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Hand Delivered

Chairman Carol J. Mitten
D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: Z.C. Cases No. 05-17 (Atlantic Plumbing South) and 05-32 (Atlantic Plumbing North)

Dear Chairman Mitten and Members of the Board:

On behalf of Broadway Atlantic One LLC, the applicant in the above-mentioned cases, enclosed please find the applicant's Proposed Findings of Fact and Conclusions of Law. If you have any questions or concerns, please feel free to contact either of the undersigned.

Sincerely yours,

Allison C. Prince

Ashleigh D. Horne

Enclosures

cc: Travis Parker, Office of Planning
Mike Jelen, DDOT
Myla Moss, ANC 1B
David Weldler

ZONING COMMISSION
District of Columbia
Case 05-32
Exhibit 24

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ZONING COMMISSION
District of Columbia
CASE NO.05-32
EXHIBIT NO.24

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-17/05-32
Z.C. Cases No. 05-17 and 05-32
Consolidated Approvals for Planned Unit Developments for the Property located in the vicinity of the intersection of Florida Avenue, 9th Street, and V Street
(Square 2873, Lots 1, 232, 852, 853, 859, and 864; Square 2875, Lots 1106, 1107, 2012, 2026, 2030)

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 26, 2005, to consider applications from Broadway Atlantic One LLC (the "Applicant") for consolidated review and approval of two planned unit developments ("PUD") in Squares 2873 (Lot 864) and 2875 (Lots 1106, 1107, 2012, 2026, and 2030). The application was assigned Z.C. Case No. 05-17, and then was split into two applications. Application No. 05-17 included the properties in Square 2875, and Application No. 05-32 included the properties in Square 2873. Application No. 05-32 was later amended to add the following properties in Square 2873: Lots 1, 232, 852, 853, and 859. The applications were filed on behalf of and with the consent of the owners of the property that is the subject of the application. The Zoning Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal regulations. 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 applications.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On June 14, 2005, the Applicant filed an application with the Commission for review and approval of two PUDs that together comprise one project and for a related map amendment for property located at 2030 8th Street, NW (Square 2875, Lot 2030). The Applicant later withdrew its request for a map amendment. Comprising a total of approximately 2.2 acres, the PUD site initially included Lot 864 in Square 2873 and Lots 1107, 1107, 2012, 2026, and 2030 in Square 2875. Subsequently Lots 1, 232, 852, 853, and 859 in Square 2873 (together with the aforementioned properties, the "**Property**") were included in the two PUDs.

2. During its public meeting held October 17, 1005, the Zoning Commission voted to schedule a public hearing on each application. The Zoning Commission decided to review the application as two separate cases, and, accordingly, the application was assigned Z.C. Cases No. 05-17 and 05-32. The Zoning Commission also requested that the Applicant provide: a more detailed landscape and grading plan, a more detailed circulation and loading plan, additional information about relief from the rooftop requirements, and additional elevations showing the scale in relation to adjacent buildings.

3. Through the two PUD applications, the Applicant proposes to construct four mixed-use buildings with a combined total of up to 700 residential units (the "**Project**").

4. Three of the proposed buildings are included in Application No. 05-17. This portion of the Project is known as Atlantic Plumbing South and includes the portions of the Property located in Square 2875 – Lots 1107, 2012, and 2026 ("**Parcel A**"); Lot 2030 ("**Parcel B**") and Lot 1106 ("**Parcel D**"). It is located in Ward 1 and contains approximately 58,023 square feet of land area. Parcels A is located in the CR Zone District at the northwest corner of the intersection of 8th and V Streets, N.W. Parcel B is located in the ARTS/C-2-B Zone District at the southeast corner 8th and V Streets, NW. Parcel D is located in the CR Zone District on 9th Street, just north of the 9:30 Club, a well known night club. The Applicant proposes to construct a separate building on each of the three parcels, for a total of three buildings in Atlantic Plumbing South. The Applicant has withdrawn its request for a zoning map amendment, and requests PUD approval under the existing zoning categories.

5. One of the total of four buildings in the consolidated PUD is included in Application No. 05-32. This portion of the Project is known as Atlantic Plumbing North and includes the portions of the Property located in Square 2873 (Lots 1, 232, 852, 853, 859, and 864) ("**Parcel C**"). It is located in Ward 1 and contains approximately 37,493 square feet of land area. Parcel C is located in the CR Zone District between Florida Avenue and 9th Street, N.W., south of the Howard University Parking Lot.

6. On November 3, 2005, the Applicant filed two prehearing statements, one for each case, with the Zoning Commission, including additional information requested by the Zoning Commission and the Office of Planning.

7. After proper notice, the Commission held a hearing on the applications on January 26, 2006. The two applications were consolidated into one hearing. The parties to the case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 1B, the ANC within which the Property is located.

8. As a preliminary matter, the Applicant requested that the Commission waive the notice requirements set forth in § 3015.11 to enable the Applicant to add Lot 1 in Square 2873 (a 2,948 square foot lot) to Application No. 05-32 (Atlantic Plumbing North). The Applicant explained that it had purchased additional property in order to accommodate an easement requested by the Office of Planning. Initially, the property owner of Lot 1 was not inclined to sell at that time but decided to sell the property to the Applicant shortly before the scheduled public hearing. As a result, Lot 1 was not included in the public notice of the hearing. The Commission found that the inclusion of Lot 1 in Application No. 05-32 would have no affect on which property owners received notice of the hearing because Lot 1 abuts property owned by the Applicant on three sides. Therefore, ample notice of the Project had been given. The Commission voted unanimously to waive the provision of § 3015.11 with regard to Lot 1.

9. At its duly noticed meeting held January 5, 2006, with a quorum present, ANC 1B voted 8-0-0 to support a proposed traffic improvement for the extension of Bryant Street culminating in a traffic circle intersection with Florida Avenue. This proposal was made by DDOT in connection with its study of the immediate area. The ANC vote in support of the PUD failed on a vote of 3-5-0. The ANC subsequently voted 7-1-0 to request that the Zoning Commission delay consideration of the application for one month in order to allow the ANC further time to discuss the Project with the Applicant. Some members of the ANC voiced concern about the

size of the development, the amount of affordable housing, and the composition and extent of the amenities package. At its duly noticed meeting held February 2, 2006, with a quorum present, ANC 1B voted 7-2 to endorse the applications. The Applicant agreed to make a $100,000.00 contribution to the ANC for use in connection with various neighborhood organizations.

10. There were no parties or persons in support of the PUD.

11. There were no parties in opposition to the PUD. Christopher Hopson, a representative of Howard University, testified in opposition to the Project. He stated that Howard does not object to the Project itself, but, rather, it objects to the proposed extension of Bryant and/or W Streets. He testified that the extended streets will cross Howard's campus and may interfere with the Town Center project and the construction of a new School of Engineering.

12. At the hearing, the Applicant submitted into the record updated plans and elevations for Atlantic Plumbing North and Atlantic Plumbing South.

13. At its meeting held March 2, 2006, the Commission took proposed action by a vote of _____ to approve the applications with conditions.

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

15. The Commission took final action to approve the applications of Cases No. 05-17 and 05-32 on _____ by vote of _____.

The PUD Project

16. The Project comprises four sites located between Florida Avenue and Eighth Street, N.W. The total land area of the Property is 95,516 square feet. Z.C. Case No. 05-17, known as Atlantic Plumbing South, includes Parcels A, B, and D. Parcel A is situated at the northwest corner of 8th and V Streets and is the largest of the four sites at 40,530 square feet. Parcel B is situated at the southwest corner of 8th and V Streets and comprises 13,420 square feet. It abuts the Housing Finance Agency building and is located across the street from the General Baking Co. building. Parcel D is the smallest of the four sites at 4,073 square feet and is situated directly north of the 9:30 Club on the east side of 9th Street, N.W. Z.C. Case No. 05-32, known as Atlantic Plumbing North, includes Parcel C. Parcel C is situated on the east side of Florida Avenue, directly west of the intersection of W Street, N.W. It comprise 37,493 square feet.

17. The Generalized Land Use Map recommends the Property for a mix of moderate and medium density residential and commercial uses. The Property currently is improved with a mixture of commercial uses such as parking lots, concrete-block industrial buildings, and warehouses. All of the existing buildings will be demolished. Much of the property to the north and east of the Property is owned by Howard University and is part of the plan for the Howard Town Center. Much of the property to the north is currently devoted to parking lots for Howard University. The Property is just to the north of the U Street Corridor and lies in the northern

portion of the Uptown Destination District Plan. The Property also is located within the Howard Gateway housing opportunity area. This area has been designated as a desirable location for the development of housing and residential uses.

18. The proposed Project is a mixed-use development of residential and retail uses. The Applicant has requested flexibility to construct up to 700 residential units among Parcels A, B, C, and D. The Applicant currently proposes to construct approximately 342 units on Parcel A, approximately 91 units on Parcel B, approximately 262 units on Parcel C, and approximately 10 units on Parcel D. Each building will feature some ground floor retail. Parcels A and B will provide ground floor retail on the V Street frontages to take advantage of the prominent corner locations of these buildings. Parcel C may feature retail on the Florida Avenue frontage and Parcel D may feature retail on the 9th Street frontage, depending on market conditions.

19. The largest building in Atlantic Plumbing South will be constructed on Parcel A. This building has a prominent corner location with frontage on 8th and V Streets. The largest retail component for this building will be situated at the corner location at the intersection of 8th and V Streets. The building will feature a parking garage below grade that will provide approximately 313 parking spaces, including full-sized and compact spaces. Access to the parking garage will be from the alley behind the building. The roof of the building will feature a pool, landscaped areas, and green roof technology. The rear court of the building will be landscaped with plants. The proposed height is 100 feet, and the proposed lot occupancy is 82%. The proposed FAR is 8.0, which results from the combined FAR of Parcel A and Parcel D.

20. The building to be constructed on Parcel B, which is located in Atlantic Plumbing South, will feature a tower that will emphasize and enhance the building's prominent corner location. It features a rear courtyard and roof terrace. The ground floor retail is focused at the prominent corner location. The parking garage will include three levels below grade and will provide approximately 76 parking spaces, including full-sized and compact spaces. Access to the garage will be directly from V Street. The building will have a height of 90 feet, which will be stepped down to 65 feet at the southern elevation in response to the adjacent rowhouses. The FAR will be 6.3, and the lot occupancy will be 83%.

21. The building to be constructed on Parcel C, which comprises Atlantic Plumbing North, features a large open courtyard. The roof will feature a pool with recreation and gathering space. It features a parking garage with three levels below grade, which will provide approximately 256 parking spaces, including full-sized and compact spaces. Access to the parking garage will be directly from 9th Street. The building will have a height of 100 feet, an FAR of 8.0, and a lot occupancy of 83%.

22. The building to be constructed on Parcel D will be the smallest of the buildings in the Project. A part of Atlantic Plumbing South, it will feature approximately 10 residential with a small ground floor retail component. There will be no parking in this building, but the residents will have access to the parking across the alley in the building located on Parcel A. The height of the Parcel D building will be 60 feet, and the lot occupancy will be 81%. The proposed FAR is 8.0, which results from the combined FAR of Parcel D and Parcel A.

23. In its February 13 submission, the Applicant indicated that all parking spaces for retail uses on both Atlantic Plumbing North and Atlantic Plumbing South will be located on Parcel A at grade and outside of parking garage. The spaces will be easily accessible, and there will be none of the conflicts that could result from the combined use of the garage for residential and retail parking.

24. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study and the testimony presented by Martin J. Wells, the Applicant's traffic consultant, during the public hearing. As discussed below, the Applicant plans to contribute $250,000.00 towards the construction of a DDOT-endorsed extension to Bryant Street that will connect Georgia and Florida Avenues and will terminate in a traffic circle at the intersection of Sherman and Florida Avenues. In addition, the Property is located in close proximity to the U Street/African-American Civil War Memorial/Cardozo Metrorail Station.

Matter-of-Right Development under Existing Zoning

25. The Property is located primarily in the CR District, which is designated for mixed-use development. The maximum building height permitted as a matter-of-right in the CR District is 90 feet. The maximum FAR permitted as a matter-of-right is 6.0. Parcel B is located in the ARTS/C-2-B District, which is designated to serve commercial and residential functions with high-density residential and mixed uses. The maximum height permitted as a matter-of-right in the ARTS/C-2-B District is 65 feet. The maximum FAR permitted as a matter-of-right is 3.5.

Development Incentives and Flexibility

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

a. FAR: The Applicant is seeking density above the matter-of-right for the applicable Zone District. Parcel A will be developed to an FAR of 8.0, which is the maximum FAR permitted for a PUD in the CR Zone. Parcel B will be developed to an FAR of 6.3, which is greater than the maximum 6.0 FAR permitted for a PUD in the ARTS/C-2-B Zone. For Parcel B, the Applicant is seeking an additional 5% density, which is permitted under § 2405.3 if the increase is essential for the functioning of the project. Parcel C will be developed to an FAR of 8.0, which is the maximum FAR permitted for a PUD in the CR Zone. Parcel D will be developed to an FAR of 4.8, which is less than the maximum 8.0 FAR permitted for a PUD in the CR Zone.

b. Roof Structures: The Applicant has requested minor relief from the roof structure requirements. The roof structure on Parcel B is 18 feet 6 inches in height and is set back only 10 feet from the alley on the west. The roof structure on Parcel C is not set back from the southern elevation.

c. Lot Occupancy: The proposed lot occupancy for all four sites is greater than allowed as a matter-of-right under the Zoning Regulations. All four of the sites are limited to a 75% lot occupancy for the residential floors. As set forth above, all four of the Parcels have proposed lot occupancies between 80% and 83%.

d. Recreation Space: Both the CR and C-2-B Districts require residential development to provide recreation space equal to 15% of the total residential gross floor area. The Applicant is proposing to provide recreation space equal to approximately 10% of the residential gross floor area. The recreation space will be enhanced by the spacious outdoor courtyards and roofscapes, as well as the private balconies and gardens.

e. Public Space at Ground Level: The CR District requires 10% of the lot area to be open public space. Parcels A and C provide approximately 5%, and Parcel D provides approximately 8%. The public space at ground level will be enhanced by the proposed upgraded streetscapes, courtyards, and private gardens.

f. Loading: Parcel B will not provide all of the loading facilities required by the Zoning Regulations. It will provide the required 30 foot berth, 20 foot service bay, and 200 square foot loading platform. It will not provide a 55 foot loading berth or a 100 square foot loading platform.

g. Courts: The building proposed for Parcel A features a closed court in lieu of a rear yard. The proposed court is 15 feet. A 25 foot court is required.

h. Parking: Because of the small size of the building proposed for Parcel D, the Applicant has requested that the required parking for Parcel D be located in the Parcel A garage.

i. The additional 5% of FAR the Applicant is requesting for Parcel B is essential for the functioning of the Project and meets the requirements of § 2405.3 of the Zoning Regulations. Two factors related to the Property have directly affected the design of the building and created a need for an additional 5% FAR on Parcel B. First, the alley that once existed to the west of this property has been incorporated into the neighboring property. As a result, the building's loading functions must be located within the first floor plan, where they now count as FAR. Second, the narrow right of way and sidewalks of 8th Street to the west have forced the bay projections to be pushed back into the property. They cannot project into public space. (Bays in public space do not count towards FAR.) The bays are an important part of the design of the this building that help it to integrate with the adjacent row houses. Also, because of the bay design, the entire elevation of the building has been pushed back four feet, therefore affecting all eight levels of the building.

Public Benefits and Amenities

27. The following benefits and amenities will be created as a result of the Project:

a. Housing and Affordable Housing: The greatest benefit to the neighborhood and the District as a whole is the creation of new housing opportunities consistent with the Zoning Regulations, Comprehensive Plan, Mayor's housing initiative, and DUKE Plan. The Applicant proposes to devote an area equal to 15% of the density gained through the PUD process to affordable housing to those persons whose income does

not exceed 80% of the area median income, as that term is defined by the U.S. Department of Housing and Urban Development. The proposed unit count is 695 units for all four parcels. Of these, approximately 14% are studio apartments, 29% are one-bedroom units, 40% are one-bedroom with den units, and 16% are two-bedroom units. The Applicant proposes a similar mix of units for the affordable housing requirement. The Applicant has requested flexibility with regard to the size and type of units. If the allocation of market rate unit types changes, the allocation of affordable units will change to reflect this allocation. These units would be distributed among floors on Parcels A, B and C. The units will be affordable for a 20 year term. The Department of Housing and Community Development will determine the price and enforce the affordability of the units through covenants and other legal mechanisms.

b. Transportation: Initially, the Applicant, OP, and DDOT proposed that the Applicant would provide an easement to the District over the northern portion of Parcel C in order to allow the future extension of Bryant Street. This street extension is important to the development of the area between Georgia and Florida Avenues north of V Street. There is currently no east-west connection between V Street to the south and Barry Place to the north, and access to the Project and the future Howard Town Center will be difficulty without the increased mobility and access through this unusually large block. Following further discussions with DDOT, it was determined that the preferred location or the street extension is further north of Parcel C, and not adjacent to the Applicant's property. DDOT has proposed a traffic circle a the corner of Florida and Sherman Avenues that would connect to a proposed Bryant Street to the east. The Applicant has agreed to contribute $250,000.00 to DDOT toward the engineering and design costs of the circle and future Bryant Street extension. In addition, the Project will provide the benefit of effective and safe vehicular and pedestrian access.

c. Urban Design, Architecture, Site Planning, and "Green Building Practices: The high quality of design in the development of the architecture for the Project exceeds that of most matter-of-right projects. The landscaping, raised first floor level access, and alternating composition of projecting bays all combine to create a sense of scale and visual interest. The open courtyards will be an attractive amenity for the building's residents. The bays of the buildings have been designed to provide ample room for street trees to grow and thrive. This Project features numerous aspects that are superior to those typical for a matter-of-right project. Some of these include: no through-wall vents or exhaust flues; a superior quality of brick with tinted mortar, and a custom bonding pattern with numerous special shapes; embellished brick window heads; pre-cast window sills and window heads which project into surrounding brick; recessing windows beyond standard to create better shadow lines and weathering characteristics; superior glass; green roof technologies with pool and accessory amenities and equipment; architectural rooftop embellishments which incorporate exhaust vents and fans to provide wind-screening and shade; custom ornamental metal; direct access to ground level units requiring more site work and custom units; nine-foot ceilings; water source H.P.S., which uses 40% less energy than air-to-air; 100% outside ventilation air-to-air

corridors; a recycling chute to encourage compliance; generous bike storage; a 1:1 ratio of parking spaces to residential units; increased exterior wall R value based on using a rigid insulation system outside of sheathing; and D.C. standard streetscape at street facades; bio-water detention system in addition to green roof technologies.

d. Uses of Special Value: The Project will provide ground-floor retail that will be a significant contribution toward realizing the vision set forth in the DUKE Plan for a cultural, 18-hour destination district. The ground-floor retail is a pedestrian-oriented use that will greatly enhance the street activity of the area. The Applicant also will be providing a greater number of parking spaces than is required by the Zoning Regulations. The Applicant has agreed to provide at least one parking space per residential unit. Parking is a major concern of the neighbors, and the proposed rate will prevent further impacts on surrounding parking problems.

e. Monetary Contributions to Neighborhood Organizations: As part of the amenities and benefits package offered in connection with the applications, the Applicant agreed to contribute $100,000.00 to ANC 1B to assist the neighborhood programs and initiatives identified by ANC 1B.

f. Historic Signage: The Applicant also plans to work with the Office of Historic Preservation to contribute $10,000 towards new historic district signage in the area.

g. Employment and Training Opportunities: In order to further the District's policies relating to the creation of employment and training opportunities. The Applicant has indicated that it will participate in a First Source Agreement with the District of Columbia Department of Employment Services. The Applicant also has agreed to enter into a Memorandum of Understanding with the Local Business Opportunity Commission to use local firms in the development and construction of the Project.

28. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, job training and employment opportunities, transportation measures, and uses of special value to the neighborhood.

Compliance with PUD Standards

29. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. Given the level of project amenities and public benefits, and the fact that the development will proceed under the existing zoning, the Commission finds that the development incentives are appropriate to increase the overall residential density to 8.0 for Parcels A and C and up to 6.3 for Parcel B. As stated above, the Commission finds that the extra 5% of density permitted under § 2405.3 is appropriate and essential to the functioning of the Project. The Commission also finds that the requested flexibility in roof structures, lot occupancy, recreation space, public space at

ground level, and loading are fully justified by the superior benefits and amenities offered by this Project.

Comprehensive Plan and Public Policies

30. The Project is consistent with and furthers the goals and policies enumerated in the District of Columbia Comprehensive Plan.

a. The Generalized Land Use Map: The Project is consistent with the Generalized Land Use Map, which recommends the subject site for a mix of moderate and medium density residential and commercial uses. The Project will not be inconsistent with this use category. In addition, the Generalized Land Use Policies Map shows the Property located within the Howard Gateway housing opportunity area, which has been designated as a desirable location for the development of housing and residential uses. The Project will be developed under the existing CR and ARTS/C-2-B Zone Districts. In addition, the proposed residential project is foregoing a majority of the commercial density that would otherwise be allowed on the Property in the existing CR Zone District.

b. Stabilizing the District's Neighborhoods: The creation of up to 700 new residential units will help enhance and stabilize the U Street/Cardozo neighborhood. The creation of a significant residential development on the site also is likely to attract additional residential and retail development and stabilize the neighborhood.

c. Increasing the Quantity and Quality of Employment Opportunities in the District: As stated above, the Applicant has agreed to enter into a First Source Agreement with DOES and a Memorandum of Understanding with the LBOC.

d. Respecting and Improving the Physical Character of the District: The Project has been designed to improve the site's integration with the surrounding neighborhood and to dramatically improve the streetscape on 8th, 9th, and V Streets. The facades, landscaping, raised first floor level access, and alternating composition of projecting bays, all combine to create a sense of scale and visual interest. The height of the building to be constructed on Parcel B has been gradually stepped back from 90 feet to 65 feet in order to respect the lower density massing of the adjacent rowhouses. The Project as a whole employs traditional, time-tested materials in new and modern ways in a design that is aesthetically enduring and which adds to the fine urban texture of the city. Finally, the construction of a high quality residential project will be an important asset for the community.

e. Preserving and Ensuring Community Input: Through the PUD process, the Applicant has worked with representatives of ANC 1B, as well as the surrounding neighborhood, to create a new residential community that is a benefit to the neighborhood and the District of Columbia. The Applicant hosted community meetings and presented the Project to the LeDroit Park Civic Association and the Cardozo Shaw Neighborhood Association.

31. The Project also complies withy the major elements of the Comprehensive Plan.

a. Housing: The creation of up to 700 residential units on this currently underutilized site fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Project will devote 15% of the bonus density gained through the PUD process to affordable housing. The inclusion of these affordable units in the project also is entirely consistent with the provisions of the Comprehensive Plan noted above.

b. Urban Design: As shown in the detailed plans, elevations, and renderings included in the Applicant's January 6 submission (Exhibit ___), as modified by its powerpoint presentation of January 26 (Exhibit ___) and its post hearing submissions of February 10 (Exhibit ___), the Project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a prominent residential building will complement the established residential neighborhood that surrounds the site.

c. Ward 1 Goals and Policies: The Ward 1 Element of the Comprehensive Plan seeks to stimulate production of new housing, maintain and strengthen the quality and construction of housing, and promote low and moderate income housing development opportunities. (See 10 DCMR § 1206.1 and 10 DCMR § 1207.1). The Project is consistent with these provisions of the Ward 1 Elements of the Comprehensive Plan and the "appropriate study" discussed below.

d. DUKE Plan: The Project is located within the area of land studied under the Draft Development Framework for a Cultural Destination District within Washington, DC's Greater Shaw/U Street Plan ("**DUKE Plan**"). The DUKE Plan has been proposed by the Office of Planning to celebrate and re-create an historical economic, cultural, social and institutional center for the District's African-American community. The DUKE Plan seeks to guide future development of the project area by capitalizing on the area's historic context to restore the neighborhood with 18-hour destinations. As discussed in depth above, the Project will be consistent with the DUKE Plan's vision and will be the first step in accomplishing a major goal of the DUKE Plan by contributing towards the design fees for the extension of Bryant Street. Several goals of the DUKE Plan will affect the Property. The DUKE Plan seeks: (1) an increase from moderate to medium density land use designations, (2) the designation of V Street as a neighborhood retail and service center, (3) residential development which includes affordable housing, and (4) the development ground floor retail/entertainment uses and a mix of national and unique, locally-owned retail establishments on 7th, 9th and U Streets, and Florida Avenue. In addition, the Project will contribute design fees to further the goal of extending the street system in the vicinity of Bryant and W Streets to provide an east-west cut through to link Georgia and Florida Avenues.

Office of Planning Report

32. By reports dated January 9, 2006, and February 20, 2006, OP recommended approval of Applications No. 05-17 and 05-32. The recommendation was based on its findings that the Project is consistent with and will further important Comprehensive Plan objectives, is consistent with the zoning for the area, and provides an amenity package appropriate to the amount of density being gained through the PUD process. OP also stressed the importance of traffic mitigation in the area and recommended that the applications be approved subject to the contribution toward the proposed Bryant Street extension.

33. OP conditioned its recommendation for approval on the provision of the following amenities:

a. A $250,000.00 contribution to DDOT for design and engineering costs for a traffic circle and extension of Bryant Street;

b. A $100,000.00 contribution to ANC 1B for neighborhood amenities;

c. Affordable housing totaling 29,800 square feet offered at 80% of AMI;

d. Incorporation of green building technologies;

e. Retail development of the V Street and Florida Avenue frontages including neighborhood serving retail;

f. A First Source Agreement with DOES; and

g. A Memorandum of Understanding with LBOC.

34. The Commission finds that the Applicant has offered to provide affordable housing in an amount equal to 15% of the bonus density generated by the PUD process. Under the gross floor area currently proposed, the affordable housing the Applicant would be required to provide would equal approximately 29,800 square feet.I

Other Government Agency Reports

35. By report dated January 23, 2006, DDOT concluded that it has no objections to the Project. In its report DDOT expressed concern that the driveway entrances for the parking garage and loading docks on Parcel B are located adjacent to each other and do not provide the adequate clearance required by DDOT design standards.

36. During the public hearing and in its post hearing submission of February 10, the Applicant addressed DDOT's concern about the driveway entrances for the parking garage and loading docks on Parcel B. The Applicant explained that the service entry to Parcel B, off the north frontage of V Street near the center of the block, meets the DC Streetscape Standards dimension from the western property line. It is also the recommended maximum width for garage or loading entries. It primarily serves the Parcel B parking garage and, to a much lesser extent, a loading area that will be used, at most, once a day for trash pick-up and possibly twice a month for moving. Because of the small number of units in the building, a second entry exclusively for the minimal loading that will occur is not necessary. A second entry also would

seriously adversely affect the quality of the streetscape. Additionally, moving activities are normally scheduled by condominium unit owners to occur off-peak when the level of garage activity and local pedestrian traffic is at its lowest, and possible conflicts are therefore minimized. The minimum width of the garage ramp is 14 feet, and the minimum width of the loading berth is 12 feet. The total 26-foot width can be handled by one 24-foot wide opening and curb cut as illustrated in the attached plan. A six-foot wide wall segment has been left between the proposed loading/parking entry and the adjacent property to allow for pedestrian clearance, should the neighboring site locate its service entries in a manner similar to the subject site.

37. The Applicant learned, through conversations with DDOT, that a comprehensive study of streets, curbs, and sidewalk widths in this neighborhood is likely in the near future. The Applicant will continue to work closely with DDOT to ensure that the streetscape of the Project addresses the needs and requirements set forth by any new standards of street and sidewalk design for the neighborhood.

38. The Commission finds that the Applicant has demonstrated that the entrances to the parking garage and loading facilities for Parcel B are sufficient and that DDOT's concerns are unfounded.

CONCLUSIONS OF LAW

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

2. Under the PUD process, the Commission has the authority to consider these applications as consolidated or first-stage PUDs. 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, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise required approval by the Board of Zoning Adjustment.

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

4. Each of the applications (05-17 and 15-32) individually meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD is within the applicable height, build, and density standards of the Zoning Regulations. The proposed height and density will not cause a significant adverse effect on any nearby properties and will serve as the critical concentration of residents required to transform

this underutilized area. Mixed use is appropriate for Atlantic Plumbing North (Parcel C), which is located in the CR Zone. Mixed use also is appropriate for Atlantic Plumbing South (Parcels A, B, and D), which is located in the CR and ARTS/C-2-B Zone. The Commission notes that the zoning for the Property will not be changed, and the proposed uses would be permitted as a matter-of-right for the appropriate Zone. As demonstrated in the Traffic Study submitted by the Applicant, the Project will not cause adverse traffic impacts and the Property is located in close proximity to mass transit. The Project has been appropriately designed to complement and respect the existing adjacent buildings with respect to height and mass.

6. Application No. 05-17, Atlantic Plumbing South (Parcels A, B, and D), meets the contiguity requirements of § 2401.3. Application No. 05-32, Atlantic Plumbing North (Parcel C), meets the contiguity requirements of § 2401.3.

7. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.

8. The benefits and amenities provided by the Project, particularly the provision of housing and affordable housing, parking, neighborhood-serving retail, and substantial monetary contributions to improve the neighborhood, are reasonable for the development proposed in Applications No. 05-17 and 05-32.

9. The applications seek an increase in height, FAR, and lot occupancy. They also seek a reduced court width requirement for Parcel A, aggregation of parking between Parcel A and Parcel D, and a reduction in the public space and residential recreation space requirements. They also seek flexibility with regard to roof structure height and setback requirements and loading. The benefits and amenities provided by the Project, particularly the provision of affordable housing, the superior and exciting design of the buildings, the contribution toward the proposed Bryant Street extension, and the transformation of an underutilized and largely vacant site into a vibrant mixed-use community, are all reasonable trade-offs for the requested development flexibility.

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

11. Approval of the PUD applications is not inconsistent with the Comprehensive Plan.

12. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 1B voted in favor of approving Applications No. 05-17 and 05-32. The Commission agrees with the ANC that this Project should be approved.

13. Although the Commission has considered the objection of Howard University to the proposed extension of Bryant Street and the proposed traffic circle intersection with Sherman and Florida Avenues, the Commission notes that it does not have the jurisdiction or the responsibility to approve the proposed extension and implement DDOT's plan. The Commission also notes that the $250,000.00 contribution to DDOT could be used to extend the street network in other areas or to find an alternative traffic mitigation solution.

14. The applications for a PUD under the existing zoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

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

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this order, of Application No. 05-17 and Application No. 05-32 for consolidated review and approval of a Planned Unit Development. This approval shall apply to the following properties included in Application No. 05-17: Square 2875, Lots 1106, 1107, 2012, 2026, 2030. This approval shall apply to the following properties included in Application No. 05-32: Square 2873, Lots 1, 232, 852, 853, 859, and 864. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD in Application 3-17 shall be developed with the plans prepared by Esocoff & Associates, dated January 6, 2005, marked as Exhibit ___ in the record, as modified by the PowerPoint presentation presented during the public hearing on January 26, 2006, marked as Exhibit ___ in the record, and as further modified by the Applicant's post-hearing submission, dated February 10, 2005, marked as Exhibit ___ in the record.

2. The PUD in Application 05-32 shall be developed with the plans prepared by Esocoff & Associates, dated January 6, 2005, marked as Exhibit ___ in the record, as modified by the PowerPoint presentation presented during the public hearing on January 26, 2006, marked as Exhibit ___ in the record, and as further modified by the Applicant's post-hearing submission, dated February 13, 2005, marked as Exhibit ___ in the record.

3. The Project shall be a mixed-use development. With regard to the PUD in Application No. 05-17 (Atlantic Plumbing South), the building on Parcel A shall be constructed to a maximum height of 100 feet and a density of 8.0 FAR, which is the combined FAR for Parcel A and Parcel D. The building on Parcel B shall be constructed to a maximum height of 90 feet and a maximum density of 6.3 FAR. The building on Parcel D shall be constructed to a maximum height of 60 feet and a maximum density of 8.0 FAR, which is the combined FAR for Parcel D and Parcel A. With regard to the PUD in Application No. 05-32 (Atlantic Plumbing North), the building on Parcel C shall be constructed to a maximum height of 100 feet and a density of 8.0 FAR.

4. With regard to the PUD in Application No. 05-17 (Atlantic Plumbing South), approximately 426,175 square feet of gross floor area shall be devoted to residential use. With regard to the PUD in Application No. 05-32 (Atlantic Plumbing North), approximately 295,269 square feet of gross floor area shall be devoted to residential use. The Applicant shall have the flexibility to construct between 630 and 700 residential units in the Project, including Atlantic Plumbing North and Atlantic Plumbing South.

5. The retail use is required on Parcels A, B, and C in the following amounts: Parcel A – 6,245 square feet; Parcel B – 4,306 square feet; and Parcel C – 4,243 square feet. Retail

use is permitted, but not required, on Parcel D. If retail use is not provided on Parcel D, that space will used for residential

6. Of the residential gross floor area for the Project, a minimum of approximately 29,800 square feet shall be devoted to affordable housing for residents with an income that is no greater than 80% of the area median income. The required affordable housing shall be divided proportionately among the buildings on Parcels A, B, and C, and shall be phased accordingly.

7. The PUD approved as Application No. 05-17 (Atlantic Plumbing South) shall include a minimum of one parking space per residential unit with a minimum of nine spaces devoted to the retail uses. The PUD approved as Application No. 05-32 (Atlantic Plumbing North) shall include a minimum of one parking space per residential unit. This parking requirement may be satisfied with any combination of full and compact parking spaces.

8. Prior to the issuance of a building permit for any building approved by either the Application No. 05-17 (Atlantic Plumbing South) PUD or the Application No. 05-32 (Atlantic Plumbing North) PUD, the Applicant shall make a monetary contribution of $250,000.000 to the District Department of Transportation. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the other PUD.

9. Prior to the issuance of a building permit for any building approved by either the Application No. 05-17 (Atlantic Plumbing South) PUD or the Application No. 05-32 (Atlantic Plumbing North) PUD, the Applicant shall make a monetary contribution of $100,000.00 to ANC 1B. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the other PUD.

10. Prior to the issuance of a building permit for any building approved by either the Application No. 05-17 (Atlantic Plumbing South) PUD or the Application No. 05-32 (Atlantic Plumbing North) PUD, the Applicant shall make a monetary contribution of $10,000.00 to the Office of Historic Preservation to provide historic signage. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the other PUD.

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, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;

    b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;

    c. To make 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;

d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and

e. To make alterations to the parking garage design provided that the parking garage contains a minimum of approximately one parking space for each residential unit, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.

12. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development. The Applicant shall abide by the terms of the Memorandum of Understanding in order to achieve, at a minimum, the goal of 35% participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the Application No. 05-17 (Atlantic Plumbing North) PUD and the Application No. 05-32 (Atlantic Plumbing South) PUD.

13. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant shall abide by the terms of the agreement in order to achieve the goal of utilizing the District of Columbia residents for at least 51% of the jobs created by the PUD.

14. No building permit shall be issued for any building approved by either the Application No. 05-17 (Atlantic Plumbing South) PUD or the Application No. 05-32 (Atlantic Plumbing North) PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners(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 applicable PUD Parcel 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. Prior to the issuance of a certificate of occupancy for any building approved by either the Application No. 05-17 (Atlantic Plumbing South) PUD or the Application No. 05-32 (Atlantic Plumbing North) PUD, the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable units in such buildings to affordable housing for not fewer than 20 years.

17. The Application No. 05-17 (Atlantic Plumbing South) and the Application No. 05-32 (Atlantic Plumbing North) PUDs shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building

permit for one of the buildings in either PUD as specified in 11 DCMR § 2409.1. The phasing of the four buildings is permitted. The filing of an application for a building permit for one of the four buildings shall vest this order with regard to Applications No. 05-17 (Atlantic Plumbing South) and 05-32 (Atlantic Plumbing North). However, an application for the final building permit must be filed within five years of the issuance of a certificate of occupancy for the first building.

18. 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.