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March 26, 2007

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**By Hand Delivery**

Mr. Anthony Hood, Chairperson  
District of Columbia Zoning Commission  
Office of Zoning  
441 4<sup>th</sup> Street, NW, Room 210  
Washington, DC 20001

**Re: Zoning Commission Case No. 05-38 (Square 499, Lots 50 and 853) - Marina View Trustee, LLC Planned Unit Development; Proposed Findings of Fact and Conclusions of Law**

Dear Chairperson Hood and Members of the Commission:

Enclosed please find twenty copies of the Applicant's Proposed Findings of Fact and Conclusions of Law for the above-captioned application. We look forward to the Commission's meeting scheduled for April 9, 2007, when the Commission will take proposed action on this matter.

Best regards,

Christine Roddy

Enclosure

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ZONING COMMISSION  
District of Columbia  
CASE NO. 05-38  
EXHIBIT NO. 71

ZONING COMMISSION  
District of Columbia  
CASE NO.05-38  
EXHIBIT NO.71

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ZONING COMMISSION ORDER NO. 05-38

Case No. 05-38

#### (Consolidated Planned Unit Development and Amendment to the Zoning Map for Marina View Trustee, LLC)

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on February 28, 2007, to consider an application for Marina View Trustee, LLC ("Applicant") for the consolidated review and approval of a planned unit development ("PUD") and an amendment to the Zoning Map of the District of Columbia from the R-5-D Zone District to the C-3-C Zone District for Lots 50 and 853 in Square 499 pursuant to Chapter 24 and Section 102 respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on April 9, 2007, the Zoning Commission took proposed action by a vote of \_\_\_\_\_ to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to Section 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated \_\_\_\_\_, found that the proposed PUD \_\_\_\_\_.

The Commission took final action to approve the application on \_\_\_\_\_, by a vote of \_\_\_\_\_.

ZONING COMMISSION  
District of Columbia

#### A. FINDINGS OF FACT

CASE NO. \_\_\_\_\_

#### PUD SITE

EXHIBIT NO. \_\_\_\_\_

1. The property that is the subject of this application is located in Lots 50 and 853 in Square 499. It is bound by K Street, SW to the north, M Street, SW to the south, 6<sup>th</sup> Street, SW to the west and the site formerly known as Waterside Mall to the east (the "Subject Property" or "Property"). The Property consists of approximately 135,263 square feet of land area and is currently occupied by two residential towers. (Exhibit 26, p.2.)

2. The PUD Site is located in the R-5-D Zone District and the Medium Density Commercial land use category on the Generalized Land Use Map. The PUD requests a rezoning of the entire site to the C-3-C Zone District. (Exhibit 26, p.1.)

3. Two existing residential structures, known as the Marina View Towers, currently occupy the site ("Pei Towers"). Surface parking lots occupy the northern and southern ends of the Property. The Marina View Towers were designed by I.M. Pei and are an example of his modernist design as well as the design typical in Southwest D.C. during the 1960s. (Exhibit 26, Exhibit B.)

4. The Waterside Mall property is located directly east of the Property and consists of 13.4 acres of property that was rezoned to the C-3-C Zone District in a first-stage PUD approval pursuant to Zoning Commission Order No. 02-38. (Exhibit 2, pp. 4-5; Exhibit 26, p. 2.)

5. Arena Stage is located directly to the west of the Property across 6<sup>th</sup> Street and is located in the medium density residential category of the Generalized Land Use Map. (Exhibit 2, p. 5; Exhibit 26, p.2.)

6. Directly to the north of the Property, across K Street, is the west end of Town Center Park which is located in the Parks, Recreation, and Open Space land use category of the Generalized Land Use Map. (Exhibit 2, p.5; Exhibit 26, pp.2-4.)

7. Directly to the south of the Property is a mixture of medium and moderate density residential buildings in the Tiber Island Residential Complex. (Exhibit 2, p.5; Exhibit 26, p.2.)

8. The Property is located less than two blocks away from the Waterfront-Southeastern University Metrorail station located at 4<sup>th</sup> and M Streets. (Exhibit 26, p.3.)

#### PROCEDURAL HISTORY

9. The Applicant filed an application for consolidated review and approval of a PUD and a related amendment to the Zoning Map of the District of Columbia on November 30, 2005. (Exhibit 2.)

10. The Applicant's initial application provided for a building height of 120 feet for the two new buildings that will be constructed on the existing surface parking lots. At its March 13, 2006, public meeting, the Zoning Commission voiced concern with the height of the buildings and asked the Applicant to reconsider its design. (Exhibit 2, Exhibit F.)

11. The Applicant filed a supplemental submission on June 16, 2006, with plans for the new buildings at a height of 112 feet; the top floor being set back at a one-to-one ratio at 102 feet on the M, K, and 6<sup>th</sup> Street sides of the new structures. The Applicant also changed the footprint of the new buildings to feature a contraflexive "S" curve to complement the flat, highly ordered, regular grid of Pei's facades. (Exhibit 26, Exhibit A.)

12. The Zoning Commission reconsidered the application at its July 24, 2006, public meeting and voted 5-0-0 to set the case down for a public hearing.

13. The Applicant submitted the project to the Historic Preservation Review Board ("HPRB") for concept design review of a potential historic property. While no Southwest Historic District formally exists, HPRB evaluated the project as if the historic district existed and the Pei buildings were contributing buildings to the historic district. (Exhibit 26, pp. 10-11.)

14. The HPRB reviewed the project at its public hearing on October 5, 2006, and adopted a "consensus endorsement of the project." (Exhibit 26, p. 11.)

15. The Applicant filed its pre-hearing statement with the Office of Zoning on October 12, 2006 and a public hearing was scheduled before the Zoning Commission for

February 15, 2007. Due to weather conditions on February 15, 2007, the public hearing was postponed until February 28, 2007. Notice of the new hearing date was posted in the Pei Towers. (Transcript, \_\_\_\_.)

16. At the February 28, 2007, public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted Phil Esocoff of Esocoff & Associates as an expert in architecture; Donald Richardson of Zion Breen & Richardson Associates as an expert in landscape architecture; and Lou Slade of Gorove/Slade as an expert in traffic and parking. (Transcript, p.\_\_\_\_.)

17. Tiber Island Cooperative Homes, Inc. ("Tiber Island") and Paul Greenberg submitted a request for party status dated February 14, 2007. The Commission denied the request for party status based on the untimely filing of the request, the failure to produce evidence that Paul Greenberg was authorized to testify on behalf of Tiber Island, and the failure to provide evidence of being uniquely affected by the PUD. The Commission granted Tiber Island an additional ten minutes to present its testimony. (Transcript, \_\_\_\_.)

18. At the close of the hearing, the Zoning Commission requested additional information regarding the Applicant's commitment to a minimum number of points on the LEED scorecard, the condominium discount purchase program and alternative amenities, the proposed rental program for existing tenants, reducing the amount of parking provided with the PUD, the phasing of the PUD, details about the lighting on the Property, and the feasibility of an increased setback on M Street. (Transcript, \_\_\_\_.)

19. The Applicant filed its post-hearing submission on March 12, 2007, sufficiently addressing each of the issues raised by the Commission. (Exhibit 69.)

#### PUD APPLICATION AND PROJECT

20. The PUD will preserve the two existing Pei buildings and will include two new residential structures at the north and south ends of the Property, replacing existing surface parking lots. (Exhibit 26, p. 4.)

21. The two new buildings will hold approximately 285-315 residential units and the existing Pei Towers will include approximately 255 units. The Applicant anticipates a mixture of rental and for-sale units in this project. (Exhibit 26, p. 4.)

22. The new south building will provide approximately 8,900 square feet of ground floor retail along M Street with a 14-foot ceiling height. This retail space provides an opportunity for a restaurant at the intersection of M and 6<sup>th</sup> Streets, facing the Arena Stage. (Exhibit 26, p. 4.)

23. The new buildings will rise to approximately 102 feet, with an additional top floor set back at a one-to-one ratio on the M, K and 6th Street sides of the new structures, for a total building height of 112 feet. The measuring point used for the calculation of building height is the midpoint of the Subject Property's frontage along M Street. (Exhibit 26, p. 4.)

24. Approval of the 112-foot tall buildings allows for a ground level clearance height of approximately 14 feet in the new south building to allow for marketable retail space. On the northern building, the greater clearance height at the ground level allows for taller residential units and the possibility of converting those units to commercial, arts-related, or other community service use if the market exists for such uses along K Street. (Exhibit 26, p. 4.)

25. The site formerly known as Waterside Mall to the east of the Property is proposing a maximum building height of 130 feet. The stepping down in height from the 130-foot Waterside Mall office tower to the 112-foot proposed residential height (with setbacks at 102 feet) to the 90-foot height of the existing Pei buildings, is typical of the stepping skyline arrangements of mid-twentieth century Modernist urban design. (Exhibit 26, p. 5.)

26. The footprint of the new buildings enhances the scale relationship between the proposed and existing buildings. The existing Pei buildings will read as “buildings in the round,” consistent with Pei’s original design for the two towers. The two new buildings feature a contraflective “S” curve that creates a more dynamic relationship between the new and existing buildings. Further, the sinuous curve serves as a lively counterpoint to the flat, highly ordered, regular grid of Pei’s facades. Like the stepping heights of the buildings, this contrast is also an element of Modernism. (Exhibit 26, p. 5.)

27. The new structures are primarily glass and masonry piers with perforated metal panels used as balcony rails and sun screens. The alternating balcony design reduces the scale of the new buildings and allows for two-story high clearance at many balconies. The glazing system proposed, and the perforated metal panels, are contemporary additions to the architectural language of this neighborhood. (Exhibit 26, p. 5.)

28. Each set of buildings will also contain an underground parking facility. The point of entry on 6<sup>th</sup> Street will be a ramp that leads down to an underground “auto court” rotary to allow traffic to circulate for both self parking and valet parking. The parking garages will hold approximately 573 parking spaces, one space for every residential unit and eight dedicated retail parking spaces. (Exhibit 26, p. 6.)

29. The building is also designed to be friendly to cyclists. Air-conditioned bicycle rooms and maintenance areas will be located adjacent to the auto courts in order to make the use of bicycles convenient. The project will include approximately 565 bicycle storage spaces, approximately one bike space for every residential unit. Finally, bicycle access will be safe and secure as the driveways into the auto court will include designated bike/pedestrian lanes. (Exhibit 26, p. 6.)

30. As a part of its transportation demand management program, the Applicant is coordinating with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project. (Exhibit 56.)

31. The roofs of the new buildings will also serve as recreational open spaces. Each new building will feature an irregularly-shaped pool at its west end, oriented towards the Washington Channel and waterfront. Pool and sun deck areas will also be provided on the roofs of the buildings. (Exhibit 26, p. 6.)

32. A key component of the Modern development pattern that characterizes Southwest Washington is the “tower in the park” rhythm of tall residential structures with generous and varied open space. The landscape architecture firm Zion Breen & Richardson (“ZBR”), which was known as Zion Breen when it prepared the original landscape plan for the Subject Property, will renovate and update its original landscape plan. (Exhibit 26, p. 7.)

33. The PUD will include a large green space in the center of the Subject Property (“Great Lawn”) and two new ‘vest pocket’ parks located between the existing Pei buildings and the new residential buildings. The PUD also includes a new linear garden flanking 6<sup>th</sup> Street between the Pei buildings that will be open to the public during the day. Two small pavilions that define the ends of this space will allow for vending of light refreshments. (Exhibit 26, p. 7.)

34. An eight foot wide east-west path that parallels the Great Lawn will allow pedestrians and bicyclists to traverse the site in an east-west direction to access Metro and the future developments to the east. (Exhibit 26, p. 8.)

35. The Applicant proposes to create a shared north/south service drive on the east side of the Subject Property with the adjacent property owner. This shared drive will be paved and can be used safely by pedestrians as well as cyclists in the defined pedestrian crossings areas. Access to the north and south ends of the shared private drive will be provided on the site formerly known as Waterside Mall. The shared route will bend westward behind the central garden and amenity building on the Subject Property. The minimum width of two - eleven foot wide drive aisles will be maintained throughout the length of the shared drive. Sidewalks will be provided along both sides of the “pedestrian crossing zone”. (Exhibit 32, p.2.)

36. On the east end of the Great Lawn there is an amenities building that will include fitness facilities, recreation space, and a large swimming pool with lap lanes. This building will be available to all residents of the Property. (Exhibit 26, p. 8.)

37. The PUD provides several public benefits and project amenities, including the following:

- Housing and Affordable Housing: The PUD will create approximately 540-570 new and upgraded residential units and at least 11,500 square feet of workforce affordable housing. (Exhibit 26, p. 22.)
- Historic Preservation of Private or Public Structures, Places, or Parks: The Applicant will preserve the historically and architecturally significant I.M. Pei buildings on the Subject Property, and integrate those structures into an aesthetically pleasing residential development designed for the needs of a 21<sup>st</sup> century urban community. (Exhibit 26, p. 23.)
- Urban Design, Architecture, Landscaping, or Creation or Preservation of Open Spaces: Massing the new buildings along M, K, and 6<sup>th</sup> Streets creates an appropriate urban development pattern that visually defines the adjacent streets and public spaces, while preserving significant open space within the center of the Subject Property. The southern building is oriented along a significant east-west corridor and will create an attractive

streetscape for pedestrians exiting the Metro Station and headed for the Arena Stage or the Southwest Waterfront. Eliminating the existing surface parking and replacing it with multiple ground level retail and residential entrances reduces the sidewalk and street to a human scale and helps remake the public space into an active pedestrian thoroughfare. (Exhibit 26, p. 23.)

- Site Planning, And Efficient and Economical Land Uses: The proposed project takes advantage of its site location along a significant link between a mass transit hub and cultural and recreational destinations by placing retail at the ground floor street level. The project creates an ensemble of well-defined outdoor spaces for various purposes:
  - M Street, SW: The M Street right-of-way is now properly defined by a building of appropriate size and scale. This accomplishes the important urban design goals of defining the public realm as envisioned in the L'Enfant plan and marking the western terminus of M Street at the nexus of Maine Avenue and the Waterfront. The 18 foot 8 inch setback of the building establishes the M Street corridor, which is consistent with the L'Enfant plan.
  - K Street, SW: Along K Street, the project defines the K Street edge of the public park to the north with a building of appropriate scale to that important urban space.
  - 6<sup>th</sup> Street, SW: The project design creates a garden open to the public along 6th Street between the Pei buildings to enrich the urban experience. Pavilions flanking the space house facilities for serving light refreshments from local vendors. These facilities also mark the entry point to the interior of the site.
  - The Great Lawn: At the project's core, a central green is restored on the Property that is gated but visually open to view as the public traverses the site.
  - The Vest-Pocket Parks: These spaces will serve as a communal space primarily for the residents of each pair of buildings and the public, and will be tranquil courts for passive recreation. The central focus of these spaces is a glass pyramid located directly above and providing natural light to the auto court below. Wall fountains at the east end of these spaces and groves of trees create two urbane spaces with dappled light and the sound of water.
  - The Rooftops: Four well-landscaped roof terraces, with pools on the two new buildings, are established for the enjoyment of the residents of each building. The landscaping of these roofs provides the environmental benefit of reducing the urban heat island effect. (Exhibit 26, pp. 24-25.)
- Effective and Safe Vehicular and Pedestrian Access: The PUD will provide two points of entry and exit into two shared parking garages for the north and south ends of the Subject Property. These garage access ramps are located along 6<sup>th</sup> Street, SW and allow for traffic circulation via an underground "auto court" rotary. The shared service drive that transverses the back of the development will be accessible from K Street and M Street. The project provides separate pedestrian entrances and exits for both residents and shoppers along M and

K Streets. These separate and distinct entrances/exits mitigate any potential pedestrian and vehicular conflicts. The Subject Property, only two blocks from the Waterfront-SEU Metro station, will be integrally connected to the District's mass transit system, and, will also enhance Metro access and service to the neighborhood itself. (Exhibit 26, p. 26.)

The Applicant has also agreed to implement a transportation demand management program consisting of:

- Coordinating with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project.
  - Providing a one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service.
  - Providing all new residents, upon move-in, a complimentary SmartTrip card with \$20 Metro fare to encourage the use of mass transit.
  - Providing an on-site business center to provide residents access to a copier, facsimile machine, and internet services; and
  - Designating a member of building management as a point of contact who is responsible for coordinating and implementing transportation demand management incentives.
  - Providing a secure bicycle storage space for each residential unit. (Exhibit 56.)
- Uses of Special Value: The Applicant has agreed to provide the following community benefits as a result of this project:
    - Tenant Condominium Discounts: The Applicant has created a homeownership opportunity for existing tenants by offering them the chance to purchase a condominium at a discount of approximately \$100 per square foot. The total value of this program is valued in excess of \$3,240,000. If less than 80 residents take part in either the condominium purchase program or the rental program by December 31, 2007, the Applicant will increase the amount of work-force affordable housing it will provide to 16,000 square feet. The workforce affordable housing will be reserved for those households making up to 80% of the area median income. These units will be restricted through a deed restriction, covenant, and/or other legal means in their resale for a period of twenty years.
    - Tenant Rental Discount: The Applicant has created a program that provides existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate will remain the same, provided the tenant chooses to stay in a similarly sized unit. The total value of this program is expected to exceed \$384,000 annually.



- Jefferson Junior High School: The Applicant will make a financial contribution of \$17,000 to Jefferson Junior High School. These funds will be used for enhancement of the school's computer and technological development capabilities.
- Amidon Elementary School: The Applicant will make a financial contribution of \$17,000 to Amidon Elementary School. These funds will be used to renovate the school's library.
- Bowen Elementary School: The Applicant will make a financial contribution of \$17,000 to Bowen Elementary School. These funds will be put toward technological advancements, including computers and Smart Boards.
- Friends of the Southwest Library: The Applicant will make a financial contribution of \$15,000 to the Friends of the Southwest Library. These funds will be used to expand the Library's resource collection.
- Study of the Potential Renovation of the Town Center West Park: This park is located immediately north of the property and its ownership recently transferred from the U.S. Government to the District of Columbia. The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity. The cost of this study is \$15,000.
- Proposed Retail Operators: In response to resident and community requests for neighborhood-serving retail, the Applicant will seek a mix of retail uses that may include: a full service restaurant with alcohol service, dry cleaners, bakery, or coffee shop.
- Green Space: The Applicant has brought the original architect landscape firm, now known as Zion Breen & Richardson, back to renovate and update its original landscape plan to accommodate the new project. Zion Breen & Richardson will design a new linear garden flanking 6<sup>th</sup> Street between the Pei buildings that will be open to the public during the day. (Exhibit 54.)
- Revenue for the District: The addition of approximately 540-570 new and upgraded households and accompanying retail uses in the new buildings will result in the generation of significant additional tax revenues in the form of recordation, transfer, property, income, sales, use and employment taxes for the District. (Exhibit 26, p. 27.)
- First Source Employment Program: The Applicant will voluntarily enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 26, p. 27.)
- Local Business Opportunity Program: The Applicant will enter into a Memorandum of Understanding ("MOU") with Office of Local Business Development ("OLBD") to use the

resources of the OLBD to utilize local business enterprises in the development of this project. (Exhibit 26, p. 28.)

- Comprehensive Plan: As described in greater detail below, the PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. (Exhibit 26, p. 28.)
- Public Benefits of the Project: This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Zoning Commission, including:
  - exemplary/superior architecture (no thru-wall vents, complete architectural treatment of all sides of the buildings, extensive soft and hardscape elements of the landscape plan.);
  - affordable housing;
  - transit-oriented development;
  - ground floor retail establishments;
  - historic preservation;
  - significant open space and public space; and
  - extensive “green” design features, including Extensive green roofs on the Pei Towers and Intensive plantings on the new buildings. The Applicant will employ a roof assembly with pavers on pedestals to collect rain water on the new buildings. The rain water will drain into cisterns at the garage level and then be pumped back to the roofs to water the Intensive, somewhat less-drought resistant plants, that provide necessary shade. By harvesting the water that falls on the paved areas the Applicant is able to redistribute it to the Intensive plantings. (Exhibit 26, p. 28; Exhibit 32, Exhibit D.)

38. The proposed project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan. (Exhibit 26, pp.30-32; Exhibit 38, pp. 3-4.)

- Stabilizing the District’s neighborhoods: The creation of 540-570 new and upgraded residential units will help stabilize and enhance the existing Southwest neighborhood. The retail component will strengthen the neighborhood by providing shopping and dining opportunities in an area that suffers from a general lack of retail activity.
- Respecting and improving the physical character of the District: The development will preserve the historically significant structures and open space, while replacing unattractive surface parking lots with retail, restaurant, and residential opportunities that befit the urban character of the immediate neighborhood.
- Preserving historic character: This PUD respects and preserves the architecturally significant Marina View Towers designed by I.M. Pei and landscaping designed by Zion Breen which reflect the historic development patterns of mid-20<sup>th</sup> century Washington.

At the same time, the site plan takes them out of their 1960s auto-centered context and integrates them into a more modern and appropriate 21<sup>st</sup> century urban development.

- Preserving and promoting cultural and natural amenities: The improved streetscape along M Street will boost Metro service and pedestrian access to the Arena Stage across from the Subject Property and to the Southwest Waterfront itself.
- Preserving and ensuring community input: The Applicant met with the Marina View Towers Tenant Association on two occasions, the Southwest Neighborhood Assembly; Tiber Island Condominium Board, Tiber Island Cooperative Board, and the Advisory Neighborhood Commission 6D on four occasions. The Applicant also held “office hours” for residents of the Marina View Towers on over thirty occasions.

39. The PUD is consistent with many Major Elements of the Comprehensive Plan, including; the Housing Element, the Urban Design Element, the Land Use Element; the Generalized Land Use Map and portions of the Ward 6 Element. (Exhibit 26, pp. 32-37; Exhibit 38, pp. 4-5.)

- Anacostia Waterfront Initiative: Southwest Waterfront Development Plan: The Development Plan and AWI Vision for the Southwest Waterfront sets the following planning and policy goals for the Southwest Waterfront:

Land Use, Density and Building Massing

Many areas of Washington, DC are characterized by buildings of constant height and material, resulting in a uniform and orderly appearance. While this consistency is appropriate for the monumental core and business areas of the District, the Southwest Waterfront is designed to include buildings of varied height and massing, which will create interesting spaces and street frontages, with open views between and around buildings.

The approach of the Southwest Development Plan is designed to be consistent with the architectural character of the surrounding Southwest neighborhood, and to extend many aspects of this character to the waterfront. In contrast with other parts of the city, the Southwest was designed in the 1960's as a community of mixed height buildings widely spaced in open pedestrian areas. The combination of low townhouses with mid-rise (9-12 story) residential towers created a sense of spatial openness with an abundance of light and mature greenery.

Southwest Waterfront Development Plan, at 4-16

New Public Spaces

[A] proposed major public space is a new Civic Park at the southeast end of the [waterfront] site near the intersection of M Street and Maine Avenue. . . . [T]he Civic Park will serve as a cultural hub connecting these activities to each other and to the neighborhood.

The location of the Civic Park in the alignment of M Street preserves an important vista over the Washington channel, while providing a dignified terminus for M Street.

Southwest Waterfront Development Plan, at 4-10.

#### Metro Connections

Although the Southwest Waterfront is short distance from both the L'Enfant Metro station at L'Enfant Plaza and the Waterfront Metro station at Waterside Mall, the walk from either station to the Washington Channel is bleak and uninviting.

An active and lively Southwest Waterfront will draw pedestrian traffic from these subway stations regardless of the quality of the walk, but as the Southwest Waterfront develops, improving the pedestrian environment between these stations and Maine Avenue will be a crucial step in reconnecting the District to its waterfront.

Southwest Waterfront Development Plan, at 5-8

- **Housing Element:** The Comprehensive Plan includes the following goals with regard to the production of new housing:

“Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies and objectives” (10 DCMR § 302.2(a));

“Review and recommend suitable regulatory zoning, tax and financing incentives under appropriate controls to meet housing production goals, particularly for low-income, moderate income and elderly households” (10 DCMR § 302.2(b));

“Encourage housing on suitably located public or private properties that are vacant, surplus, underutilized, or unused” (10 DCMR § 302.2(e)); and

“Designate, as residential opportunity areas, sites where significant housing development can appropriately occur and encourage multi-unit housing development near selected Metrorail stations, at locations adjacent to Downtown, and adjacent to proposed employment centers and office areas.” (10 DCMR § 302.2(d)).

The Comprehensive Plan includes the following goals of the District with regard to the production of low and moderate-income housing:

“Provide zoning incentives, as appropriate to developers prepared to build low- and moderate-income housing, such as permitting additional densities in exchange for incorporating low- and moderate-income housing in development projects” (10 DCMR § 303.2(d)).

The creation of approximately 285-315 new residential units on the Subject Property fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. In addition, the development enhances and stabilizes the existing 255 residential units in the two Pei buildings. The project will provide at least 11,500 square feet of workforce

affordable housing. The inclusion of these affordable units in the project is consistent with the provisions of the Comprehensive Plan noted above.

- Urban Design Element: It is the goal of the District to:
  - “Preserve and enhance the outstanding physical qualities of District neighborhoods.” (10 DCMR § 702.1(b));
  - “Create and enhance relationships between the rivers and District residents, develop urban waterfronts and water-related recreation in appropriate locations, and establish attractive pedestrian connections from neighborhoods to activities along the waterfronts.” (10 DCMR § 706.1(c));
  - “Create an environment in the public space that attracts people and stimulates redevelopment and commerce.” (10 DCMR § 709.2(d));
  - “Promote design features such as storefront windows, multiple entrances to retail, and unenclosed sidewalk cafes to encourage pedestrian activity along the streets.” (10 DCMR § 709.2(i));
  - “Encourage in-fill development to be complementary to the established character of the area. In-fill development in stable areas shall not create sharp changes in physical pattern which might lead to deterioration.” (10 DCMR § 711.2(a));
  - “Encourage special design quality around Metrorail stations to create aesthetically pleasing physical concentrations of activity and development.” (10 DCMR § 713.2(g)); and
  - “Strengthen the function and design image of the development and activity corridors that serve as neighborhood centers.” (10 DCMR § 713.2(h)).

The construction of two prominent residential buildings with approximately 8,900 square feet of ground floor retail and residential amenities will complement the existing historically significant buildings and established residential neighborhood that surrounds the Subject Property. The ground floor retail stores and building itself will activate the streetscape along M Street between the Waterfront Metro station at 4<sup>th</sup> and M Streets and Arena Stage and the waterfront itself to the west.

- Transportation Element: The Comprehensive Plan states the following policy goals with respect to transportation:

“It is the goal of the District to provide appropriate, energy-efficient, cost-effective, and convenient public transportation services within the District . . . as a means of enhancing the functions and quality of life for those who live, work, and visit in the District.” (10 DCMR § 501.1); and

“Support land use arrangements that simplify and economize transportation services, including mixed-use zones that permit the co-development of residential and nonresidential uses to promote higher density residential development at strategic locations, particularly near appropriate Metrorail stations” (10 DCMR § 502.2(a)).

The PUD provides a mixed-use development with ground floor retail two blocks from the Waterfront-SEU Metro station. The location near the Metro ensures that mass transit will be a desirable and preferred option for its residents. Moreover, the availability of ground floor retail in the new South building along M Street, close to the Metro, will establish the project as a center for the neighborhood. Finally, the proximity to the Waterfront Metro station will improve the function and appeal of that station itself as a prime means of access for the Arena Stage and waterfront.

- Land Use Element: With regard to land use, the Comprehensive Plan states the following policy goal:

“Land use policies must ensure that all neighborhoods have adequate access to commercial services within the District and sufficient housing opportunities to accommodate a range of needs. These policies must also ensure that the historic, cultural, and design qualities that make neighborhoods unique and desirable are maintained and enhanced. Adequate recreational opportunities and access to cultural and educational facilities are also necessary ingredients of neighborhood vitality.” 10 DCMR § 1100.2(a)

The PUD preserves existing historical residential structures indigenous to the neighborhood, yet adds new residents and accompanying retail and residential opportunities that benefit the entire neighborhood. The project will also advance the creation of a Southwest historic district.

- Preservation and Historic Features Element: The Comprehensive Plan states the following historic preservation goal:

“The new preservation and historic features goal for the District is to preserve the important historic features of the District while permitting new development that is compatible with those features.” (10 DCMR § 801.1).

The Subject Property currently contains two buildings of architectural and historical significance that reflect the unique impression that modernist design trends of the early 1960s left on Southwest Washington, D.C. The buildings are flanked, however, by surface parking lots to their north and south, that interrupt the urban character of the surrounding neighborhood. This project will preserve the significant buildings and replace the dated parking lots with two new residential buildings that integrate the old and new structures, stabilize the site, and ensure the preservation of this facet of District history for years to come through the creation of a Southwest historic district.

## GOVERNMENT REPORTS

40. The Historic Preservation Office filed a report dated October 5, 2006. The staff found the PUD both extremely thoughtful and highly successful as compatible design in its

context and stated that it should serve as a real model for how to integrate substantial new construction within the Southwest environment. (Exhibit 26, Exhibit B.)

41. The Historic Preservation Review Board provided consensus endorsement of the PUD at its meeting on October 5, 2006. (Exhibit 26, p.11.)

42. In its February 5, 2007, report, the Office of Planning ("OP") recommended that the Zoning Commission approve the project. OP found that the project complements redevelopment plans for both the Arena Stage and Waterside Mall sites, and is supportive of "green building" and smart growth principles. OP also held that the PUD was consistent with the 2006 Comprehensive Plan Future Land Use Map, which designates the site as "high density residential" where "high-rise (8 stories or more) apartment buildings are the predominant uses..." (Exhibit 38, pp. 3-12.)

43. OP supported the case subject to: (1) the provision of additional detail and certainty regarding amenity items, particularly ones related to housing discounts for existing tenants, green building elements and contributions to neighborhood schools and parks; (2) registration of easements to ensure that the mid-block connections through the site will remain open and accessible to the public; and (3) concurrence from DDOT regarding the proposed parking, loading and rear alley provisions. (Exhibit 38, p.12.)

44. At the public hearing, the Office of Planning testified that the Office of the Tenant Advocate indicated that the Applicant's proffers to its existing residents should be included in its benefits and amenities package; however, it still requested that additional affordable housing be provided. (Transcript, \_\_\_\_.)

45. The District Department of Transportation ("DDOT") submitted a report dated February 8, 2007, stating that it did not support the PUD application until the Applicant amended its transportation study to modify the traffic generation assumptions and expands the transportation demand management benefits to prospective residents. (Exhibit 40, p.1.)

46. DDOT submitted a supplemental report on February 14, 2007, indicating that the Applicant had provided additional information in response to DDOT's concerns: the Applicant agreed to implement all Transportation Demand Management measures recommended in DDOT's initial report and the Applicant agreed to expand its scope of study. DDOT requested flexibility in filing additional comments once the Applicant filed its supplemental traffic analysis. (Exhibit 43, p. 1.)

47. On February 26, 2007, DDOT submitted a final report indicating that the Applicant complied with the conditions outlined in DDOT's initial report and that it did not object to the planned development. (Exhibit 68, p.1.)

#### ADVISORY NEIGHBORHOOD COMMISSION REPORT

48. The ANC moved to support the PUD at its regularly scheduled meeting held on February 12, 2007 subject to the following conditions: (1) that the setbacks of the newly

constructed building on M Street, SW be consistent with and equivalent to the setbacks for the adjacent Waterfront Mall but in no event less than 22 feet from the curb line, and that final setbacks for the Marina View PUD Application be deferred until, and be considered in conjunction with, the final consideration of setbacks along M Street, SW for the Waterfront Mall PUD; (2) that it can be determined that the Applicant is duly licensed to do business in the District of Columbia by the Department of Consumer and Regulatory Affairs; (3) that any fines having been levied by the District of Columbia Department of Consumer and Regulatory Affairs against the Applicant (and any of its appellations) are paid in full; and (4) that a formal condominium conversion and renovation plan be prepared by the Applicant and distributed to the Marina View Towers residents not less than 30 days after the approval of this PUD so residents may vote on the plan in accordance with District law. (Exhibit 60.)

49. Max Skolnik was present at the Zoning Commission hearing to testify on behalf of the ANC 6D. (Transcript, \_\_\_\_.)

#### PARTIES AND PERSONS IN SUPPORT

50. Brett Martin submitted a letter dated March 1, 2006, into the record voicing his support of the PUD and his belief that the Applicant had been responsive to the concerns and issues raised by tenants of the Marina View Towers. (Exhibit 13.)

51. Julia Hatcher, a resident of Marina View Towers, submitted a letter in support of the PUD dated April 6, 2006, stating that the neighborhood will benefit from the redevelopment plans for the Waterfront area, specifically the Marina View Towers Complex. She submitted another letter in support of the PUD on February 7, 2007. (Exhibits 17, 37.)

52. Guy Bergquist, Facility Project Director for Arena Stage, submitted a letter dated March 9, 2006, indicating Arena Stage's support for the PUD and its belief that the architectural and landscape design of the PUD will be a benefit for the greater community. Guy Bergquist reiterated the support of Arena Stage when he testified at the public hearing. (Exhibit 14.)

53. Tamika McCree, a resident of Marina View Towers, submitted a letter dated April 13, 2006, indicating her support for the PUD. She noted that the approval of the project would provide a number of desired amenities for the tenants as well as the greater community. (Exhibit 19.)

54. Joe Galli of the Bernstein Companies submitted a letter in support of the PUD dated February 2, 2007. The Bernstein Companies expressed their support of the density and height of the buildings and their belief that the PUD will rejuvenate the community. (Exhibit 33.)

55. Lea Adams, President of the Marina View Towers Tenants' Association, submitted a letter dated February 5, 2007. The Marina View Towers Tenants' Association stated that Fairfield made exceptional efforts to communicate its plans with residents and to address the needs and interests of the residents. As such they urged the Commission to approve the PUD.



Lea Adams testified in support of the Tenants' Association at the hearing. (Exhibit \_\_\_\_; Transcript \_\_\_\_.)

56. Almeta Hawkins, Principal of the Anthony Bowens Elementary School, submitted a letter in support of the application. The school supported the amenities package that was submitted as a part of the application. (Transcript, \_\_\_\_.)

57. John Goudeaux of Amidon Elementary School submitted a letter in support of the application on February 6, 2007. He stated that the school welcomed Fairfield's development and encouraged the Commission to approve it. (Exhibit 35.)

58. Dianna Porter, a resident of Marina View Towers, submitted a letter dated February 12, 2007, in support of the PUD. She noted the efforts Fairfield made in to inform residents of its plans. (Exhibit 41.)

59. Ahmed Lahjouji submitted testimony in support of the PUD on February 15, 2007. He supported the Applicant's efforts to accommodate each existing resident of the Marina View Towers. He testified in support of the application at the hearing. (Exhibit 45, Transcript \_\_\_\_.)

60. David Smith and Gordon Fraley, on behalf of Waterfront Associates, LLC, submitted a letter dated February 23, 2007, in support of the PUD. They noted their willingness to continue to coordinate with the Applicant as both the Marina View PUD and their PUD at the site formerly known as Waterside Mall move forward. David Smith testified in support of the application at the hearing. (Exhibit 48; Transcript \_\_\_\_.)

61. Sarah Peten testified in support of the application and the design proposed by the Applicant. (Transcript, \_\_\_\_.)

62. Clarence Brown of Amidon Elementary School testified in support of the application noting that the development could provide housing for future students of the school. (Transcript, \_\_\_\_.)

63. Lisa Barton, a resident of the Marina View Towers, testified in support of the application and commended the Applicant's efforts to communicate with the residents and to accommodate the residents. (Transcript, \_\_\_\_.)

64. Holly Baker, a resident of the Marina View Towers, testified in support of the application. (Transcript, \_\_\_\_.)

65. William Schen testified in support of the application noting that he was pleased with the design and with the Applicant's outreach efforts. (Transcript, \_\_\_\_.)

#### PARTIES AND PERSONS IN OPPOSITION

66. Marilyn Killingham submitted a letter in opposition to the set down of the case on March 13, 2006. She requested that the application be re-filed with Marina View Trustee, LLC as the applicant. Marilyn Killingham submitted a letter dated June 29, 2006, requesting that the PUD be denied for Fairfield's failure to register with the Department of Consumer and Regulatory Affairs. She submitted another letter in opposition to the Marina View Towers Tenants' Association. She also testified in opposition to the application at the hearing. (Exhibits 12, \_\_\_, 50; Transcript \_\_\_.)

67. Marie Piquet submitted a letter dated April 6, 2006, in opposition to the height of the proposed towers. She submitted another letter in opposition to the PUD dated February 3, 2007. (Exhibits 18, 39.)

68. Rosa Black submitted a letter on February 14, 2007, in opposition to the PUD. She was opposed to the density proposed for the site. (Exhibit 42.)

69. D.C. Tenants' Advocacy Coalition submitted a letter to register as a witness at the hearing. Its testimony at the hearing was in opposition to the PUD because Fairfield's proffer to provide workforce housing was exclusionary at the expense of those who were not employed. (Exhibit 44; Transcript, p. \_\_\_.)

70. Paul Greenberg testified at the hearing and indicated his opposition to the proposed setback on M Street and his belief that the setback should be extended at least an additional three feet. (Exhibit 46; Transcript \_\_\_.) Mr. Greenberg testified that the PUD would have a detrimental effect on the amount of open space available in the southwest neighborhood, which he believed was a hallmark of the Southwest Urban Renewal plan. He further testified that the PUD should be permitted to utilize a maximum height of 130 feet in order to enable the reduction of the PUD's bulk. Finally, Mr. Greenberg questioned the effectiveness of the Historic Preservation Review Board's review of the PUD. (Transcript, \_\_\_.)

71. Mr. Greenberg also submitted written testimony requesting that the PUD be denied unless a setback of at least 22 feet is provided along M Street in order to preserve the vistas, light and air of the Tiber Island residents. He further asserted that the proposed PUD design was inconsistent with the historic character of Southwest D.C. (Exhibit 46.)

72. \_\_\_\_\_ Jenkins, a resident of the Shaw neighborhood, testified in opposition to the application under the assumption the development would displace existing residents. (Transcript, \_\_\_.)

73. Terry Lynch testified in opposition to the application and requested a definitive number of units to be set aside for affordable housing. (Transcript, \_\_\_.)

## **B. CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR §2400.1. The overall goal of

the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. Under the PUD process, 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. In this application, the Commission finds that the requested flexibility to permit multiple buildings on a single record lot can be granted without detriment to the zone plan or map.

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

4. The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1.

5. The Commission believes that this is a project of truly exemplary architectural quality, character and design. The Commission applauds the Applicant and its design professionals for the attention paid to architectural design details, the appropriate historic renovation of the Pei Towers, the landscaping treatment throughout the site, and the commitment to “green” design. The Commission finds that the proposed massing and building height relate well to the Pei Towers and neighboring properties, including the Tiber Island complex. The project respects the existing character of the Southwest D.C. community while merging the neighborhood with the urban design proposed for the nearby Southwest Waterfront. The Commission agrees with the statement of the Historic Preservation Office staff that this project is a model of integrating new construction into the existing context of Southwest D.C.

6. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the condominium purchase discount and the rental discount programs offered to existing tenants are significant amenities of the project. The Commission also finds that the financial contributions to the local D.C. public schools, the Southwest Library, and for the study of the renovation of the adjacent Town Center West Park are appropriate and will provide significant benefits to the surrounding community.

7. Approval of the PUD and the PUD-related Zoning Map Amendment is consistent with the Comprehensive Plan. The PUD will create new residential units, including workforce affordable housing, retain existing residents, and provide retail opportunities in place of existing surface parking lots.

8. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map Amendment differently from other types of rezoning. PUD-related Zoning Map

Amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§2408.8 and 2408.9), the Zoning Map Amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR §2400.7. A PUD-related Zoning Map Amendment is thus a temporary change to existing zoning, that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. The Commission might grant PUD related Zoning Map Amendments in circumstances where it might reject permanent rezoning. In this case, the Commission believes that the proposed rezoning of the Property to the C-3-C District is appropriate given the superior features of the PUD project.

9. The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission finds that the Applicant's Transportation Demand Management Program will help mitigate any adverse impacts related to increased vehicular traffic or parking demand in the surrounding area that may arise as a result of this project.

10. The Commission finds that the Development and Construction Management Plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community.

11. In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. ANC 6D voted to support the project subject to several conditions. The Commission carefully reviewed the conditions proposed by the ANC and has determined that conditions related to the Applicant's license to do business in the District of Columbia and the conversion of the rental building to a condominium are outside the scope of the Zoning Commission's purview. The Zoning Commission held previously in Order No. 03-16, and reiterates again now, that those issues are not land-use related and are not within the scope of the Zoning Commission's review of a PUD. Other agencies within the District of Columbia are charged with reviewing such issues and, thus, the Zoning Commission will defer to those agencies. Accordingly, the Commission will neither opine on the allegations that the Applicant is not properly registered nor will it condition the approval of the PUD on the proper execution of the procedure to convert the existing residential buildings.

12. The Zoning Commission considered the written submissions and testimony of the representatives of ANC 6D and Tiber Island that the Applicant be required to further set-back the new building from the property line along M Street. The Commission finds that in light of the testimony of the Office of Planning, the support of this project from the Historic Preservation Office and the Historic Preservation Review Board, and the written submission and testimony of the Applicant at the public hearing, such a set-back is not appropriate or necessary. The Commission finds that such a set-back would, in fact, impair the urban fabric of the project and the area by pulling the building further away from the property line. The Commission agrees with the Applicant's post-hearing submission that fundamental design principles argue against setting the building further back from its property line along M Street. The proposed siting and height of

the building along M Street is entirely consistent with the 1910 Height Act and will create an appropriate spatial relationship at the western terminus of M Street. The Commission also finds that an appropriate visual corridor along M Street will be created with the approval of this application.

13. The Commission finds that no adverse impact to the amount of light, air, or open space available to neighboring properties (including the Tiber Island properties) will occur as a result of the proposed siting and height of the new south building along M Street. The Commission notes that the M Street right-of-way is 120 feet wide at this point and that the additional set-back requested by the ANC and Tiber Island will have no discernible impact on the surrounding properties, yet will create a suboptimal width of the proposed vest pocket park or width of the residential units in the new south building. For these reasons, the Commission approves the height and location of the new south building along M Street.

14. Approval of the application will promote the orderly development of the Property 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.

15. Notice of the public hearing was provided in accordance with the Zoning Regulations.

16. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

## **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 application for consolidated review of a Planned Unit Development and Zoning Map Amendment application from the R-5-D Zone District to the C-3-C Zone District for Lot 50 and 853 in Square 499. The approval of this PUD and Zoning Map Amendment is subject to the following guidelines, conditions and standards:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 20, 21, 26, 32, 53, 54, 55, 56, and 69 of the record, as modified by the guidelines, conditions and standards of this order.
2. The Applicant will make the following financial contributions, prior to the issuance of a building permit for the new south building on the Subject Property:
  - Jefferson Junior High School: The Applicant will make a financial contribution of \$17,000 to Jefferson Junior High School to be used for enhancement of the school's computer and technological development capabilities.
  - Amidon Elementary School: The Applicant will make a financial contribution of \$17,000 to Amidon Elementary School to be used to renovate the school's library.

- Bowen Elementary School: The Applicant will make a financial contribution of \$17,000 to Bowen Elementary School to be put toward technological advancements, including computers and Smart Boards.
  - Friends of the Southwest Library: The Applicant will make a financial contribution of \$15,000 to the Friends of the Southwest Library to be used to expand their resource collection.
  - Study of the Potential Renovation of the Town Center West Park:  
The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity at a cost of \$15,000.
3. The Commission will require those organizations receiving a monetary contribution to present evidence to the Office of Zoning's Compliance Review Manager demonstrating that the money has been applied to the designated use within six months of receiving the contribution. If the money has not been applied to the designated use within six months, the recipient must provide a reasonable explanation to the Office of Zoning's Compliance Review Manager as to why not and must present evidence to the Office of Zoning's Compliance Review Manager within one year indicating that the contribution has been properly allocated.
4. The Applicant will establish a condominium discount purchase program whereby existing Marina View Towers tenants may purchase a condominium at a discount of approximately \$100 per square foot.
5. The Applicant will establish a program providing existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate for the tenant will increase only in connection with the annual consumer price index increases, provided the tenant chooses to stay in a similarly sized unit.
6. The Applicant shall establish a transportation demand management program that will include the following:
- Coordination with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project;
  - Provide a one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service;
  - Providing all new residents, upon move-in, a complimentary SmartTrip card with \$20 Metro fare to encourage the use of mass transit;
  - Providing an on-site business center to provide residents access to a copier, facsimile machine, and internet services;
  - Providing a secure bicycle storage space for each residential unit; and

- Designating a member of building management as a point of contact who is responsible for coordinating and implementing transportation demand management incentives.
7. The Applicant will preserve the historically and architecturally significant I.M. Pei Towers, and will renovate the exterior of the I.M. Pei buildings, including the replacement of exterior glass walls and windows with insulated glass panels and windows in the same geometric configuration, repairing exposed concrete, and expanding the lobbies in each structure.
  8. The Applicant will use the landscape firm known as Zion Breen & Richardson to renovate and update its original landscape plan to accommodate the new project, to design two new 'vest pocket' parks located between the existing Pei buildings and the Applicant's proposed residential buildings, and a new linear public garden flanking 6<sup>th</sup> Street between the Pei buildings.
  9. The Applicant will coordinate its design for a shared drive in the rear of the property with the adjacent property owners. The Applicant and the adjacent property owner will create reciprocal easement agreements that will ensure that the mid-block pedestrian connections between the properties will remain open and accessible to the general public. The Applicant will provide the Zoning Commission with evidence of a recorded easement prior to the issuance of a Certificate of Occupancy for any units in the new south building.
  10. The Applicant will provide public access through the site in designated areas to accommodate pedestrian/bicycle traffic between Sixth Street and the Southeastern University Metro station.
  11. The Applicant will abide by the Development and Construction Management Plan, as submitted on January 26, 2007, as Exhibit 32 of the record. This Development and Construction Management Plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.
  12. The project will reserve 11,541 square feet of gross floor as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit G of Exhibit 26 of the record. Should less than 80 residents participate in the condominium discount purchase program or the rental program described in paragraphs 4 and 5 by December 31, 2007, the Applicant will increase its commitment to affordable housing to a total of 16,000 square feet for households having an income not exceeding 80% of the Area Median Income for Washington, DC. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.

13. The PUD shall be valid for a period of two years from the effective date of Zoning Commission Order No. 05-38. Within such time, an application must be filed for a building permit for the construction or renovation of one of the residential buildings as specified in 11 DCMR Sections 2404.8 and 2409.1; the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.
14. The Applicant shall enter into a Memorandum of Understanding ("MOU") with the Office of Local Business Development ("OLBD") in substantial conformance with the Memorandum of Understanding submitted as Exhibit I of Exhibit 26 of the record. A fully signed MOU between the Applicant and OLBD must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building.
15. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in substantial conformance with the First Source Agreement submitted as Exhibit I of Exhibit 26 of the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building.
16. The Applicant shall not be required to secure LEED certification for the PUD; however, the Applicant shall achieve a minimum of 20 points as defined by the U.S. Green Building Council in the LEED certification process and further described in Exhibit D of Exhibit 32 of the record.
17. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
  - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction; and
  - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.
18. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct



and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

19. The change of zoning from the R-5-D Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 18, pursuant to 11 DCMR §3028.9.
20. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

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

VOTE:

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

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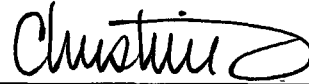
**ANTHONY HOOD**  
**Chairman**  
**Zoning Commission**

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**JERRILY R. KRESS, FAIA**  
**Director**  
**Office of Zoning**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of this document was hand delivered or mailed first class, postage prepaid to each of the persons at the addresses listed below on March 26, 2007.



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