

February 21, 2006

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
441 4th Street N.W., Suite 210 South
Washington, D.C. 20001

RE: Proposed Order – ZC Case No. 05-36
(First Stage & Consolidated PUD & Related Map Amendment-200 K Street N.E.)

Dear Chairperson Mitten and Members:

This Applicant submission responds to the Zoning Commission's comments regarding the above-listed case during the public meeting February 13, 2006. We appreciate having this opportunity. Chairman Mitten suggested that we revise the Decision portion of the Draft Order submitted February 1st to capture the proffered public benefits and amenities in greater detail.

We have done so, and the revised document is enclosed in two forms to facilitate your review. Attachment 1 is only the Decision portion, showing additions to the February 1st Draft in underlined red text, and deletions in ~~strikethrough-red~~ text. Rationale statements are presented in blue text for explanatory purposes. Attachment 2 is a clean copy of the entire Draft Order including the revised Decision portion. Except for the date change and correction of one typographical error, we made no changes in the draft Findings of Fact and Conclusions of Law.

Regarding the substance of Commission members' requests, key points are summarized on the next page in the format requested by Commissioner Hood.

- The Applicant cannot accept the proposal to require a second-stage plan with a 90-foot building height for a 40-foot setback from the K Street building line (referenced hereinafter as "the 90/40 alternative"). The data provided below shows why this approach would destroy the financial viability of the project.
- The Applicant agrees to consider placing some of the affordable units on the sixth floor. But the previously-submitted first-through-fifth-floor Affordable Unit Designation Plan satisfies equitable distribution requirements and should be accepted, with flexibility to replace some of these units with some comparable sixth-floor units.
- The Applicant accepts Chairman Mitten's request for a specific provision requiring execution of the Draft Covenant as submitted, except for the revisions necessary to correctly describe the metes and bounds of the Consolidated PUD properties.
- The Applicant accepts the Commission's request for explicit language in the Order to require a green-roof system for the Preliminary PUD.
- The Applicant accepts the Commission's suggestion that basic elements of the central plaza public use plan should be included as mandates in the Order. However, we believe detailed plaza rules and operations should be determined collectively by the Applicant, the Union Place condominium association, and ANC 6C.

Chairman Carol J. Mitten and Members

D.C. Zoning Commission

February 21, 2006

Page 2

Applicant's Key Points

- The proposed 90/40 alternative for Phase 2 (90-foot building height for a 40-foot setback from the K Street building line), if imposed, would tip development cost over the edge. The project would not be financially feasible and could not be developed as planned.

Why? Because the 90/40 alternative would cause the loss of 77,760 gross square feet of FAR.

37,760 gsf would be lost due to the height reduction over the 40-foot width of the proposed setback from the K Street building line.

Another 40,000 gsf would be lost because the 40-foot setback would not leave enough space to build the standard double-loaded corridor in the portion of the first tier that rises to 130 feet at the point where the setback ends.

The loss of 77,760 gross square feet would reduce the Applicant's net gain in marketable market-rate bonus density to 138,833 gsf. At this level, it would cost the Applicant **\$153.78** per square foot (FAR) of net marketable, market-rate bonus density to develop the project with all of the proffered public benefits and amenities. This is **more than twice as much as current land costs** of about \$70 per square foot.

- The Applicant's cost of providing the full range of proffered public benefits and amenities is \$21.350 million, including a loss of \$125,000 per unit for the 78 affordable housing units.
- Development costs are teetering at the edge of financial viability. Any Commission action that would further increase costs would be fatal to the project as planned.
- Union Place will deliver 702 residential units in a neighborhood that has had little significant new housing development for many years.
- Union Place will deliver 78 affordable housing units, the highest percentage ever proffered by a private developer on private land that was not acquired from the government.
- ANC 6C and neighborhood civic leaders resoundingly urged the Commission to approve the project because of the community's great need for housing, affordable housing, and the other project benefits and amenities.

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 3

Throughout these proceedings, we have worked diligently to respond to everything that has been asked of us by the Commission, OP, and ANC 6C. With this submission today, we are again trying to comply with Commission members' suggestions to the fullest possible extent, without destroying the carefully-constructed balance that makes Union Place financially viable.

The Applicant, Ronald J. Cohen of the Cohen Companies, testified under oath at the January 5th hearing, that Union Place "is a very closely designed, conceived project (in which) every element is a building block. One piece of it goes, it impacts everything else, and there's a domino effect. And I beg you to please respect that aspect of this project and not try to pull the blocks apart and rearrange them. This is a project that works and, yes, it is the best I can do, having gone back to the drawing board many times."

We ask again today that the Commission accept the Applicant's plan, which incorporates many of the recommendations of the community, OP, and the Zoning Commission, as the very best for the development of this site.

1. Reasons Why The 90/40 Alternative Cannot Work

As Mr. Cohen testified, Union Place is not a project that can be tinkered with piece by piece without risk of upsetting the delicate balance that makes it financially viable. The 90/40 alternative would destroy the balance and doom the project to financial failure.

In discussing the 90/40 alternative during the February 13th Commission meeting, Stephen Cochran of the Office of Planning ("OP") said OP "would like to see it explored" because "we don't have enough information" to weigh its merits. We believe the following information convincingly demonstrates that the alternative would make the proposed development financially unsound and too risky to pursue as planned. With that knowledge, there is no point in requiring the submission of a 90/40 alternative. The 90/40 alternative would cause:

- **The direct loss of 37,760 gross square feet of FAR due to the height reduction from 130 feet to 90 feet over the 40-foot width of the proposed setback from the K Street building line. This 40-foot height reduction across the 40-foot span of the setback results in the loss of approximately 35 to 37 residential units; and**
- **The loss of an additional 40,000 gross square feet of FAR because the 40-foot setback would make it impossible to build double-loaded corridors in the next adjacent residential tier at the point where the 130-foot height would begin. In other words, this tier – from 90 feet up to 130 feet – would have to be developed as a single-loaded corridor, with only one row of units beside the corridor. **The rooftop elevator penthouses would have to be designed to provide elevator service to the single-loaded corridor, in addition to the double-loaded corridors in the 90-foot portion and the double-loaded corridors in the 130-foot portion.****

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 4

The sum of 37,760 gross square feet and 40,000 gross square feet is 77,760 gross square feet, which is the total amount of buildable space that would be lost with the 90/40 alternative. This loss must be factored into the overall cost calculations of the \$400 million project. Consider this:

Requested Bonus Density	308,638 gsf
— Minus 90/40 loss:	77,760 gsf
— Minus loss of market-rate space committed to affordable housing:	92,045 gsf
Remaining marketable market-rate bonus density with the 90/40 alternative:	138,833 gsf

Development Costs of the Public Benefits/Amenities:	
+ 702 parking spaces at one-to-one ratio, cost of providing 468 more than the one-to-three ratio (234) required by code:	\$ 9.10 million
+ Central plaza, cost of waterproofing, landscaping, maintenance, security, etc.:	\$ 1.50 million
+ Affordable housing, \$125,000 loss per unit x 78 units:	\$ 9.75 million
+ Green-roof systems, Phase 1 and Phase 2:	\$ 1.00 million
TOTAL:	\$21.350 MILLION
COST PER SQ FT OF NET MARKETABLE MARKET-RATE BONUS DENSITY WITH THE 90/40 ALTERNATIVE (\$21.350 million divided by 138,833 gsf):	\$153.78
CURRENT PER SQ FT COST OF BUYING BUILDABLE LAND IN THE PUD AREA:	\$70.00

The bottom line is that if the 90/40 alternative is imposed, the Applicant would have to pay more than twice as much as current land costs for the net marketable, market-rate bonus density to be gained through the PUD. The Applicant cannot accept such a drastic loss.

By contrast, if the Preliminary PUD is approved with a maximum height of 130 feet and 8.4 FAR for the entire project, the net marketable market-rate bonus density increases to 216,593 gsf. The costs of providing the public benefits and amenities, in relation to the net marketable market-rate bonus density, then drops to \$98.57 per square foot. At this level, the project remains financially viable, but right at the tipping point.

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 5

Throughout the process, the Applicant has steadily increased the value of public benefits and amenities. In doing so, Mr. Cohen realized the costs were rising to the point that the project was teetering on the edge of financial feasibility.

However, he determined that he could absorb these costs at this level, partly because he had acquired the properties over the past ten years. Because of this investment basis, he is willing to proffer a greater percentage of affordable housing than anybody else can afford to offer at current land prices.

But any further increase in costs – such as with the 90/40 alternative – will push the project over the edge so that it is no longer financially feasible.

In the original 1995 Order for development of this site, the Commission approved the 130-foot height for all proposed buildings. In deference to community and OP concerns, we reduced the height of the Consolidated PUD (Phase 1) to 90 feet with a setback at a height of 61 feet/6 inches on the northeast end. Except for the suggestion of studying an alternative, OP has continued to support a Phase 2 height of 130 feet.

ANC 6C endorsed and testified in support of the applications, with no conditions or reservations regarding the height. The ANC adopted its resolution of support through an extensive public process, involving nine public meetings, two votes by its Planning and Zoning Committee, and two votes by the full Commission.

Only one person – who owns K Street property **but does not live there** – testified in opposition to the height. Mr. Cochran mentioned receiving an unspecified number of telephone calls and e-mails from individuals (unidentified) who opposed the height, but these communications are not part of the record in this case.

Our Preliminary PUD application simply asks that the Commission re-affirm its prior decision regarding the maximum height. On that basis, Mr. Cohen was able to bring in ZOM-USA, an experienced and highly-regarded national real estate firm, as an investor. We introduced ZOM-USA executive Jon Wallenstrom at the Commission hearing, where he testified to his commitment to take the lead in developing Phase 2 and to proceed immediately with the second-stage PUD application. He further testified that the 130-foot height and 8.4 FAR are essential to make the project financially feasible. So we do not need an alternative Phase 2 plan to know that a height reduction will not work. We already know that.

Finally, we would like to direct the Commission's attention to an aspect of the development that seems to have gone unnoticed. This project should be viewed in the context of its location, and with recognition of the difficulty, investment risk, and cost of developing a desirable residential community adjacent to the ugliness and noise of heavily-used railroad tracks and the rock-walled embankment supporting the tracks. The railroad proximity severely diminishes the residential marketability of the first two or three stories of the 2nd Street side of the Phase 2 building.

It took creativity and daring for Mr. Cohen to take on the challenge of devising a way to make the two or three lower floors on 2nd Street usable, marketable, and attractive. To do so, he

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 6

proposed, among other things, 2nd Street landscape beautification and the creation of the 27,000-square-foot Union Place central plaza with public access from a 2nd Street entrance. This encourages 2nd Street foot traffic and draws pedestrians into the plaza and its ground-floor retail establishments, changing the nature of 2nd Street from a drab and ugly place into a pleasant environment.

The negative marketability of residential units on the lower floors on the 2nd Street side, are significant factors requiring the full 130-foot height for all of the Phase 2 building.

2. Placement of the Consolidated PUD Affordable-Housing Units

During the February 13th meeting, the Commission invited us to submit a revised plan showing dispersal of affordable units “throughout” the Phase 1 building and also showing that no affordable unit is less than 95% of the size of comparable market-rate units. We do not believe either approach is workable, either for the Applicant or for the buyers of affordable units.

It appears that the Commission is attempting to apply to this case some portions of the Inclusionary Zoning text amendments it adopted as preliminary rule-making on February 9th, even though these proposed amendments have not yet been published in the *D.C. Register*, fully vetted through public review, and adopted as final rule-making. Though I understand your interest in moving quickly on the Inclusionary Zoning matter, I respectfully suggest that it is unwise to apply proposed rules without the benefit of the public review period required by the Zoning Regulations.

a. Dispersal Among The Floors

We remain convinced that the allocation of the 28 affordable housing units on floors one (1) through five (5) in the Consolidated PUD is even, equitable, and fair as shown in the table and floor plans submitted as Attachments 4 and 6 in the Applicant’s Post-Hearing Submissions dated January 20, 2006 (“Affordable Unit Designation Plans”).

However, the Applicant is willing to relocate some affordable units to floor six (6) in response to comments by Chairman Mitten and Commissioner Jefferies that they would like to see some affordable units above the fifth floor. In the revised draft Decision document attached, we have written new language allowing the Applicant to relocate some affordable units to the sixth floor, with the approval of the person or agency charged with implementing and enforcing the affordable-housing requirements.

Multi-unit residential development becomes cost-effective only when the developer can recover development costs – and in this case, also the losses sustained by the affordable units – and earn a reasonable profit through the premium rates that some buyers are willing to pay to have high-level views of the city.

We urge the Commission to recognize, as shown in the hearing record, that the ANC and community leaders want housing to be built at this site, and want the affordable units the Applicant has committed to provide. For instance, Reverend William Bynum of the Public

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 7

Citizen Civic Association appealed to the Commission: *"We ask you, please don't sacrifice the generous affordable houses that Mr. Cohen is providing by altering the plan from the way he has submitted it."*

The Phase 1 floor plans were developed on the premise that **each and every unit would be a market-rate unit.** The Applicant did not design "affordable" units with one set of standards, and market-rate units with different standards. At the Commission's direction, we designated the affordable units on the framework of the original floor plans. The affordable units are not clustered on any single floor, but co-mingled with market-rate units throughout five floors.

We find no factual basis for Commission members to conclude that affordable-unit buyers are somehow disadvantaged by having units on floors one through five, or that these units are somehow "inferior" to units on higher floors. Buyers of the 76 market-rate units on floors one through five will surely not consider themselves residents of "inferior" housing. In this case, the first-floor units are particularly desirable because they provide front porches, small front-yard space, and entrances directly from the street as well as from the interior.

If we had put most or all of the affordable units in clusters that could have been labeled as the "low-income wings" or the "low-income floors", we would understand and agree with the Commission's objections. But we did not do that. As shown in our Affordable Unit Designation Plans, the affordable units are interspersed with market-rate units throughout floors one through five so that there is no distinction between them.

b. Comparability of Affordable Unit Sizes to Market-Rate Unit Sizes

Regarding the issue that no affordable unit should be less than 95% of the size of a comparable market-rate unit, we submit that such a rigid rule ignores the floor-plan designs. In our plan, as in most large condominium developments, all units – market-rate and affordable – come in different sizes within each type.

We encourage you to look closely at the floor plans of the Affordable Unit Designation Plans. The net square footage of each unit is shown within the design of each unit. You will see that the 1BR units come in 33 different sizes, varying according to their placement within the building configuration. ***You will also see that the six smallest 1BR units – at 500 square feet or less – are market-rate units in our plan.***

The 1BR+den units come in 34 different sizes, and two-thirds of them are between 840 and 950 square feet. Of the seven affordable 1BR+den units, five are also in the 840-950 sf range; one is slightly smaller and another is considerably larger, at 1,105 square feet.

The 2BR units come in 36 different sizes, almost equally divided between those of less than 1,100 square feet, and those from 1,100-1,260 square feet, with eight units at 1,300 square feet or more. Of these eight largest 2BR units, two are designated as affordable units. Four other affordable units range from 1,106 to 1,193 square feet, and the fifth is 1,042 square feet.

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 8

So when Commission members say affordable units must meet a “95% rule,” we don’t know what you mean in terms of the varying sizes in our proposed project. Application of a rigid 95% formula would eliminate the largest units designated as affordable in the plans we submitted, and would diminish buyers’ choices in the size of units they need. We do not believe this serves the best interests of affordable-unit buyers.

3. Requiring Applicant Execution of the Draft Covenant

Chairman Mitten indicated she wanted to make sure the Draft Affordable Housing Covenant filed by the Applicant in the January 20th Submission would be the covenant the Applicant executes and records. In response, we have added Condition No. 13 in the draft Decision document attached to require the Applicant to execute the covenant as drafted, except for the revisions necessary to correctly identify the metes and bounds of the Consolidated PUD properties covered by the covenant.

Also in response to the Chairman’s comments, we added Condition No. 5 mandating the affordability periods and the 80% of Area Median Income eligibility, duplicating the same provisions in the covenant.

4. Mandating Preliminary PUD Green-Roof Technology

Chairman Mitten commented that the draft Order as submitted did not sufficiently capture the green-roof commitment in the Decision portion. In response, the revised draft Decision document attached includes a new Condition 6, which specifically requires the Applicant to apply the green-roof system to the Consolidated PUD in accordance with the previously-submitted green-roof plans and to submit a similar green-roof plan with the second-stage PUD application for Phase 2. The new language specifically requires the Applicant to apply a green-roof plan to Phase 2 “for the maximum amount of roof space, minus the space needed for rooftop building systems such as elevator and mechanical penthouses.”

5. Mandating Public Plaza Use Rules

In an effort to satisfy some Commission members’ suggestions that plaza operating rules should be captured in the Decision portion of the Order, we have added a new Condition 7, which mandates the 11 a.m.-7 p.m. hours of public access, the posting of appropriate signage regarding permissible and prohibited plaza activities, the provision of a 2nd Street public entrance, and the provision of sufficient security personnel and procedures to ensure the safety of plaza users.

We do not believe additional operational details should be spelled out in the Order. Among other reasons, the D.C. Condominium Act gives condominium unit owners’ associations “power to regulate the use, maintenance, repair, replacement, or modification of common elements.” See D.C. Official Code §42-1903.8(a)(6) We submit, as stated in the proposed

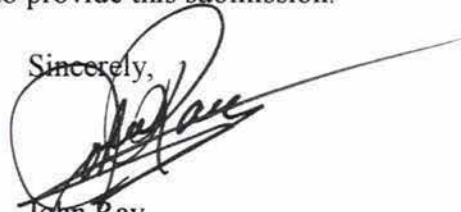
Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 9

Condition 7, that operational details should be developed collectively by the Applicant, the Union Place condominium unit owners' association, and ANC 6C.

Chairman Mitten noted at the February 13th meeting that the Commission has the option to request the Applicant or others to respond to questions during its public meetings. We will certainly be present and available to answer your questions at the February 23rd meeting if you would find this helpful in sorting through what has now become a voluminous written record.

Thank you once again for the opportunity to provide this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ray", with a long, sweeping horizontal line extending to the right.

John Ray

MANATT PHELPS & PHILLIPS LLP
Counsel to the Applicant

Attachments:

1. Revised and annotated Decision portion of the Draft Order
2. Clean copy of the entire Draft Order, including the revised Decision portion

Chairman Carol J. Mitten and Members
D.C. Zoning Commission
February 21, 2006
Page 10

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document and its attachments were served upon the following by E-MAIL AND/OR HAND-DELIVERY on February 21, 2006 to:

Ellen McCarthy, Director
ATTN: Stephen Cochran
D.C. Office of Planning
801 North Capitol Street NE, Fourth Floor
Washington, D.C. 20002

Commissioner Mark Dixon, Chairman
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80 New York Avenue NW, # 402
Washington, D.C. 20001

ANC 6C03 Commissioner Lena A. Brown
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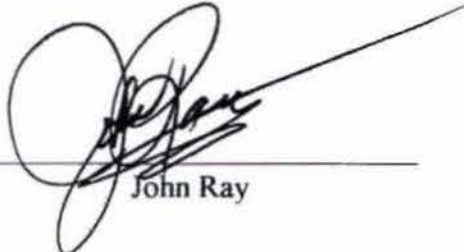
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John Ray

ATTACHMENT 1

[NOTE: **RATIONALE** statements in blue text are provided for explanatory purposes, and are not intended for inclusion in the Order. Additions to the previous draft are shown in underlined red text; deletions are shown in ~~strikethrough red text~~.]

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 the Applications for (1) consolidated review of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) a Zoning Map amendment from C-M-1 and C-2-B to C-3-C for the PUD site. The approval is subject to the following guidelines, conditions, and standards:

1. The consolidated approval of the PUD shall apply to the following properties in Square 749: Lots 32-42; part of Lot 43; Lots 64, 65, 2, and 3; Lots 808-809, part of Lot 814, part of Lot 815, and part of Lot 822, as shown to the right of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission*, ZC Case No. 05-36, filed November 29, 2005.

[**RATIONALE**: This is a standard provision of PUD approval orders.]

2. The preliminary approval of the PUD shall apply to the following properties in Square 749: Part of Lot 4; Lots 5-8, Lots 23-26, part of Lot 27; Lots 812-813, part of Lot 814, Lots 818-819, and Lot 66, as shown to the left of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission*, ZC Case No. 05-36, filed November 29, 2005.

[**RATIONALE**: This is a standard provision of PUD approval orders.]

3. A PUD-related map amendment shall rezone the PUD properties, in their entirety, from C-M-1 and C-2-B to C-3-C. With respect to the properties within the Consolidated PUD, the map amendment shall take effect at the time the Applicant records the covenant

required by ~~paragraph 7~~ Conditions No. 5, No. 12 and No. 13 below. With respect to the properties within the Preliminary PUD, the map amendment shall take effect upon final approval of the second-stage PUD application and the Applicant's recordation of the covenant as specified by the Commission in an Order approving the second-stage PUD.

[RATIONALE: As required by the Zoning Regulations, Condition 3 makes clear that the map amendment does not take effect until the Applicant records the required covenant. Because the project is being developed in two phases, there will be two covenants – one applying to Phase 1 and the other to Phase 2. The map amendment is to take effect for each phase upon the filing of the covenant for that phase.

4. The PUD shall have a maximum FAR of 8.4.

[RATIONALE: This states the Commission's decision regarding FAR.]

5. The Applicant shall designate 11.07% of the total residential gross square feet ("gsf") of the total project as affordable housing for eligible households with annual household incomes of no more than eighty percent (80%) of the Area Median Income, as determined and adjusted annually by the U.S. Department of Housing and Urban Development. The affordable-housing requirements shall be guaranteed by covenants which the Applicant shall execute and record in the land records of the District of Columbia. The affordable units shall be guaranteed by covenant to be set aside as affordable for ten (10) years in the case of for-sale units and twenty (20) years in the case of rental units, as defined with specificity in the covenants. Further conditions for the affordable-housing requirements are set forth in Conditions No. 12, No. 13, No. 14 and No. 15 a. and 15 b. for the Consolidated PUD and Condition No. 22 for the Preliminary PUD.

[RATIONALE: This condition was added in response to the Chairman's comment that the Order should capture details of the proffered public benefits and amenities with greater specificity.]

6. The Applicant shall apply green-roof technology in the development and construction of the Consolidated PUD and the Preliminary PUD. For the Consolidated PUD, the Applicant shall apply the green-roof plan as shown and described in Exhibit D, *Sheets L.9, L.9.1, L.9.2 and L.9.3*, of the Applicant's November 29th Submission. For the Preliminary PUD, the Applicant shall develop and submit with the second-stage PUD

application a similar green-roof plan for the maximum amount of roof space, minus the space needed for rooftop building systems such as elevator and mechanical penthouses.

[RATIONALE: This condition has been added in response to the Chairman's request for a detailed green-roof mandate in the Decision portion of the Order.

7. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. The central plaza shall be open to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. The plaza shall be accessible to the public through a Second Street entrance which shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owners' association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 *et seq.*, and Advisory Neighborhood Commission 6C.

[RATIONALE: This condition was added in response to the Chairman's comment that the conditions in the Decision portion of the Order should capture each portion of the proffered public benefits and amenities with greater specificity.]

8. Ground floor retail space in the Consolidated PUD and the Preliminary PUD shall have an interior clear height of no less than 14 feet.

[RATIONALE: This condition was moved from the Preliminary PUD section into this section to make clear that it applies to both phases of the project.

9. The Applicant shall construct a residential building, compatible with the Consolidated PUD in size and design, on the outparcels under the Applicant's ownership and control. The Applicant shall file the appropriate applications within 18 months of the effective date of this Order.

[RATIONALE: This requires the Applicant to construct a compatible residential structure on the outparcels adjacent to the Consolidated PUD. The OP recommendation, originally presented in its September 23rd report, was that the building would be on Lot 805 and would have a maximum height of 50 feet. At that time, Lot 805 was the only one of the three outparcels Mr. Cohen owned. The lots on either side are occupied by rowhouses about 50 feet in height.]

On January 31, 2006, Mr. Cohen closed on the purchases of the other two lots. Thus, he now owns all three outparcels and can build, as a matter of right, to a height of 65 feet. The Consolidated PUD, where it adjoins the outparcels, is designed at a height of 61 feet/6 inches.

The 18-month period allowed for the filing of applications for the outparcel construction is necessary because Mr. Cohen is allowing the rowhouse occupants to remain in the houses for six months rent-free to give them ample time to decide where they want to move. The applications may be for building permits if he decides to develop within matter-of-right requirements, or for zoning relief if decides on a plan requiring relief.]

The Consolidated PUD

10. The Consolidated PUD shall be developed in accordance with the plans prepared by GTM Architects, dated September 13, 2005, including the revisions submitted September 29, 2005, and January 4, 2006 (the "Combined Plans"). The Consolidated PUD shall have a total of 236,905 gsf, with 233,206 gsf for residential use and 3,699 gsf for retail use.

[RATIONALE: This tracks standard language in PUD orders.]

11. The Consolidated PUD shall be a residential development with ground-floor retail space, constructed to a maximum height of 90 feet above the measuring point, stepping down to a height of 61 feet/6 inches on the northeast end.

[RATIONALE: This tracks standard language in PUD orders.]

12. The Consolidated PUD shall contain 202 residential units, 28 of which shall be designated as affordable units for an affordability period of ten (10) years if for-sale units and twenty (20) years if rental units, guaranteed by covenant between the Applicant and the District of Columbia, and recorded in the land records of the District of Columbia.

[RATIONALE: This requires the Applicant to construct the specific number of units, with the specific number of affordable units, as stated in the Applicant's affordable-housing proffer. This condition further requires that all of its terms shall be guaranteed by

covenant. Condition No. 5 above sets forth additional terms and conditions of the affordable-housing requirements.]

13. The covenant required by Condition No. 12 shall be the Draft Covenant provided as Attachment 2 in the Applicant's Post-Hearing Submissions, January 20, 2006, revised only to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD.

[RATIONALE: This new condition responds to Chairman Mitten's comment that the Order should specifically require the Applicant to sign the Draft Covenant as submitted.]

14. Except as otherwise provided below, the affordable housing units in the Consolidated PUD shall be the units designated by the Applicant in the floor plans for floors one (1) through five (5), submitted as Attachment 6 in the Applicant's Post-Hearing Submissions dated January 20, 2006 ("Affordable Unit Designation Plans").

[RATIONALE: This requires the Applicant to designate affordable units in accordance with the submitted plans. The only permissible deviations from these plans are those defined in Condition No. 15 below.]

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

- a. To replace some of the units designated as affordable on floors one (1) through five (5) with some units of comparable type and size on floor six (6), subject to the approval of the person or agency charged with implementing and enforcing the affordable-housing requirements;

[RATIONALE: This provision responds to comments by Chairman Mitten and Commissioner Jefferies.]

- b. To increase or decrease the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gsf designated for affordable units shall not be less than 13.8% of total residential gsf in the Consolidated PUD;

[RATIONALE: The 5% plus-or-minus flexibility in the total number of units is similar to language in other residential PUD orders. (See, for instance, ZC Order No. 03-12/03-13, adopted February 6, 2004, Capper Carrolsburg Venture LLC). However, this condition makes clear that the affordable housing percentage

cannot drop below 13.8% of the total residential gross square feet in the Consolidated PUD.]

c. To rearrange the unit types and mix, provided that the number, type, size, and distribution of the affordable units shall remain consistent with the Affordable Unit Designation Plans;

[RATIONALE: Flexibility to rearrange units types and mixes, consistent with the development plan, is similar to language in other residential PUD orders. See, for instance, Capper Carrollsburg Venture LLC, cited above.]

d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the buildings;

[RATIONALE: Same as above.]

e. 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; and

[RATIONALE: Same as above.]

~~f. To vary the green-roof plantings within the range proposed, based on availability at the time of construction; and~~

[RATIONALE FOR THE DELETION: We concluded that this flexibility provision is not necessary because the green-roof plans, as submitted, included a statement that the plantings will be selected from among those listed, based upon availability at the time of construction.]

g. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes necessary to comply with the Construction Codes of the District of Columbia or that are otherwise necessary to obtain a building permit.

[RATIONALE: This is standard language in PUD orders.]

16. The landscaping, streetscape, and exterior lighting shall be as shown on the Consolidated Plans. Landscaping, streetscape, and lighting improvements to public space shall be in accordance with the Consolidated Plans and as approved by the Public Space Division of

DDOT. The Applicant shall maintain all landscaping, streetscape, and lighting improvements in good condition.

[RATIONALE: This is standard language in PUD orders.]

17. No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, 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 owners and all successors in title to construct on and use the property in accordance with this order or amendment thereof by the Zoning Commission.

[RATIONALE: This is standard language in PUD orders. Also see Conditions No. 5, No. 12 and No. 13 above for additional mandates on the Applicant with regard to the covenant.]

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

[RATIONALE: This is standard language in PUD orders.]

19. The Consolidated PUD approved by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this Order. Within such time, the first application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction on the Consolidated PUD shall begin within two (2) years of the effective date of this Order.

[RATIONALE: This gives the Applicant only one year – rather than the full two years allowed by the Zoning Regulations – to apply for Consolidated PUD building permits. The Applicant has made commitments to the Zoning Commission and ANC 6C to comply with this timetable.]

The Preliminary PUD

20. The Preliminary PUD shall be developed in accordance with the Combined Plans and the character, scale, mixture of uses, and design of the uses proposed.

[RATIONALE: This is standard language in Preliminary PUD orders.]

21. The Preliminary PUD shall have a maximum height of 130 feet from the measuring point, approximately 500 residential units, and a maximum of 14 stories, each of which shall have a minimum floor-to-ceiling height of 8 feet/6 inches, within the 130-foot height of the structure as measured for zoning purposes.

[RATIONALE: This states the basic requirements regarding the size of the Preliminary PUD structure. The language responds to the Commission's request for assurances of a 14-story maximum within the 130-foot height and for a specific measurement of minimum floor-to-ceiling height. These details will be shown on the drawings submitted in the second-stage PUD application.]

22. The Preliminary PUD shall include an affordable-unit set-aside of no less than 10% of the total residential gsf of the Preliminary PUD. Affordability periods of ten (10) years for for-sale units, and twenty (20) years for rental units shall be guaranteed by covenants agreed upon by the Applicant and the Commission and recorded in the land records of the District of Columbia. The affordable unit types and sizes shall be in reasonable proportion to the types and sizes of market-rate units and shall be evenly dispersed among the central and lower residential floors.

[RATIONALE: Condition No. 22 sets forth the key elements of the affordable-housing commitment as applicable to the Preliminary PUD:

- No less than 10% of residential gross square feet in the Preliminary PUD,
- Guaranteed affordable for ten years for for-sale units,
- Guaranteed affordable for twenty years for rental units,
- Unit types and sizes allocated in reasonable proportion to market-rate types and sizes,
- Co-mingled with and evenly dispersed among market-rate units on central and lower floors,
- All terms and conditions guaranteed by covenants on the property.

Preliminary PUD affordable-unit types and sizes, dispersal, and total Preliminary PUD affordable square feet will be defined in the second-stage PUD application.]

23. The Preliminary PUD shall include a daycare center of approximately 3,449 gsf in size. In the second-stage PUD application, the Applicant shall provide evidence of progress in identifying and securing an agreement with a suitable daycare services provider to operate the facility.

[RATIONALE: This requires the Applicant to provide the daycare center as proffered. Regarding the Applicant's progress in identifying a daycare provider, we mailed a Solicitation of Interest/Request for Qualifications announcement to 56 Ward 6 daycare

providers on December 27, 2005, because 63% of them had expressed interest in expanding their services in response to a Department of Human Services poll. We followed up with telephone contacts. Although eight daycare providers expressed interest in operating the Union Place facility, only one responded with a written proposal. The others were unwilling to commit resources to preparing a proposal without knowing whether the Zoning Commission would approve the project.]

24. In the second-stage PUD application, the Applicant shall address the District Department of Transportation and OP recommendations for the inclusion of garage parking spaces for car-sharing services such as Flexcar or Zip Car.

[RATIONALE: This requires the Applicant to respond, in the second-stage PUD application, to the DDOT recommendation that five percent (5%) of the parking spaces should be allocated to car-sharing services. The recommendation requires further study to determine how it might impact the Applicant's proffer of a one-to-one parking ratio for residents.

- ~~25. The ground floor retail space in the second-stage PUD shall have an interior clear height of no less than 14 feet.~~

[RATIONALE FOR THE DELETION: This was moved up to become Condition No. 8 to make clear that it applies to both the Consolidated PUD and the Preliminary PUD.]

25. In the second-stage PUD application, the Applicant shall have flexibility with respect to:

- a. Increasing or decreasing the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gsf designated for affordable units shall not be less than 10.0% of total residential gsf in the structure;

[RATIONALE: The 5% plus-or-minus language is similar to language in other residential PUD orders, as noted above. The proviso assures that the affordable-housing commitment shall not drop below 10% of total residential gsf.]

- ~~b. The design, size, and nature of a green roof system;~~

[RATIONALE FOR THE DELETION: No longer necessary due to the addition of Condition No. 6.]

b. The exterior façade design and materials, so long as the exterior appearance is compatible with the exterior of the Consolidated PUD structure and consistent in quality and character with the façade design and materials and overall exterior appearance of the Consolidated PUD; and

[RATIONALE: This tracks standard language in PUD orders.]

~~c. The design of the public access point of entry to the Plaza.~~

[RATIONALE FOR THE DELETION: No longer necessary due to the addition of Condition No. 7.]

26. In the second-stage PUD application, the Applicant shall include, as an element of the architectural materials, street-level renderings and a cross-section showing the Second Street public access point of entry to the Plaza, and Second Street elevations.

[RATIONALE: This responds to Commissioner Jefferies' requests during the January 5th hearing.]

27. The second-stage PUD application shall be submitted within one year following the effective date of this Order.

[RATIONALE: This mandates the timetable agreed to by the Applicant.]

General Provisions

28. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Department of Small and Local Business Development in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged business enterprises in the contracted development costs associated with the design, development, construction, and security for the PUD project.

29. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project.

30. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as

amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial of or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

[RATIONALE: Conditions No. 28, No. 29, and No. 30 are standard provisions of PUD orders.]