to the west, a five-story apartment building; to the south is a nine-story condominium building; to the north is Tilden Street, NW (a median-divided road) and on the north side of Tilden there are semi-detached residences (2½ - 3 stories) elevated approximately twelve feet above the Tilden Street grade; and to the southeast is the Melvin Hazen Park. (Exhibit 4, pp. 4 – 5; Exhibit 14, p. 2.)

5. The area to the west and south of the site is in the R-5-D Zone District as is an area on Tilden Street east of the site. The Property to the north and immediately east is in the R-2 Zone District. The Connecticut Avenue corridor, in this location, is characterized by high rise residential buildings. The neighborhood is the location of single family houses, apartment buildings, the Hillwood Museum, Howard University Law School, the Levine School of Music, the Edmund Burke School, the University of the District of Columbia, Intelsat and a number of foreign chanceries. (Exhibit 4, p. 5; Exhibit 14, p. 2-3.)

6. The Generalized Land Use Map includes the Subject Property in the high density residential land use category. The Commission notes that the Generalized Land Use Map is intended to serve as a “general” map and is not intended to serve as a parcel by parcel limitation on permitted development. (Exhibit 14, pp. 11 – 12.)

7. There is extensive, walkable retail along Connecticut Avenue, NW. There are also two Metrorail Stations on the Red Line within walking distance of the Property. Outdoor recreational amenities are plentiful and include hiking and biking in Rock Creek Park. The Property has 247.76 feet of frontage along Tilden Street and is 140 feet deep with a slope of eleven feet from street front to its rear property line. (Exhibit 4, p. 5; Exhibit 14, p. 3.)

8. The applicant seeks to construct a residential project on the Subject Property that will have two stories at the northern edge of the proposed building rising to five stories at the rear of the property near 3883 Connecticut Avenue, NW. The Project takes its design inspiration from the traditions of both Cleveland Park and Forest Hills. The building is designed to be a hybrid of a traditional multifamily building and rowhouse typology. The Project is configured to maximize sensitivity to the semi-detached homes on Tilden Street and to bridge the relationship to surrounding high density development. Viewing the Project from Tilden Street, the building will appear to be three completely distinct structures. Towards the rear of the Property, the three building elements become “connected” and the height rises to four stories and then five stories. Each setback in height produces generous terraces above which will heighten the open space aspect of the design. Some of the units have direct access from the street. These multiple “front doors” at the street level provide a “mews-like” feel to the courtyards. (Exhibit 4, p. 6-7; Exhibit 14, p. 3-4.)

9. The project will be a residential building with a total gross floor area of approximately 87,500 gross square feet above grade. The floor area ratio (“FAR”) of the Subject Property will be approximately 2.52, with 49 dwelling units, and a building

height of approximately 60 feet. The project will have a lot occupancy of approximately 57%. In addition, the project would have no penthouses and a front yard setback of 10 feet. (Exhibit 4, p. 6; Exhibit 14, p.3; Transcript One, p. 21; Testimony of T. Thomm, Transcript One, pp. 24; June 22, 2006 Transcript ("Transcript Two"), p. 147; Exhibit 145; Exhibit _____ [Number given to the applicant's cover letter entitled "Response to Office of Planning's Supplemental Report".].)

10. The applicant reduced the height and size of the building many times during discussions with the ANC and the community over more than two years. Initially, the project's PUD application proposed 97,370 square feet of square footage and a building height of approximately 67 feet at its highest point. The initial building design also included 60 residential units. (Exhibit 4, pp. 1,6 and D1 of Exhibit A; Exhibit 14, pp. 4 and D1 of Exhibit A; Exhibit _____ [Number given to the applicant's cover letter entitled "Response to Office of Planning's Supplemental Report".].)

11. The proposed building has a rear yard of 23 feet, increasing to 56 feet for a span of 70 feet. Initially, this rear yard was proposed to be 26 feet, 4 inches. The back of the building is jogged and has terracing to create visual interest for neighboring buildings, 3901 Connecticut Avenue, 3945 Connecticut Avenue, NW, and 3883 Connecticut Avenue, NW. (Exhibit 4, pp. 6-7 and p. A7 of Exhibit A; Exhibit 14, p. 4 and p. D1 of Exhibit A; Exhibit _____ [Number given to the applicant's cover letter entitled "Response to Office of Planning's Supplemental Report".].)

12. The building's façade will be made of precast masonry and/or brick. The applicant proposes garden walls for portions of the site to conform to the existing character of Tilden street, which currently includes stone retaining walls on the north side of Tilden Street. There are no windows on the wall closest to the Embassy of Kuwait. At the ground floor, courtyard space will be divided into private and communal gardens. The landscaping will provide visual texture for the entire neighborhood. Further, the "fire lane" at the building's rear will be composed of grasscrete, as opposed to concrete or macadam, in order to soften the landscape buffer at the rear of the building. (Exhibit 4, p. 7; Exhibit 14, pp. 4, 13 – 14; Testimony of S. Sorg, Transcript One, p. 74.)

13. An underground, two-level garage provides parking for approximately 110 cars. The parking exceeds a ratio of 2 spaces for each apartment unit, well in excess of the Zoning Regulations requirement of 1 parking space for each apartment unit in the requested zone district. The garage is accessed via a sixteen-foot wide driveway. The below grade area will also include a fitness area for residents of the proposed building. (Exhibit 14, p. 5; Testimony of S. Sorg, Transcript One, p. 40; Testimony of T. Thomm, Transcript One, pp. 57 - 58.)

14. The loading berth is located immediately adjacent to the garage ramp to Tilden Street at the northwest corner of the property. It is 12 feet by 30 feet. The trash room will be connected to the loading berth by a corridor. (Exhibit 14, p. 5 and p. A3 of Exhibit A; Exhibit 145, p. A3; Testimony of S. Sorg, Transcript One, pp. 39 - 40.)

15. A lay-by for delivery vehicles and guest drop-off and pick-up was added to the front of the Property at the request of the District of Columbia Department of Transportation and will not exceed 19 lineal feet. (Exhibit 14, p. A3 of Exhibit A; Transcript One, pp. 75 – 76; Exhibit 145, p. A3 of Exhibit A.)

16. The project will also include an environmentally sensitive “green” roof area. The “green” roof will reduce the heat island effect of the project and will provide a more visually appealing view for neighboring property owners that will be able to see the roof of the project. The project will contain other aspects of green design, as listed in Exhibit 123, including bicycle storage, water-saver fixtures and appliances, energy-efficient design, storage of recyclable materials, waste management and daylight usage. (Exhibit 14, p. 12; Testimony of T. Thomm, Transcript One, p. 30; Testimony of S. Sorg, Transcript One, p. 39; Exhibit 123.)

17. The applicant also proposes to amend the Zoning Map in order to change the Zone District of the Subject Property from R-2 to R-5-C. The existing R-2 District permits a maximum height of 40 feet (3 stories) and a maximum lot occupancy of 40%. The Zone District has no prescribed maximum FAR. This application requests a rezoning of the Property to the R-5-C Zone District which permits apartment buildings, as a matter-of-right, with a FAR of 3.5, a building height of 90 feet, and a lot occupancy of 75%. (Exhibit 4, p. 8, Exhibit 14 p. 5.)

18. Although the proposed development complies with the broad parameters of the R-5-C Zone District, the applicant seeks relief from the requirements of 11 DCMR Section 2116.2. Under 11 DCMR Section 2116.2, vehicle parking spaces are required to be within a garage, side yard or rear yard. The loading dock is located towards the front of the proposed building. (Exhibit 145, p. A3; Testimony of S. Sorg, Transcript One, pp. 39 - 40.)

19. The proposed project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District’s neighborhoods;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input.

(Exhibit 14, pp. 9-11.) The project is also consistent with many Major Elements of the Comprehensive Plan, including; the Housing Element, the Urban Design Element, the Economic Development Element, the Environment Element, the Transportation Element, and portions of the Ward 3 Element. Specifically:

- Regarding the Housing Element, the project satisfies the following goals of the District: (i) “Encourage the private sector to provide new housing to meet the

need of present and future District residents at locations consistent with the District land-use policies and future objectives” (10 DCMR 302.2(a)); “Encourage housing on suitably located public or private properties that are vacant surplus, underutilized, or unused, ...” (10 DCMR 302.2(e)); and “Encourage the private sector to meet housing needs through the development of infill housing.” 10 DCMR 302.2(f). The project satisfies these goals of the Housing Element by producing a residential project on a site that is currently vacant and designated in the high-density land use category.

- Regarding the Urban Design Element, the project satisfies the following goals of the District: (i) “Preserve and enhance the outstanding physical qualities of District neighborhoods” (10 DCMR 702.1(b)); and (ii) “Encourage well-designed developments in areas that are vacant, underserved or deteriorated. These developments should have strong physical identities.” (10 DCMR 712.2(a)). The project also achieves these District goals by bringing a high level of design finish to an area of eclectic buildings and styles. The project would improve the visual quality of the space.
- Regarding the Economic Development Element, the project satisfies the following goals of the District: (i) “[G]eneration of sufficient tax revenues to fund the District’s budget” (10 DCMR 200.13); and (ii) “Place a high priority on stimulating and facilitating a variety of commercial, retail and residential development investments ... consistent with the Land Use element ... and with sensitivity to surrounding areas.” (10 DCMR 204.2(m)). The Property currently contributes little to the economic well-being of the District. The project will enhance the District’s tax base through substantial tax revenues and bring new residents to patronize neighborhood retail.
- Regarding the Environmental Protection Element, the project satisfies the following goals of the District: (i) “Protect the environment, to resist threats to its overall quality, and to act to maintain and enhance its positive features in the interest of residents, workers and visitors.” (10 DCMR 401.1); and (ii) “Promote land use patterns and transportation services which decrease reliance on automobiles for commuting on other routine trips.” (10 DCMR 403.2(c)). The project would promote transit-oriented development and thereby encourage use of the District’s mass transit system. In addition, as detailed in Exhibit 123 of the record, the applicant has committed to including a wide array of green design elements in the proposed project.
- Regarding the Transportation Element, the project satisfies the following goals of the District: “Support land use arrangements that simplify and economize transportation service ... to promote high density residential development at strategic locations, particularly near appropriate Metrorail locations.” (10 DCMR 502.2(a)). The project would allow for the greater utilization of the Metrorail

system due to its close proximity to the Cleveland Park and Van Ness Metro Stations. Further, the project would have both ample parking and bicycle storage.

- Regarding the Ward 3 Element, the project satisfies the following goals of the District: (i) “The District Government should ... work with the private sector ... to identify sites and increase housing opportunities in appropriate locations ... [which include giving] zoning preference to projects that include housing near ... the Ward’s Metrorail stations.” (10 DCMR 1402.4(a) and 1402.4(c)(5); (ii) “Relate the overall height of new construction (including additions) to that of adjacent structures. As a general rule, construct new buildings to a height roughly equal to the average height of existing buildings. Avoid new construction that greatly varies in height (too high or too low) from older buildings in the vicinity.” (10 DCMR 1406.9(a)); and (iii) “Break up uninteresting box-like forms into smaller, varied masses. Variety of form and massing are elements essential to the character of the streetscape.” (10 DCMR 1406.9(c)). As stated, the project would bring housing near the Ward’s Metrorail stations. The proposed building has a height and massing that responds to the site’s adjacent buildings – including the 5 story structure at 3945 Connecticut Avenue, the 9 story structure at 3883 Connecticut (the structure that has the most visual impact on the Property), and the 2 story Embassy of Kuwait. In addition, the proposed building relates well to the 3 story townhouses across Tilden Street. The design of the building responds directly to 10 DCMR 1406.9(c) since it has a varied façade consisting of extensive setbacks and terracing, reflective of the cadence of rowhouses across Tilden Street.

(Exhibit 4, pp. 16-24; Exhibit 14, pp. 11-14.)

20. The applicant made modifications to its Project to including the surrounding community’s comments. The applicant sponsored several community-wide meetings and met numerous times, in one-on-one meetings with members of the Forest Hills Civic Association, several ANC Commissioners, and every community member who requested such a meeting. Moreover, the applicant met with the Office of Planning and small groups of neighbors for interactive design discussions. The applicant also created a website specifically for the proposed development to respond to Frequently Asked Questions and provide information, such as the traffic study. In response to community and OP input, the applicant made the following changes to its original Project:

- Reduced height from nine to six stories
- Reduced height from six to five stories
- Removed penthouse equipment which required including mechanical equipment inside the building
- Eliminated “floating” glass walkways connecting the three building components

- Increased the “mews” feeling of intimacy by adding numerous private front doors
- Increased the width of the driveway access point
- Improved loading accommodation
- Carved terracing and a courtyard into the back of the building to add visual interest, light and air
- Increased the number of trees and enhanced landscaping
- Eliminated connection to 3883 Connecticut Avenue driveway
- Added more traditional elements to the architecture
- Included a green roof
- Eliminated access to a rooftop deck for future residents

21. The applicant made several adjustments to the project design to incorporate and address the security concerns of the Embassy of Kuwait and the State Department’s Office of Foreign Missions (“OFM”). The applicant moved the loading dock to its furthest east location on the Property away from the Embassy of Kuwait, removed its windows on the property line wall facing the Embassy, and has been working with OFM to determine the appropriate screening for the exterior balconies of the project. During the June 22, 2006 hearing, the applicant noted that the OFM conveyed that their typical approach in these types of situations is to review security problems involved with foreign embassies. The applicant met with the Ambassador of Kuwait twice regarding the Project, before dealing solely with OFM. The applicant submitted two letters into the record that it sent to the OFM, dated February 27, 2006 (Exhibit 141 in record) and May 10, 2006 (Exhibit 142 in record). (Exhibit 141; Exhibit 142; Transcript Two, pp. 152 – 154; Exhibit 145, Exhibit E.)

22. The applicant offered testimony and evidence from Tracey Thomm, on behalf of Tilden 800 LLC. Suman Sorg, of Sorg and Associates Architects, the project architect, testified as an expert in the field of architecture. The Commission also heard testimony from Jami Milanovich of Wells & Associates, LLC, as an expert in the field of traffic and parking, and Jay Parker of Parker Rodriguez, Inc., as an expert in the field of landscape architecture.

23. Tracey Thomm addressed the applicant’s development process with respect to this project and the significant outreach that was made to ANC 3F, various neighborhood organizations, including the residents of 3883 Connecticut Avenue, and adjacent property owners. Ms. Thomm noted that as a result of that process, the project was significantly modified. (Testimony of T. Thomm, Transcript One, pp. 26 - 27.)

24. As addressed in the applicant’s pre-hearing statement and through the testimony of Ms. Thomm, the following public benefits and project amenities will be created as a result of this project.

- Housing – The project will create 49 new residential units in the District, three of them affordable, on this underutilized property. The Property is a vacant, infill location located within walking distance of two Metrorail stations. Immediately adjacent

properties are high density residential uses. The Property's location makes this site a prime opportunity to increase the District's housing stock. The affordable housing set aside will provide affordable housing in a neighborhood where the lack of large development drives up overall housing prices. (Exhibit 4, p. 14; Exhibit 14, p. 8; Testimony of T. Thomm, Transcript One, pp. 27 – 28; Transcript Two, p. 184.)

- Urban Design and Architecture – From a sustainability perspective, high density use, located near transit nodes, is good urban design. The proposed development is located in the transition area between very high density uses in the Connecticut Avenue corridor near the Metrorail stations and lower density residential development east of the Connecticut Avenue corridor. The project is planned to be entirely residential which maintains the general character of Tilden Street. The building façade has been designed to incorporate the attributes of houses and townhouse buildings in the District of Columbia and features of nearby apartment buildings. The architectural detailing of the Project sets it apart from a matter-of-right building. The progressive architecture of the Project does not mimic the classical design popular with much new construction. Instead, it blends traditional and modern elements into a special statement. (Exhibit 14, p. 7; Testimony of T. Thomm, Transcript One, pp. 25 – 26, 60 – 61, 87 – 89; Transcript Two, p. 184.)

- Site Planning – The proposed project has been carefully designed to concentrate the mass of the building at the rear of the site and step the volume down from five stories to two stories in three distinct masses, separated by courtyards facing the street. With the mass of the building located nearest its southern property line, the shadows cast across Tilden Street will be minimal, with no shadow cast on the homes across Tilden Street. Landscaping is an essential element of the site planning. The landscaping extends the green space from the nearby parkland. Although the courtyards face north, the design accommodates plentiful planting of ornamental trees and groundcover as well as canopy trees. The concept for the paving in the primary courtyard includes a moss and stone design that creates a very natural environment. The combination of private gardens and courtyard space creates an intimacy similar to that found throughout the neighborhood and helps to develop the “mews-like” feel. The proposed project also includes a rear landscaped courtyard for the residents of the new building and their guests. In addition, this rear courtyard also provides a visual buffer for the residents of 3883 Connecticut Avenue. (Exhibit 14, pp. 7 - 8.; Exhibit 127.)

- Effective and Safe Vehicular and Pedestrian Access – The site's proximity to the Cleveland Park and Van Ness Metrorail stations reduces the impact of vehicular traffic that would otherwise be generated by adding residents to the Property. The proposed project will not increase traffic volumes beyond capacity at the Tilden Street/Connecticut Avenue or Tilden Street/29th Street intersections. The Project's design simplifies vehicular access to promote vehicular and pedestrian safety. The garage has one point of entry and exit. The driveway is located next to an existing driveway for 3945 Connecticut Avenue, NW. Numerous pedestrian access points to the building encourage a vibrant streetscape. Based on the transportation analysis prepared by Wells

& Associates, a part of the PUD Application, the proposed development is anticipated to generate only 19 AM peak hour vehicular trips and 22 PM peak hour vehicular trips. The proposed development would account for less than one percent of the total AM and PM peak hour traffic volumes at the Connecticut Avenue/Tilden Street intersection, a volume well below daily traffic fluctuations. Moreover, the applicant will provide more than two parking spaces per residential unit, as well as spaces for visitors and staff. The proposed Project will contain designated space for bicycle storage. (Exhibit 14, pp. 8, 13; Exhibit 49, p. 2 of Exhibit C; Testimony of J. Milanovich, Transcript One, pp. 45 – 50, 54.)

- Uses of Special Value - The applicant has agreed to landscape the median island in Tilden Street and the frontage of the 3945 Connecticut Avenue building from the Property to Connecticut Avenue. The applicant has also agreed to make the following financial contributions:

Friends of Peirce Mill - \$50,000 for restoration of the mill complex at the historic Peirce Mill in the Rock Creek National Park, specifically the making of new parts for the wooden milling machinery. (Exhibit 125.);

Hillwood Museum & Gardens - \$50,000 for improvements, repairs and upgrades to the Four Seasons Overlook in the Friendship Walk at Hillwood. (Exhibit 126);

District of Columbia Department of Parks & Recreation - \$50,000 for upgrades to Hearst Recreation Center including renovation of athletic fields and tree work on the perimeter of that property. (Exhibit 119); and

National Park Service - \$50,000 to improve Melvin Hazen Park, specifically the lighting and landscaping in the trail between Connecticut Avenue leading into Rock Creek Park. (Testimony of T. Thomm, Transcript One, pp. 28.)

(Exhibit 4, p. 16; Exhibit 14, p. 9; Testimony of T. Thomm, Transcript One, pp. 28 - 29.)

- Revenue for the District – The Property currently contributes little to the economic well-being of the District. The 49 residential units will enhance economic development by contributing significantly to the District's population and also add to the District's tax revenue through substantial property, income, sales and other taxes. New residents will patronize neighborhood retail along Connecticut Avenue, NW and throughout the District. (Exhibit 14, p. 12.)

- Environmental Benefits – The Project will comply with all the applicable rules and regulations of the District to promote energy conservation, improve air quality and protect the natural environment. Further, the project will contain a "green" roof surface and other aspects of green design, as listed in Exhibit 123. The project will also include bicycle storage, water-saver fixtures and appliances, energy-efficient design, storage of recyclable materials, waste management and daylight usage. (Exhibit 14, p. 12; Testimony of T. Thomm, Transcript One, p. 30; Testimony of S. Sorg, Transcript One, p. 39; Exhibit 123; Transcript Two, p. 184.)

- Consistency with the Comprehensive Plan – The project fosters and furthers numerous elements of the Comprehensive Plan as well as numerous major themes of the Comprehensive Plan. The themes that the project satisfies are: (i) stabilizing the District's neighborhoods; (ii) respecting and improving the physical character of the District; and (iii) preserving and ensuring community input. The elements that the project satisfies are: (i) housing, (ii) urban design, (iii) economic development, (iv) environmental protection, (v) environment, and (vi) Ward 3. Of course, the project is also consistent with the high-density land use designation on the Generalized Land Use Map. (Exhibit 14, pp. 9-14.)

- Construction Management Agreements – The applicant has drafted a construction management agreement and entered it into the record as Exhibit 121 regarding this project and restrictions on future development of the Subject Property. (Exhibit 121.)

25. Suman Sorg addressed the thought process that resulted in the proposed building design. Ms. Sorg noted the eclectic nature of the designs and materials used in the neighborhood surrounding this site and that the project is a transition from the high-density residential and commercial areas along Connecticut Avenue, particularly 3883 Connecticut Avenue, to the west to the lower-scale residential sections of Tilden Street. Ms. Sorg noted that the design of the building sought to incorporate aspects of houses and townhouses in the area and thus the building's façade was designed into a series of townhouse scaled elements and terraces, with an increase in height as the building moves away from Tilden Street. Ms. Sorg stated that the building would be primarily stone-like precast or masonry of a warm gray-beige color to blend with the stone and stucco materials found on the neighboring buildings. On the June 5, 2006 hearing, Suman discussed the 6-story option for the building. At the hearing on June 22, 2006, Suman discussed the 5-story option for the building. The applicant also submitted shadow studies as Exhibit 127 in the record that show that the 6 story design, and therefore, the 5 story design, of the project would not cast shadows on neighboring properties. (Testimony of S. Sorg, Transcript One, pp. 31 – 39; Exhibit 127.)

26. Jami Milanovich addressed the insignificant traffic impact the proposed project will have on the traffic in the vicinity of the site. Ms. Milanovich stated that the project is estimated to generate 19 AM peak hour trips – or one vehicle every three minutes – and 22 PM peak out trips – or one vehicle every 2.7 minutes. The project will account for 2 to 3 percent of the total traffic on Tilden Street and 0.2 to 0.3 percent of the total traffic on Connecticut Avenue in the AM peak hour. The project will account for 1 to 2 percent of the total traffic on Tilden Street and 0.3 percent of the total traffic on Connecticut Avenue in the PM peak hour. Ms. Milanovich stated that the project will not create problems with cars making U-turns at the intersection of Tilden Street and 29th Street. (Exhibit 49, Exhibit C; Testimony of J. Milanovich, Transcript One, pp. 45 – 50, 54; Exhibit 145, Exhibit C.)

27. Jay Parker addressed the landscaping issues associated with the site. Mr. Parker focused on the terracing and courtyards as key elements of the landscaping plan. Mr. Parker provided detail on the number, types and location of greenery and landscaping that will be added to the Project as a result of the Project. In addition, Mr. Parker noted that the median and the area in the front yard of 3945 Connecticut Avenue would be re-landscaped during the Project construction. (Testimony of J. Parker, Transcript One, pp. 41 - 45.)

28. The applicant submitted a letter from Bowman Consulting, dated June 21, 2006 as Exhibit 117 in the record that stated that the Property is not subject to a front building restriction line. Bowman Consulting researched the building restriction line using District records, an ALTA survey, and utility records. (Exhibit 117.)

29. At the June 22, 2006 hearing, the applicant submitted a letter from Schirmer Engineering, a certified third-party plan reviewer for the District of Columbia, stating that the twenty-foot wide fire lane easement at the rear of the Property is unnecessary under the District of Columbia Fire Prevention Code Supplement/2003 (DCMR Title 12H) which references the 2000 edition of the International Code Council's ("ICC") International Fire Code ("IFC"). (Exhibit 124, pp. 2-3.)

30. A local resident, Dr. Maurice Sislen, testified in support of the project. (Transcript Two, pp. 65 - 68.)

31. In response to issues raised by Commissioners during the June 22, 2006 public hearing, the record of the case was left open for the applicant to provide the following materials and information:

- Full set of architectural drawings for the 5-story plan
- Analysis of the zoning case at the Kennedy-Warren Apartments
- Alternate traffic route exhibit

32. The applicant submitted the post-hearing information and materials requested by the Commissioners on July 12, 2006 as Exhibit 145 in the record. In this submission, the applicant included:

- The full 5-story plans and a description of the design – The applicant noted that the 5-story plan is a result of discussions with the Office of Planning and the community and comments by the Zoning Commission at the hearings on this case. The 5-story plan retain most of the positive features of the 6-story design, while scaling down many of its characteristics. (Exhibit 145, Exhibit A.)
- A legal analysis of the Kennedy-Warren Apartments PUD – The applicant submitted a statement describing the (i) precedent for approving the PUD and Zoning Map amendment application in a situation similar to the instant case, (ii) the primacy of the General Elements of the

Comprehensive Plan (including the Land Use Map) over the provisions of the Ward 3 Element of the Plan, and (iii) the balance between infill development and the protection of “green space” adjacent to “apartment buildings”. (Exhibit 145, Exhibit B.) The District of Columbia Court of Appeals in the Kennedy-Warren case specifically, and emphatically, held that the Land Use Element of the Plan trumps other provisions of the Plan when there is a conflict. Cathedral Park Condominium Committee v. District of Columbia Zoning Commission, 743 A. 2d 1231, 1240 (D.C. 2000). The Court held that, in cases like the Kennedy-Warren and the 2950 Tilden PUD, where the Land Use Map unambiguously identifies a subject property as appropriate for a high density residential use, that designation outweighs a variety of other general policies and guidelines in the Ward 3 Element. Id at 1240. Further, in cases such as the Kennedy-Warren PUD and the Tilden PUD, proximity of the sites to two Metrorail stations allows the Commission to rely on the fact that the Ward 3 Element encourages housing near Metrorail stations to grant such PUD applications. The Court rejected the position that the Ward 3 sections of the Comprehensive Plan were “mandates” on the Zoning Commission and found that the Zoning Commission could use its own judgment as to balance height and densities of buildings within its interpretation of the Comprehensive Plan. Id at 1245.

- Alternate route diagram and statement from traffic consultant – The applicant submitted the map showing the alternative traffic routes from the subject property and the applicant’s traffic consultant submits a statement providing more detail on the traffic study at the subject property and accident data for Connecticut Avenue. (Exhibit 145, Exhibits C and D.)

(Exhibit 145.)

33. OP, in its report dated May 26, 2006, submitted as Exhibit 74 in the record, withheld making a final recommendation on the project, pending the receipt of: (i) a final copy of the DDOT report on the proposal, (ii) further exploration of a 5-story building option by the applicant, and (iii) a preliminary construction management plan. This report OP praised the modifications of the applicant, including the internal penthouse and large setback for the rear courtyard. However, OP indicated that a maximum 5-story building with no penthouse is a better transition in the neighborhood. OP was supportive of a design that accommodated the eclectic designs in the neighborhood, an increased rear yard distance, and the alternative placement of mechanical equipment (into the building and in the garage). OP noted that the site has been in the high density residential land use category since 1984 and “has not been changed through several cycles of Comprehensive Plan amendments, nor was it flagged during those amendment cycles to be changed.” The OP report also highlighted the project’s compliance with the Major Themes of the Comprehensive Plan, including: stabilizing the neighborhood; respecting and improving the physical character of the

neighborhood; and preserving and ensuring community input. The OP report noted that the PUD proposal furthers many other policies and aspects of the Comprehensive Plan including: housing objectives, policies supporting improved air quality, the transportation element, the urban design element, the areas of stable character objectives, the objectives for residential neighborhoods, Ward 3 actions, and land use policies. (Exhibit 74.)

34. Through its testimony at the June 5, 2006 public hearing, OP testified as to the tension between the Ward 3 elements and the combination of the high-density residential land use designation and transit oriented development. OP testified that a 66 foot 8 inch building is too tall for the site. OP testified that the applicant made several modifications to the project design as a result of working with OP including incorporating the mechanical penthouses into the residential space and removing a portion of the middle of the building on the sixth floor. OP stated that the proposal “does not seem inconsistent with the Comp Plan and it supports a number of” planning goals and objectives. OP continued “OP is also very supportive of the applicant in the efforts they’ve made to make changes to address comments and issues that have been raised.” However, OP noted concerns about the overall scale of the project and reiterated its desire for the elimination of the 6th floor while still incorporating the mechanical equipment into 5 stories. OP recommended that the building is limited to 5 stories and a preliminary construction management plan is issued before the final order is issued. After explaining its analysis in great detail, OP concluded that the Property’s high density residential land use designation was not the result of an error on the Generalized Land Use Map, but a logical, consistent application of sound planning principles. (Transcript One, pp. 146 – 179, 198.)

35. After the public hearings on this case, OP submitted its supplemental report, dated July 25, 2006, submitted as Exhibit 153 in the record. That report indicates that the Generalized Land Use Map did not err by including the subject property within a larger area designated for high-density residential development. OP reiterated that the PUD is not inconsistent with the Comprehensive Plan and the project supports more specific housing and urban design goals identified in the Plan. OP stated that the proposed amenities and benefits as proposed are sufficient, although it requested more complete information, particularly about affordable housing specifics. OP stated that the architecture of the project effectively incorporates the architectural characteristics of the surrounding area. OP expressed its support of the delivery/loading space in the front of the building and the associated special exception relief under Sections 2116.6 from Section 2116.2 that only allows vehicle parking spaces within a garage, side yard or rear yard. OP also supported the proposed lay-by adjacent to the delivery/loading space. OP prepared its final recommendation based in part on DDOT’s report on this application, the applicant’s consideration of a 5-story design option, and review of the draft preliminary construction management plan. (Exhibit 153.)

36. The OP report recommended that the revised PUD is approved if it reflects the following characteristics:

- A 5-story building with a height no greater than 60 feet that incorporates the mechanical equipment into the top-residential floor and garage levels;
- A minimum front yard setback of 10 feet;
- A rear courtyard 91 feet wide with the back wall at least 56 feet from the adjacent residential tower on the property at 3883 Connecticut Avenue, NW as shown in the applicant's submission dated May 22, 2006;
- Landscape screens between rear building façade and existing fire lane, and between the proposed building and adjacent residential building at 3945 Connecticut Avenue, NW as shown in the referenced submission; and
- That the proposed lay-by, if constructed, extend for a distance no greater than 19 feet beyond delivery/loading parking space exclusive of the egress driveway.

(Exhibit 153.)

37. On August 14, 2006, the applicant submitted a letter as Exhibit _____ of the record that stated that the applicant would be willing to accommodate the constraints proposed by the Office of Planning ("OP"), except for the width of the courtyard at the rear of the building and the depth of the rear yard. OP suggested a rear yard setback of at least 26 feet. For the rear courtyard buffer between 3883 Connecticut Avenue and 2950 Tilden Street, the applicant's proposal has a rear yard setback of 56 feet. For the remainder of the building, the rear yard setback is 26 feet 4 inches or 23 feet. The applicant proposes a minimum of 23 feet in order to allow the apartment units to be designed appropriately and still provide adequate space for a "planting" buffer. The applicant also requests a variation from the OP recommendation for the east-west dimension of the rear courtyard. OP suggests this dimension should be 91 feet. The applicant proposes it to be 70 feet which is critical for the continued project feasibility. The applicant stated that the 70-foot dimension does not create an adverse impact because: (a) all units in 3883 Connecticut Avenue with north-only orientations still face the gracious, landscaped courtyard; (b) the applicant's architect has studied this rear condition and concluded that the difference between a 70-foot width and 91-foot width is minimal in terms of the effect of light and air; and (c) the Board of the Unit Owners of 3883 Connecticut Avenue, in a letter to its residents dated June 26, 2006, submitted as part of Exhibit 152 in the record, stated that the provision of the "56-foot buffer between the unit owners facing the development and the 2950 Tilden Street southern exterior" was one of the considerations factored in its withdrawal of opposition status. The Board of the Unit Owners of 3883 Connecticut Avenue letter was written following the applicant's submission of the revised courtyard dimensions (70 feet by 56 feet) and mentions no concern regarding the revised dimensions submitted. In addition, with the applicant's proffered compromise, there is no longer any need for relief from 11 DCMR Section 411.5 which requires a penthouse to be a uniform height. (Exhibit _____.)

38. The District Department of Transportation (“DDOT”) submitted a report dated June 1, 2006 which concluded that DDOT had no objections to the project. The report states that DDOT agrees with the applicant’s traffic study assessment that the proposed traffic to be generated by the project will have a negligible impact on peak-hour trip totals and nearby intersections would operate at similar levels of service with or without the proposed development. DDOT stated that the U-turns required at the 29th Street and Tilden Street intersection would not create problems. Although the OP report states that DDOT was not aware of the lack of a median cut, on page 2 of Exhibit 85 in the record, DDOT acknowledges that there would not be a median cut for the project. The report also states that the applicant addresses the neighbor’s concerns about parking in the proposal by constructing a below grade parking garage for 100-120 vehicles. The report concludes, “We believe that vehicular traffic generated by the proposed development can be accommodated within the existing street system, without significant further deterioration of traffic safety, and believe that the proximity of the building to Metro-rail and bus service along Connecticut Avenue will reduce vehicular traffic demand during peak hours.” (Exhibit 85.)

39. DDOT also testified at the June 22, 2006 hearing that the traffic generated by the project would be “relatively slight when compared to the overall traffic volumes.” DDOT continued, “Other than peak hour times the travel generated by the building would not be a significant problem for the existing infrastructure.” DDOT also noted that there were methods to address any peak hour issues with traffic. DDOT stated that it would request that the applicant ensure that deliveries are scheduled “such that they are not occurring during the AM or PM peak times.” (Transcript Two, pp. 7 - 30.)

40. The District Fire and Emergency Medical Services Department submitted a memorandum dated June 2, 2006. That memo stated that access to the rear of the proposed building “is not readily accessible” and cited concerns with the congestion of the Connecticut Avenue and Tilden Street location. The memo recommended that additional access to the rear of 3883 Connecticut Avenue is provided. The memo stated that an agreement that can be reached to allow this fire lane to be used as access to the rear of 2950 Tilden Street may help eliminate the problem. The applicant has an easement for access to the fire lane through the 3883 Connecticut Avenue driveway. (Exhibit 124, p. 1.)

41. ANC 3F presented its case at the June 22, 2006 hearing noting, in particular, that the proposed building is not compatible with the surrounding area and is too big, the amenities offered by the project are not sufficient and not related to the project, and the landscaping and buffering of the project are not adequate. The ANC also noted that it had concerns about the affordable housing at the site, the size of the buffer between 3883 Connecticut Avenue and the proposed building, the traffic impact of the building, and the adequacy of the loading dock. The ANC also requested that if the project is approved, 10 units would be made affordable, rather than the 3 affordable units proffered by the applicant. (Transcript Two, pp. 30 - 64.)

42. ANC 3F adopted two resolutions in opposition to the project – one at its May 24, 2006 public meeting and one at its July 20, 2006 public meeting. The first ANC resolution noted opposition to the 6-story proposal for the Property. (Exhibit 59.) The second ANC resolution noted the ANC's opposition to the alternative 5-story building design. That resolution stated that the building is too big for the site and expressed concerns about the project's height, density, urban design, traffic and parking, and landscaping. In addition, the ANC reaffirmed the opposition to the 6-story building of its May 24, 2006 resolution. (Exhibit 150.)

43. The ANC also submitted a cover letter describing safety concerns with the project and several agreements involving the Subject Property into the record as Exhibit 152. One of the points that the ANC raised was that there is no longer a fire lane between 3883 Connecticut and 2950 Tilden Street. The ANC also expressed its concerns that the applicant was only calculating "residential FAR" rather than all necessary FAR. (Exhibit 152.)

44. On August 14, 2006, the applicant submitted a letter in response to some of the new information and inaccuracies submitted by the ANC in Exhibit 152 in the record. (Exhibit ____.) In that letter, the applicant stated:

- it did not "sign away all rights to use the existing fire lane." In fact, the agreement with the 3883 Connecticut Avenue Unit Owners Board of Directors specifically confirms "continuing the easement for purposes of fire and emergency vehicle access." In addition, formal inspections were performed by the District's Department of Fire and Emergency Medical Services at the site in accordance with that Department's standard operating procedures. Those inspections resulted in the letter from the District Fire and Emergency Medical Services Department that was submitted into the record at the hearing which did not oppose the proposed project and found that the "fire lane" at the rear of 2950 Tilden Street could be used in an emergency. This is in accordance with the Fire Department's solution to the emergency access problem previously noted.
- its proposed FAR of 2.52 includes all gross floor area of the building, including hallways, stairways, lobbies and common areas, as FAR is defined under the Zoning Regulations.
- ANC 3F's characterization of the intent of the private agreements that it submitted into the record is flawed. The Cooperation and Development Agreement between 3901 Connecticut and the prior owner of the Property was intended only to guide development of 3883 Connecticut Avenue, not to establish obligations on 2950 Tilden Street. In addition, the Easement Agreement between 3883 Connecticut Avenue and 2950 Tilden Street includes an acknowledgement by the parties that many types of residential development are possible on the site including multi-family housing. More importantly, the agreement states that development of 2950 Tilden Street

“may include rezoning of [2950 Tilden Street]” (Exhibit 93, Paragraph 2a, page 4). Therefore, this agreement “put 3883 on notice” not only that development would occur at 2950 Tilden Street, but that it might be “multi-family residential housing” requiring rezoning.

(Exhibit ____.)

45. The Unit Owners Association of 3883 Connecticut Avenue submitted a withdrawal of their party status at the June 22, 2006 hearing. The Unit Owners Association of 3883 Connecticut Avenue stated that the applicant addressed their concerns regarding the proposed project and that they were satisfied with the PUD application as it was amended. (Exhibit 104.)

46. The Tilden Street Coalition offered testimony and evidence from Jacob Gillespie, on behalf of the Tilden Street Coalition. George Oberlander testified as an expert in the field of urban planning. The Commission also heard testimony from Joe Mehra of MCV Associates, Inc., as an expert in the field of traffic. A representative of the Government of Kuwait also appeared to express the concerns with the project’s impact on security and the appearance of the neighborhood. Mr. Gillespie noted that the project will not fit in the neighborhood, the amenities package is insufficient, and the affordable housing provision is not adequate. (Testimony of A. Dakheel, Transcript Two, pp. 69 – 77; Testimony of J. Gillespie, Transcript Two, pp. 80 – 85.)

47. Mr. Oberlander testified that the proposal is inconsistent with the Comprehensive Plan and inconsistent with the separation that should exist between high density Connecticut Avenue and the residential street along Tilden Street. Mr. Oberlander stated that the proposed project is too dense for the Property and that the project is inconsistent with portions of the Ward 3 element of the Comprehensive Plan. (Testimony of G. Oberlander, Transcript Two, pp. 86 – 91.)

48. Mr. Mehra testified about the traffic problems in the neighborhood and how they are not fully addressed in the Wells traffic study. Mr. Mehra commented that some developments in the vicinity of the project have not been included in the applicant’s traffic study – including the Chinese Embassy and the Sheridan School – and that the recently installed bike lane should also be included in any traffic study. Mr. Mehra stated that the right-turn lane from Tilden Street onto Connecticut Avenue was included in the applicant’s traffic study, but has not yet been put in place. (Testimony of J. Mehra, Transcript Two, pp. 91 - 100.)

49. Many local residents testified in opposition to the project. Many residents and DC Councilmembers submitted letters in opposition to this project. (Transcript Two, pp. 115 - 147.)

50. Several opponents of the project, including the Tilden Street Coalition, ANC 3F and DC Councilmember Phil Mendelson stated that the Generalized Land Use Map erred by designating the Property high-density residential. Councilmember

Mendelson stated that there was never any intention of increasing the density along Tilden Street, NW. Councilmember Mendelson states that the Ward 3 element of the Comprehensive Plan should be utilized instead of the land use designation. (Testimony of P. Mendelson, Transcript One, pp. 201 – 207.)

51. The Zoning Commission is bound to follow the District of Columbia law, which includes the clear land use designations under the Comprehensive Plan. In this case, the Comprehensive Plan states - and therefore District law holds – that the Property is in the high-density residential land use category. The Commission should not ignore or contradict such law based on parties' characterizations of "mistakes" in the law.

52. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD and amendment to the Zoning Map of the District of Columbia. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, or yards and courts. The final project presented to the Commission requests flexibility from the strict application of the Zoning Regulations in two areas – relief from the requirements of 11 DCMR Section 411.5 (requiring a penthouse to be a uniform height) and 11 DCMR Section 2116.2 (requiring vehicle parking spaces within a garage, side yard or rear yard).

The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development. The Commission finds that this PUD project provides a significant public benefits and community amenities package. The

Commission believes that this project does in fact provide superior features that benefit the surrounding neighborhood and the District to a significantly greater extent than a matter-of-right development on the Subject Property would provide. Approval of the PUD and the change in zoning from R-2 to R-5-C is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act. Moreover, the Commission finds that the project is in fact entirely consistent with numerous themes and elements of the Comprehensive Plan. Further, the Commission finds that the project is consistent with the high-density residential land use designation of the Property. Based on OP analysis, the high-density residential land use designation was not an error for the site and the project should be viewed accordingly.

This residential development will contribute to the vitality and help strengthen the Cleveland Park/Forest Hills neighborhood of Ward 3. The Commission concludes that the mass, height and size of the project is appropriately oriented to the surrounding properties and offers an appropriate transition from the high density and greater height buildings of Connecticut Avenue, particularly 3883 Connecticut Avenue, and the lower density and lower height rowhomes across Tilden Street. The Commission commends the applicant for its extensive outreach to the community during the development process for this project and the modifications that it made to the project design over that process.

The Commission concludes that approval of the application will promote 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. The development of this PUD is compatible with citywide goals, plans, and programs and the development patterns in the area. The proposed PUD will allow for appropriate residential development of underutilized property on a high-density residential property. The production of multi-family housing on the Subject Property is fully consistent with the City's goals of increasing housing opportunities in the City. Further, under 10 DCMR 112.4, the goals and policies of the general land use element of the Comprehensive Plan take primacy over the individual Ward elements of the Comprehensive Plan. Although there are aspects of the Ward 3 element that run contrary to the project, the applicant addressed many of these provisions of the Comprehensive Plan through its modifications to the project plan. As a whole, the project is consistent with the Comprehensive Plan.

The Commission takes note of Advisory Neighborhood Commission (ANC) 3F's resolutions in opposition to the project (submitted as Exhibits 59 and 150 in the record) and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission notes the opposition of the Tilden Street Coalition to the project. In addition, the Commission takes note of the large amount of letters in opposition this case received from citizens in the vicinity of the Property. The Commission believes that the applicant has responded to many community concerns in its project design. Further, the Commission has responded to the opposition concerns in the conditions that accompany this order.

The Commission takes note of the OP reports and testimony, which supported the approval of a 5-story building with certain conditions that limited the impact of the building on the surrounding neighborhood.

Based on the DDOT Report and the OP reports and testimony, the Commission has determined that the project will have an insignificant impact on the traffic situation in the surrounding neighborhood. Also, the Commission determines that the proposed lay-by lane on Tilden Street is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of these applications for consolidated review of a Planned Unit Development and a related amendment of the Zoning Map from R-2 to R-5-C for Lot 800, in Square 2234. The approval of this PUD and change in zoning is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the applicant marked as Exhibits 145 and _____ of the record, as modified by the guidelines, conditions and standards of this order.
2. In accordance with the plans and materials noted above, the approved PUD shall consist of a residential project which includes 49 residential units, including 3 affordable units, occupying 87,500 square feet of gross floor area with a FAR of 2.52, a maximum building height of 60 feet, and 110 total parking spaces.
3. The building shall have no penthouses, a minimum front yard setback of 10 feet, a minimum rear yard setback of 23 feet, a minimum rear courtyard depth (north-south dimension) of 56 feet for a width (east-west dimension) of 70 feet of this courtyard. The project shall have a vehicular lay-by in the front of the building, as shown on page A3 of Exhibit A to Exhibit 145 in the record.
4. The applicant shall provide 3 affordable units that shall be sized, configured, and managed as agreed by the applicant and OP.
5. The terms of the Construction Management Plan, submitted into the record as Exhibit 121, are incorporated herein.
6. The applicant shall provide the following off-site amenities:
 - Contribution of \$50,000 to Friends of Peirce Mill, such contribution shall be used for the restoration of the mill complex at the historic Peirce Mill in the Rock Creek National Park, specifically the making of new parts for the wooden milling machinery;

- Contribution of \$50,000 to Hillwood Museum & Gardens, such contribution shall be used for improvements, repairs and upgrades to the Four Seasons Overlook in the Friendship Walk at Hillwood;
- Contribution of \$50,000 to the District of Columbia Department of Parks & Recreation, such contribution shall be used for upgrades to Hearst Recreation Center including renovation of athletic fields and tree work on the perimeter of that property; and
- Contribution of \$50,000 to the National Park Service, such contribution shall be used to improve Melvin Hazen Park, specifically the lighting and landscaping in the trail between Connecticut Avenue leading into Rock Creek Park..

7. The applicant shall include the aspects of “green” architecture outlined in Exhibit 123 of the record.

8. The applicant shall endeavor to enter into an agreement with 3945 Connecticut Avenue to govern the placement of landscaping on that property, as shown in the plans submitted page L1.01A of Exhibit A to Exhibit 145 of the record.

9. The applicant shall institute the loading and delivery management plan as submitted as Exhibit 122 of the record to govern the management and use of the loading and delivery space and the lay-by on the Property. The Applicant shall endeavor to schedule deliveries that can be scheduled and moves so that they do not take place during the AM and PM peak traffic hours.

10. The applicant shall comply with the storm water management techniques described in the letter from Bowman Consulting to the National Park Service, submitted into the record as Exhibit 95.

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

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
- To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
- 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

- To make alterations to the parking garage design provided that the parking garage contains a minimum of approximately two parking spaces for each residential unit and a total of 110 parking spaces.

12. The applicant shall enter into an agreement with the Department of Transportation which will address the manner in which the traffic island on Tilden Street from the Property to Connecticut Avenue will be landscaped and maintained, as well as appropriate streetscape improvements on Tilden Street between the Property and Connecticut Avenue.

13. The applicant shall enter into a First Source Employment Agreement with the Department of Employment Services. Copies of all filings with the Department of Employment Services shall be provided to the Office of Zoning.

14. The applicant shall enter into a Memorandum of Understanding with the Department of Disadvantaged, Small, and Local Business Development. Copies of all filings with the Department of Disadvantaged, Small, and Local Business Development shall be provided to the Office of Zoning.

15. The change of zoning from R-2 to R-5-C for the Subject Property shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3.

16. No building permit shall be issued for the PUD until the applicant has recorded a covenant in the land records of the District of Columbia, between the applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the applicant and all successors in title to construct and use the Subject Property in accordance with this order, or amendment thereof by the Zoning Commission.

17. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicant has filed a certified copy of the covenant with the records of the Office of Zoning.

18. The consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applicant must be filed 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.

19. The applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia

does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

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

VOTE:

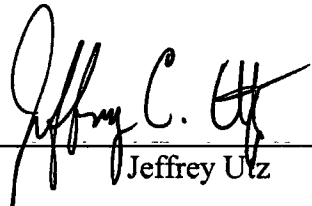
In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter and Proposed Findings of Facts and Conclusions of Law were mailed first class, postage prepaid to each of the persons, at the addresses, listed below on August 14, 2006.



Jeffrey Utz

Jennifer Steingasser
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20001

Arthur Jackson
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20001

ANC 3F
4401-A Connecticut Avenue, NW
Box 244
Washington, D.C. 20008-2322

Tilden Street Coalition
c/o Cornish Hitchcock, Esq.
5301 Wisconsin Avenue, N.W., Suite 350
Washington, D.C. 20015

Carl Kessler
3636 Alton Place, NW
Washington, D.C. 20008

Robert Maudlin
2906 Ellicott Terrace, NW
Washington, D.C. 20008

Karen Perry
3003 Van Ness Street, NW, #W-118
Washington, D.C. 20008

Mital Gandhi
4801 Connecticut Avenue, NW, #824
Washington, D.C. 20008

Frank Winstead
4545 Connecticut Avenue, NW, #508
Washington, D.C. 20008

Daniel Klibanoff
3801 Connecticut Avenue, NW
Washington, D.C. 20008

Catherine Wiss
3810 Albemarle Street, NW
Washington, D.C. 20016