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April 14, 2009

HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, NW
Second Floor
Washington, DC 20001

Re: Request for Extension of Time, Zoning Commission Order No. 06-24^B (Consolidated
Planned Unit Development – 2400 14th Street, N.W. – DCO Realty, Inc., formerly
Level 2 Development, LLC

Dear Members of the Zoning Commission:

DCO Realty, Inc., on behalf and with the consent of DCO 2400 14th Street, LLC, the owner of the subject property (collectively, the "Applicant") hereby requests a two (2) year extension of Zoning Commission Order No. 06-24 (the "Order") such that the deadline for filing an application for a building permit for the PUD is extended to April 20, 2011; and the deadline for starting construction of the project is extended to April 20, 2012.

This request is filed pursuant to §2408.10 of the Zoning Regulations for good cause shown herein. A copy of the Order is attached as Exhibit A. A check in the amount of \$400.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning regulations is also enclosed.

I. INTRODUCTION

A. Factual Background

By Order No. 06-24, the Zoning Commission approved a PUD for the property located at 2400 14th Street, N.W., on Lot 219 in Square 2661 ("the Subject Property"). The Subject Property consists of approximately 39,991 square feet of land area and is located on the west side of 14th Street, N.W., between Belmont and Chapin Streets. The Subject Property is zoned C-2-B, and the Applicant did not seek a zoning map amendment in connection with the PUD.

ZONING COMMISSION
District of Columbia
ZONING COMMISSION
District of Columbia
CASE NO. 06-24B
CASE NO. 06-24B
EXHIBIT NO. 1

The approved PUD is a mixed-use project with retail and service uses at the ground levels and an apartment house including affordable units on the upper floors. The floor area ratio for the PUD will be a maximum of 6.0. The building will have nine floors and a maximum height of 90 feet. It also includes a two-level underground parking garage for the residential units with approximately 158 parking spaces and 18 surface retail parking spaces. The parking and service loading areas will have access from the two-way, 20-foot public alley on the west side of the Property.

The Order became final and effective on April 20, 2007. Therefore, under the PUD regulations, the PUD approval is valid until April 20, 2009, and an application for a building permit for the PUD must be filed no later than April 20, 2010. As discussed in more detail below, the Applicant is requesting this time extension based upon unexpected delays beyond the Applicant's control.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file for a building permit) and Section 2408.9 (three year requirement to begin construction), provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the materials facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and
- (c) The applicant demonstrates, with substantial evidence, that there is good cause for such extension, as provided in §2408.11.

The criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;

(b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

II. THE EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The Applicant has served this request for an extension of time on ANC 1B, the only other party to the initial PUD application, as evidenced by the Certificate of Service attached hereto.

III. THE APPLICANT DEMONSTRATES GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408.11(a) supports the grant of an extension of PUD approval for projects confronting difficulties with financing, based upon changes in economic and market conditions beyond an applicant's control.

In this case, the Applicant has pursued the development of the Subject Property in good faith. The Subject Property was previously improved with a vacant shopping center in disrepair, which the Applicant demolished. Also, the Applicant has obtained a foundation to grade permit for the project, and is awaiting the issuance of a sheeting and shoring permit.

While the Subject Property has been cleared and is ready for development, the Applicant has been unable to obtain sufficient financing for the construction of the approved PUD due to the dire economic climate. The freeze on the credit markets has forced the Applicant to pursue funding from sources other than traditional lending institutions, including institutional investors, pension funds and others. To date a financial package sufficient to support the project has not come to fruition.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §2408.10 of the Zoning Regulations requires the following:

(b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD.

The extension is requested in order to enable the Applicant to continue its diligent efforts to secure favorable financing for the project. Moreover, there has not been any substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD, and the Applicant remains committed to moving forward with the Project and fully complying with the conditions and obligations imposed as part of the PUD approval.

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in §2408.11. The only other party to this application was Advisory Neighborhood Commission ("ANC") 1B, and the Applicant has served a copy of this request on ANC 1B. There is no dispute to the facts that: (1) the Applicant has been unable to secure financing for the project, or (2) that there are significant impediments in the market place to proceeding with the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria set by which the Zoning Commission is required to consider this request.

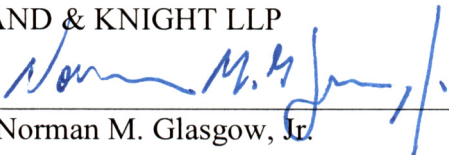
IV. CONCLUSION

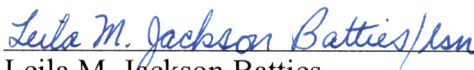
In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two (2) year extension of the approved PUD, such that an application for a building permit for the PUD must be filed no later than April 20, 2011, and construction of the project must start no later than April 20, 2012. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Norman M. Glasgow, Jr.


Leila M. Jackson Batties

CERTIFICATE OF SERVICE

I hereby certify that on **April 14, 2009**, a copy of the Applicant's Request for Extension of Time, Zoning Commission Order No. 06-24 (Consolidated Planned Unit Development – 2400 14th Street, N.W. – DCO Realty, Inc., formerly, Level 2 Development, LLC) was served via hand delivery on the following:

Jennifer Steingasser
D.C. Office of Planning
2000 14th Street, 4th Floor
Washington, DC 20009

And by first class mail to:

Advisory Neighborhood Commission 1B
P.O. Box 73710
Washington, DC 20056

Ms. Brianne Nadeau, Chair
Advisory Neighborhood Commission 1B
2112 New Hampshire Avenue, N.W.
Washington, DC 20009

Ms. Meghan Conklin
ANC1B-06 Single Member
District Representative
1439 Chapin Street, N.W.
Washington, DC 20009


Leila M. Jackson Batties

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION CORRECTED* ORDER NO. 06-24

Z.C. Case No. 06-24

Consolidated PUD at 2400 14th Street, N.W.

April 9, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 25, 2007, to consider an application from Level 2 Development, LLC (the "Applicant"), for consolidated review and approval of a planned unit development ("PUD"). The application was filed on behalf of and with the consent of L2CP 2400 Holdings, LLC, the owner of the property covered in the application. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Applications, Parties, and Hearings

1. On May 17, 2006, the Applicant filed an application with the Commission for consolidated review and approval of a PUD for the property located at 2400 14th Street, N.W., on Square 2661, Lot 219, located on the west side of 14th Street, N.W., between Belmont and Chapin Street in Washington, D.C. (the "Property"). The Property consists of 39,991 square feet of land area and is located in the C-2-B District.
2. At its public meeting held July 10, 2006, the Commission voted to schedule a public hearing on the application. At the meeting, the Zoning Commission and the Office of Planning suggested that the Applicant modify the building design to minimize the impact on the neighborhood to the west and to be more compatible with the smaller scale neighborhood buildings. Also, additional information was requested on truck movements into and out of the alley on the west side of the project, the potential tenants for the below-market retail space, the value of the below-market retail space, monetary contributions to neighborhood organizations, and the "green" elements that will be incorporated into the PUD.

* Date on first page heading was changed to April 9, 2007 – previously published as April 9, 2004; no other changes were made.

3. On September 19, 2006, the Applicant filed a prehearing statement with the Commission that included the aforementioned items.
4. At its duly noticed meeting held December 7, 2006, Advisory Neighborhood Commission ("ANC") 1B voted unanimously to support the PUD application.
5. On January 5, 2007, the Applicant submitted a supplemental filing that included revised architectural drawings, an updated discussion on the project design and PUD benefits and amenities, additional letters in support of the PUD application, and an updated traffic impact report.
6. After proper notice, the Commission held a hearing on the application on January 25, 2007 (the "Hearing"). The parties to the case were the Applicant and ANC 1B, the ANC within which the PUD Site is located.
7. Mr. Jared DeMarinis and Mr. Luke Minikoff, residents at The Denver condominium building, spoke in opposition to the PUD, on the basis that the project would affect residents' views of the City.
8. At the Hearing, the Commission requested the Applicant provide the Commission with the following:
 - a. new roof plans for the building showing the stairways from the ninth floor to the penthouse level and the mechanical equipment layout within the penthouse;
 - b. plans showing an increase in the green roof area from 2,000 to 4,000 square feet;
 - c. clarification on the LEED elements that are proposed for the PUD; and
 - d. a First Source Employment Agreement, signed by the Applicant, and filed with the Department of Employment Services.
9. The information requested by the Commission in Paragraph 8 above was filed by the Applicant on January 30, 2007, and is marked as Exhibit No. 43 of the record.
10. At its meeting on February 12, 2007, the Zoning Commission took proposed action to approve the application.
11. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated February 23, 2007, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

12. The Commission took final action to approve the application on April 9, 2007.

The PUD Project

Overview

13. The proposed PUD is a mixed-use project consisting of approximately 225 dwelling units, a portion of which will be affordable housing, and 16,000 square feet of retail. It also includes a two-level underground parking garage with approximately 158 parking spaces, or a parking ratio of not less than .7 per dwelling unit, and 18 surface retail parking spaces. The floor area ratio for the PUD will be 6.0.

Site Description

14. The Property is located on the west side of 14th Street, N.W., between Belmont and Chapin Streets, in the area commonly referred to as the U Street Corridor. Consisting of approximately 39,991 square feet of land area, the Property is currently improved with a strip shopping center with 17,743 square feet of retail space.¹ The Property and surrounding area are well served by public transportation, including Metrobus lines and the U Street-Cardozo Metrorail Station, which is located approximately five (5) blocks southeast of the Property at U and 18th Streets.
15. The District of Columbia Comprehensive Plan Generalized Land Use Map designates the Property in the medium-density residential land use category. Multiple-unit housing and mid-rise apartment buildings are the predominate uses in this category, which may also include low- and moderate-density housing. The Property is located in the C-2-B District, which permits matter-of-right medium-density development, including office, retail, housing, and mixed uses.

Project Design and Components

16. The building will have nine (9) floors and a maximum height of 90 feet. At the ground level of the building, on the Belmont and 14th Street frontages, there will be a series of street-oriented retail spaces with tall ceilings. On the Chapin Street frontage, there will be street-oriented, walk-in residences. Retail and residential parking and service loading areas will have access from the two-way 20-foot public alley on the west side of the Property. A roof top pool and terrace will be constructed for building residents and their guests.
17. The design of the PUD consists of a series of intersecting, simple, rectilinear volumes that step down the 14th Street frontage, negotiating the one and a half story drop across the site. These volumes, which vary in height and breadth, allow the overall composition

¹ Of the available retail space, 11,767 square feet is leased and 5,976 square feet is vacant.

to respond to both the larger scale of the 14th Street frontage and the more intimate apartment buildings to the west. The focal point of the composition is a precast frame with residential balconies and bases, and stitches the various volumes together and works as an architectural "veil" on the building, adding depth and layering to the 14th Street façade. A second precast concrete and glass corner bay firmly anchors the building to its site at the corner of Chapin and 14th Street. The building's massing fronts on 14th Street, allowing ample setbacks on the western sides to the neighboring alley and structures.

Matter of Right Development Under Existing Zoning

18. The Property is located in the C-2-B District, which is designated to serve commercial and residential functions similar to the C-2-A District,² but with high-density residential and mixed uses.
19. The maximum building height permitted in the C-2-B District is 65 feet. The maximum permitted density is 3.5 FAR, of which up to 1.5 may be for commercial use.

Development Incentives and Flexibility

20. The Applicant requested the following areas of flexibility from the Zoning Regulations:
 - a. Roof Structure Requirements: The Regulations require that mechanical penthouses be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. Because the shape of the building narrows near its north-south midpoint, the penthouse is within two (2) feet of the western wall at that location.
 - b. Residential Recreation Space: The Regulations require that buildings located in the C-2-B District containing a residential use, other than a one-family dwelling, flat, or hotel, have an area equal to 15% of the gross floor area dedicated for residential use as residential recreation space. The PUD devotes approximately 4% of the residential floor area, primarily in the form of a rooftop pool and terrace, to residential recreation space.
 - c. Lot Occupancy: The Regulations limit the residential lot occupancy to 80%. However, on the ground floor, which has retail and a small amount of residential, the lot occupancy for the PUD is 93%.
 - d. Loading Space: In lieu of the 55-foot loading berth required under the Regulations, the Applicant proposes a 30-foot space.

² The C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. 11 DCMR § 720.2.

21. The Applicant also requests flexibility for the following:

- to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
- to have a range in the number of dwelling units within the PUD -- 225 plus or minus 25 units, so long as the total area for residential use within the PUD does not exceed 223,946 square feet;
- to vary the location and arrangement of the green roof areas so long as the total area of green roof for the PUD is a minimum of 4,000 square feet;
- to vary the location of the below-market retail space, which shall be determined by the tenants and allocation of space within the project;
- to vary the final selection of the exterior materials within the color ranges and material types as proposed, without reducing the quality of the materials; and
- to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Public Benefits and Amenities

22. The following benefits and amenities will be created as a result of the PUD:

- a. Site Planning and Efficient and Economical Land Utilization. The site plan for the project improves the pedestrian circulation and vehicular traffic patterns on the site and the immediate area by removing the existing curb cuts along Chapin and Belmont Streets. Instead, vehicular access to the site will be via the public alley on the west side of the Property.
- b. Transportation Features. The Applicant is providing one Flexcar space at the rear of the Property. The Applicant has also re-oriented the entrance to the parking garage to allow vehicles to enter and exit more easily from the direction of Chapin Street. The elimination of the existing curb cuts will create an additional on-street parking space.

- c. Below Market Rent for Employment Training. The Applicant has committed to reserve 1,000 square feet of the retail space for lease to a retail tenant(s) that has entered into an agreement with the Department of Employment Services, Columbia Heights Development Corporation, or similar organization with an employment program for District residents. The selected tenant(s) will be able to lease the space at 60% of the market-rate rent for an aggregate value of \$100,000, or a net present value of \$78,813, based on an interest rate of 8.5%.
- d. Affordable Housing. The Applicant is devoting 15,000 square feet of the residential units to persons whose income does not exceed 80% of the area median income. The proportion of affordable housing units will reflect that of the market rate units and will be distributed throughout the building, except for the top two floors. The size of these units will not be less than 95% of the size of the average size of the comparable market unit within the PUD.
- e. Environmental Benefits. The Applicant is committed to including the following sustainable design elements in the PUD:

Sustainable Sites

- Erosion and Sedimentation Control: An erosion and sediment control plan will be required conforming to the DC or EPA criteria to contain soil and prevent sedimentation and dust.
- Site Selection: Verification that the site does not violate any of the prohibited site characteristics.
- Urban Redevelopment (Development Density and Community Connectivity): Verification that either 10 basic community services within 1/2 mile radius, or that the site is within a community with at least a 1.5 average FAR.
- Alternative Transportation – 15% Bike Storage: Bike storage will be provided for 15% of the total number of units constructed.
- Alternative Transportation – Public Transportation: Verification of distance of less than 1/2 mile to the Metro or 1/4 mile to two bus line stops.
- Stormwater Management (Rate and Quantity): A green roof of 4,000 square feet will be provided to reduce the project's run-off compared to the already fully developed site.
- Stormwater Management (Quality): Filtration and stormwater tank meeting WASA requirements will be provided.
- Heat Island Effect: The green roof of 4,000 square feet will reduce the overall heat island effect of the roof. The location of almost all of the parking in a subsurface garage and shading of a portion of the remaining parking will meet the non-roof heat island effect definition.

Water Efficiency

- Water Efficient Landscaping: The garden area will be designed using tolerant plants and/or high efficiency irrigation system to reduce use by 50% from standard practice.

Energy and Atmosphere

- Fundamental Building Systems Commissioning: The building common systems will follow the commissioning practices defined in the LEED handbook.
- Minimum Energy Performance: The project will meet the ASHRAE 90.1 performance requirements.
- CFC Reduction in HVAC&R Equipment: CFC's will be reduced or eliminated from building mechanical systems.

Materials and Resources

- Storage and Collection of Recyclables: A separate room will be provided for the collection and storage of domestic recyclable materials.

Indoor Environmental Quality

- Minimum IAQ Performance: The project will comply with the ASHRAE 62.1 ventilation requirements.
- Construction IAQ Management Plan – During Construction: A plan will be required demonstrating that the construction procedures will meet the SMACNA guidelines for air quality and that absorptive construction material will be protected. If permanent AHU's are used during construction, high efficiency filters will be required.
- Low-Emitting Materials, Carpet: Low-emitting carpet will be specified and required.
- Daylight & Views 75%: The project will be designed to incorporate daylight and/or views from 75% of the residential regularly occupied spaces.
- Controllability of Systems – Lighting: The project will be designed to provide control of lighting to over 90% of the occupants.
- Controllability of Systems – Thermal Comfort: The project will be designed to provide control of thermal comfort and operable windows for over 50% of the occupants.

Innovation and Design Process

- LEED Accredited Professional: The project will utilize the services of a LEED-AP professional.

- f. Other Public Benefits and Project Amenities. In connection with the PUD application, the Applicant commits to make the following monetary contributions: \$17,500 for a new Teen Center program at the Boys and Girls Club #10; \$2,500

to support the neighborhood initiatives of the North and South Columbia Heights Neighborhood Associations; and \$5,000 to Samaritan Inns, a non-profit organization dedicated to the rehabilitation of training for work and independence of the homeless with drug and alcohol addictions.

Compliance with the Comprehensive Plan

23. The PUD is consistent with major themes of the Comprehensive Plan as follows:
- a. Stabilize and improving the District's neighborhoods. The proposed development will transform a small shopping center with a surface parking lot along the street into a prominent mixed-use building fronting on 14th Street. The building will not only visually fill in a gap in the streetscape, but it will add residents and new retail space to the neighborhood.
 - b. Respect and improving the physical character of the District. By enhancing the streetscape of 14th Street and eliminating a surface parking lot, the project will improve the physical character of the District.
 - c. Reaffirming and strengthening the District's role as the economic hub of the National Capital Region. By contributing to the vitality of the neighborhood, the development will reinforce the 14th and U Street corridor, a unique arts, entertainment, and retail location for the region.
 - d. Promote enhanced public safety. By increasing pedestrian activity and "eyes on the street," public safety will be increased.
 - e. Providing for diversity and overall social responsibilities. By providing affordable dwelling units, the project will support a range of income groups in the neighborhood.
 - f. Ensure community input. The project was reviewed by and supported by ANC 1B. Additionally, the Applicant met with and received letters of support from Councilman Jim Graham, the Meridian Hill Neighborhood Association, The Mercury at Meridian Condominium Association, and the Sankofa Tenants Association.
24. The PUD is consistent with a number of specific elements of the Comprehensive Plan, including the Housing, Environmental Protection, Urban Design, and Land Use elements. The proposal would also address a number of goals and objectives specific to the Ward 1 Plan, including those specific to Economic Development, Housing, Transportation, Urban Design, and Land Use.

Office of Planning Report

25. By report January 15, 2007, the Office of Planning recommended approval of the PUD application, subject to the Applicant providing additional information regarding the enclosed spaces at the penthouse level and an executed First Source Employment Agreement prior to final action. This recommendation was based on its findings that the project will enhance an underutilized site and contribute to the revitalization of the 14th Street corridor. The project will also achieve objectives set forth on the Generalized Land Use Map, which calls for medium density residential uses on part of the Property, and Major Themes of the Comprehensive Plan, including promoting stabilizing neighborhoods and increasing public safety and diversity. The PUD is also consistent with the pending 2006 Comprehensive Plan, which designates the area of 14th Street that includes the Property as a Main Street Mixed-Use Corridor.
26. The Office of Planning supports the mix of unit sizes and the provision of ground-floor retail. It is also supports the overall massing and the design and architecture of the building. The Office of Planning considers the amenity package adequate and appropriate to the neighborhood.

Other Government Agency Reports

27. By report dated November 16, 2006, the Department of Employment Services ("DOES") advised that the Applicant must submit a First Source Employment Agreement to DOES before the zoning application can be considered. DOES recommended that the Applicant execute the agreement prior to the proposed action by the Commission. The Applicant submitted a signed First Source Employment Agreement to DOES on January 29, 2007. As set forth in Finding No. 9 above, a copy of the Agreement was filed with the Commission on January 30, 2007.
28. By report dated December 16, 2006, the Department of Housing and Community Development expressed support for the first floor retail for the PUD and opined that one or possibly two of the retail spaces should be reserved for small, locally-owned (community-serving) businesses. The agency also supported the residential density proposed for the project and encouraged the Commission to require at least 10% of the units be devoted to affordable housing. The agency also concluded that the proposed building massing appears to be appropriate for 14th Street, and the mixed-use encourages lively street pedestrian activity.
29. By report dated October 16, 2006, and revised January 12, 2007, the District Department of Transportation ("DDOT") stated that it has no objections to the PUD, including the Applicant's request to provide a 30-foot deep loading berth in lieu of the 55-foot deep loading berth required under the Regulations. Specifically, DDOT reported:

- a. DDOT supports the findings of the traffic impact study by the Applicant, which determined that the PUD will generate fewer AM peak-hour and PM peak-hour trips than the shopping center that currently exists on the Property.
 - b. DDOT supports the opinion that the use of large tractor trailer trucks would be infrequent based on the dwelling unit size and expected retail tenants. The agency recommends the Applicant use the curb face on 14th Street to accommodate infrequent use of the large tractor trailer trucks, if necessary, working with DDOT to obtain temporary no parking signs.
 - c. The project will have a negligible impact on the surrounding transportation network.
30. The Commission finds that by executing and filing a First Source Employment Agreement, the Applicant has complied with the request of DOES; and the proposed affordable housing within the PUD and mix of units furthers the objectives expressed in the Department of Housing and Community Development report. Also, the Commission accepts the findings of DDOT.

Response to Post-hearing Information Requested by the Commission

31. As set forth in Findings No. 8 and 9, the Applicant submitted information in response to requests made by the Commission at the Hearing. The Commission finds that the information contained in that response adequately responded to the Commission's concerns, in that the drawings have been revised to illustrate the layout of the ninth floor and penthouse level and include a typical unit mechanical space plan, the amount of green roof depicted in the plans has increased to 4,000 square feet, and the Applicant has submitted an executed First Source Employment Agreement to DOES.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and

for yards or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of the PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, including its approval pursuant to § 2405.3, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of residential and retail uses is appropriate for the Property. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project benefits and amenities are reasonable for the development proposed on the PUD Site.
8. Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area.
9. Approval of the PUD is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The application for a PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development for the PUD site located at 2400 14th Street,

N.W., in Square 2661, Lot 219. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Shalom Baranes Associates, entitled "2400 14th Street, N.W.," dated January 5, 2007, marked as Exhibit No. 31 of the record; as modified by Sheets A4 ("Level 9 & PH Plans") and A5 ("Roof Plan"), dated January 30, 2007, marked as Exhibit No. 43 of the record (collectively, the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The project shall be a mixed-use development constructed to a maximum height of 90 feet and a density of 6.0 FAR. Approximately 223,946 square feet of the gross floor area of the project shall be devoted to residential use and approximately 16,000 square feet of the gross floor area shall be devoted to retail use.
3. Of the residential gross floor area for the project, a minimum of 15,000 square feet shall be devoted to affordable housing for residents with an income that is no greater than 80% of the area median income. The proportion of affordable units shall reflect that of the market rate units, and shall be distributed throughout the building, except for the top two floors. The size of the units shall not be less than 95% of the size of the average size of the comparable market unit within the PUD.
4. The PUD shall include a minimum parking ratio of .7 space per dwelling unit for the residential use, and 18 surface parking spaces for the retail uses. At least one surface parking space shall be reserved for use by a car-sharing service, such as Zipcar or Flexcar.
5. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$17,500 to the Boys & Girl Club of Greater Washington for the development of a new teen center at the Boys & Girls Club #10.
6. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$5,000 to the Samaritan Inn's Service Enriched Housing Communities, which offers long-term affordable housing solutions for persons recovering from addiction and homelessness.
7. Prior to the issuance of a building permit for the PUD, the Applicant shall make a monetary contribution of \$2,500 to the Southern Columbia Heights Neighborhood Association. The funds will be used to send two (2) children from the Faircliff development to the Birch Creek Summer Camp in Utah and to cover expenses for outreach efforts.

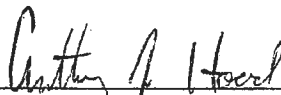
8. The Applicant shall have flexibility with the design of the PUD as follows:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - c. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - d. to have a range in the number of dwelling units within the PUD -- 225 plus or minus 25 units, so long as the total area for residential use within the PUD does not exceed 223,946 square feet;
 - e. to vary the location and arrangement of the green roof areas so long as the total area of green roof for the PUD is a minimum of 4,000 square feet; and
 - f. to vary the location of the below-market retail space within the project.
9. The Applicant shall abide by the terms of the First Source Employment Agreement entered into with the Department of Employment in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD.
10. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner(s) and the District of Columbia, which is satisfactory to the Office of the Corporation Counsel 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 PUD Site in accordance with this Order or amendment thereof by the Zoning Commission.
11. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

12. The 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 as specified in 11 DCMR § 2409.1.
13. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the act will not be tolerated. Violators will be subject to disciplinary action.

On February 12, 2007, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (Gregory Jeffries, Anthony J. Hood, and Michael Turnbull to approve; Carol J. Mitt en and John G. Parsons, having not participated, not voting.)

The Order was **ADOPTED** by the Zoning Commission at its public meeting on April 9, 2007 by a vote of 3-0-2 (Anthony J. Hood, Gregory Jeffries, and Michael Turnbull to approve; Carol J. Mitt en and John G. Parsons, having not participated, not voting.)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on APR 20 2007.



ANTHONY J. HOOD
Vice Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning