

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-02

As Secretary to the Commission, I hereby certify that on SEP 17 2007 copies of this Z.C. Notice of Final Rulemaking & Order No. 06-02 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia

CASE NO. 06-02
EXHIBIT NO. 42

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ZONING COMMISSION
District of Columbia
CASE NO.06-02
EXHIBIT NO.42

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-02

Z.C. 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 (the "Commission") 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 and related map amendment 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, N.W., pursuant to Chapter 24 and § 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; it has an address of 4136 Georgia Avenue, N.W. (the "Property").

2. On February 1, 2006, Petworth Holdings, L.L.C. (the "Applicant"), filed an application with the 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 District to the C-3-A 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 District, and the proposed density does not exceed those guidelines. The proposed PUD project is a mixed-use building with approximately 57 new residential units and 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 Commission held a public hearing on the 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 (Exhibit 27). The Commission also accepted Chris Kabatt, of Wells and Associates, as an expert in traffic and parking based on a review of his resume (Exhibit 27).

5. Due to the land area of the Property of 13,648 square feet, the Applicant requested and the Commission granted a waiver from 11 DCMR § 2401.2. Under § 2401.1(c), the Commission may waive up to fifty percent (50%) of the minimum 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 eighty percent (80%) of the project is devoted to dwelling units and uses accessory thereto. The Commission determined that the project meets these criteria since the project is of exceptional merit, represents a significant investment in a neglected portion of the city, and is devoted primarily to residential use, with limited neighborhood-serving retail.

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

7. The Commission took proposed action to approve the application with conditions by a vote of 5-0-0. The Commission also requested that the Applicant refine the design of the building's tower and window mullion elements and provide more information about the affordable housing program proposed for the project before final action.

8. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated April 27, 2007, found the proposed PUD and map amendment would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.

9. The Applicant submitted drawings showing a revised design for the building that was responsive to the Commission's concerns and additional information about the project's affordable housing program on May 7, 2007. The Commission voted to re-open the record to include these materials at its May 14, 2007 public meeting.

10. The Commission took final action on May 14, 2007 by a vote of (5-0-0) to approve with conditions the application and plans that were submitted into the record.

PROJECT SITE

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

12. 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 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 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.)

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

14. Immediately to the west of Square 2910, Square 2911 is zoned C-M-1, which is a 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.)

15. 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, between the Property and the Metro station, including 3910 Georgia Avenue (a proposed mixed-use 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.)

16. The City's planning objectives call for more residential use in the vicinity 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, along Georgia Avenue, 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 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.)

17. The PUD guidelines for the C-2-A Zone District allow a height of 65 feet and a maximum density of 3.0 FAR, with a limit of 2.0 FAR of non-residential density. 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 density of 2.5 FAR, with a limit of 1.5 FAR of non-residential density.

18. The PUD guidelines for the C-3-A Zone District allow a height of 90 feet and a maximum density of 4.5 FAR, with a limit of 3.0 FAR of non-residential density. 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 density of 4.0 FAR, with a limit of 2.5 FAR of non-residential density.

PUD APPLICATION AND PROJECT

19. The proposed project will result in the creation of a residential building with a minimum of 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, and direct retail pedestrian access to Georgia Avenue. (Pre-Hearing Statement at pp. 8-9, 13, and 16.)

20. The proposed building height is 75 feet as measured from Georgia Avenue. The proposed lot occupancy is 63%. The proposed Project is within the building envelope permitted by the C-3-A District PUD Guidelines (maximum density of 4.5 FAR 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 4.25 FAR. The proposed height and density requested by the Applicant are needed to allow for both the quality of the development and to maximize the number of residential units. 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 benefit from the stimulus. (Pre-Hearing Statement at pp. 14 and 16.)

21. The building will be composed primarily of brick. 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 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 will serve as visual 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.)

22. The roof of the new building will be partially a “green roof.”

23. Ingress and egress to the below-grade parking garage will be from Kansas Avenue, at the southern edge of the Property. Residents of the Project will 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 will be available to the retail areas. The total parking on the site, both above and below ground, will be 37 parking spaces. Thirty-five spaces will be located in the below-grade parking garage. (Pre-Hearing Statement at p. 15.)

24. The main lobby for the residential portion of the building will be accessed from Kansas Avenue via a glass entranceway and lobby, which will create 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. The third such entrance will be located at the corner of the Property – at the intersection of Kansas Avenue, Upshur Street, and Georgia Avenue. The Project will enliven the streetscape with its pedestrian access and ground-floor retail. (Pre-Hearing Statement at p. 15.)

25. The proposed Project will include hardscape and landscape improvements on the Property. There will be two landscaped areas on the Property. One will be at the northwest corner of the building and the other will be created along Kansas Avenue. These areas will be landscaped with plant species requiring minimal irrigation. The landscaping and the finish on the building will energize the surrounding neighborhood and the streetscape, whereas the property is not now conducive to such an active pedestrian street life. (Pre-Hearing Statement at pp. 15-16; Post-Hearing Submission, Exhibit A.)

26. A loading berth, loading platform, and loading space are provided at the rear of the building and will be accessed from Kansas Avenue. Based on input from the Commission at the setdown meeting and the Office of Planning, the Applicant redesigned the loading facilities.. A 30-foot truck will be able to utilize the loading berth for “front in/front out” loading. 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 Council legislation. (Pre-Hearing Statement at p. 17.)

FLEXIBILITY UNDER PUD GUIDELINES

27. The PUD process was created to allow greater flexibility in planning and design than is possible under conventional zoning procedures. The PUD regulations allow the Commission to approve any zoning relief that would otherwise require the approval of the

Board of Zoning Adjustment ("BZA"). While the proposed development complies with the broad PUD parameters of the C-3-A Zone District, it requires additional relief in several areas. (Pre-Hearing Statement at p. 18.)

Loading Facilities

28. Specifically, the Applicant requires relief from two regulations related to the Project's loading facilities: (1) the requirement of § 2201.1 of the Zoning Regulations that the Project have one 55-foot loading berth, one 200-square-foot loading platform, and one 20-foot service/delivery space; and (2) the requirement of § 2204.2 of the Zoning Regulations that the loading facilities be directly accessible from public space or a private driveway. While the proposed Project includes a loading platform of 231 square feet and a loading space of 20 feet, the loading berth is only 47 feet long. In addition, the loading facility will be accessible only through private space. 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 District Department of Transportation ("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. The Commission is satisfied that the Project's loading facilities are sufficient, and the reduction of the size of the loading berth allows for more efficient site planning. (Pre-Hearing Statement at p. 19.)

Parking

29. The Applicant requests relief from several parking 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 five contiguous compact parking spaces required by § 2115.4. The parking garage itself requires relief from § 2117.8(a) to permit the Applicant to begin the grade of the garage driveway at the edge of the sidewalk rather than the property line and relief from § 2117.6 to permit garage drive aisles between parking garage columns that are 15 feet, 2.5 inches apart, rather than the 20 feet of drive aisle width required by the regulation. Finally, the Applicant requests relief from § 2116.1 to permit location of fifteen parking spaces in the vault space adjacent to Lot 40, rather than on the same lot as the building they serve. (Pre-Hearing Statement at pp. 20-21.) Since it is an oddly configured lot, the arrangement of parking spaces, ramps, and drive aisles maximizes the use of the site in the most efficient manner.

30. The Applicant requests relief from the requirements regarding the minimum width of courts under § 776.5. The configuration of the building creates two courts – one on

both sides of the stairwell extending into the rear courtyard. 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 promoted by the Zoning Regulations. (Pre-Hearing Statement at pp. 20-21.)

31. Although the Applicant requested relief from § 400.7 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 not 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 § 411.5 of the Zoning Regulations. (Exhibit 34.)

32. 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.

33. Also as detailed in Exhibit 7, 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 serve Georgia Avenue.

34. The Applicant communicated with the community extensively. ANC 4C offered support and suggestions for the Project.

35. The Project is consistent with and fosters the goals and policies stated in the District Elements of the Comprehensive Plan for the National Capital, 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 pp. 28-33; Exhibit 28.)

36. 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).

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

- Housing and Affordable Housing – Pursuant to § 2403.9(f) of the Zoning Regulations, the production of housing is a public benefit that the PUD process is designed to encourage. This Project will create four (4) new affordable residential units (approximately 3,877 square feet) in the Petworth neighborhood. The units will be available to residents with household incomes that do not exceed 80% of the Washington D.C. Area Median Income ("AMI"). Given the strong need for affordable housing in the District of Columbia, this is a significant amenity. (Pre-Hearing Statement at p. 24.)
- Site Planning – Pursuant to § 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 Commission. The Project will include open and inviting spaces for residents and guests, including a landscaped courtyard. In addition, the Project will bring much needed retail space to the area and new housing close to the Metro. The Project will 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 will be a vibrant gateway to the Georgia Avenue Corridor. (Pre-Hearing Statement at p. 25.)
- Effective and Safe Vehicular and Pedestrian Access – Pursuant to § 2403.9(c) of the Zoning regulations effective and safe vehicular and pedestrian access can be considered public benefits and project amenities of a project. The proposed Project will provide at least 37 parking spaces, primarily in an underground parking garage. 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 will be distributed throughout the Project. Each retail space will have its own entrance and one retail space will have two entrances. These separate and distinct entrances/exits will mitigate potential pedestrian and vehicular conflicts. 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 – Pursuant to § 2403.9(h) of the Zoning Regulations, public benefits and project amenities may be exhibited in the category of environmental benefits. As shown in the detailed plans, elevations, and renderings submitted as 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 features 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; 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.)
- First Source Employment Program – According to § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, the Applicant will 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 § 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 local, small, and disadvantaged business enterprises in the development of this Project. (Pre-Hearing Statement at p. 27.)
- Consistency with the Comprehensive Plan – According to § 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 will be able to construct such a well-designed project and provide new housing. The building will be integrated into its surroundings and equipped with modern safety amenities as well as parking and recreational space. 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 affordable housing. In addition, the surrounding neighborhoods will benefit from the first floor retail spaces. The Project is likely to have a catalytic effect on the immediately surrounding area. In addition, the Applicant will provide \$50,000 for 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. In addition, the Applicant will provide \$30,000 to renovate existing retail storefronts on Georgia Avenue in the vicinity of the Project, to be modeled after the ongoing Georgia Avenue Storefront Revitalization Program sponsored by the District's Department of Housing and Community Development ("DHCD").

(Exhibit 36.)

38. 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 will be sufficient for the operation of the proposed building. (Exhibit B to the Pre-Hearing Statement.)

39. In response to issues raised by the Commission during the public hearing, the record of the case was left open for the Applicant to provide post-hearing materials including: revisions to the 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. 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 focused on assisting such retail uses. The Applicant proposed a retail-oriented amenity modeled on the ongoing Georgia Avenue Storefront Revitalization Program sponsored by DHCD, which provides \$10,000 grants to rehabilitate existing retail storefronts on Georgia Avenue. The Applicant will contribute \$30,000 to the rehabilitation of three (3) storefronts along Georgia Avenue in the general vicinity of the project. The targeted storefronts will be selected with input from ANC 4C; Friends of Petworth; and the Upshur, New Hampshire, Taylor and Seventh Street Association ("UNTS").

- 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 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 designate the additional \$25,000 for the renovation of the athletic fields and landscaping. The total contribution to Clark will total \$75,000 and the contribution to the Petworth Recreation Center will 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 agreed 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

40. 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.)

41. In a supplemental report dated February 21, 2007 and filed February 27, 2007, 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, N.W. (Exhibit 29.)

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

43. 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 fewer trips during the AM and PM peak hours than the former 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 would be 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 the adjacent street and "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 repair fund, 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

44. ANC 4C voted to unconditionally support the application 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

45. In a letter submitted as Exhibit C to Exhibit 36 in the record, the Friends of Petworth and UNTS noted their support for the application. (Exhibit C to Post-Hearing Submission.)

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

PARTIES AND PERSONS IN OPPOSITION

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

CONCLUSIONS OF LAW

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

goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)

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

3. 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 that may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve variance relief that 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 on the adjacent street 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 § 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.

4. The development of this Project will promote the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

5. 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.

6. 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 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, the First Source Agreement with DOES, and the MOU with LBOC are significant project amenities of this PUD application.

7. The Commission finds that the Project has been designed to be consistent with buildings throughout the neighborhood. 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 Commission finds that the revisions to the tower element and related window treatments enhanced the initial design.

8. 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.

9. The Project will promote 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.

10. 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.
- Zoning Impact – The proposed PUD-related Zoning Map amendment 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 local development boom. The rezoning of the Property comports with the District's planning initiatives in the vicinity of the Property.
- 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 Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. Once the Project is completed, it will have the beneficial impact of urban infill. With the use of the Property changed from a gas station to housing and retail, the Property will be much more efficiently utilized. The Project will 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 will help keep more cars off the roads and assist 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, such that the Project is well-served by public transportation.

11. In accordance with D.C. Official Code §1-309.10(d), 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 also notes the support that the Project received from the Friends of Petworth and UNTS.

12. 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), to give great weight to OP recommendations. The Commission considered the recommendations for approval and concurs in its recommendation.

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

14. The standards for evaluating a PUD application are found at 11 DCMR § 2403, and 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. 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 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 more housing close to the Metro. The result will be a vibrant gateway to the Georgia Avenue Corridor.
- Effective and Safe Vehicular and Pedestrian Access – The proposed Project will provide at least 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 number of environmentally-sensitive design elements that would not necessarily be included in a matter-of-right project.
- 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 for computer equipment and related technology enhancements to the Petworth Recreation Center, (b) \$75,000.00 for upgrades to the computer room and refurbishing and enhancements to an underutilized athletic field and related landscaping work to Clark Elementary School, and (c) \$30,000 for storefront revitalization on Georgia Avenue, in the vicinity of the Project, modeled on the Georgia Avenue Storefront Revitalization Program sponsored by DHCD.

15. 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 at least 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 at least 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 both existing and new commercial uses along Georgia Avenue, N.W. 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, N.W. 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. The facade, landscaped areas, quality materials, sweeping tower element, and alternating composition of projecting bays, all combine to create a sense of scale, visual interest, and aesthetic sensitivity.

- 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.

16. 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 at least 57 rental residential units on this currently underutilized property fully satisfies the provisions of the Housing Element of the Comprehensive Plan. 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.
- Urban Design Element – As shown in the detailed plans, elevations, and renderings included in Exhibit A, the proposed Project exhibits the characteristics of quality urban design and architecture. The construction of a prominent residential and retail building will complement and enhance the neighborhood that surrounds the site.
- 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, and the proposed Project and C-3-A Zone District are consistent with that designation. Such a designation supports the construction of a 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 will 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 each of these provisions of the Ward 4 Elements 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 39, as modified by the guidelines, conditions, and standards of this Order.
2. The approved PUD shall include a minimum of 57 residential units. The entire Project shall include approximately 57,995 square feet of gross floor area resulting in a density of approximately 4.25 FAR.
3. The Project shall include approximately 3,877 square feet of affordable residential space (for households making 80% or less of the AMI) adjusted for household size and approximately 4,884 square feet of retail space.
4. There shall be a minimum of 35 parking spaces provided in the parking garage and 2 spaces provided in the rear of the building.
5. Prior to the issuance of a building permit for the building approved by this PUD Order, the Applicant shall provide computer equipment and related technology enhancements worth \$50,000 to the Petworth Recreation Center.
6. Prior to the issuance of a building permit for the building approved by this PUD Order, the Applicant shall provide upgrades to the computer room and refurbishing and enhancements to an underutilized athletic field and related landscaping work worth \$75,000 to Clark Elementary School. Of the total, \$50,000 of such contribution shall be utilized to upgrade and enhance the school's computer room and related technological resources, and \$25,000 of such contribution shall be utilized to upgrade the school's underutilized athletic fields and landscaping.
7. Prior to the issuance of a building permit for the building approved by this Order, the Applicant shall make a monetary contribution of \$30,000.00 for grants to upgrade

existing retail facades on Georgia Avenue, as modeled on the ongoing Georgia Avenue Storefront Revitalization Program sponsored by DCHD.

8. Prior to the issuance of a building permit for the building approved by this Order, 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.
9. Prior to the issuance of a building permit for the building approved by this Order, 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.
10. 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.
11. The change of zoning from the C-2-A Zone District to the C-3-A Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 10.
12. Prior to the issuance of a certificate of occupancy for the building approved by this 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 as described in Condition 3 for not fewer than 20 years.
13. 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 structure;
 - To vary the final selection of the exterior materials within the color ranges and material types as proposed, without reducing the quality of such materials, 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 and provided such alterations are consistent with the dimensional requirements of the Zoning Regulations except as specifically provided herein;
 - 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.
14. The consolidated PUD approved by the Zoning Commission shall be valid for a period of two (2) 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 (3) years of the date of the effective date of this Order pursuant to 11 DCMR §§ 2408.8 and 2408.9.
15. 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**.

On April 9, 2007, the Zoning Commission **APPROVED** the application 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).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on May 14, 2007, by a vote of 5-0-0 (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons 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* on SEP 14 2007.



CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA ✓
DIRECTOR
OFFICE OF ZONING