

PLANNED UNIT DEVELOPMENT COVENANT

THIS COVENANT, made as of this 22nd day of February, 2008, by and between THE ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole, (hereinafter referred to as the "Declarant"), and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property known as Lots 114 and 115 in Square 3531 in the District of Columbia (the "Subject Site"); and

WHEREAS, an application on behalf of the Declarant was filed for a Planned Unit Development and Zoning Map Amendment, and the Declarant or his designee intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 05-39, effective August 10, 2007, in Zoning Case No. 05-39; and

WHEREAS, said Chapter 24 and Zoning Commission Order No. 05-39 requires the Declarant to enter into this Covenant with the District assuring the Declarant's, and its successors and assigns in title, development and use of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission") in Order No. 05-39, and any modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development and Amendment to the Zoning Map under

ZONING COMMISSION
District of Columbia

CASE NO. 05-39
EXHIBIT NO. 81
ZONING COMMISSION
District of Columbia
CASE NO. 05-39
EXHIBIT NO. 81

RECEIVED

DC. OFFICE OF ZONING

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Order No. 05-39, effective August 10, 2007 (as the same may be amended and/or modified from time to time, collectively the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. As required by the Order, the Subject Site will be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or the Zoning Commission may authorize, pursuant to 11 DCMR §§ 2409.6 and 2409.9 respectively. The Declarant covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Declarant, its successors or assigns should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order, the Zoning Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

3. Default. In the event that Declarant, its successors or assigns fails to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to section 2408.10, the benefits granted by the Order shall terminate pursuant to Section 2400.7 of the Zoning Regulations.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. The Declarant, its successors or assigns shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.


8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Declarant, its successors or assigns, execute an instrument, in recordable

form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, as of the date first written above, the ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, intending to be legally bound, has caused this PUD Covenant to be executed by Archbishop Donald W. Wuerl, the Roman Catholic Archbishop of Washington, for purposes of executing, acknowledging and delivering this PUD Covenant, as the free act and deed of the ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON for the uses and purposes herein contained.

The ROMAN CATHOLIC ARCHBISHOP OF WASHINGTON, a corporation sole,

By: 
Name: Donald W. Wuerl
Title: Roman Catholic Archbishop of Washington

State of Maryland)
County of Prince Georges)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 12th day of December, 2007, within my jurisdiction, the within named Donald W. Wuerl, who acknowledged that he is the Roman Catholic Archbishop of Washington, a corporation sole, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.


Notary Public

My Commission expires: June 16, 2008

[NOTARIAL SEAL]

Brenda L. Spence
Notary Public
Calvert County
My comm. Exps. June 16, 2008

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA,
a municipal corporation

Tabatha Braxton

By: Stephanie Scott
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Dr. Stephanie Scott, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 22 day of February, 2008, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 22 day of February, 2008.

Tabatha Braxton
Notary Public, D.C.

My commission expires: _____
[NOTARIAL SEAL]

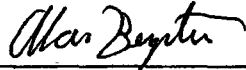
TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires May 14, 2012

APPROVED:

Matthew Z. Zekert 1-31-08

Zoning Administrator, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:



Alan Bergstein, Section Chief
Land Use and Public Works Section
Office of the Attorney General for the District of Columbia

EXHIBIT A

Zoning Commission Order No. 05-39

(attached hereto)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-39**

Z.C. Case No. 05-39

**Consolidated Approval for a Planned Unit Development and Related Map Amendment
St. Martin's Apartments – 116 T Street, N.E.
(Square 3531, Lots 114 and 115)
Archdiocese of Washington and Catholic Community Services
April 9, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 29, 2007 and February 8, 2007 to consider an application from Archdiocese of Washington and Catholic Community Services (collectively referred to herein as the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment from R-4 to R-5-B. The Commission considered the application 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 hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On December 2, 2005, the Applicant filed an application with the Commission for consolidated review and approval of a PUD for Lots 114 and 115 in Square 3531 ("the Subject Property"), as well as a PUD-related amendment of the Zoning Map from the R-4 to the R-5-B District. The Subject Property consists of approximately 91,152 square feet of land that is bounded by T Street on the south, Todd Place on the north, Summit Place on the east, and Lincoln Road on the west in the northeast quadrant of the city. There is a significant change in topography from street level to grade at the center of the Subject Property. The Subject Property is currently improved with a surface parking lot, a Quonset hut, and a Single Room Occupancy ("SRO") building (St. Martin's House), which is presently used by Catholic Community Services to house seventeen formerly homeless men. St. Martin's House is a former convent that will be moved to the east side of the Subject Property and incorporated into the proposed development. The City Lights Public Charter School is located on the western portion of the Subject Property and will continue to operate during and after completion of the PUD project. The proposed

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development will include 178 residential units, all of which will be affordable to moderate- and low-income households. The project will provide 120-140 parking spaces in a partially below-grade garage. The total project Floor Area Ratio ("FAR") will be 2.64.

2. At its public meeting on April 20, 2006, the Commission voted to schedule a public hearing on the application. The Commission noted that, since the time the application had been filed, the D.C. Preservation League ("DCPL") submitted a request to the District's Historic Preservation Office to designate the former convent and school as historic landmarks. The Commission directed the Applicant to resolve that issue prior to any hearing on the application.
3. On September 15, 2006, the Applicant provided a Pre-Hearing submission, along with revised Architectural Plans and Elevations, marked as Exhibit 19 of the record (the "September 15th Plans"). The September 15th Plans supersede the plans originally filed with the application. The revisions to the site plan reflected a negotiated agreement with the D.C. Preservation League to preserve the convent building by relocating it to the southeast corner of the project and incorporating it into the new design. As a result of this compromise, it was necessary for the Applicant to eliminate six of the originally planned residential units, reducing the total number of units in the development from 184 to 178. These changes reduced the overall density of the development from 2.7 FAR to 2.64 FAR.
4. On January 9, 2007, the Applicant submitted updated architectural drawings, marked as Exhibit 77A of the record, and additional comments in response to correspondence with the Office of Planning ("OP") and numerous community organizations. Modifications to the architectural drawings included reintroducing three-bedroom units to the unit mix.
5. After proper notice, the Commission held a public hearing on the application on January 29, 2007 and February 8, 2007. The parties to the case were the Applicant; Eckington Citizens for Responsible Development ("ECRD"); and Advisory Neighborhood Commission ("ANC") 5C, the ANC within which the property is located.
6. The Applicant presented four witnesses at the Commission's hearing session of January 29, 2007: Edward J. Orzechowski, LCSW, President and CEO, Catholic Community Services; Logan C. Schutz, AIA, Grimm Parker Architects; Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, and Iain Banks, a traffic engineer with O.R. George & Associates. Based upon their professional experience, as evidenced by the resumes submitted for the record and prior appearances before the Commission, Mr. Schutz was recognized as an expert in architecture; Mr. Sher an expert in land use, zoning and planning; and Mr. Banks as an expert in transportation planning.

7. ECRD presented six witnesses: Adam Benzing, Sally Berk, an expert in historic preservation and compatible design in a historic context, Steve Rynecki, Joe Lilavois, Geoffrey Taylor, and Mirafe Marcos. ECRD expressed concerns regarding (i) the impact of the project on neighborhood traffic and parking, the compatibility of the project with historical aspects of the site and the neighborhood, the appropriateness of the development with regard to the Comprehensive Plan, and the possible ramifications of this type and scale of construction on the houses and streets of the neighborhood. (Z.C. Transcript, February 8, 2007, ("Tr. 2/8") at p. 70.)
8. Twenty-three persons or organizations testified in support of the application, including the Edgewood Civic Association, the Bloomington Civic Association, and the Ecumenical Council. Dozens of letters were also submitted to the record in support of the project. The supporters praised the development of affordable rental units and the sensitivity and compatibility of the design with the adjacent residential properties. They noted that the Comprehensive Housing Strategy Task Force stated that 19,000 new units of affordable housing must be built to accommodate future growth in the city. By providing 178 units, they stated that the St. Martin's project represents a reasonable contribution of the Eckington neighborhood toward reaching the overall city goal for new affordable housing. Many of the witnesses, including the Bloomingdale Civic Association, testified that design, scale, and program of the project were refined in direct response to specific issues raised by the community.
9. The Coalition for Smarter Growth also testified in support of the project, because it offers critically important workforce housing in a city and neighborhood where such affordable housing is rapidly disappearing. The Coalition noted the project will be located close to a robust transit network and downtown Washington. Given the low car ownership rates in the neighborhood, the Coalition suggested that it would be appropriate for the project to offer fewer off-street parking spaces. However, the Coalition concluded that the proposed parking ratio and pricing to rent parking is an appropriate compromise with some neighbors who have asked for more parking to be provided. According to the Coalition, the provision of additional parking would needlessly burden housing costs.
10. A number of individuals filed letters with the Commission and testified in opposition to the project. The letters and testimony raised a number of issues, but the primary concerns included the following:
 - The incompatibility of size, scale, and design of the project with the surrounding row houses;
 - Preservation of the historic convent on the site;
 - The inappropriate mix of low- and very-low-income residents that would occupy the building and create "a pocket of economic segregation within a rejuvenated neighborhood;"

- The unknown neighbors that would reside in the project and the potential crime they would generate; and
- Parking and traffic congestion.

(Exhibits 27-33.)

11. At its meeting on December 19, 2006, which was duly noticed and at which a quorum was present, ANC 5C voted to support the amended proposed development.
12. At its public meeting held on March 12, 2007, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and plans that were submitted to the record.
13. The Commission took final action to approve the application on April 9, 2007 by a vote of 5-0-0 .

PUD Project

14. The proposed PUD contemplates the construction of a multi-family residential building that will accommodate moderate- and low-income families. Under the initial submission, the Applicant proposed to provide 184 apartments. The number of units under the revised scheme was reduced slightly to 178 units, with a loss of approximately 5,500 square feet of space. The overall density of the project is now 2.64 FAR, down from 2.7 FAR in the initial proposal. Approximately 120-140 parking spaces will be provided in a partially below-grade garage, which exceeds the minimum requirement of 89 spaces, or one for every two units.
15. The Subject Property consists of Lots 114 and 115 in Square 3531 and contains approximately 91,152 square feet of land. The Subject Property is currently improved with a surface parking lot, a Quonset hut, and a former convent that now serves as an SRO building (St. Martin's House), which is used by Catholic Community Services to house formerly homeless men. This structure will be relocated to the corner of T and Summit Streets and incorporated into the project design. The City Lights Public Charter School is located on the western portion of the Subject Property and will continue to operate during and after completion of the PUD project.
16. The project will include a number of community service and recreational uses, including a library, computer room, café, lounge, game rooms, two landscaped interior courtyards, and two roof terraces. The building will also include 1,200 square feet of space that will be used by the adjacent City Lights Charter School as a shop and storage space.

17. The Subject Property is located in the northeast quadrant of the District in the Eckington neighborhood. The Eckington residential area includes row houses, moderate-density apartment buildings, and institutional uses, including McKinley Technical High School and Hyde Leadership Charter School, which are located immediately south of the project. The Comprehensive Plan designates the area for moderate-density residential uses.

Matter-of-Right Development Under Existing Zoning

18. The Subject Property is currently zoned R-4. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The R-4 District permits a maximum height of forty feet and three stories. A maximum density is not prescribed in the R-4 District. Parking is required at a rate of one parking space for every three dwelling units. Under the PUD guidelines for the R-4 District, the maximum permitted height for a residential use is sixty feet, and the maximum density is 1.0 FAR. (11 DCMR §§ 2405.1, 2405.2.)

Matter-of-Right Development Under Proposed Zoning

19. Under the proposed PUD, the zoning of the Subject Property would become R-5-B. The R-5 Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the established height, density, and area requirements. (11 DCMR § 350.1.) The R-5-B District is designed to permit moderate height and density developments. (11 DCMR § 350.2.) The R-5-B District permits a maximum height of fifty feet and a maximum density of 1.8 FAR for all structures. (11 DCMR §§ 400.1, 402.4.) Parking in the R-5-B District is required at a rate of one space for every two dwelling units. (11 DCMR § 2101.1.) Under the PUD standards for the R-5-B District, the maximum height is sixty feet. (11 DCMR § 2405.1.) The PUD standards for the R-5-B District permit a maximum density of 3.0 FAR for residential uses. (11 DCMR § 2405.2.)

Development Incentives and Flexibility

20. The Applicant seeks flexibility from the minimum requirements for loading facilities. As permitted under § 2405.8, the 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.
21. The Zoning Regulations require an apartment building with more than fifty units to provide a truck loading berth with a depth of fifty-five feet. Instead, the PUD proposes a loading berth of thirty feet that will be combined with the service area. The Commission has previously found in other larger PUDs that, based on reports of traffic engineers, a

55-foot loading berth has been deemed unnecessary for a residential building of this size. (See, for example, Z.C. Order No. 03-26, 14th & V PUD, August 5, 2004; see also Z.C. Order No. 04-13, 1200 R Street PUD, May 13, 2005.) The units in the proposed PUD will be modest in size, averaging approximately 560 to 1,180 square feet each. Based on statistics submitted for much larger PUDs, such households will only generate a need for smaller trucks or transport vehicles. Surveys of condominium projects ranging from 58 to 300 units indicate that the arrival of a large tractor-trailer will be rare and that the absence of a 55-foot loading berth for residential use did not create any adverse impacts. Further, truck rental facilities have confirmed that a 14- or 15-foot van or small truck is most frequently used for moving purposes. Consequently, a smaller loading berth will not adversely affect traffic circulation patterns or loading issues in the immediate vicinity.

22. The Applicant also seeks flexibility from § 3202.3 to allow two principal buildings – City Lights School and the St. Martin's Apartments – on one lot of record. The Commission notes that the City Lights School was constructed prior to the enactment of the current Zoning Regulations and is, therefore, a "grandfathered" structure. The school building and the proposed project will still be programmatically integrated, with the project providing space for workshop classes for the school. However, because there will not be an above-grade connection, relief from § 3202.3 is necessary.
23. Finally, the Applicant seeks flexibility from § 2116.1 in order to allow area residents and faculty and staff of the adjacent schools to park at the site, which is a proffered public benefit of the project.

Public Benefits and Amenities

24. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
 - a. *Housing and Affordable Housing.* The single greatest benefit to the area, and the city as a whole, is the creation of new housing opportunities consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. Additionally, the project will provide affordable units to both low- and very-low-income households to ensure an adequate supply of housing opportunities for existing area residents. The 128 units devoted to households earning sixty percent of Area Median Income ("AMI") will be configured as one-, two-, and three-bedroom units. Any resident whose income increases above the sixty-percent income limits while residing in the building will be permitted to remain. The remaining fifty units will be set aside for individuals earning approximately thirty percent of AMI. These units are intended to serve formerly homeless individuals who have completed the Applicant's self-sufficiency

training program and are earning approximately \$18,000 to \$20,000 annually. Seventeen men in this income bracket are currently living on the property, and this segment of the population will continue to be served at the site in greater numbers.

- b. *Urban Design, Architecture, Landscaping, and Open Space.* The proposed new building has been designed to complement and respect the surrounding neighborhood. The overall composition reinforces the broad and lively elements of the Eckington neighborhood. The design also includes extensive landscaping in the two interior courtyards that provide separate outdoor areas for active and passive uses. The west courtyard will feature a formal garden with hardscape and softscape elements, while the east courtyard will include active recreational spaces and play equipment for children.
- c. *Social Services and Other Uses of Special Value to the Neighborhood.* The proposed PUD will provide new affordable housing for a segment of the city's residents and Ward 5 that have not benefited from the recent housing boom. Current market trends have priced a large portion of the population out of the city, and this development promises to address the workforce housing shortages for District families. The project will also make any excess parking spaces available to area residents and faculty and staff of the adjacent schools.

Compliance with the Comprehensive Plan

- 25. The Generalized Land Use Map designates the Subject Property for moderate-density residential land use. Row houses and garden apartments are the predominant uses in this land use category, which may also include low-density housing.
- 26. At the hearing, ECRD argued that the proposed R-5-B rezoning of the property was inconsistent with the moderate-density classification on the Generalized Land Use Map. According to ECRD, R-5-B zoning is more appropriately described as medium-density. In support of this view, ECRD relied on the Future Land Use Plan, which was not in effect at the time the application was filed or at the time of the Commission's two hearing dates for this case. The legend on the Future Land Use Plan describes medium-density residential uses as including mid-rise apartments of four to seven stories. Because the proposed St. Martin's Apartments will be five-stories in height, ECRD asserts that the project falls within the medium-density category and, thus, is inconsistent with the lower "moderate-density" designation.
- 27. The Commission disagrees with ECRD's analysis. First, the Commission is constrained to analyze the proposed project under the Generalized Land Use Map now in effect. However, the Commission finds that § 350.2 of the Zoning Regulations describes the R-

5-B District as permitting development of "moderate height and density." Furthermore, it is not inconsistent with the Plan to have a higher density zone district at one point within an area broadly identified as moderate density if the "predominant" density is moderate. In this area of the city, a broad swath bounded by Rhode Island Avenue on the north, Florida Avenue and Q Street on the south, and industrial properties along the railroad right-of-way on the east (but not including the educational campuses on the south side of T Street) is included in the moderate-density category. The Commission also takes note of the "Zoning Consistency Chart" submitted to the record on Z.C. Case No. 04-33 pertaining to Inclusionary Zoning, wherein R-5-B is deemed consistent with either Moderate- or Medium-Density Residential Land Uses. Moreover, the Commission notes that broad areas of the city that are shown as moderate-density residential are included in the R-4, R-5-A, and R-5-B Districts. Accordingly, the Commission finds that the proposed rezoning of the PUD site to R-5-B is not inconsistent with the Generalized Land Use Map of the Comprehensive Plan.

28. Second, if the Commission were to analyze the proposed project under the Future Land Use Plan of the Comprehensive Plan, it would likewise find that the proposed rezoning of the site to the R-5-B District is not inconsistent with that Plan. The Future Land Use Map describes moderate-density residential as one that "[d]efines the District's row house neighborhoods as well as its low-rise garden apartment complexes. [It] also applies to areas characterized by a mix of single family homes, 2-5 unit buildings, row houses, and low-rise apartment buildings. In some older inner city neighborhoods with this designation, there may also be existing multi-story apartments." In the new Framework Element of the Comprehensive Plan, for the first time zoning districts are described in the context of land use categories, within which R-5-B can be considered moderate-density: "The R-3, R-4, R-5-A zone districts are generally consistent with the Moderate Density Residential category; the R-5-B district and other zones may also apply in some locations." Moreover, the Guidelines for Using the Generalized Policy Map and the Future Land Use Map found in the Framework Element stated that the Future Land Use Map is not a zoning map and it is to be interpreted broadly. Those same guidelines note that "the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited herein." Thus, the Commission likewise finds that the proposed rezoning of the site to R-5-B will not be inconsistent with the Future Land Use Map of the Comprehensive Plan when it becomes effective.
29. The Commission finds that the PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:
 - a. *Stabilizing and Improving the District's Neighborhoods.* The proposed conversion of an SRO to an apartment building will serve to stabilize and improve the surrounding neighborhood. The development will increase the stock of affordable housing while providing a well-designed building that is both

accessible and attractive. By increasing the density and mixing households of sixty percent AMI with thirty percent AMI, this project can support a significant investment into the architectural design of the building and enhance the physical and aesthetic appearance of the neighborhood. A matter-of-right building devoted to only the lower income levels, as originally envisioned for this site, would not support the type of architecture found in this application. A project comprised of a mixture of income levels will help stabilize a neighborhood experiencing displacement and gentrification by providing decent rental housing for low-income families.

- b. *Respecting and Improving the Physical Character of the District.* The PUD process will ensure a development that is sensitively-designed and of appropriate density for this well-developed and established community. The project will replace an existing shelter use with a vibrant residential development that will be consistent with and complementary to the density and layout of the immediately surrounding neighborhood.
- c. *Reaffirming and Strengthening the District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The project will take advantage of this asset through its proximity to the Rhode Island Avenue Metrorail Station, as well as numerous routes of Metrobus. The proposed development furthers the District's efforts to increase the supply of affordable housing and bring additional residents to the city.
- d. *Preserving and Ensuring Community Input.* The Applicant has met with several community groups and immediate neighbors of the proposed development to solicit comments and respond to the issues raised. The planning for this project has been guided by a Community Steering Committee sponsored by the nearby St. Martin's Roman Catholic Church, which includes approximately twenty-five church members, a representative of the local ANC, representatives from three to five other neighborhood churches, and other interested community members. The Applicant met with the Community Steering Committee four times prior to submitting this application. Additionally, the Applicant met twice with and was endorsed by the local Ecumenical Council, which represents five neighborhood churches. The PUD has also been supported by the Bloomington Civic Association, which represents the area within which the project is located. As a result of these meetings, the Applicant made significant changes to the project, including a reduction in the building density, increased parking, the introduction of townhouse-like facades on Todd Place, exclusion of pedestrian or garage entrances on Todd Place, and location of the garage entrance past the Hyde school property.

30. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- a. *Economic Development Element.* According to the Economic Development Element of the Comprehensive Plan, the District places a high priority on stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use Element and ward plans, with sensitivity to the surrounding area. (10 DCMR § 204.2(m).) The proposed development serves to attract and retain residents, which further increases the tax base and creates revenue for the District. The projected direct tax revenues to the District as a result of the proposed project, based on 2005 dollars, total \$487,000 annually (excluding real estate taxes). Further, the combination of initial recordation fees, development processing fees, and permit fees are estimated to generate in excess of \$800,000 of direct revenues for the city. Additionally, approximately six residential-related jobs and project support jobs are estimated to be created. This job generation is in addition to the 109 construction-related jobs estimated to be created spanning each month of the project's 18-month construction period.
 - b. *Housing Element.* According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. (10 DCMR § 300.4.) The PUD complies with this element in that it is in relatively close proximity to the Rhode Island Avenue Metrorail Station and Metrobus lines on North Capitol Street and Rhode Island Avenue, and will further the total urban living system with its access to public transportation.
 - c. *Transportation Element.* The traffic report prepared by O.R. George and Associates also demonstrates that the proposed project will not generate any objectionable conditions with respect to parking or traffic. In fact, Levels of Service ("LOS") for area roadways will continue to operate in the A and B range. The District Department of Transportation ("DDOT") concurred with the analysis and recommended approval of the project.
 - d. *Urban Design Element.* The Project has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding land uses. (10 DCMR § 708.2.) The facades on Todd Place and Summit Street are designed to emulate the townhouses that they face rather than appear as a large apartment house. In contrast, the T Street elevation reflects its

multi-unit character in deference to the size and scale of the institutional school buildings across the street. The project is designed so that a majority of the units have views to the south, affording residents spectacular views of the District's monumental core. The proposed building will also incorporate two rooftop terraces to allow residents who do not face south to have access to these views. The PUD will greatly enhance the architectural character of the site and surrounding area through its design and elimination of outmoded, underutilized buildings.

- e. *Land Use Element.* The Land Use Element encourages a substantial amount of new housing, primarily in Housing Opportunity Areas and near Metrorail Stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. (10 DCMR § 1100.2(b).) The proposed PUD will further this goal due to its proximity to the Rhode Island Avenue Metrorail Station and Metrobus stops.

31. The Project also fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 5:

- a. *Ward 5 Economic Development Element.* Development is sought in Ward 5 that will enhance and expand existing businesses, create new ownership opportunities, increase retail services and opportunities for ward residents, and promote the vitality of Ward 5 neighborhoods. The proposed development will create the demand to expand existing businesses, generate new retail businesses, and provide residents of varying income levels who will increase the vitality of this neighborhood.
- b. *Ward 5 Housing Element.* The project, which is proximate to the Rhode Island Avenue Metrorail Station, responds to the objectives of the Ward 5 Housing Element through its significant contribution of new affordable housing.
- c. *Ward 5 Transportation Element.* The residents of the proposed PUD will be able to take advantage of the site's proximity to the Rhode Island Avenue Metrorail Station and Metrobus routes. On both Summit and T Streets, this project will provide units that have individual access to the street. Additionally, it will improve traffic safety through coordinated efforts with DDOT for additional traffic signage and the provision of off-street parking spaces in excess of the required 89 spaces. After completion of the project, the traffic will still operate at acceptable Levels of Service (A and B).
- d. *Ward 4 Urban Design Element.* The PUD Project specifically and substantially addresses the objectives in the Ward 5 Urban Design Element, including: the

promotion of a physical environment that upgrades the ward's aesthetic qualities, enhances neighborhood stability, emphasizes neighborhood identity and function, and physically enhances the gateways and entrance ways into the District (10 DCMR § 1620.1(a)); and the provision of special design attention to those areas in the ward that maintain a poor physical image, where new development can improve the neighborhood's visual qualities while providing needed services (10 DCMR § 1620.1(b)). The PUD Project provides a well designed residential development that will help to physically revitalize the Ward 5 area.

Office of Planning Report

32. By report dated January 19, 2007, OP recommended approval of the PUD application subject to the DDOT report. OP found that the proposed PUD is consistent with the requirements of the PUD regulations and elements of the Comprehensive Plan. OP encouraged the Applicant to commit to a First Source Agreement with the District of Columbia Department of Employment Services and a Memorandum of Understanding with the Local Business Opportunity Commission prior to final action by the Zoning Commission. The Applicant agreed to these recommendations.

Other Government Agency Reports

33. DDOT submitted an initial memorandum, dated January 29, 2007, indicating that DDOT supports the project proposal with modifications. DDOT requested that the Applicant work with DDOT to determine the preferred location for the parking garage entrance and to ensure that public entrances are handicapped accessible. Thereafter, DDOT met with the Applicant and filed a supplemental memorandum, dated February 8, 2007, supporting the project without the need for modifications. DDOT requested that the Applicant continue to work with them regarding the introduction of additional traffic calming measures. Specifically, DDOT requested, and the Applicant agreed, to post a stop sign on private property at the garage exit, which will permit drivers to have a clear view of pedestrian and vehicular traffic along T Street before proceeding across the sidewalk and into the street. Additional signage will also be posted at the parking garage to enforce the one-way restriction periods along T Street. The Applicant also agreed to request the re-striping of the existing crosswalks at Summit Place and T Street and to install new stop signs on east- and west-bound T Street at the intersection of Summit Place, to make the intersection "All-Way Stop" controlled. Finally, the Applicant agreed to continue to work with DDOT as the project progresses and to make any necessary adjustments or institute new traffic calming measures as conditions warrant.

Contested Issues

Size, Scale, and Design of the Project

34. Opponents who objected to project argued that the proposal does not meet PUD standards in addressing the need for open space, for recreational amenities, and in respecting the design integrity of adjacent properties and the surrounding neighborhood. Sally Berk, ECRD's expert in historic preservation and compatible design in an historic context, testified that the proposed design was incompatible with the existing buildings on the site and the neighboring two-story row houses. She stated that the context of the neighborhood is regularized by unvarying design and repetition, with many buildings even identical. In contrast, she stated, the proposed PUD has "taken an element from almost every single one of those [buildings] and incorporated it into a single project, so that the design becomes far busier" than the existing neighborhood. (Tr. 2/8 at p. 78). She argued that such designs are more appropriate for commercial buildings, not apartments.
35. Ms. Berk also objected to the use of vinyl siding on the proposed building, which in her view was inconsistent with the PUD requirements that "affordable housing should use the same design, the same standards, and the same materials as market rate housing." She argued that market-rate housing does not have such extensive use of vinyl. She further claimed that vinyl siding only has a life of approximately fifteen years. (Tr. 2/8 at pp. 78-79.)
36. Similarly, Ms. Berk testified that the PUD failed to respect and improve the physical character of the District, because it almost completely eliminates the visual access neighbors have across the property to views of the city. She claimed that the property likewise failed to provide diversity and social responsibility because of its fortress-like configuration. In contrast to front porch row houses, Ms. Berk believed that the proposed PUD discouraged neighborhood interaction and thus was socially irresponsible. She admitted on cross-examination, however, that the proposed PUD incorporates the same row house form with numerous access points along the street.
37. Ms. Berk asserted that there were "countless schemes" that were preferable to the current proposal and offered one example consisting of 110 units under a rezoning to the R-5-A District as an alternative. She claimed that the alternative scheme, configured as several garden apartment buildings, would retain the former convent in place, maintain the existing topography, create an interaction with the neighborhood, and preserve visual access to the views of the city, while at the same time achieving the goal of affordable housing. Ms. Berk concluded that although the alternative scheme was not complete, it was nevertheless viable.
38. The Applicant refuted Ms. Berk's claims. Mr. Schutz, the Applicant's expert in architecture, testified that the proposed design reflects the mixture of styles in the

neighborhood and the houses across the street. He described how the materials of the neighboring row houses are primarily brick and wood siding, which is consistent with the brick and vinyl siding chosen for the project. He clarified that vinyl siding has a life of up to 50 years and is a fairly indestructible product. Unlike wood, it does not have to be painted every five to eight years. He further explained that a cementitious product known as Hardiplank is preferred over wood, but has similar maintenance issues, and that vinyl siding is often used instead as a less expensive alternative. Because the specifications for this project call for a higher quality of vinyl siding, including a heavier gauge and matte finish, Mr. Schutz opined that it will be extremely difficult to tell the difference between it and wood. Mr. Schutz also testified that the sixty percent of the exterior will be clad in brick, and because of the manner in which it is used, brick will be the visually dominant material from the public street views.

39. The Commission credits the testimony of the architectural expert and finds that the proposed PUD is compatible with the surrounding neighborhood with respect to size, scale, materials, and building type. The axonometric drawings and the animated simulations of the project in context prepared by the architects amplify how the project complements the streetscape and reflects the row house qualities of the dwellings across the street. The Commission finds that vinyl is an appropriate companion product for an affordable apartment building and has been successfully used in conjunction with brick in other projects approved by this Commission, including the Henson Ridge Hope VI Project (Z.C. Order No. 942-A, November 16, 2001); the Oxon Creek PUD at 19th Street and Mississippi Avenue, S.E., (Z.C. Order No. 841, June 5, 1998; Eastgate Senior Residences at Ridge Road and B Street, S.E. (Z.C. Order No. 04-37, October 21, 2005); Nehemiah Homes at Fort Dupont (Z.C. Order No. 948, December 14, 2001); Rocky Gorge Fort Totten PUD at 611 Emerson Street, N.E. (Z.C. Order No. 04-11, May 20, 2005); and the Valley Green/Skytower PUD at Wheeler Road and Valley Avenue, S.E. (Z.C. Order No. 851, July 3, 1998). In at least two of those cases, the street elevations were clad with less than sixty percent brick.
40. The Commission is persuaded that the apartment house form, as designed, is the appropriate building type for this new affordable housing community. It is conducive to the provision of important project amenities, including the recreation room, a two-story lobby with front desk service, a café, a library, landscaped courtyards, and roof terraces, none of which would be available in a townhouse development. These design features are easily accessible to the residents of the new building through interior corridors. The project is also readily accessible to the disabled and elderly, in part because of the re-grading of the site.
41. The Commission also finds that the juxtaposition of apartment buildings next to row houses is typical of this community and other residential neighborhoods throughout the city. Many historic districts are characterized by large-scale apartment buildings adjacent

to smaller row houses, as shown in the photograph of the Sheridan-Kalorama neighborhood provided by the Applicant. The Commission notes that immediately to the south of McKinley High School, the Commission approved a large-scale residential/retail PUD at Harry Thomas Way and Eckington Place, N.E., with building heights ranging from nine to eleven stories (Z.C. Case No. 05-23). Similarly, in Z.C. Order No. 03-26, the Commission approved a 90-foot tall apartment building on 14th Street, N.W., with approximately 240-300 units, that was separated only by an alley from small-scale two-story row houses on V and W Streets. The Capper-Carrollsbury PUD will also be characterized by a mixture of housing types, with small row houses across the street from many portions of the development. (Z.C. Case No. 03-12.) The Commission further finds that, while the proposed project will be approximately one to one-and-a-half stories taller than the row houses across Todd Place, matter-of-right row houses could rise to seventy feet in height if the hill were not regraded, in contrast to the proposed height of fifty-six feet. Furthermore, the neighborhood is characterized by a mixture of row houses immediately next to four- or five-story apartment buildings at 2nd and T Streets and at 3rd and T Streets. The proposed height is consistent with the relative height of McKinley High School, the relative height of City Lights School, and the abutting row house to the east. The Commission notes that the neighborhood is characterized by steep grade changes, which create varying roof heights along the streetscapes. Thus, the Commission finds that the scale and density of the proposed building will not be inconsistent with the neighborhood or other residential communities in the city.

42. Because the Commission finds that the proposed design is consistent with the PUD standards and the Comprehensive Plan, it need not consider whether alternative proposals with less density would also be appropriate.

Historic Preservation

43. Ms. Berk also asserted that the project does not preserve and promote the cultural and natural amenities of the city. She testified that site currently includes two historic buildings: the former convent building and the school, which are characterized by brick with limestone trim and a restrained, elegant, simple massing. It was her opinion that the proposed design was incompatible with these qualities because of its unrestrained massing, design, and choice of materials.
44. Ms. Berk noted that the convent would be moved from its original site and the site significantly regraded. According to Ms. Berk, these undertakings were not consistent with good preservation practices.
45. Ms. Berk admitted, however, that the neighborhood surrounding the site is not located in an historic district or the site of any historic landmarks. She further acknowledged that pursuant to an agreement with the Applicant, the DCPL would withdraw its landmark

application for the St. Martin's convent and school buildings in exchange for the relocation and incorporation of the convent into the new building. In its letter to the Commission, DCPL expressed its support for the project, because it will protect the historical and architectural attributes of the convent while allowing the affordable housing project to achieve its goals with the greatest flexibility. DCPL noted that the agreement was negotiated with the support of OP and the D.C. Historic Preservation Office.

46. The Commission finds that the project is compatible with the PUD regulations and fosters the Historic Preservation Element of the Comprehensive Plan. While the Commission recognizes the expertise of Ms. Berk in historic preservation, it is persuaded by the fact that DCPL, the city's leading private preservation advocacy group, determined that the revised design successfully protects the convent such that the landmark application is no longer necessary. Moreover, this agreement was reached after numerous discussions with the city's Historic Preservation Office, a city agency that the Commission looks to for guidance in such matters. Accordingly, the Commission finds that the proposal is consistent with accepted preservation practices and furthers the goals of the Comprehensive Plan in this regard.

Parking, Loading, and Traffic

47. ECRD also disputed the sufficiency of the Applicant's transportation plan with respect to parking and loading facilities and traffic congestion. With respect to loading, ECRD questioned whether the reduction in the size of the loading berth and service area, for which the Applicant requested relief, could be granted without adversely affecting the neighborhood. ECRD argued that the loading dock would not adequately serve delivery trucks and moving vans that are typical for apartment buildings. ECRD also disputed whether the plan adequately accommodated the loading and service needs of the adjacent City Lights School.
48. The Applicant supplemented the record with information on the loading and service needs of City Lights School. Currently, trucks unload supplies for the school from the hilltop parking lot. As part of the PUD project, the Applicant will re-introduce the loading bays at the lower level of the school on Todd Street, which are presently bricked-up. Food and other supplies will be delivered only by 30-foot trucks, which can avail themselves of the re-established loading bays. Alternatively, supplies can be delivered to the St. Martin's Apartment's loading dock and then transported to the school by a hand-truck. This renovation will also allow trash to be emptied from the basement and not the second floor, which, due to the grade change, opens onto the existing parking lot.
49. Based on the expert report of the traffic consultant and the recommendation of DDOT, the Commission finds that the reduced loading berth and service area will adequately meet the needs of the new residents without adversely affecting the neighborhood. The re-

introduction of the loading bays on the City Lights School is an improvement over the current configuration. Because these loading bays are located on Todd Place at the intersection of First Street, the Commission finds that there will be ample room for maneuverability so that delivery trucks can be accommodated.

50. ECRD also claimed that the traffic study was deficient in not analyzing the number of cars that currently park on the Subject Property. Accordingly to ECRD, as many as 94 cars were parked on the site at any one time. The Applicant confirmed that teachers and staff at Hyde Leadership Charter School recently began using the lot when McKinley Technical High School ceased accommodating Hyde's parking needs. The Applicant also acknowledged that it had not been vigilant in securing its property to preclude unauthorized individuals from using the lot.
51. ECRD also questioned several other facts and findings in the Applicant's transportation report, including street widths, traffic counts, accident reports, background traffic conditions, and the driveway location. However, many of the assertions were not supported by evidence submitted to the record. Moreover, the Applicant clarified that its traffic report adequately accounted for future traffic conditions by including a two percent growth factor, which is the accepted methodology. Based on the Applicant's supplemental traffic report dated February 7, 2007, which included traffic counts for the recently configured one-way traffic on T Street, the levels of service in the vicinity after construction of the PUD in both the morning and evening peak hours would operate at LOS B, which is well within the DDOT operating standard of LOS D or better. Additionally, based on further discussions between the Applicant and DDOT on February 7, 2007, DDOT agreed that the preferred location for the PUD driveway was on T Street.
52. The Commission credits the expert testimony of the Applicant's traffic consultant and DDOT. The Commission finds that the PUD will not create any adverse traffic conditions, and that the traffic calming measures recommended by DDOT, which the Applicant supports, will help alleviate any potential conflicts with pedestrian traffic, whether generated by the PUD, area residents or faculty, staff, and students of the nearby schools.
53. The Commission also finds that the PUD provides ample parking for its residents and will also help meet the parking needs of adjacent properties. The Commission recognizes that the Applicant cannot be held responsible for the traffic congestion created by the nearby schools or the parking needs of their teachers and students. The Commission also notes that traffic congestion created by the schools is for a limited period during the day when most residents are at work. Further, such conditions are typically managed by the school – not an adjacent property owner – through a Transportation Management Plan. Nevertheless, the Applicant will accommodate the excess parking demand of the schools and neighbors by providing spaces in its garage. Based on census tract information on car ownership rates for rental units, the PUD and City Lights School will generate a demand for approximately 75

spaces. The remaining excess spaces would be available for use by the community, including the Hyde School teachers displaced from the McKinley High School parking lot. The Commission finds the provision of community parking, as well as the commitment to work with DDOT on additional traffic calming measures, to be a benefit of the PUD project.

Trash Removal

54. The Commission also finds that the Applicant has adequately addressed the trash removal needs of the City Lights School. Presently, the school uses a dumpster on the hilltop parking lot. As part of the PUD project, the dumpster will be relocated to a 30-foot area between the new building and the existing school at Todd Place. The Commission finds that there will be ample room for trash removal trucks to maneuver and load and unload the dumpster, because First Street intersects Todd Place where the 30-foot areaway meets the street.

Other Issues

55. Letters in opposition to the project also expressed concerns about the type of residents who would occupy the building, the potential crime they might generate, and whether the mix of incomes targeted for this affordable housing development is appropriate or sustainable. With respect to the "unknown residents" and potential crime they might bring, the Commission finds these issues to be speculation based on fear. Because these concerns are unsubstantiated, the Commission need not address them.
56. The Commission also finds that the lack of market-rate units in the proposal does not detract from the economic viability of the project, as demonstrated by the evidence submitted by the Applicant. In fact, the Commission finds that the project serves two important segment of the city's population: individuals earning no more than sixty percent of AMI and those earning no more than thirty percent of AMI. Such affordable housing projects are far too few and desperately needed. The provision of such workforce housing to residents in these income brackets is a significant public benefit of the PUD.
57. The Commission also notes that ECRD challenged the project's compliance with the Comprehensive Plan. As discussed earlier, the Commission finds that the proposed PUD is fully compliant with the Plan.

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 Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential use for this project is appropriate for the PUD site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
8. Approval of this PUD and related map amendment is appropriate, because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application with certain conditions persuasive.

10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The application for a PUD 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 and approval of a planned unit development ("PUD") and related amendment of the Zoning Map from the R-4 to the R-5-B District for the Subject Property, subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Grimm Parker Architects, submitted January 9, 2007, marked as Exhibit 77A in the record (the "Plans"); as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a residential development as shown on the approved Plans. The PUD shall have a maximum density of 2.64 FAR and a combined gross floor area of no more than 240,940 square feet. The project shall contain no more than 178 dwelling units. The Applicant shall be permitted to adjust the layout, configuration, and number of apartment units, provided the total number of units (178) is not exceeded, and provided further that the number of three-bedroom units is not fewer than two.
3. The maximum height of the residential building shall be fifty-six feet.
4. Fifty of the residential units shall be devoted to individuals earning no more than thirty percent of the Area Median Income ("AMI") for the Washington, D.C. metropolitan area. The remaining units shall be devoted to individuals and families earning no more than sixty percent of AMI.
5. The project shall include a minimum of 120 off-street parking spaces. Sixteen spaces shall be set aside for use by the City Lights School. Any spaces in excess of the parking demand generated by residents of the building and City Lights School may be offered for rent to residents within a two-block radius of the site or to faculty and staff at the public schools across T Street to the south of the PUD site. The Applicant shall develop a parking coordination plan with City Lights School, consistent with the recommendations of the transportation engineer, to ensure the efficient management of the parking garage.

6. The Applicant shall include landscaping, streetscape, and open-space treatment for the project as shown on the Plans. The management company to be hired for the apartment complex shall maintain and keep in good, clean, attractive, and sanitary condition the areas of common responsibility. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement of all landscaping and other flora, structures, improvements, streets, rights-of-way, and other green spaces, parks, or open areas shown on the plans, marked as Exhibit 77A of the record.
7. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping in the public space.
8. Prior to the issuance of the first building permit for the project, the Applicant shall enter into a First Source Employment Agreement with the District's Department of Employment Services and a Memorandum of Understanding with the District's Department of Small and Local Business Development.
9. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; provided, however, that any vinyl siding shall meet the following specifications:
 - 1) The vinyl siding shall be integrally colored, complying with ASTM D 3679;
 - 2) It shall be a "Basis-of-Design" Product from the Norman Rockwell Siding Collection or a comparable product from Alside, Inc.; CertainTeed Corp, Vinyl Building Products Group; Wolverine Technologies, Inc.; or Heartland Building Products, Inc.;
 - 3) The horizontal pattern shall be a Dutch-lap double five-inch style;
 - 4) The texture shall be a low-gloss cedar;
 - 5) The minimal nominal thickness shall be 0.044-inch; and
 - 6) The colors shall be selected by the Applicant from the manufacturers' standard colors as specified on the approved Plans.
 - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural

embellishments and trim; minor refinements to the projecting bays on Summit Avenue; or any other minor changes to comply with the District of Columbia Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and

- d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified and all area requirements of the Zoning Regulations are met.
10. 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 owners 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 Commission.
 11. 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 Commission.
 12. 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.
 13. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 12, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Anthony J. Hood, Carol J. Mitten, Gregory N. Jeffries, John G. Parsons, and Michael J. Turnbull to approve).


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The Order was **ADOPTED** by the Zoning Commission at its public meeting on April 9, 2007, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

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 AUG 10 2007 .



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

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Return To:

FEB 04 2008

MAR 04 2008

Kyrus Freeman, Esq.
Holland & Knight LLP
2099 Pennsylvania Ave., NW, Ste. 100

Sylvia Pelley
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Jay T. Hill
Recorder of Deeds, D.C.

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