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March 29, 2007

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Hand Delivered

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

**Re: Z.C. Case No. 06-02 – Planned Unit Development Application by
Petworth Holdings, L.L.C. – 4136 Georgia Avenue, NW**

Dear Chairman Mitten and Members of the Board:

On behalf of Petworth Holdings, L.L.C., the applicant in the above-mentioned case, enclosed please find the applicant's Proposed Findings of Fact and Conclusions of Law. If you have any questions or concerns, please feel free to contact either of the undersigned.

Sincerely yours,

Allison C. Prince

Allison C. Prince

Jeffrey C. Utz

Jeffrey C. Utz

Enclosures

cc: Stephen Mordfin, Office of Planning
Shanel Anthony, ANC 4C
John Formant

ZONING COMMISSION
District of Columbia

CASE NO. 06-02

EXHIBIT NO. 37

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ZONING COMMISSION
District of Columbia
CASE NO.06-02
EXHIBIT NO.37

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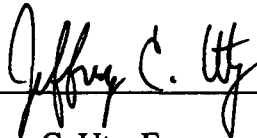
CERTIFICATE OF SERVICE

I hereby certify that on this March 29, 2007, I served a copy of the foregoing Proposed Findings of Fact and Conclusions of Law via hand delivery, to:

Stephen Mordfin
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20001

ANC 4C (10 copies)
P.O. Box 60847
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Shanel Anthony, SMD 4C07
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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 06-02

Case No. 06-02

(Application for the Consolidated Review and Approval of a Planned Unit Development by Petworth Holdings, L.L.C.)

April 9, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on March 1, 2007, to consider an application from Petworth Holdings, L.L.C., for the consolidated review and approval of a planned unit development application for Lot 40 in Square 2910, and the portion of the alley to be closed that will revert to Lot 40, located at 4136 Georgia Avenue, NW, 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.

FINDINGS OF FACT

1. The project site consists of Lot 40 in Square 2910, and the portion of the closed alley that reverted to Lot 40, and has an address of 4136 Georgia Avenue, NW (the "Property").

2. On February 1, 2006, Petworth Holdings, L.L.C. (the "Applicant"), filed an application with the Zoning Commission ("Commission") for review and approval of a planned unit development ("PUD") and a Zoning Map amendment. The Applicant requested the amendment of the Zoning Map from the C-2-A Zone District to the C-3-A Zone District for the Property. The proposed height and lot occupancy of the project are significantly less than allowed by the PUD guidelines in the C-3-A Zone District, and the proposed density does not exceed those guidelines. The PUD project involves a residential building with approximately 57 new residential units. The PUD project also includes approximately 4,884 square feet of retail space. (Exhibit 2 at p. 7; Exhibit 18, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. 8.)

3. At a Special Public Meeting on April 20, 2006, the Commission voted to set down the application for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on March 1, 2007, which was conducted in accordance with the provisions of 11 DCMR § 3022.

4. At the March 1, 2007 public hearing, the Commission accepted Sassan Gharai of SGA Architects, as an expert in architecture based on a review of his resume (submitted in Exhibit 27 in the record). The Commission also accepted Chris Kabatt of Wells and Associates as an expert in traffic and parking based on a review of his resume (also submitted in Exhibit 27 in the record).

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5. Due to the size of the Property of 13,648 square feet, the Applicant requested and the Commission granted a waiver from 11 DCMR Section 2401.2. Under 11 DCMR Section 2401.1(c), the Commission may waive up to fifty percent (50%) of the 15,000 square foot lot size required for a PUD application, if the project is of exceptional merit and in the best interest of the City and if at least eight percent (80%) of the project is devoted to dwelling units and uses accessory thereto. The Commission determined that the project achieves all of these criteria since the project is of exceptional merit, represents a significant investment in an as-yet neglected portion of the City, and is devoted solely to residential use, with limited neighborhood-serving retail.

6. There were no applications for party status. Advisory Neighborhood Commission ("ANC") 4C, the ANC in which the Property is located, is automatically a party to this application.

PROJECT SITE

7. The Property is presently the site of a Shell gas station. It is located along the south side of Upshur Street, NW, between Georgia Avenue, NW, and Kansas Avenue, NW. The Property consists of approximately 13,648 square feet of land area and is commercially-zoned and has been used as a gas station for a number of decades. (Pre-Hearing Statement at pp. 4 and 9.)

8. The square to the west of the Property includes a self-storage facility, an office building, and an auto repair shop. Directly to the south, and adjacent to, the Property along the west side of Georgia Avenue, NW, is a building housing an internet café and a carry-out restaurant. South of, and adjacent to, the Property along the east side of Kansas Avenue, NW, is a commercial storage structure. Along the entire southern portion of Square 2910 is a parking lot that is the former site of Yabba Motors. The Yabba Motors site is the subject of Zoning Commission Case No. 05-19, an application for a PUD by The Neighborhood Development Company, LLC. That case was approved by the Zoning Commission by final action on April 20, 2006. (Pre-Hearing Statement at pp. 11 and 12.)

9. The current state of underdevelopment extends to the south of Taylor Street, NW, to a used car lot and parcels of vacant land, lining the whole of the south side of Taylor Street, NW, between Georgia Avenue and Kansas Avenue, NW. Directly to the east of the Property, across Georgia Avenue, NW, is a park. Further still, along the east side of 9th Street, NW, are two churches, a vacant lot, and several other structures. North of the Property is the intersection of Georgia Avenue, Kansas Avenue, and Upshur Street, NW, and a small triangular park. To the northeast of the Property, along the west side of Georgia Avenue, NW, between Upshur Street and Kansas Avenue, NW, are retail buildings. To the northwest of the Property, along the east side of Georgia Avenue between Upshur Street and Georgia Avenue, NW, is the Petworth Branch Library and behind that, Roosevelt High School. (Pre-Hearing Statement at p. 12.)

10. Immediately to the west of Square 2910, Square 2911 is zoned C-M-1, which is the Commercial and Light Industrial Zone District. To the northwest of the site, Square 2915 is zoned R-4; however, as mentioned, it is utilized by local public facilities. In all other directions, the Property is ringed by C-2-A properties. (Pre-Hearing Statement at p. 12.)

11. The Property is .3 miles (approximately a five-minute walk) to the Georgia Avenue-Petworth Metro Station. Several new developments, either proposed or approved, are or will be located along Georgia Avenue, NW, between the Property and the Metro station, including 3910 Georgia Avenue (a proposed mixed-use or retail-only project on 31,000 square feet of land area), 3646 Georgia Avenue (a proposed development of sit-down restaurants and quick eateries), 4100 Georgia Avenue (the proposed affordable housing development and retail project mentioned above), and a large \$40 million mixed-use project at the Petworth Metro station that will include 148 condominiums, 17,000 square feet of retail space, and underground parking. (Pre-Hearing Statement at pp. 12 and 13.)

12. The City's planning objectives call for more residential use in the area of the Property. The site is located in the Low Density Commercial/Moderate Density Residential land use category as shown on the District of Columbia Generalized Land Use Map. The properties to the south of the Property lining Georgia Avenue, NW, are in the Moderate Density Commercial/Medium Density Residential land use category. Given its location and prominence on the Georgia Avenue corridor, the Property shares many of the same characteristics of the properties in this higher intensity land use category. The properties immediately to the north, south, east and west of the Property are also in the Low Density Commercial/Moderate Density Residential land use categories. The property to the northwest of the Property is in the Local Public Facilities land use category. The other properties further outside the ring of Low Density Commercial/Moderate Density Residential surrounding the property are in the Moderate Density Residential land use category. (Pre-Hearing Statement at p. 13.)

13. The PUD guidelines for the C-2-A Zone District allow a height of 65 feet and a maximum FAR of 3.0, with a limit of 2.0 of non-residential FAR. The C-2-A Zone District, as a matter-of-right, permits a maximum height of 50 feet, a maximum lot occupancy of 60% for solely residential uses, and a maximum FAR of 2.5, with a limit of 1.5 of non-residential FAR.

14. The PUD guidelines for the C-3-A Zone District allow a height of 90 feet and a maximum FAR of 4.5, with a limit of 3.0 of non-residential FAR. The C-3-A Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum lot occupancy of 75% for solely residential uses, and a maximum FAR of 4.0, with a limit of 2.5 of non-residential FAR.

PUD APPLICATION AND PROJECT

15. The proposed project will result in the creation of a unique residential building with approximately 57 residential units, comprising approximately 42,715 square feet and including four affordable units of approximately 3,877 square feet, ground level retail space of approximately 4,884 square feet, and common spaces of approximately 10,396 square feet (the "Project"). The total gross floor area included in the proposed PUD will be approximately 57,995 square feet for a total Floor Area Ratio ("FAR") of approximately 4.25. The Project will include direct residential pedestrian access to Kansas Avenue, NW, and direct retail pedestrian access to Georgia Avenue, NW. It has been thoughtfully designed to complement the existing structures and properties near the site and enhance and rejuvenate its surroundings. (Pre-Hearing Statement at pp. 8-9, 13, and 16.)

16. The proposed building height is 75 feet as measured from Georgia Avenue, NW, and has a lot occupancy of approximately 63%. The proposed Project is equal to or smaller than the building envelope permitted under the C-3-A District PUD Guidelines (maximum FAR of 4.5 and a maximum building height of 90 feet). It is necessary to rezone the Property to the C-3-A Zone District in order to allow the proposed 75 foot height and FAR of 4.25. The proposed height and FAR on the Property is critical to allow for both the quality of the development the Applicant intends to build on the Property and to maintain a price of the units that is comparable to the market at this location. The building will serve as a gateway to the Petworth neighborhood and will also provide impetus and direction for the development of the Petworth community. The Project is a significant investment in a neighborhood that will greatly benefit from the stimulus. (Pre-Hearing Statement at pp. 14 and 16.)

17. The building will be primarily comprised of brick. The Applicant revised the color of the Project in response to comments received from the Zoning Commission at the April 20, 2006 setdown meeting. A great deal of care has been taken to adorn the façade with a high level of finish and detail. The massing of the building, decorative metal panels, embellishments such as steel and glass entrance canopies and aluminum storefronts, alternating projecting bays from the face of building, and liberal use of large windows with aluminum framing will create a design and expression appropriate to this neighborhood. In addition, the building's design is focused on a central tower element that acts as the foundation for a gateway into a significant part of the Georgia Avenue corridor. The design will bring new visual interest to Petworth, while incorporating a pattern that blends traditional and modern elements and capitalizes on the unique features of the Property. (Pre-Hearing Statement at p. 14.)

18. The tower element was significantly modified as a result of the comments from the Commission at the March 1, 2007 hearing so that it had a more open appearance and integrated windows and light rather than stone and brick. In addition, the Applicant modified the projecting bay window elements of the building to match the updated design of the tower element. (Exhibit 36, Post-Hearing Submission from the Applicant ("Post-Hearing Submission") at p. 1. and Exhibit A to the Post-Hearing Submission)

19. The roof of the new building will be partially a "green roof" since the Office of Planning requested such a design feature for the Project and the Zoning Commission has deleted the residential recreation space requirements of the Zoning Regulations. (Exhibit A to the Post-Hearing Submission.)

20. Ingress and egress to the below-grade parking garage of approximately 35 parking spaces will be from Kansas Avenue, NW, at the southern edge of the Property (approximately a third of the way down the block between Taylor Street, NW, and Upshur Street, NW). Residents of the Project can proceed directly from their parking spaces in the below-grade garage to their units. Four spaces in the underground garage, and two additional spaces in the "rear" courtyard of the building are available to the retail areas. The total parking on the site, both above and below ground, is 37 parking spaces. (Pre-Hearing Statement at p. 15.)

21. The main lobby for the residential portion of the building will be accessed from the Kansas Avenue entrance to the building via a glass entranceway and lobby which creates a visual connection to Kansas Avenue. A pedestrian-only entrance will be provided for each of the three retail "units" in the Project. Two of these pedestrian entrances will be located on Georgia Avenue, NW. The third such entrance will be located at the building on the corner of the Property – at the intersection of Kansas Avenue, Upshur Street, and Georgia Avenue, NW. Clearly, the Project will enliven the streetscape with its pedestrian access and ground-floor retail. (Pre-Hearing Statement at p. 15.)

22. The proposed Project will include hardscape and landscape improvements on the Property. There will be two landscaped areas on the Property. One will be on the northwest corner of the building and the other will be created along Kansas Avenue, NW. These areas will be landscaped with plant species allowing for a minimum amount of irrigation. The result of the landscaping and the exemplary finish on the building will be that the surrounding neighborhood and the streetscape are energized – the property now discourages such an active pedestrian street life. (Pre-Hearing Statement at pp. 15-16; Post-Hearing Submission, Exhibit A.)

23. No side yard is required under Section 775 of the Zoning Regulations. The rear yard requirement under Section 774.1 is 2.5 inches per foot of building height. Since the building is 75 feet high, the rear yard required would be 12 feet, 5 inches. Under Section 774.11, since the building is on a corner lot abutting three streets, the rear yard may be measured from the center line of the street abutting the lot at the rear of the building. Beginning at the middle of Kansas Avenue, NW, the Project offers a rear yard of 60 feet. (Pre-Hearing Statement at p. 16.)

24. A loading berth, loading platform and a loading space are provided at the rear of the building and will be accessed from the entrance on Kansas Avenue, NW. Based on input from the Zoning Commission at the setdown meeting and the Office of Planning, the Applicant redesigned the loading facilities. A 30 foot truck could utilize the loading berth for "front in/front out" loading. The loading space and loading platform are

of sufficient size under the Zoning Regulations. The trash and recycling areas will be enclosed within the building and located at the rear of the building. The abutting alley has been closed by the City Council's approval of closure of the entire alley in Square 2910. (Pre-Hearing Statement at p. 17.)

FLEXIBILITY UNDER PUD GUIDELINES

25. The PUD Process was created to allow greater flexibility in planning and design than is possible under conventional zoning procedures. The PUD regulations specifically allow the Commission to approve any zoning relief that would otherwise require the approval of the Board of Zoning Adjustment ("BZA"). The proposed development complies with the broad parameters of the C-3-A Zone District. However, the design scheme proposed for the PUD has created a configuration that does not meet all of the exact requirements of this zone. (Pre-Hearing Statement at p. 18.)

26. Specifically, the Applicant requires relief from Section 2201.1 of the Zoning Regulations. While the Project offers a loading platform of 231 square feet and a loading space of 20 feet, the loading berth is only intended to handle a 30 foot truck rather than the 55 foot truck loading berth required by Section 2201.1. Ample space is provided for loading and unloading with the proposed facilities as confirmed by the Applicant's traffic consultant. The Applicant's design includes open space in the rear of the building that will facilitate the servicing of the building. The Applicant met with the District Department of Transportation ("DDOT") on June 12, 2006 to review the proposed loading plan. DDOT indicated its support of the Project's loading provisions. The Applicant's traffic engineer enclosed, as Exhibit A to Exhibit 18 of the record, a truck turn diagram showing how a 30 foot truck would maneuver on the Property. It is possible to have a 30 foot truck employ a "front in/front out" loading maneuver. Also, on the rare occasions the residents would require a delivery from a 55 foot truck, DDOT suggested that the Applicant apply for temporary "No Parking" signs for the spaces that abut the proposed building on Kansas Avenue, NW. The plans allow for a more efficient use of the Property. Further, the 55 foot loading berth requirement is triggered only when a building contains 50 or more units. In this case, the 57 unit building only slightly exceeds that threshold. Also, the proposed 57 residential units are planned to be condominiums and not so there is likely to be minimal turnover in the units. (Pre-Hearing Statement at p. 19.)

27. Also regarding the loading at the site, the Applicant requests relief from Section 2204.2 of the Zoning Regulations in order to allow access to a portion of its loading area over private space. The Zoning Regulations require that loading berths and loading spaces shall be directly accessible from a street, alley or private driveway. Such relief is required due to the unusual shape of the Property caused by the three abutting streets. (Presentation of the Applicant, March 1, 2007.)

28. The Applicant requests relief from the residential recreation space requirement of 15% of residential gross floor area required by 11 DCMR § 773. Although the Zoning Commission recently voted to remove residential recreation space

from the District of Columbia Zoning Regulations, the final order effectuating such vote has not yet been published. As a result, until the final order removing the residential recreation space is published in the D.C. Register, the Applicant requires relief from the residential recreation space requirements since the Project does not provide the required 15% of residential gross floor area. (Presentation of the Applicant, March 1, 2007; Exhibit 28, p. 9.)

29. The Applicant requests relief from Section 2115.4 of the Zoning Regulations. The Applicant proposes a parking garage that contains one section of three contiguous compact parking spaces and a rear parking area of two contiguous compact parking spaces rather than the required five contiguous compact parking spaces. Since it is an oddly configured lot, the arrangement of such parking spaces maximizes open areas in the most efficient manner. For the same reason, the parking garage also requires two other areas of relief: (i) relief from Section 2117.8(a) of the Zoning Regulations since the Applicant proposes to begin the vertical grade of the driveway to the parking garage at the edge of the sidewalk nearest the Property rather than at the edge of the property line; and (ii) relief from Section 2117.6 of the Zoning Regulations since the Applicant proposes to provide drive aisles in one section of the parking garage of 15 feet, 2.5 inches in between the parking garage columns, which are less than the 20 feet of drive aisle width required in areas of 90 degree angle parking. (Pre-Hearing Statement at p. 20.)

30. The Applicant requests relief from the requirements regarding the minimum width of courts in buildings under Section 776.5 of the Zoning Regulations. The configuration of the building creates two courts – one on both sides of the stairwell extending into the rear courtyard. The courts were created since the stairwell and elevator shaft have been pushed away from the front of the building and its tower element as discussed above. One court is 85 feet high (when calculated to the top of the adjacent wall of the roof structure), 15 feet of which is attributable to commercial space, and therefore should be 27 feet and 1 inch wide. That court is approximately 17 feet 5 inches wide. The other court is 73 feet high (when calculated to the top of the adjacent wall of the roof structure), 3 feet of which are attributable to commercial space, and therefore should be 24 feet and 1 inch wide. That court is approximately 14 feet 5 inches wide. This relief will not violate the intention of the Zoning Regulations and will allow for greater flexibility in design of the building. The design of the Project allows for a large open area accessible to all of the residents of the building that achieves the access to air and light sought by the Zoning Regulations. (Pre-Hearing Statement at pp. 20-21.)

31. Finally, the Applicant requests relief from Section 2116.1 of the Zoning Regulations, which requires that the parking spaces associated with the Project are located on Lot 40. Fifteen parking spaces are to be provided in the vault space adjacent to Lot 40. Section 2101.1 requires one parking space for every two residential units and one space for each 300 square feet of residential space over 3,000 square feet. Based on this, the Project is required to have 35 parking spaces. The Applicant is furnishing 37 parking spaces at the Property, including the row of parking spaces that are in vault space. Therefore, the Applicant requests that the fifteen parking spaces in vault space are

considered legitimate parking spaces under the Zoning Regulations. (Pre-Hearing Statement at p. 21.)

32. Although the Applicant requested relief from Section 400.7 of the Zoning Regulations regarding setback of roof structures in its Pre-Hearing Statement, the Applicant no longer requires such relief. Since the Applicant was able to remove the residential recreation space on the roof and replace it with a partially "green roof", the roof structure was no required to provide access to the roof and setback relief is no longer required. Such an alteration to the roof structure also allows the Applicant to remove its request for relief from Section 411.5 of the Zoning Regulations. Since the Applicant does not need to provide access to the roof for residential recreation space, the roof structure design is also not required to include slightly varying heights. (Presentation of the Applicant, March 1, 2007; Exhibit 34.)

33. As detailed in Exhibit 7 in the record, no adverse environmental impact will result from the construction of the Project. In addition, the increased use of water and sanitary services that will occur as a result of the Project, will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project.

34. As detailed in Exhibit 7 in the record, the Project will not have an adverse impact on the public facilities that it will rely on for service. The Property is located within easy walking distance of the Petworth/Georgia Avenue Metrorail station. In addition, numerous Metrobus lines utilize Georgia Avenue, such that the Project is adequately served by public transportation.

35. The Applicant communicated with the community a great deal. ANC 4C offered support and suggestions for the Project.

36. The Project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan, D.C. Law 12-275, 10 DCMR (Planning and Development) § 100 et seq. (1998) ("**Comprehensive Plan**"). The Project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input.

The Project is also consistent with many Major Elements of the Comprehensive Plan (including the Housing and Urban Design Elements), and fulfills the goals and policies of the Ward 4 Plan. The OP report submitted on February 14, 2007 stated that

OP believes that the land use impact of the Project would be favorable to the District. (Pre-Hearing Statement at p. 28-33; Exhibit 28.)

37. Testimony and evidence on behalf of the Applicant was provided by John Formant, the managing member of Petworth Holdings, L.L.C.; Sassan Gharai of SGA Architects (who testified as an expert in the field of architecture); and Chris Kabatt of Wells and Associates (who testified as an expert in the field of traffic and parking engineering).

38. As addressed in the Applicant's Pre-Hearing Statement and in the testimony of Mr. Formant, Mr. Gharai, and Mr. Kabatt, the following public benefits and project amenities will be created as a result of this Project.

- Housing and Affordable Housing – Pursuant to Section 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This Project will create approximately four (4) new residential units in the Petworth neighborhood. As a whole, the Project will result in the creation of approximately 3,877 square feet of affordable housing units. The units will be available to potential residents with a household income that does not exceed 80% of the Washington D.C. Area Median Income ("AMI"). Given the current strong interest in the production of affordable housing in the District of Columbia, this is a significant amenity. (Pre-Hearing Statement at p. 24.)
- Site Planning – Pursuant to Section 2403.9(b) of the Zoning Regulations, "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. The proposed Project has been designed to provide residents and their guests with all of the amenities they could want while minimizing the zoning impact. For example, the Project offers open and inviting spaces for residents and guests, including a landscaped courtyard and a fitness room. In addition, the Project would bring much needed retail space to the area and a great deal of housing close to the Metro. The Project would be an efficient use of the Property and take advantage of its many positive characteristics to the benefit of its residents, its neighbors and the District. The result would be a vibrant gateway to the Georgia Avenue Corridor. (Pre-Hearing Statement at p. 25.)
- Effective and Safe Vehicular and Pedestrian Access – The Zoning Regulations, pursuant to Section 2403.9(c), state that "effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. The proposed Project will provide approximately 37 parking spaces, primarily in an underground parking garage. The entrance and exit to this garage will be on Kansas Avenue, NW. Residents of the Project will be able to proceed directly from their parking space in the garage to their units, and patrons of the retail space will be able to park in designated retail parking spaces. Separate and buffered from the vehicular entrance, the

pedestrian entrances are distributed throughout the site. The main residential entrance is on Kansas Avenue, NW. Each retail space has its own entrance and one retail space has two entrances. These separate and distinct entrances/exits will mitigate any potential pedestrian and vehicular conflicts. Further, clearly such an arrangement will contribute to an active streetscape. Loading will occur in a separate area at the "rear" of the building to minimize conflicts between vehicles and pedestrians. (Pre-Hearing Statement at p. 26.)

- Environmental Benefits – As shown in the detailed plans, elevations, and renderings submitted as Exhibit 34 to the record (particularly on page 34 of Exhibit 34) and as stated by Mr. Gharai at the March 1, 2007 hearing, the Project will include numerous environmentally sensitive features that would not necessarily be included in a matter-of-right project. These attributes include: a green roof system covering part of the building's roof top; materials and construction intended to reduce the effects of urban heat islands; the inclusion of an extensive amount of bicycle parking; the use of low emissivity building materials; the remediation of a site that is currently utilized as a gas station; and the use of water-conserving landscaping. (Exhibit 34, p. 34.)
- Revenue for the District – According to Section 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The addition of a new building with approximately 57 households and retail space will result in the generation of significant additional tax revenues in the form of income, sales, use and employment taxes for the District. Further, the provision of new affordable living space will mean that a segment of the District workforce presently being pushed out of the District by increasing housing costs will remain, thereby supporting the businesses where they work. The provision of three new retail locations will provide numerous business opportunities and jobs, likely for residents of the surrounding neighborhoods. (Pre-Hearing Statement at p. 26.)
- First Source Employment Program – According to Section 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, 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. (Pre-Hearing Statement at p. 27.)
- Local Business Opportunity Program – Pursuant to Section 2403.9(e), the use of local firms in the development and construction of the Project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a Memorandum of Understanding ("MOU") with the Local Business Opportunity Commission ("LBOC") to use the resources of the LBOC to utilize LSDBEs in the development of this Project. (Pre-Hearing Statement at p. 27.)

- Consistency with the Comprehensive Plan – According to Section 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. (Pre-Hearing Statement at p. 27.)
- Public Benefits of the Project – Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of its Pre-hearing Statement and during its testimony at the March 1, 2007 hearing. It is only as a result of the additional density and height provided through the PUD process that the Applicant is able to construct such a well-designed project and provide new housing. The building will be integrated into its surroundings and equipped with all modern safety amenities as well as parking and recreational space. As a substantial investment, the Project will be a valuable addition to the urban fabric of the Petworth neighborhood. The architectural detailing of the proposed building, landscaping, and the inclusion of quality affordable housing provided in this Project set it apart from a matter-of-right residential project. The approval of this PUD application will result in the creation of approximately 3,877 square feet of high-quality affordable housing. In addition, the surrounding neighborhoods will greatly benefit from the first floor retail spaces. The Project is likely to have a highly desirable catalytic effect on the immediately surrounding area. In addition, the Applicant will be providing \$50,000 of computer equipment and related technology enhancements to the Petworth Recreation Center and \$75,000 for upgrades to the computer room and refurbishing and enhancing an underutilized athletic field and related landscaping work to Clark Elementary School. As described in Exhibit 36 to the record, the Applicant will work with the Upshur, New Hampshire, Taylor and Shepard Street Association to administer such benefits. The Applicant has been in frequent contact with local residents and ANC 4C representatives and members to determine such amenities. In addition, the Applicant will provide an allocation of \$30,000 to renovate existing retail storefronts on Georgia Avenue in the vicinity of the Project, to be modeled on ongoing Georgia Avenue Storefront Revitalization Program sponsored by the District's Department of Housing and Community Development ("DHCD").

(Exhibit 36.)

39. At the public hearing and in his transportation impact study submitted into the record as Exhibit B to the Pre-Hearing Statement, the Applicant's traffic engineer, Mr. Kabatt, concluded that the proposed Project will have no significant impact on peak hour levels of service at nearby intersections. Mr. Kabatt testified that all key intersections around the Property currently operate at acceptable levels of service. The redevelopment of the Property will be adequately accommodated at the key intersections

in the study area and have only minimal impact on the delay and volume/capacity ratios in the study area. In addition, Mr. Kabatt testified that the loading facilities of the Project would be sufficient for the operation of such a building. (Exhibit B to the Pre-Hearing Statement.)

40. In response to issues raised by Commissioners during the public hearing, the record of the case was left open for the Applicant to provide post-hearing materials including: revisions to the site plans including updates to the tower element and related design work and enhancements to the Project's amenities package. The Applicant submitted the required materials on March 22, 2007 as Exhibit 36 to the record. In addition to enhancements to the design as requested by the Commission, the Applicant made the following upgrades to its amenities package:

- Enhanced Retail along Georgia Avenue – Given the ongoing initiative to enhance existing retail uses along Georgia Avenue and to attract new, viable uses that will serve the neighborhood's needs, the Applicant determined to focus on assisting such retail uses. Accordingly, the Applicant has considered additional amenities that will serve that objective. The Applicant proposes a retail-oriented amenity modeled on the ongoing Georgia Avenue Storefront Revitalization Program sponsored by DHCD. That program provides \$10,000 grants to rehabilitate existing retail storefronts on Georgia Avenue. Consistent with the spirit of that initiative, the Applicant would allocate a total of \$30,000 to the rehabilitation of three (3) storefronts along Georgia Avenue in the general vicinity of the project. The targeted storefronts would be selected with input from ANC 4C, Friends of Petworth, and the Upshur, New Hampshire, Taylor and Seventh Street Association ("UNTS"). The improvement of existing storefronts will provide an immediate benefit to Georgia Avenue and achieve the goals of the Applicant, Zoning Commission and the Office of Planning. In addition, the Applicant submitted a letter from the Project's retail broker, Steven Solomon, as Exhibit B to Exhibit 36, stating that the Project's retail space of only approximately 4,884 square feet would not be sufficient to include a set aside of space for an LSDBE tenant in the Project.
- Additional Support of Clark Elementary School - In addition, the Applicant met with the Friends of Petworth on March 13, 2007, to discuss the project amenities. The Friends of Petworth and UNTS support an additional contribution to Clark Elementary School for the purpose of renovating the school's athletic fields and associated landscaping. The principal of Clark, Mr. Bearn Wright, confirmed that he would appreciate and accept such support in addition to the \$50,000 of computer equipment that has already been proposed. (Exhibit D to Exhibit 36.) Accordingly, the Applicant proposes to use the additional \$25,000 for the renovation of the athletic fields and landscaping. The total contribution to Clark would be the total \$75,000 and the contribution to the Petworth Recreation Center would remain \$50,000 for the described purposes .

- Affordable Units – Petworth Selection Process – ANC 4C suggested that preference should be given to Ward 4 residents, and ANC 4C residents in particular, in the selection of purchasers for the affordable units. The Applicant will agree to target the marketing efforts for the affordable units to Ward 4 residents. The Applicant will make every effort to keep Ward 4 residents informed about the selection process and the opportunities presented by the project.

(Exhibit 36.)

GOVERNMENT REPORTS

41. OP, in its report dated February 16, 2007 and through its testimony at the public hearing noted that the application meets the standards for a PUD and that the Project is not inconsistent with the Comprehensive Plan, the draft 2006 Comprehensive Plan, or the Georgia Avenue Commercial Overlay District. OP recommended approval of the Project subject to the provision of more amenities. (Exhibit 28.)

42. In a supplemental report dated February 21, 2007 and filed February 27, 2007 as Exhibit 29 in the record, OP outlined the relief requested and amenities offered by the Project and the project in Zoning Commission Case No. 05-19 at 4100 Georgia Avenue, NW. (Exhibit 29.)

43. No District of Columbia agency other than DDOT responded to the OP notice that the application had been filed. (Exhibit 28 at p. 17.)

44. The DDOT submitted a report dated July 11, 2006 (“**DDOT Report**”), which stated that DDOT had no objection to the Project. DDOT noted that it concurred with the Applicant’s traffic consultant that the Project will generate less trips during the AM and PM peak hours than the gas station use of the Property. In addition, DDOT noted that it met with the Applicant to discuss the loading facilities. DDOT stated that the use of a large tractor trailer is infrequent and that, in the rare occurrence a tenant of the proposed building is using a 55 foot truck for moving, the moving company could use “No Parking” signs in coordination with DDOT, if necessary. DDOT noted its concern about the closure of the existing gas station contributing funds to the District’s highway repairing project, but stated that did not impact DDOT’s favorable review of the Project. The DDOT Report stated that the Property is well-served by public transportation. (Exhibit 19.)

ADVISORY NEIGHBORHOOD COMMISSION REPORTS

45. ANC 4C voted to support the application for the PUD and rezoning of the Property from C-2-A to C-3-A with no conditions at a regularly scheduled and publicly noticed meeting on February 26, 2007. The letter sent by Shanel Anthony, the ANC 4C Single Member District Representative for the Property, on March 1, 2007, states that the

ANC supports the Project and believes that it will bring a more desirable use to the Property and does not create any adverse conditions. That letter stated that the ANC believes that the Project offers a sufficient amenities package for the relief requested. Shanel Anthony appeared at the public hearing to support the Project. (Exhibit 32.)

PARTIES AND PERSONS IN SUPPORT

46. In a letter submitted as Exhibit C to Exhibit 36 in the record, the Friends of Petworth and Upshur, New Hampshire, Taylor and Shepard Street Association noted its support for the application. (Exhibit C to Post-Hearing Submission.)

47. No persons testified in support of the application at the public hearing.

PARTIES AND PERSONS IN OPPOSITION

48. There were no parties that testified or submitted any materials in opposition to the application.

CONCLUSIONS OF LAW

49. 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.

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

51. 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. The Zoning Commission may also approve design elements that are permitted by variance and would otherwise require approval by the BZA. In this application, the Commission finds that:

- The requested flexibility from the requirements of 11 DCMR § 2201.1 regarding the size of the loading berth can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has adequate loading and will not require a larger loading berth. In the rare occurrence a 55 foot truck is utilized at the site, the Applicant or any other party can work with DDOT to use “No Parking” signs at the Property.

- The requested flexibility from the requirements of 11 DCMR § 2204.2 regarding the access to the loading facilities over private space can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has maximized the efficiency of the loading for the building given the unique configuration of the site.
- The requested flexibility from the requirements of 11 DCMR § 773 regarding the provision of residential recreation space can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Commission has voted to remove such requirement from the Zoning Regulations and such space is not required in the Project although an amount of residential recreation space is provided in the building.
- The requested flexibility from the requirements of 11 DCMR § 2115.4 regarding the grouping of compact spaces in the parking garage can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has maximized the efficiency of the parking for the building given the unique configuration of the site.
- The requested flexibility from the requirements of 11 DCMR § 2117.8(a) regarding the vertical grade of the driveway to the parking garage beginning at the edge of the sidewalk nearest the Property rather than at the edge of the property line can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has maximized the efficiency of the circulation pattern and parking for the building given the unique configuration of the site.
- The requested flexibility from the requirements of 11 DCMR § 2117.6 regarding the width of portions of the drive aisles of the parking garage can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has maximized the efficiency of the parking for the building given the unique configuration of the site.
- The requested flexibility from the requirements of 11 DCMR § 776.5 regarding the width of courts can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. Such courts will maximize the flexibility of the design of the Project without negatively impacting light and air.
- The requested flexibility from the requirements of 11 DCMR § 2116.1 regarding the provision of parking on private space can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has maximized the efficiency of the parking for the building given the unique configuration of the site.

52. The development of this 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.

53. The Commission finds that the project is of exceptional merit, in the best interests of the City, and at least eighty percent (80%) residential and therefore waives the minimum PUD area requirements of 11 DCMR § 2401.1.

54. The Commission agrees with the testimony of the project architect and the representative of the Applicant and finds 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 Property would provide. The Commission finds that the affordable housing provided in the Project, the environmental sensitivity of the Project, the contributions to local institutions, the local retail storefront assistance, and the First Source Agreement with DOES and MOU with LBOC are significant and substantial project amenities of this PUD application.

55. The Commission finds that the Project relates well to nearby buildings. The variations to the exterior of the building through a series of projecting bays allow the property to relate well to neighboring properties and create a scale similar to that of the neighboring properties. The designs of the façades of the building are consistent with the buildings throughout the neighborhood. The Commission finds that the revision to the tower element and related window treatments are a beneficial alteration to the initial design.

56. 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.

57. The Project will achieve numerous goals of the District. The Project will create an affordable residential development and will improve dramatically the appearance of the site. The proposed height and massing of the Project are consistent with recently approved PUD projects in the area and with the District's planning goals for the future of this neighborhood.

58. The Commission evaluates the impact of the Project as follows:

- Land Use Impact – The proposed PUD Project will create a significant residential development along the important Georgia Avenue Corridor and will improve dramatically the appearance of the site. The proposed height and massing of the Project is consistent with the buildings in the area and with the District's planning goals for the future of this area of the City. The Project does not fully use the 90 foot height allowance of the PUD guidelines in the C-3-A Zone District. In order to create a more compatible building with the surrounding neighborhood, the Applicant designed the Project to a height of 75 feet.

- **Zoning Impact** – The proposed Zoning Map Amendment application can be granted without adversely affecting nearby and adjacent Zone Districts. The proposed C-3-A Zone District is consistent with the Moderate Density Residential/Low Density Commercial Land Use Category designation for the Property and the surrounding Generalized Land Use Map designations. It is particularly consistent with the Medium Density Residential/Moderate Density Commercial Land Use Category designation for the properties on the Georgia Avenue Corridor. Those properties are zoned C-3-A. The development will extend the rejuvenation of the Georgia Avenue Corridor further north into Petworth. As such, it will direct investment and energy further into an area that has not benefited from the D.C. development boom. The rezoning of the Property comports with the District’s planning initiatives in the vicinity of the Property. In addition, the D.C. Court of Appeals has held that PUDs do not constitute spot zoning. Daro Realty, Inc. v. District of Columbia Zoning Commission, 581 A. 2d 295, 299.
- **Environmental Impact** – No adverse environmental impact will result from the construction of this Project. In addition, the increased use of water and sanitary services that will occur as a result of the Project will have an inconsequential effect on the District’s delivery systems. The site is currently served by all major utilities. The Project’s proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project. Once the Project is completed, it will have the beneficial impact of urban infill. With the Property changed from a gas station lot to housing and retail, the Property would be much more efficiently utilized. The Project would bring residents into the City, enabling them both to quickly access the Metro and provide an array of services and business in its retail spaces. As a result, the Project would have the effect of keeping more cars off the roads and assisting in curbing sprawl.
- **Facilities Impact** – The proposed Project will not have an adverse impact on the public facilities that it will rely on for service. As previously mentioned, the Property is located within easy walking distance of the Georgia Avenue-Petworth Metro Station. In addition, Metrobus lines utilize Georgia Avenue, NW, such that the Project is well-served by public transportation.

59. 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. The Commission takes note of ANC 4C’s letters in support of the Project and has accorded to the ANC’s decision the “great weight” consideration to which it is entitled. The Commission notes the support that the Project received from the Friends of Petworth and UNTS. Based on the letters and support from the community, the Commission concludes that the Applicant has been well received by the community.

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

61. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. The instant consolidated application will achieve the goals of the PUD process by creating a high quality residential and retail building on the Property which will help to enliven and revitalize the Georgia Avenue Corridor and the Petworth neighborhood of Ward 4. The Commission finds the following elements of the amenities package of the Project to be in accordance with the amount of relief requested:

- Housing and Affordable Housing - This Project will create approximately four (4) new residential units in the Petworth neighborhood comprising approximately 3,877 square feet.
- Site Planning – The Project will bring much needed retail space to the area and a great deal of housing close to the Metro. The result would be a vibrant gateway to the Georgia Avenue Corridor.
- Effective and Safe Vehicular and Pedestrian Access – The proposed Project will provide approximately 37 parking spaces, primarily in an underground parking garage. The Project has been well planned to create effective and safe vehicular and pedestrian access. Such an arrangement will contribute to an active streetscape.
- Environmental Benefits – The Project has included a large degree of environmentally-sensitive design elements that would not be included in a matter-of-right project as shown on page 34 of Exhibit 34.
- Revenue for the District – The Project will bring new tax revenues in the form of income, sales, use and employment taxes for the District.
- First Source Employment Program – The Applicant will sign a First Source Employment agreement with DOES.
- Local Business Opportunity Program – The Applicant will sign an MOU with LBOC.
- Consistency with the Comprehensive Plan – The Project is consistent with and furthers many elements and goals of the Comprehensive Plan.
- Public Benefits of the Project – The Project will provide (a) \$50,000.00 of computer equipment and related technology enhancements to the Petworth Recreation Center, (b) \$75,000.00 of upgrades to the computer room and

refurbishing and enhancements to an underutilized athletic field and related landscaping work to Clark Elementary School, and (c) an allocation of \$30,000 to storefront revitalization on Georgia Avenue, in the vicinity of the Project, modeled on the Georgia Avenue Storefront Revitalization Program sponsored by DHCD.

62. The proposed PUD is consistent with and fosters the goals and policies enumerated in the District of Columbia Comprehensive Plan. The proposed Project significantly advances these purposes by furthering the social and economic development of the District through the creation of approximately 57 new residential units, including four (4) affordable units, and active ground level retail space on a site that is critically important to the development of the Georgia Avenue Corridor. The Applicant's proposal is consistent with three major themes as follows:

- Stabilizing the District's Neighborhoods – The creation of approximately 57 new residential units will help stabilize the Petworth neighborhood by providing an opportunity for District residents to live in desirable housing in this area of the District. The creation of such a significant retail and residential development on the Property is also likely to help stimulate additional residential development and further stabilize the neighborhood. The influx of new residents in the neighborhood will help provide the critical mass of customers needed to patronize existing, and hopefully new, commercial uses along Georgia Avenue, NW. In addition, the first floor retail spaces will bring much-needed goods and services to the area and begin the active streetscape that the District seeks. Therefore, the Project will both have a catalytic effect on surrounding areas while respecting the massing and scale of the neighborhood.
- Respecting and Improving the Physical Character of the District – The proposed Project has been designed to improve the site's integration with the surrounding neighborhood and put it to a more beneficial use than the current gas station. By increasing the density and maximizing the lot usage, the Project will contribute to the streetscape along Georgia Avenue, Kansas Avenue and Upshur Street, NW. Although the building will be taller than some of its immediate neighbors, the Project's architects have used materials, projecting bays, layering of textures, and other design elements to unite the building with its surroundings and scale. Thus, the Project will not overwhelm the neighborhood and will fit in well with the surrounding buildings. The facade, landscaped areas, modern quality materials, sweeping tower element, and alternating composition of projecting bays, all combine to create a sense of scale, visual interest, and aesthetic richness.
- Preserving and Ensuring Community Input – Throughout the PUD process and development of the Project, the Applicant has worked with representatives of ANC 4C and held several meetings with the community. The Applicant is committed to working with the ANC, as well as the immediate surrounding

neighborhood, to continue to create a new residential community that is a benefit to the neighborhood and the District of Columbia.

63. The Comprehensive Plan also contains 11 major elements. The Project furthers the objectives and policies of several of these elements as follows:

- Housing Element – The creation of approximately 57 rental residential units on this currently underutilized property fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Project will provide approximately 42,715 square feet of residential space, including approximately 3,877 square feet of affordable housing. The inclusion of the affordable units in the Project is entirely consistent with the provisions of the Comprehensive Plan noted above.
- Urban Design Element – As shown in the detailed plans, elevations, and renderings included in Exhibit A, the proposed Project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a prominent residential and retail building will complement and enhance the neighborhood that surrounds the site. The integration of the site design into a prominent lot at the corner of Georgia Avenue, Kansas Avenue, and Upshur Street, NW, and the offering of street level retail will tie the Project into the neighborhood. The Applicant has met with OP on the proposed Project. As a result of OP's input, the design has been enhanced. The result is an exemplary design that utilizes modern materials for a fresh and inspiring appearance.
- Generalized Land Use Map – As previously mentioned, the Generalized Land Use Map includes the Property in the Moderate Density Residential/Low Density Commercial Land Use Category. It should be noted that, while the Generalized Land Use Map typically is helpful in determining appropriate uses and density in areas of the city, it is not intended to serve as a "general" zoning map, nor does it mandate a parcel-by-parcel limitation on permitted development. The proposed Project and C-3-A Zone District are consistent with the flexibility that the Moderate Density Residential/Low Density Commercial Land Use category provides for the Property. Such a designation supports the construction of a high-quality housing project with a retail component on the site of an underutilized lot. In addition, the Georgia Avenue corridor adjacent to the property is a long stretch designated as Medium Density Residential/Moderate Density Commercial. Therefore, the Project would fit well in the plan for the establishment of Georgia Avenue as a rejuvenated vibrant corridor.
- Ward 4 Goals and Policies – The Ward 4 Element of the Comprehensive Plan seeks to "capitalize on Metrorail station areas as focal points for retail services...and community activities" (10 DCMR § 1501.1(d)), "create and expand retail activity" (10 DCMR § 1505.1(a)), expand development on vacant commercial properties (10 DCMR § 1506.1(a)), maintain, conserve, and expanding the housing stock, particularly of affordable housing, (10

DCMR § 1507.1(a)), provide affordable housing in particular near the Georgia Avenue-Petworth Metro Station (10 DCMR § 1507.3)), provide for the housing needs of moderate-income households (10 DCMR § 1508.1(a)), encourage the private sector to provide new housing (10 DCMR § 1508.1(c)), and support the construction of rental housing (10 DCMR § 1508.1(d)). Furthermore, the Ward 4 Land Use Plan calls for the implementation and upgrading of local neighborhood centers in a small area that includes the Property (10 DCMR § 1530.1 (h)(2)(C)(ii)). The proposed PUD is consistent with these provisions of the Ward 4 Elements of the Comprehensive Plan. It is difficult to imagine a project that better satisfies the goals and objectives of the Ward 4 Element of the Comprehensive Plan.

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 application for Lot 40, and the portion of the closed alley that reverted to Lot 40, in Square 2910. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit A to Exhibit 36, as modified by the guidelines, conditions and standards of this order.
2. The approved PUD shall consist of a project that includes a minimum of 57 residential units. The entire Project will include approximately 57,995 square feet of gross floor area resulting in a FAR of approximately 4.25. The Project shall include approximately 3,877 square feet of affordable residential space (at 80% AMI) and approximately 4,884 square feet of retail space.
3. There will be a minimum of 35 parking spaces provided in the parking garage and 2 spaces provided in the rear of the building.
4. Prior to the issuance of a building permit for the building approved by this PUD Order, the Applicant shall provide \$50,000.00 of computer equipment and related technology enhancements to the Petworth Recreation Center. Applicant will be able to reallocate such amount towards alternative expenditures if a more pressing need arises for the Petworth Recreation Center.
5. Prior to the issuance of a building permit for the building approved by this PUD Order, the Applicant shall provide \$75,000.00 of upgrades to the computer room and refurbishing and enhancements to an underutilized athletic field and related landscaping work to Clark Elementary School. \$50,000 of such benefit shall be utilized to upgrade and enhance the school's computer room and related technological resources. \$25,000 of such benefit shall be utilized to upgrade the

school's underutilized athletic fields and to perform related upgrades to landscaping. Applicant will be able to reallocate such amount towards alternative expenditures if a more pressing need arises for Clark Elementary School.

6. Prior to the issuance of a building permit for the building approved by this PUD Order, the Applicant shall make a monetary contribution of \$30,000.00 to upgrade retail facades on Georgia Avenue, as modeled on the ongoing Georgia Avenue Storefront Revitalization Program sponsored by DCHD.
7. The Applicant shall enter into an MOU with LBOC. The Applicant shall abide by the terms of the MOU in order to achieve, at a minimum, the goal of 35% participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD.
8. The Applicant shall enter into a First Source Employment Agreement with DOES. The Applicant shall abide by the terms of the agreement in order to achieve the goal of utilizing the District of Columbia residents for at least 51% of the jobs created by the PUD.
9. No building permit shall be issued for the building approved by this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct on and use the Property in accordance with this Order or amendment thereof by the Zoning Commission.
10. Prior to the issuance of a certificate of occupancy for the building approved by this PUD Order, the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable units in such buildings to affordable housing for not fewer than 20 years.
11. 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;
 - To make minor refinements to exterior details and dimensions, including

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;

- To make alterations to the parking garage design provided that the parking garage contains a minimum of 35 parking spaces, which requirement may be satisfied with any combination of compact and full-sized spaces;
 - To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and
 - To make minor adjustments to the site plan, including such areas as the loading areas and driveway, if necessary.
12. The consolidated 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 and construction of the Project must start within three years of the date of the effective date of this order pursuant to 11 DCMR §§2408.8 and 2408.9.
13. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sexual 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 _____.

ANTHONY HOOD
Vice Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning