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November 5, 2007

VIA HAND DELIVERY

D.C. Zoning Commission
Suite 210
441 4th Street, N.W.
Washington D.C. 20001

Re: Zoning Commission Case No. 05-37 – Capitol Place
Proposed Findings of Fact, Conclusions of Law and Order and Conforming Plans

Dear Members of the Commission:

On behalf of the Applicant in the above-referenced case, enclosed please find an original and nineteen copies of the Applicant's Proposed Findings of Fact, Conclusions of Law and Order.

In addition, the Applicant requests that the Zoning Commission reopen the record to accept the enclosed conforming architectural plans and drawings, which incorporate all of the modifications proposed as part of the Applicant's Post-Hearing Submission on October 22, 2007, for the convenience of the Commission's review and for the record. This conforming set of plans contains no new modifications and is only a compilation of what was previously submitted.

Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact me.

Sincerely,

Christine Moseley Shiker

Enclosures

cc: Parties to Case (See Attached Proof of Service)
Travis Parker, D.C. Office of Planning (Via Hand; w/enc)
Advisory Neighborhood Commission 6C (See Proof of Service)
Mediation Committee
Lee Quill, Cunningham + Quill (Via Hand; w/enc)
Karen Wirt, ANC 6C Chair (See Proof of Service)
Monte Edwards, SPNA (See Proof of Service)
Drurry Tallant, Square 752 Residents (See Proof of Service)
Drew Ronnenberg, ANC 6A Representative (Via Hand; w/enc)
Gary Peterson, CHRS (Via Hand; w/enc)

PROOF OF SERVICE

I hereby certify that on November 5, 2007, a copy of the foregoing Applicant's Proposed Findings of Fact, Conclusions of Law and Order and Conforming Plans was served on the following parties:

Advisory Neighborhood Commission 6C — Via Hand Delivery
c/o Karen Wirt, Chair
234 E St., NE
Washington DC 20002

and

c/o Alan Kimber, — Via Hand Delivery
Single Member District Representative
228 Parker Street, NE
Washington, DC 20002

Square 752 Residents — Via Hand Delivery
c/o Drury Tallant
732 3rd Street, NE
Washington, DC 20002

Stanton Park Neighborhood Association — Via Hand Delivery
c/o Monte Edwards
330 E Street, NE
Washington, DC 20002

Christine Moseley Shiker, Esq.
Holland & Knight

PROPOSED FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-37
Case No. 05-37
(Consolidated Planned Unit Development and Zoning Map Amendment for Station Holdings LLC at G, H, 2nd and 3rd Streets, NE)

_____ __, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 1, 2007, to consider applications from Station Holdings LLC (the "Applicant") for consolidated review and approval of a planned unit development and zoning map amendment (collectively, the "Applications"). 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 ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Applications.

FINDINGS OF FACT

The Applications, Parties and Hearings

1. On November 22, 2005, the Applicant filed the Applications for consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment of the subject property (the "Original PUD Submission") located between 2nd and 3rd Streets, N.E., and G and H Streets, N.E (the "Site"). The Original PUD Submission is in the record at Exhibits 1 (PUD Submission Statement) and 2 (PUD Submission Plans) and sought a rezoning of the Site to the C-2-B District.

2. The Applicant filed supplemental materials to the Original PUD Submission on March 22, 2006 and further supplemented the application in its Prehearing Submission on May 15, 2006 (the "Prehearing Submission").

3. The Zoning Commission set the case for hearing at its regularly scheduled public meeting in April, 2006.

4. In July, 2006, the Applicant withdrew from its scheduled zoning hearing to continue to refine the project with input from the community and the Office of Planning.

5. The Applicant then filed additional materials in its Modified Prehearing Submission on January 12, 2007, proposing to rezone portions of the Site to C-3-C (the "Modified Prehearing Submission").

6. At its February 12, 2007, public meeting, the Zoning Commission again set the case for hearing, based on the proposed rezoning to C-3-C.

7. A hearing on the case was set for May 7, 2007. In response to further concerns raised by the community and the Office of Planning, the Applicant submitted a letter dated April 27, 2007, requesting a postponement of the public hearing and agreeing to participate in a mediation process facilitated by the Office of Planning in an effort to resolve the outstanding issues for this project.

8. The Applicant and community representatives participated in the mediation process throughout the summer of 2007.

9. Responding to the issues identified during the mediation, the Applicant filed additional materials on September 11, 2007 and October 1, 2007, supplementing the Modified Prehearing Submission.

10. After proper notice, the Zoning Commission held a public hearing on the Applications on October 1, 2007.

11. The Commission determined the parties to the case at the October 1, 2007, public hearing. Parties in this case included the following: the Applicant; Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the Site is located; Square 752 Residents; and Stanton Park Neighborhood Association. The Commission denied party status to the following individuals and organizations that requested party status: ANC 6A; Karin Rutledge (728 3rd Street, N.E.); Sam and Sue Marullo (710 3rd Street, N.E.); George D. Stamas (708 3rd Street, N.E.); MaryAnn Hoadley (706 3rd Street, N.E.); Ann Morrison (722 3rd Street, N.E.); Leon & Kaelie Kung (734 3rd Street, NE); and Lemuel Jamison (714 H Street, N.E.). ANC 6A and Lemuel Jamison were denied party status because neither was proximate to the Site and thus not uniquely affected by this project. The other individuals requesting party status were made part of the Square 752 Residents party and thus did not need individual party status as well.

12. ANC 6A and Stanton Park Neighborhood Association jointly filed two motions: the first requested that the Zoning Commission require the Applicant to submit a reviewed application to address Section 1305.1 of the Zoning Regulations and the second requested that the Zoning Commission review the Applications in a two-stage proceeding. The Applicant responded to each motion with arguments as to why the motions should be denied. At the public hearing, Stanton Park Neighborhood Association withdrew both motions. Because ANC 6A was not admitted as a party, it did not have standing to file the motions.

13. The Applicant presented the following witnesses: Robert H. Braunohler of Louis Dreyfus Property Group, representing the Applicant; Richard Cook, architect with the firm of Cook + Fox; Martin J. Wells and Chris Kabbat, traffic consultants with Martin J. Wells and Associates; Eric Smart, an economic benefits consultant with Bolan Smart Associates Inc.; and Steven Sher, Land Planner with Holland & Knight. Messrs. Braunohler, Cook, Wells, Kabbat, Smart and Sher were accepted as experts in their respective fields.

14. The Office of Planning testified in support of the project.

15. ANC 6C was represented by Alan Kimber and Karen Wirt. Their testimony reflected the unanimous support of the project with conditions as set forth in the ANC 6C report and resolution, discussed in Findings 105 through 109.

16. Stanton Park Neighborhood Association was represented by Monte Edwards, co-chair of the Land Use Committee. The Stanton Park Neighborhood Association testified in support of the settlement described in the mediation letter prepared by Lee Quill, discussed in Findings 35 through 38. Mr. Edwards testified as to some concerns with the project, despite the designation of party status in support of the project. These concerns included the following:

    a. The project must comply with all guidelines and state with which requirements it does not comply, which is addressed in Findings 67 through 69;

    b. The rezoning and increased height and density must not set a precedent and should be granted only because of this Site's unique location and characteristics, which is addressed in Findings 39 through 47; and

    c. The rezoning and increased height and density can be granted in this case because of a unique and overriding public interest which should become the standard for PUDs in the Neighborhood Commercial Overlay District, which is addressed in Finding 47.

17. Square 752 Residents was represented by Drury Tallant, who testified on behalf of the group in opposition to the project. The three primary points raised by this party in opposition included the following:

    a. Concern regarding the fragility of the houses, which is addressed in Finding 76(b)(12);

    b. The design of the widened north-south alley as well as maintenance of access to the homes from this alley during construction, which is addressed in Finding 76(b)(1) and Finding 76(b)(12); and

c. The upzoning to C-3-C and the resulting increase in gross floor area for which these residents do not believe that the amenities are sufficient, which is addressed in Findings 39 through 47 and Finding 79.

18. ANC 6A testified in support of the project, but raised concerns regarding the precedential impact of the rezoning and raised specific design issues. These issues are addressed in Findings 39 through 47 and Findings 53 through 63. Subsequent to the public hearing, ANC 6A submitted a letter to the Zoning Commission dated October 22, 2007, indicating that its position was now in opposition to the project based on specific design concerns.

19. H Street Main Street and the Capitol Hill Restoration Society each testified in support of the project as well as three individuals. Several letters were submitted to the record in support of the project, including a letter from Ward 6 Councilmember Tommy Wells.

20. Four individuals testified in opposition to the project, and several letters were submitted to the record in opposition to the project. The letters and testimony raised a number of issues, with the primary concerns being protection of adjacent existing homes and the height and bulk of the proposed building.

21. At its public meeting held on November 19, 2007, the Zoning Commission took proposed action by a vote of _____ to approve with conditions the Applications, including PUD plans, as presented at the public hearings or as part of the written record.

22. The Zoning Commission took final action by a vote of _____ to approve the Applications at its public meeting held on _____, 2007.

The PUD Site and the Area

23. The Site consists of Lots 32, 39-41, 45, 48, 801, 804-806, 811, 813, 814, 856 and 857 in Square 752 and contains 76,713 square feet of land area. The Site is currently improved with a parking lot at the north end and two- and three-story structures devoted to office purposes.

24. The Site is situated in Ward 6, in the western half of the block bounded by 2nd, 3rd, G and H Streets, N.E. The Site is located at the west end of the H Street Corridor. The general character of the area reflects the commercial and residential uses of the H Street Corridor.

25. The PUD Site is not a designated historic landmark nor is it within a historic district.

Existing and Proposed Zoning

26. The Site is currently zoned HS/C-2-B and C-2-A. The Applicant requests that the northwest corner of the Site, at the southeast corner of 2nd and H Streets (approximately

27,897 square feet), be rezoned to C-3-C, with the other zone designations to be maintained.

27. C-3-C zoning exists to the north of the project in the Senate Square PUD and to the west of the project in the Station Place PUD and the North Capitol Receiving Zone west of 1st Street.

28. The C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. The C-2-B District is designated to serve commercial and residential functions. The C-2-A District permits a maximum height of fifty feet and a maximum density of 2.5, of which up to 1.5 FAR may be devoted to non-residential uses. The C-2-B District permits a maximum height of sixty-five feet and a maximum density of 3.5 FAR, of which up to 1.5 FAR may be devoted to non-residential uses. For residential uses in the C-2-A District, parking is required at a minimum of one space per two dwelling units. In the C-2-B District, parking is required at a minimum of one space per three dwelling units. For retail uses in the C-2-A District, one parking space is required for each 300 square feet of gross floor area and cellar floor area in excess of 3,000 square feet. In the C-2-B District, one parking space is required for each 750 square feet of gross floor area in excess of 3,000 square feet. A PUD in the C-2-A District may have a maximum height of sixty-five feet and a maximum density of 3.0 FAR, of which up to 2.0 FAR may be devoted to non-residential uses. A PUD in the C-2-B District may have a maximum height of ninety feet and a maximum density of 6.0 FAR, of which up to 2.0 FAR may be devoted to non-residential uses.

29. The H Street Neighborhood Commercial Overlay District (the "HS Overlay District") is applicable to the C-2-B portion of the Site only and sets guidelines for development review through PUD and special exception proceedings. The portion of the Site included in the HS Overlay District is in the Housing Sub-district. In the HS Overlay District, designated retail and service uses must occupy no less than fifty percent of the gross floor area of the ground level. The density for non-residential uses is limited to 0.5 FAR and total lot occupancy is permitted up to seventy percent. A PUD may obtain additional height and density only for housing or preferred uses.

30. The C-3-C District is designated to serve commercial and residential functions. The C-3-C District permits a maximum height of ninety feet and a maximum density of 6.5 FAR. For residential uses, parking is required at a minimum of one space per four dwelling units, and for retail uses, one parking space is required for each 750 square feet of gross floor area in excess of 3,000 square feet. A PUD in the C-3-C District may have a maximum height of 130 feet and a maximum density of 8.0 FAR. The Act of 1910 limits the height on this Site to a maximum of 110 feet.

The PUD Project

31. The Applicant proposes the construction of an apartment house with a maximum gross floor area of 389,101 square feet, including approximately 302 residential units and approximately 25,777 square feet of gross floor area of ground floor retail and professional office use. The overall FAR for the project is 5.07. The retail space is located at the corner of 3rd and H Streets and along 2nd Street. The professional office space is located on the second floor, where the project meets the H Street Overpass near 2nd Street.

32. The project incorporates landscaping treatment on each frontage of the project to respond to its immediate context. Specifically, on G Street, private gardens are introduced to complement the individual gardens abutting the existing row houses. Along the existing north-south public alley abutting the east side of the project, courtyards have been incorporated to provide front door access to residential units. These courtyards include landscaping, exterior furniture and benches, and an eco-pond feature.

33. The maximum height of the project is located at the corner of 2nd and H Streets and is 100 feet, as measured from the top of the middle of the curb at the front of the building on 3rd Street. All references to height are based on this measuring point, unless otherwise stated The maximum building height including the roof structure and architectural tower element is 118.5 feet. Due to the change in grade of the overpass, the building is not more than ninety feet above the overpass at any point. The height of the building steps down to the east from ninety feet to eighty feet to sixty-five feet and finally fifty-five feet at the corner of 3rd and H Streets. The building height also steps down along 2nd Street to fifty-five feet and then up to sixty-five feet at the corner of G Street. Along G Street, the height steps down from sixty-five feet at the corner of 2nd Street to forty-five feet adjacent to the alley.

34. The project includes a minimum of 318 parking spaces as well as sixty tandem residential spaces in a below-grade parking garage, as shown on the Plans. The project includes loading, as shown on the Plans. Although the project abuts an existing north-south public alley along its east side, all parking and loading is accessed from 2nd Street as requested by members of the community, especially those residing in Square 752.

Mediation Committee

35. The Applicant participated in a mediation process facilitated by the Office of Planning, with Lee Quill of Cunningham & Quill Architects as the mediator(the "Mediator"). The mediation committee consisted of the following representatives: Karen Wirt, ANC 6C; Drew Ronnenberg, ANC 6A; Drury Tallant, Square 752 residents; Monte Edwards,

Stanton Park Neighborhood Association; and Gary Peterson, Capitol Hill Restoration Society (the "Mediation Committee").

36. The Applicant and its architects worked intensively with the Mediation Committee, with open communication and dialog through the Mediator. The project was reviewed and refined many times in formal meetings as well as informal discussions with the Mediation Committee, the Mediator and the community at large, especially the residents of the subject square.

37. The Mediation Committee raised concerns throughout the mediation process. These concerns included the following and are addressed in the Findings set forth:

a. Establishing a non-precedential impact from the rezoning, addressed in Findings 39 through 47;

b. Massing justification and placement of height on the Site, addressed in Findings 48 through 52;

c. Architectural design, addressed in Findings 53 through 63;

d. Density of the project, addressed in Findings 64 through 66;

e. Compliance with H Street Overlay and H Street Design Guidelines, addressed in Findings 67 through 69; and

f. Public benefits and project amenities, addressed in Finding 76.

38. These concerns were each reviewed and addressed by the Mediation Committee and Applicant, as set forth in the Applicant's letter to the Mediation Committee dated October 1, 2007, and in the record at Exhibit 104.

Rezoning to C-3-C and Non-Precedential Impact of the Rezoning

39. The Applicant requests rezoning of a portion of the Site at the corner of 2nd and H Streets, N.E., to C-3-C, based upon community input. The rezoning allows the project to redistribute its mass and locate much of the mass towards the corner of 2nd and H Streets, away from the residential buildings on G and 3rd Streets. The rezoning also provides an opportunity for the Applicant to create a gateway element at this western entrance to the H Street corridor to complement the tower across H Street to the north of the Site by providing additional permitted height at this corner.

40. Although many of the community members support the additional height at this corner, the Mediation Committee expressed concern that the proposed rezoning will set a precedent for future development of other properties within the H Street Overlay.

41. The Applicant stated its view that C-3-C zoning is appropriate for the Site for the following reasons:

a. *Location on the East Side of 2nd Street.* The Site fronts on the east side of 2nd Street, N.E., which forms the dividing line between the Central Employment Area to the west and the Capitol Hill H Street Corridor to the east. To the west, including the Station Place development immediately across the street, are predominantly office buildings which are up to 130 feet in height and are of a larger scale in a commercial style of architecture. Starting at 2nd Street, including this Site and the Senate Square PUD across H Street, the buildings are predominantly residential, stepping down in height and of a finer grain. This Site is the only place that this immediate transition happens on H Street. It makes this Site the western gateway to the H Street corridor, across the street from the approved 110 foot tower at the northeast corner of 2nd and H Streets which serves as the other half of the gateway entrance. The rezoning of the corner of the Site to C-3-C provides an opportunity for a complementary tower element creating and marking this important departure from the high density and high-rise character of the Central Employment Area west of 2nd Street and the entry to the H Street corridor and neighborhood and reinforcing the goals of the H Street Overlay.

b. *Transit-Oriented Development.* The Site is the closest residential/mixed-use site on H Street to the Union Station Metrorail Station, near which the H Street Plan and the Comprehensive Plan suggest focusing higher density mixed-use activity. All of the density on the Site is devoted either to residential use or to retail and services uses, which are designated as preferred uses under the H Street Overlay. All of the density over the matter-of-right density is used for residential use. "As indicated in the plan, the proposed new development is generally divided between new, larger-scale projects on vacant or underutilized sites at the western end of the corridor and small scale, infill development projects scattered along the entire corridor." The H Street N.E. Strategic Development Plan, April, 2003, page 35. "The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide." The Comprehensive Plan for the National Capital, District Elements, December, 2006, ¶306.10.

c. *Adjacency to H Street Overpass.* The Site is adjacent to the H Street Overpass. As a result of this frontage, the Site along its H Street-northern frontage has a significant grade change (approximately 20 feet) along the H Street roadway from 3rd to where the street passes over 2nd Street. Thus, although the revised tower element measures 100 feet in height from the measuring point on 3rd Street, the height of the entire revised H Street frontage will be no more than ninety feet above the surface of H Street and will have only eight stories when viewed from the overpass. Maintaining this limitation on the height relative to the surface of H Street, the project reinforces the goal of limiting heights along H Street to ninety feet above grade, while taking into account the slop of H Street along the site.

d. *Adjacency to C-3-C Zoned Properties.* The Site is directly across the street from properties to the west (Station Place PUD) and the north (Senate Square PUD) that are already zoned C-3-C. No other property in the H Street Overlay abuts or directly faces any C-3-C zoned lots.

e. *Appropriate Zone Transition.* The rezoning of the Site is structured so that the transition from the C-3-C zone into the neighborhood area happens on this Site and not further into the neighborhood. The C-3-C zone is located only at the corner of 2nd and H Streets. Within the Site, the zoning steps down from the west to the east, approximately mid-block on H Street, to the existing C-2-B district, which extends to 3rd Street and into the next block. On the 2nd Street side of the Site, the C-3-C zone steps down from the north to the south to the existing C-2-A district which extends to and across G Street. The C-2-A and C-2-B zones put in place as part of the H Street Overlay are maintained on all sides of the C-3-C-zoned portion of the project. There is no other property facing or abutting the C-3-C zoning.

f. *Central Employment Area.* The Site abuts the boundary of the Central Employment Area, which follows the centerline of 2nd Street. Only two parcels have these characteristics – the Site and the parcel to the immediate north that is being developed and is governed by an approved PUD (Senate Square).

g. *Large Parcel Development.* The Development and Design Guidelines of the H Street Strategic Development Plan call this site out for Type I or large parcel development, which can support major mixed-use development opportunities. The H Street Strategic Development Plan sets forth that larger sites in single ownership (such as the Site) make higher density, mixed use projects possible and allow a sensitive transition. "A mixed use development at this end of the corridor reinforces the concept of Transit-Oriented Development, the District's policy of focusing higher density mixed use activity nodes close to major transportation hubs." The H Street N.E. Strategic Development Plan, April, 2003, Page 33. "A

concentration of housing at the western end of H Street will have a beneficial impact on the viability of small retail establishments such as traditional 'corner shops.'" The H Street N.E. Strategic Development Plan, April, 2003, Page 37. "Parcels near Union Station with multi-modal connectivity also increases the opportunity for more dense development." The H Street N.E. Development & Design Guidelines, April, 2003, Page 2. Through a unique design incorporating creative massing and architectural details, the density on the Site has been distributed within the height proposed to reflect the different contexts of the four streets on which the Site fronts and the sensitivity to relate the project to the smaller scale of the houses which front on G and 3rd Streets in the square. "Improve buffering and urban design transitions between the emerging office and high-density residential corridor north of Union Station ("NoMA") and the adjacent row house neighborhoods of Capitol Hill. Use zoning, design guidelines, historic preservation review, and other measures to avoid sharp contrasts in scale and character where high density and moderate density areas abut one another." The Comprehensive Plan for the National Capital, District Elements, December, 2006, ¶1608.16. "Ensure that new developments on parcels that are larger than the prevailing neighborhood lot size are carefully integrated with adjacent sites. The Comprehensive Plan for the National Capital, District Elements, December, 2006, ¶910.15.

42. The Applicant asserted that there is no other property within the H Street Overlay which has the same confluence of factors cited in Findings 41(a) through 41(g), and thus the rezoning will not set a precedent for future development.

43. The Zoning Commission finds that the proposed rezoning is acceptable for the Site based on the factors described in Findings 41(a) through 41(g) and based on the Land Use designation and categories set froth in the Comprehensive Plan of 2006.

44. The Zoning Commission finds that the project provides an appropriate massing and height and will include appropriate transition to minimize impacts on the residential buildings to the south and the south and the east.

45. The Zoning Commission finds that rezoning the Site is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641-.01 of the D.C. Code as follows:

a. The proposed zone is not inconsistent with the Comprehensive Plan, as stated in Findings 87 through 96;

b. The proposed zone will not produce objectionable traffic conditions, as stated in Finding 103;

c. The requested rezoning will promote the health and general welfare by stabilizing land values and facilitating Metro ridership; and

d. The proposed rezoning will not lead to the overcrowding of land, as stated in Findings 48 through 52.

46. The Zoning Commission finds that in approving this project, it is not approving rezoning of any other project. The Commission will look at the individual project and the impacts related to the same for each project and will make its decision accordingly. Thus, the Commission finds that the proposed rezoning to C-3-C will not set a precedent for other projects along the H Street corridor.

47. The Zoning Commission finds that the location of the Site, the character of the surrounding area and the District's planning goals and objectives, including the policies for the H Street Overlay and those supporting transit-oriented development, support the request for C-3-C zoning at the corner of 2nd and H Streets on the Site.

Massing Justification and Placement of Height on Site

48. Concerns were raised regarding the massing of the project and how that relates to the adjacent residential community.

49. The Applicant has set forth as a primary goal of the design the need to transition the project through its massing and steps in height from the larger scale development at the western end of the H Street corridor to the lower scale of the residential development along G and 3rd Streets.

50. As a result of the mediation process, the transition was further refined, the height reduced in numerous areas and mass of the building removed and redistributed on the Site. These changes included the following:

a. Reducing the height of the building along 2nd Street by removing one floor, resulting in a maximum height of fifty-five feet;

b. Maintaining a maximum height of sixty-five feet along the G Street façade and at the corner of 2nd and G Streets;

c. Incorporating a stepped-down in height garden pavilion with a maximum height of 45 feet;

d. Reducing the maximum height along the H Street façade to ninety feet above the overpass, which results in the maintenance of a perceived eight-story façade along the H Street overpass as it descends from the raised portion of the bridge;

e. Creating a tower element at the corner of 2nd and H Streets with an architectural embellishment extending eighteen feet above the roof to create a unique gateway to the H Street corridor; and

f. Incorporating an appropriate transition down to a height of fifty-five feet at the corner of H and 3rd Streets.

51. The massing of the tower element at the corner of 2nd and H Streets was further refined in response to comments from the Zoning Commission, reducing the height of the embellishment and further emphasizing the gateway features at this corner.

52. The Zoning Commission finds that the project has been designed in such a way as to respond to the concerns raised relating to the massing and height of the project. The Commission finds that the massing of the project is appropriate and transitions from the larger scale development to the lower scale development such that there is no adverse impact on the surrounding area.

Architectural Design

53. Concerns were expressed that the project's architecture did not reflect the architectural language of Capitol Hill.

54. The Mediation Committee worked closely with the architects, requesting that the façades each be changed to be more in keeping with the H Street Design Guidelines, including creating buildings with an expressed base, middle, and top and with expressed sills and lintels, incorporating pedestrian friendly streetscape and ground level, designing each façade to respond to its context, placing the larger mass at the gateway, and reducing the apparent mass of the project.

55. Based on the Applicant's submissions and testimony of its architect, the Applicant redesigned the project in an effort to respond to these various issues.

56. The Mediator testified at the public hearing that members of the Mediation Committee were generally satisfied with the resolution of design issues by the time of the hearing.

57. ANC 6C, as described in Finding 105, voted unanimously to support the project, with conditions that were not related to the architectural design of the project.

58. ANC 6A, although not a party or the affected ANC in this case, filed a letter to the Zoning Commission dated October 22, 2007, stating concerns with the design of the corner of 3rd and H Street, the tower element at 2nd and H Streets, and the glassy top of the H Street façade.

59. Members of the Commission expressed a concern that the project did not reflect a design character typical of the Washington region. The Applicant further refined the project to more closely reflect the influences from some of the design details on the existing buildings near the project, as set forth in the Applicant's Post-hearing Submission, in the record at Exhibits 114 and 115.

60. Members of the Commission also raised questions relating to the expression of the gateway tower at the corner of 2nd and H Streets. Specific concerns included the height of the architectural embellishment at this corner and the importance of creating a gateway with other elements in addition to height.

61. In its Post-Hearing Submission, the Applicant presented a redesigned gateway element at the corner of 2nd and H Streets. The corner tower element was lowered in height. In addition, details of the tower were modified to correspond to the approved design of the building on the north side of H Street, including materials and expression of windows

62. The Zoning Commission finds that the modifications to the gateway tower address the concerns raised by the Zoning Commission. The height is appropriate for the location, and the tower elements achieves a gateway with elements other than height.

63. The Zoning Commission also finds that the architectural design as now presented is of an exceptional merit and that it appropriately blends within the neighborhood. The Commission finds that both its concerns as well as that of the Mediation Committee's concerns were satisfactorily addressed in revisions to the project.

Density of Project

64. Members of the community have consistently stated that the proposed density of the project was too high, since the time that the Applications were filed with the Zoning Commission..

65. The Applicant has responded many times to this concern. When originally proposed, the project had a proposed density of approximately 432,000 square feet of gross floor area, or 5.73 FAR. The project was refined before the initial set down in April 2006, with the revised design having a proposed density of approximately 422,000 square feet of gross floor area, or 5.5 FAR. Upon further work with the community, the size of the project was reduced to approximately 403,000 square feet of gross floor area, or 5.25 FAR. During the mediation process, additional square footage was removed from the project. The project as presented at the public hearing was reduced to approximately 389,000 square feet of gross floor area, or 5.07 FAR. The project has thus been reduced in size from its original density by approximately 43,000 square feet.

66. The Zoning Commission finds that the density is appropriate because there are no adverse impacts on the surrounding area or such impacts have been mitigated. In addition, based on the Site's proximity to the Union Station Metrorail, it is the most appropriate site in the H Street Overlay on which to place higher-density residential development. The Commission notes that the placement of density near transit opportunity is recognized in the H Street plan to enhance the opportunity of creating a unique multi-modal center.

Compliance with H Street Overlay and H Street Design Guidelines

67. Concerns were raised as to whether the project's design complies with the H Street Overlay and the design guidelines of the H Street N.E. Strategic Development Plan.

68. The Applicant submitted summaries of the project's compliance with both the H Street Overlay and the design guidelines of the H Street N.E. Strategic Development Plan as Tabs B and C to the Applicant's Post-hearing Submission, in the record at Exhibit 114. These summaries indicate that the project complies in all respect with a few exceptions. The exceptions are noted therein and involve unique conditions to the Site which make compliance impossible or not desirable. Most of these unique conditions are a result of the raised-nature of the H Street overpass and the fact that the grade changes by approximately 20 feet from the western edge to the eastern edge of that façade. Other areas of noncompliance include the special characteristics of this site (such as the designation of this project as the one-half of the gateway to the H Street corridor) and community requests (such as prohibition on use of the alley for loading and parking access).

69. The Zoning Commission finds that the areas of non-compliance and the attendant flexibility required from the Zoning Regulations can be granted when balanced with the public benefits and project amenities proffered for this project.

Increased Density for a PUD in the H Street Overlay

70. Concerns were also raised as to whether the Neighborhood Commercial Overlay District ("NC Overlay"), within which the H Street Overlay is contained, limits the ability to increase matter-of-right height and FAR limits based on Section 1305.1 of the Zoning Regulations in the NC Overlay which states that these matter-of-right heights and FARs shall serve as guidelines for PUDs.

71. The Applicant argued that based on Section 2403.3 and 2403.9 of the Zoning Regulations, the specific height and floor area ratio approved by the Commission for a particular PUD depends upon the exact circumstances surrounding the application,

including the location and physical characteristics of the property; the nature of surrounding properties, uses and buildings; and the design of the proposed project.

72. The Applicant noted that Section 1326.1 of the H Street Overlay provides for additional height and FAR above that permitted as a matter-of-right for PUDs within the H Street Overlay so long as it is used only for housing or preferred uses.

73. The Zoning Commission finds that the proposed project complies with the specific standard of Section 1326.1 of the Zoning Regulations applicable to properties in the H Street Overlay, in that all of the density over the matter-of-right limitation for the three zone districts included within the project is devoted to residential use.

Development Flexibility and Incentives

74. The Applicant requests the following areas of flexibility from the C-2-A, HS/C-2-B, C-3-C and PUD standards:

a. *H Street Overlay*: There are several areas of noncompliance with Section 1324, including the following:

(1) Section 1324.2 requires that buildings shall be designed and built so that no less than seventy-five of the streetwall(s) to a height of not less than twenty-five feet shall be constructed to the property line abutting the street right-of-way. Approximately fifty-five percent of the proposed building that fronts H Street is built to the property line. The Tower portion of the H Street frontage is setback 14'-0" to allow for a pedestrian stair connection between 2nd and H Streets.

(2) Section 1324.4 states that in the C-2 Districts within the HS Overlay District, a seventy percent residential lot occupancy shall be permitted. The project has a lot occupancy of eighty-three percent in the C-2-B portion of the Site and has an overall lot occupancy of seventy-three percent.

(3) Section 1324.8 requires each new building on H Street to devote not less than fifty percent of the surface area of the streetwall at the ground level to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building. The project does not comply with this requirement due to the H Street overpass. As the bridge slopes up, the sidewalk does not meet grade after a distance of approximately twenty feet. The corner of H and 3rd Street and the entrance at the western end of the building will have clear display windows as per the requirement in Section 1324.8 for a distance of approximately forty feet, or approximately twelve percent of the streetwall.

(4) Section 1324.11 requires that buildings be designed so as not to preclude an entrance every forty feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby. The portion of the project fronting H Street does not comply due to the H Street Overpass.

b. *Roof Structure*: The Roof Structure regulations require a roof structure to be set back a distance equal to its height and to have walls of equal height. The Applicant requests relief from these requirements. Due to the narrowness of the pavilions and the requirements of the mechanical systems, some of the penthouses are not able to meet the required setback. As well, in an effort to reduce their visibility, some of the roof structures do not have walls of equal height.

75. As part of the PUD, the Zoning Commission may grant such flexibility without the need for special exception approval from the Board of Zoning Adjustment or compliance with the special exception standards that might otherwise apply.

Public Benefits and Project Amenities

76. The project incorporates the following public benefits and project amenities:

a. ***Housing and Affordable Housing (§ 2403.9(f))***. The project provides over 300 units of new residential development and approximately 20,570 square feet of gross floor area devoted to affordable housing. The total amount of affordable housing is calculated as fifteen percent of the bonus density (i.e., the increase of gross floor area resulting from the PUD).

The Zoning Commission finds that the provision of additional housing and affordable housing are valuable community benefits of the PUD that should be recognized.

b. ***Special Value to the Neighborhood (§ 2403.9(f))***. The Applicant proposes several amenities which will provide special value to the neighborhood, including the following:

(1) *Improvements to the North-South Alley System.* The Applicant will construct a north-south alley with a width of twenty feet to replace the existing ten-foot wide public alley, in accordance with DDOT standards. The Applicant will pay for and install the sewer infrastructure in the newly constructed north-south alley to allow connection to future alley structures built by the residents of the 3rd Street townhouses. In addition, the Applicant will seek approval from the District to dedicate the portion of the new twenty-foot wide alley that is currently on private

property for public alley purposes. This dedication of private land is contingent upon the DC Council's acceptance of such dedication.

(2) *Contribution for East-West Alley*: Assuming that all other owners of property that abut the east-west public alley behind the north side of the 200 block of G Street, NE sign an application to close the alley, the Applicant has agreed to sign such application and support the proposed closing. The Applicant will contribute up to a maximum of $15,000 to implement a beautification and work plan agreed to by all of the property owners abutting the alley to be closed. In the event that the east-west alley is not closed and the Applicant has not expended any of the $15,000 for beautification projects, the Applicant agrees to repave and re-lamp the existing east-west alley up to a cost of $15,000, subject to the approval of DDOT.

(3) *Improved Fencing Along H Street.* The Applicant shall pay for and install improved, more aesthetic fencing along the H Street overpass in front of Capitol Place, subject to approval by DDOT, including the Public Space Division.

(4) *Public Stairway and Sidewalk from H Street Overpass to 2nd Street.* The Applicant shall provide a public stairway and sidewalk from the H Street overpass to 2nd Street on Capitol Place property, subject to approval by DDOT, including the Public Space Division.

(5) *Improvements Below H Street Overpass.* The Applicant will install brick and granite pavers and improved lighting under the H Street overpass on the east side of 2nd Street for pedestrian circulation and potential market use, subject to approval by DDOT, including the Public Space Division.

(6) *Contribution to Microgrant Programs.* The Applicant will fund two micro-grant programs for the benefit of the neighborhood. The first program will be funded with $150,000 whereby neighboring property owners within Squares 752, 753, 777 and 778 can apply for a grant for the purpose of making repairs and improvements to the portions of their homes which are within public space or viewed from public space. The second program will be funded with $80,000 whereby property owners only within Square 752 can apply for a grant for the purpose of making energy efficient and other upgrades to their homes, as approved by the Capitol Hill Restoration Society ("CHRS"). Both micro-grant programs will be administered by CHRS. The Applicant shall pay a total administration fee of $20,000 to CHRS for its role as administrator of these two micro-grant programs.

(7) *Contribution to H Street Main Street.* The Applicant will contribute $150,000 to H Street Main Street to be used for the Clean and Safe Program. In the event that the Clean and Safe Program has not been instituted within twelve months from the date of the certificate of occupancy and the escrowed money has not been released to H Street Main Street, the Applicant will notify ANC 6C, which will prepare a proposed alternative use for this money to benefit the H Street corridor.

(8) *Participation in Clean and Safe Program.* The Applicant will participate in H Street Main Street's Clean and Safe Program based on a formula derived of the project's pro-rata share as calculated with the rest of the H Street area that will be participating, provided that the Capitol Place project is legislatively removed from the Capitol Hill BID.

(9) *Sidewalk Improvements.* The Applicant will replace the sidewalk, curb and gutter along the west side of 3rd Street between H and G Streets and along the north side of G Street between 2nd and 3rd Streets, subject to approval by DDOT, including the Public Space Division.

(10) *Project Amenities Offered to Neighborhood.* The Applicant will provide the option for occupants and owners of property in Square 752 to purchase a membership for access to the health club at Capitol Place. In addition, the Applicant will provide the option for neighborhood residents to rent parking spaces in the project's below-grade garage, subject to availability, with preference being given to occupants and owners of property within Square 752

(11) *Improved Fencing in Square 753.* The Applicant will replace the chain link fencing around the parking lot in Square 753 with galvanized steel fencing, subject to the approval of the owner of that property.

(12) *Construction Management Plan.* The Applicant will abide by a construction management plan intended to minimize potential adverse impacts resulting from the construction of the project.

Some residents of Square 752 expressed concern as to whether their homes and property would be protected during the construction of the project. At the public hearing, the Applicant submitted a detailed construction management plan that it believed addressed many of these concerns. The Applicant continued to work with the community and submitted, as part of its Post-Hearing Submission, a further updated Construction Management Plan. The Construction Management Plan proposed preconstruction surveys for adjacent structures, provisions for construction monitoring, and provisions for alley access during construction. The Zoning Commission finds that this revised construction management plan

addresses those concerns raised during the public hearing. Furthermore, ANC 6C indicated in its post-hearing submission that the revised construction management plan satisfied its concerns relating to construction management.

The Zoning Commission finds that these many benefits and amenities constitute uses of special value to the neighborhood and finds that these amenities can be considered in the required balancing test.

c. ***Environmental Benefits (§ 2403.9(h))***. The Applicant has agreed to develop the project to achieve U.S. Green Building Council LEED Silver Certification under the LEED-NC v2.2 guidelines. The Applicant shall post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy for the project, in an amount equal to 1% of the construction cost for the project as identified on the building permit application. When the project achieves LEED Silver Certification, the Security shall be released to the Applicant. In the event that the Applicant does not achieve LEED Silver Certification for the project within two years of the date of the certificate of occupancy for the project, the Security will be released to the District.

The Zoning Commission finds the LEED Certification, including the associated sustainable design features, to be an important environmental benefit and thus accepts the amenity as one to consider for this project.

d. ***Transportation Management Measures (§ 2403.9(c))***. The Applicant has agreed to a variety of transportation management measures, including the following: inclusion of two car-sharing parking spaces in the below-grade parking garage; payment of up to $25 for the application fee or a portion of the annual membership fee for a car-sharing program for the initial purchaser or renter of a residential unit in the project; issuance of a $50 Metro Smartcard pass to the initial purchaser or renter of a residential unit in the project; inclusion of at least 85 bicycle parking spaces on-site; and offer of a ten percent discount on one parking space to the purchaser or renter of each affordable housing unit.

e. ***Employment and Training Opportunities (§ 2403.9(e))***. The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services (DOES). Under this Agreement, the Applicant will be required to use DOES as its first source to fill all new jobs created as a result of the construction of the project. In addition, the Applicant will make best efforts to fill at least fifty-one percent of these newly created jobs, apprentice and trainee positions with District residents.

The Applicant has also committed to make a bona fide effort to utilize Local, Small or Disadvantaged Business Enterprises ("LSDBE") certified by the D.C. Local Business Opportunity Commission ("LBOC") in order to achieve, at a minimum, the goal of thirty-five percent participation in the contracted development costs in connection with design, development, and construction of the project.

77. The Zoning Commission finds that the amenities have been tailored to specifically address items and programs within the immediate neighborhood, and the overall package was created as a result of community discussion and input.

78. The Mediation Committee requested additional information and confirmation of details regarding the amenities at the end of the mediation process. The Applicant provided this requested information in its Updated Amenities Summary dated October 1, 2007 in the record at Exhibit 100. Based on this summary, questions and comments from members of the Mediation Committee were raised at the public hearing. These included additional information regarding the micro-grant program, confirmation as to the structure of the contribution of $150,000 to H Street Main Street, and additional commitments for the construction management plan. Each of those issues were addressed in the Applicant's Post-Hearing Submission, in the record at Exhibit 113. The Zoning Commission finds that each of the issues related to the amenities package raised during the public hearing was responded to in the Applicant's Post-Hearing Submission and have been acceptably incorporated herein.

79. The Zoning Commission finds that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects. The Zoning Commission finds that the benefits and amenities are acceptable to be included as part of the balancing test required in Section 2403.8 of the Zoning Regulations and deserve recognition as a benefit and amenities of the PUD.

Compliance with PUD Standards

80. The Applications comply with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.

81. The Zoning Commission finds that the project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the Applications satisfy the balancing test required in Section 2403.8 of the Zoning Regulations.

82. The PUD Site area is approximately 76,713 square feet in land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-2-A, C-2-B or C-3-C District, in accordance with Section 2401.1(c) of the Zoning Regulations.

83. The project has been evaluated under the PUD guidelines for the C-2-A, C-2-B, and C-3-C District. The project is within the permitted height and FAR. The height and mass have been sculpted to sensitively respond to the immediate context of the neighborhood.

84. The Applicant's proffered two mitigation items for potential impacts to historic preservation:

    a. *Professional Survey of Property.* The Applicant will donate $83,500 to CHRS for the purpose of completing a professional survey of properties for inclusion in a possible future extension of the Capitol Hill Historic District, which would include properties located within the twenty-six blocks comprised of 2nd to 15th Streets, NE, and F to H Streets, NE, not including the Site or properties within the H Street Overlay.

    b. *Survey of Buildings On-Site.* The Applicant will survey and document those potentially eligible structures to be demolished within the Site, in accordance with certain standards for documentation.

85. The Zoning Commission finds that these two proffers mitigation any potential adverse impacts on historic preservation for the surrounding community.

86. The Zoning Commission finds that the impact of the project on the surrounding area on the operation of city services and facilities is not unacceptable.

Consistency with Comprehensive Plan

87. At the time the Applications were filed, the governing comprehensive plan was the Comprehensive Plan of 1998. The Applicant, in its PUD Submission, set forth in detail the project's consistency with that plan.

88. On March 12, 2007, the Comprehensive Plan of 2006 came into effect and became the governing document. The Applicant's expert witness testified in detail and submitted a report to the Commission, in the record at Exhibit 99, regarding the project's compliance with the Comprehensive Plan of 2006.

89. The Future Land Use Map of the Comprehensive Plan of 2006 designates the Site for Medium Density Residential/Moderate Density Commercial/Local Public Facilities. The Medium Density Residential designation defines neighborhoods or areas where mid-rise (i.e., four to seven stories) apartment buildings are the predominant use. The Moderate

Density Commercial designation defines shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. The project is consistent with this designation.

90. The Generalized Policy Map of the Comprehensive Plan of 2006 includes the Site in the Main Street Mixed Use Corridor, which has a common feature of pedestrian-oriented environment with traditional storefronts and many with upper story residential or office uses. The project is consistent with this designation.

91. The Land Use Element (Chapter 3) of the Comprehensive Plan of 2006 sets forth the importance of a focus on transit-oriented and corridor development, which is a central theme throughout many elements of the plan. The Comprehensive Plan of 2006 recognizes the importance of fully capitalizing on the investment made in Metrorail and states that this requires better use of the land surrounding transit stations and along transit corridors. The plan further states that much of the city's planning during the last five years has focused on making better use of transit areas. The plan sets forth certain principles for management of these lands, including the following: a preference for housing above ground floor retail uses; a preference for diverse housing types, including both market-rate and affordable housing units; a priority on attractive, pedestrian-friendly design; and a stepping down of densities away from each station.

92. The Zoning Commission finds that the Comprehensive Plan of 2006 describes and discusses the principles of transit-oriented development in LU-1.3 and more specifically in Section 306.4 which identifies the core principles for development of land around all of the District's neighborhood stations. The Commission finds that based on these provisions, this project is consistent with and furthers the principles of transit-oriented development in the Comprehensive Plan of 2006.

93. The Comprehensive Plan of 2006 also stresses the critical housing issues facing the District, including, among other things, ensuring housing affordability, fostering housing production, and promoting home ownership. The new Housing Element recommends providing zoning incentives to developers proposing to build affordable housing, which should be considered as a public benefit for the purposes of granting density bonuses when new development is proposed. The project is an ideal candidate for these incentives.

94. The Capitol Hill Area Element within which the Site is located supports growth in the commercially-zoned areas of the Capitol Hill Planning Area, with particular emphasis on the H Street/Benning Road corridor. Policy CH-1.1.4 continues to state that mixed use development combining ground floor retail and upper story residential uses should be supported in this area, along with streetscape improvements that improve the visual and urban design qualities and enhance pedestrian, bus, and auto circulation.

95. The H Street/Benning Road Policy Focus Area of the Capitol Hill Area Element supports the revitalization of the H Street corridor in a manner that is consistent with the 2003 H Street Strategic Development Plan. The H Street Strategic Development Plan includes the Site in the Western Gateway "urban living" district, which is intended for medium to high density residential development with limited ground floor retail uses.

96. The Zoning Commission finds that the project is not inconsistent with the Comprehensive Plan of 2006, including the Future Land Use Map, the Generalized Policy Map, and the text.

Office of Planning

97. By the Office of Planning report dated September 21, 2007, in the record at Exhibit 94 (the "OP Report"), and through testimony presented at the public hearing, the Office of Planning recommended approval of the Applications based on the work done at that point through the mediation process and subject to further minor revision and clarification by the mediation team prior to the public hearing.

98. The OP Report specifically found that the amenities offered by this project are commensurate with the additional density being sought.

99. The OP Report also noted the great progress that had been made to the project as a result of the mediation process and the Applicant's willingness to engage the community and address concerns in a productive manner.

100. The OP Report concluded that the project was not inconsistent with the Comprehensive Plan and recommended that the project be approved.

101. At the public hearing, the Travis Parker of the Office of Planning testified that the Office of Planning continued to support the project, noting that it was supportive of the architectural design as well as the amenities and benefits proffered as part of the project.

102. The Zoning Commission finds the OP Report and the testimony of the Office of Planning persuasive in its decision to approve the Applications.

District Department of Transportation

103. DDOT filed a report dated May 7, 2007, in the record at Exhibit 50, in support of the project (the "DDOT Report"). The DDOT Report stated that DDOT supports the community and public space improvements. The DDOT Report also stated that the project traffic can be adequately accommodated by the existing transportation network.

104. The Zoning Commission finds that based on DDOT's recommendation, the project will have no adverse traffic impacts. The Commission further finds that the parking provided for retail uses is sufficient per the Zoning Regulations.

ANC 6C Report and Testimony

105. By letter dated September 26, 2007, in the record at Exhibit 106, ANC 6C indicated that it voted to support the application by a vote of 8-0-0. The vote of support was conditioned upon the following:

a. The ANC strongly petition the Zoning Commission to specifically state in its order the specific justifications for increased height and density and that any such increase be based on the unique characteristics of the Site, especially the presence of the H Street overpass, the design of the project, especially relative to the height above the H Street overpass, the goal of providing a gateway to H Street and the surrounding neighborhood and the desired characteristics of a transit-oriented development.

b. The Applicant provide a commitment in writing that the construction management plan specifically include certain commitments, as identified therein.

c. Commissioner Kimber, the single member district representative, be vested with the authority to decide whether or not the final detail for height and density justification, construction management, amenities and design adequately address these issues prior to the public hearing.

d. The Applicant shall provide a copy of each of its required monthly reports for the First Source Employment Agreement and Memorandum of Understanding for LSDBE to ANC 6C.

106. ANC 6C, through the single member district representative Alan Kimber, testified in support of the project, raising the following additional issues and concerns:

a. The excess residential parking provided as part of this project was very important to the community as it would address the concern that community members had regarding parking overflow onto residential streets.

b. ANC 6C requested additional details, including the timing for payment, regarding the micro-grant programs and the contribution to the Clean and Safe Program.

c. ANC 6C wanted further evaluation of the construction management plan, especially with respect to protection of the adjacent row houses.

107. ANC 6C submitted a supplemental letter dated October 22, 2007, in the record at Exhibit 113 ("ANC 6C Supplemental Letter"), indicating that ANC 6C was satisfied with the amenities and construction management plan offered by the Applicant. ANC 6C concluded that it supports the upzoning and PUD application.

108. The Zoning Commission finds that the issues and concerns raised by ANC 6C have been fully addressed throughout this order, and the Zoning Commissions finds that all of the issues and concerns have been addressed or resolved. Specifically, the Zoning Commission finds that the specific issues and concerns have been resolved as follows:

a. The requested rezoning and accompanying increase in height and density are justified by the unique aspects of the location of the Site within the H Street Overlay, as set forth in Findings 39 through 47.

b. The Applicant committed to elements of construction management, as set forth in Tab E of the Applicant's Post-Hearing Submission in the record at Exhibit 114, as set forth in Finding 76(b)(12).

c. The Applicant will provide copies of all reports required to be filed with the District related to the First Source Employment Agreement and the Memorandum of Understanding for Local, Small and Disadvantaged Businesses, as set forth in Condition 22 and 23.

d. The project contains excess residential parking in order to address concerns relating to spill-over parking in the neighborhood, as set forth in Finding 34 and is offering parking to neighborhood residents, as set forth in Finding 76(b)(10).

e. The Applicant provided additional details, including the timing for payment, regarding the micro-grant programs and the contribution to the Clean and Safe Program. ANC 6C specifically stated in its

109. The Zoning Commission afforded the views of ANC 6C the "great weight" to which they are entitled.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience" 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of this project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

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

5. The PUD is within the applicable height, bulk and density standards of the Zoning Regulations and the height and density will not cause a significant adverse impact on any nearby properties. Residential use with ground floor retail is appropriate for the Site. The size and scale of the project are appropriate for the Site, as the project has been appropriately designed to respect the surrounding areas. The impact of the project on the surrounding area is not unacceptable.

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

7. The number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested.

8. Approval of the Applications is appropriate because the project is consistent with the present and future character of the area.

9. Approval of the Applications is not inconsistent with the Comprehensive Plan.

10. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6C's position and has responded to or addressed each of its issues and concerns.

11. The approval of the Applications will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

12. The rezoning of a portion of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641-.01 of the D.C. Code.

13. Notice was provided in accordance with the Zoning Regulations and applicable case law.

14. The Applications are subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Applications for consolidated review of a Planned Unit Development and for a Zoning Map amendment for a portion of the Site to C-3-C. This approval is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Cook + Fox, dated November 5, 2007, in the record at Exhibit _, as modified by the guidelines, conditions and standards herein (the "Plans").

2. The PUD shall be a residential project, containing a maximum of 389,101 square feet of gross floor area and including approximately 302 residential units and approximately 25,777 square feet of gross floor area devoted to ground floor retail and second floor professional office space. The ground floor retail shall be generally located at the corner of 3rd & H Streets and along 2nd Street to G Street. The maximum FAR of the project shall be 5.07 FAR.

3. The maximum height of the building shall be 100 feet at the corner of 2nd and H Streets, with steps in heights and set backs as shown on the Plans. The project may include roof structures with the setbacks as shown on the Plans.

4. The project shall include a minimum of 318 parking spaces in the below-grade parking garage as well as sixty tandem residential parking space. The project shall provide loading as shown on the Plans.

5. The Applicant shall provide approximately 20,570 square feet of gross floor area devoted to affordable housing units. The total amount of affordable housing constructed shall be equal to fifteen percent of the bonus residential density (i.e., the increase of gross floor area resulting from the PUD) and is thus subject to change based on the final total

increase. The details of the affordable housing program are set forth in Tab 1 of the Updated Amenities Summary dated October 1, 2007, in the record at Exhibit 100. The Applicant shall have the flexibility to make minor modifications to the affordable housing program, so long as the total amount of affordable housing does not fall below 15% of the bonus residential density. The affordable units shall be reserved for households making no more than 80% of the Area Median Income. In addition, the Applicant shall offer a 10% discount on one parking space to the purchaser or renter of each affordable housing unit.

6. The Applicant shall obtain LEED Silver Certification for the project. The Applicant shall post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy for the project, in an amount equal to 1% of the construction cost for the project as identified on the building permit application. When the project achieves LEED Silver Certification, the Security shall be released to the Applicant. In the event that the Applicant does not achieve LEED Silver Certification for the project within two years of the date of the certificate of occupancy for the project, the Security will be released to the District.

7. The Applicant shall construct a north-south alley with a width of twenty feet to replace the existing ten-foot wide public alley, in accordance with DDOT standards. The Applicant shall pay for and install the sewer infrastructure in the newly constructed north-south alley to allow connection to future alley structures built by the residents of the 3rd Street townhouses. The alley shall be constructed and the below-grade improvements completed prior to the issuance of a certificate of occupancy for the project. In addition, the Applicant shall seek approval from the District to dedicate the portion of the new twenty-foot wide alley that is currently on private property for public alley purposes. This dedication of private land is contingent upon the DC Council's acceptance of such dedication. Upon recordation of a plat dedicating the land for public alley purposes to establish the twenty-foot public alley, the project shall be permitted to have a maximum FAR of 5.21 of the reduced land area of the Site, with the design and size of the building to be as shown on the Plans.

8. Assuming that all other owners of property that abut the east-west public alley behind the north side of the 200 block of G Street, NE sign an application to close the alley, the Applicant shall sign such application and support the proposed closing. The Applicant shall contribute up to a maximum of $15,000 to implement a beautification and work plan agreed to by all of the property owners abutting the alley to be closed. The Applicant shall maintain the funds until such time as all of the property owners agree to the beautification and work plan and invoices are submitted for payment of work authorized by the plan. In the event that the east-west alley is not closed and the Applicant has not expended any of the $15,000 for beautification projects, the Applicant

agrees to repave and re-lamp the existing east-west alley up to a cost of $15,000, subject to the approval of DDOT.

9. The Applicant shall pay for and install improved, more aesthetic fencing along the H Street overpass in front of Capitol Place, subject to approval by DDOT, including the Public Space Division and generally in accordance with that shown in the Applicant's Post-Hearing Submission in the record at Exhibit 115.

10. The Applicant shall provide a public stairway and sidewalk from the H Street overpass to 2nd Street on Capitol Place property, subject to approval by DDOT, including the Public Space Division, and as generally shown in Tab 6 of the Updated Amenities Summary dated October 1, 2007, in the record at Exhibit 100.

11. The Applicant shall fund a micro-grant program with $150,000 whereby neighboring property owners within Squares 752, 753, 777 and 778 can apply for a grant for the purpose of making repairs and improvements to the portions of their homes which are within public space or viewed from public space. The Applicant shall also fund an additional micro-grant program with $80,000 whereby property owners only within Square 752 can apply for a grant for the purpose of making energy efficient and other upgrades to their homes, as approved by CHRS. Both micro-grant programs will be administered by CHRS. The Applicant shall pay a total administration fee of $20,000 to CHRS for its role as administrator of these two micro-grant programs. The Applicant shall donate these funds and pay the administration fee prior to the issuance of a building permit for the project.

12. The Applicant shall replace the sidewalk, curb and gutter along the west side of 3rd Street between H and G Streets and along the north side of G Street between 2nd and 3rd Streets, subject to approval by DDOT, including the Public Space Division.

13. The Applicant shall replace the chain link fencing around the parking lot in Square 753 with galvanized steel fencing, generally as shown in Tab 9 of the Updated Amenities Summary dated October 1, 2007, in the record at Exhibit 100, subject to the approval by the owner of that property. Assuming approval by the owner of that property, this construction shall be completed prior to the issuance of a certificate of occupancy for the project.

14. The Applicant shall install brick and granite pavers and improved lighting under the H Street overpass on the east side of 2nd Street for pedestrian circulation and potential market use, subject to approval by DDOT, including the Public Space Division.

15. The Applicant shall provide the option for occupants and owners of property in Square 752 to purchase a membership for access to the health club at Capitol Place. The

Applicant shall also provide the option for neighborhood residents to rent parking spaces in the project's below-grade garage, subject to availability, with preference being given to occupants and owners of property within Square 752.

16. The Applicant shall contribute $150,000 to H Street Main Street to be used for the Clean and Safe Program. The Applicant shall escrow this contribution prior to the issuance of a certificate of occupancy. If the Clean and Safe Program has not been instituted within twelve months from the date of the certificate of occupancy and the escrowed money has not be released to H Street Main Street, the Applicant shall notify ANC 6C. ANC 6C shall then present to the Applicant for approval an alternative use for this money to benefit the H Street corridor. The use of the money shall be finally determined by the Applicant and contributed within ninety days of the date that ANC 6C notifies the Applicant of the proposed alternative use.

17. The Applicant shall participate in H Street Main Street's Clean and Safe Program based on a formula derived of the project's pro-rata share as calculated with the rest of the H Street area that will be participating, provided that the Capitol Place project is legislatively removed from the Capitol Hill BID.

18. The Applicant shall provide the following transportation management measures: inclusion of two dedicated car-sharing parking space(s) in the below-grade parking garage; payment of up to $25 for the application fee or a portion of the annual membership fee in a car-sharing program for the initial purchaser or renter of a residential unit in the project; issuance of a $50 Metro Smartcard pass for the initial purchaser or renter of a residential unit in the project; and inclusion of 85 bicycle parking spaces on-site.

19. The Applicant shall abide by the terms of the construction management plan as set forth in the Updated Construction Management Plan dated October 22, 2007, and in the record as Tab E of the Applicant's Post-Hearing Submission in the record at Exhibit 114.

20. The Applicant shall donate $83,500 to CHRS for the purpose of completing a professional survey of properties for inclusion in a possible future extension of the Capitol Hill Historic District, which would include properties located within the twenty-six blocks comprised of 2nd to 15th Streets, NE, and F to H Streets, NE, not including the Site or properties within the H Street Overlay. The Applicant shall donate these funds within 180 days of the effective date of a non-appealable order from the Zoning Commission.

21. The Applicant shall survey and document those potentially eligible structures to be demolished within the Site in accordance with the standards for documentation set froth in Tab 16 to the Updated Amenities Summary dated October 1, 2007 in the record at

Exhibit 100. This completed survey shall be delivered to ANC 6C, with a copy to CHRS, within 180 days of the effective date of a non-appealable order from the Zoning Commission.

22. The Applicant shall enter into and abide by the terms of a Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve the target goal of thirty-five percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, and construction of the project. The Applicant shall provide copies of all reports required to be filed with the District to ANC 6C.

23. The Applicant shall enter into and abide by the terms of a First Source Employment Agreement with the Department of Employment Services. This Agreement will require the Applicant to make best efforts to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent of the new jobs created by the construction of the PUD project. The Applicant shall provide copies of all reports required to be filed with the District to ANC 6C.

24. 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 but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;

    b. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;

    c. 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;

    d. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;

    e. To make refinements to the garage configuration, including layout, location and design of parking spaces and/or other elements, so long as the total number of parking spaces provided complies with the PUD approval;

25. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the Site

and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

26. 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.

27. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

28. Pursuant to the Human Rights Act of 1977, D.C. Code § 1-2531 (1991), the Applicant is required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

Vote of the Zoning Commission taken at is public meeting held on _____ __, 2007: _____ (_____ in favor, _____ in opposition, _____, not present, not voting)

The order was adopted by the Zoning Commission at its public meeting on _____ __, 2007, by a vote of ___ (_____)

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

ANTHONY J. HOOD
Chairman, Zoning Commission

JERRILY R. KRESS, FAIA
Director, Office of Zoning