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April 12, 2007

VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: Zoning Commission Case No. 06-29
1143 New Hampshire Ave., N.W. PUD

Dear Members of the Commission:

On behalf of WB/NV Center City Hotel Holdings, LLC, the applicant in the above-referenced case, we are submitting herewith an original and twenty copies of its Proposed Findings of Facts and Conclusions of Law.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Mary Carolyn Brown
Whayne S. Quin
Mary Carolyn Brown

Attachment

cc: Karen Thomas, OP (w/attach., via email)
Michael Thomas, ANC 2A (w/attach. via email)
Barbara Kahlow, WECA (w/attach. via email)
Joy Howell, FBA (w/attach. via email)

ZONING COMMISSION
District of Columbia
CASE NO. 06-29
EXHIBIT NO. 47
ZONING COMMISSION
District of Columbia
CASE NO.06-29
EXHIBIT NO.47

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**APPLICANT'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

**ZONING COMMISSION CASE NO. 06-29
(Consolidated Planned Unit Development and
Zoning Map Amendment for 1143 New Hampshire Avenue, N.W.)**

Pursuant to notice, the Zoning Commission (the "Commission") for the District of Columbia held a public hearing on March 22, 2007, to consider the applications from WB/NV Center City Hotel Holdings, LLC, for consolidated review and approval of a planned unit development and related zoning map amendment from the R-5-E District to the CR District. The Commission considered the application pursuant to Chapters 24 and 30 of the 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 applications.

The Applications, Parties and Public Hearing

1. On June 9, 2006, WB/NV Center City Hotel Holdings, LLC (the "Applicant"), owner of 1143 New Hampshire Avenue, N.W., also known as Lot 74 in Square 72 (the "Property" or "Site"), filed applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment to the C-3-C District (collectively, the "Applications") for the Property. The Applicant later amended its application to request CR rezoning instead.
2. At its September 11, 2006, public meeting, the Zoning Commission (the "Commission") determined to set the Applications for public hearing.
3. The Commission held a public hearing for the Applications on March 22, 2007. Advisory Neighborhood Commission ("ANC") 2A was an automatic party to the proceeding and testified in support of the proposed PUD and map amendment to the CR District. The Commission granted party status to the West End Citizens Association ("WECA") and the Foggy Bottom Association ("FBA") in support of the PUD and CR rezoning applications.
4. At its March 22, 2007 meeting, the Zoning Commission took proposed action by a vote of 5-0-0 to approve with conditions the Applications and plans presented at the public hearing.
5. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") on _____, under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. By action dated _____, 2007, NCPC found that _____.

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6. The Commission took final action by a vote of _____ to approve the Applications at its public meeting on _____.

The Property and Surrounding Area

7. The Property is located at 1143 New Hampshire Avenue, N.W., in Square 72. The total land area for the Property is approximately 31,244 square feet of land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the R-5-E District established in section 2401.1(a) of the Zoning Regulations.
8. The Property is situated in Ward 2 at the southeast corner of M Street and New Hampshire Avenue, N.W. The Site has approximately 250 feet of street frontage along New Hampshire Avenue, N.W., and is currently occupied by a nine-story hotel.
9. The Property is surrounded by a variety of uses. Office buildings are located to the north and east along 21st Street, N.W. Residential uses are located to the south along New Hampshire Avenue, N.W. To the east are hotels and additional office uses with ground floor retail. To the west are residential, hotel, retail, and office uses. To the east, west, north, northeast and southeast are buildings either planned or constructed to a height of 110 feet as a matter of right or through the PUD process.
10. The Generalized Land Use Map of the Comprehensive Plan designates the property in the mixed-use high-density residential/medium density commercial land use category.

Existing and Proposed Zoning

11. The Site is currently zoned R-5-E. The R-5-E District permits matter of right high density development of general residential uses, including single family dwellings, flats and apartment buildings, to a maximum lot occupancy of seventy-five percent, a maximum FAR of 6.0 for apartment houses and hotels and 5.0 for other structures, and a maximum height of ninety feet.
12. In its initial submission to the Commission, the Applicant requested rezoning of the Property to C-3-C. After consultation with the ANC and WECA, the Applicant amended its application to include the CR District in the alternative. Prior to the hearing, the Applicant withdrew its request for C-3-C rezoning entirely and proceeded only with a request for the the CR District.
13. The PUD guidelines for the CR District allow for a maximum height of 110 feet and a maximum density of 8.0 FAR, of which no more than 4.0 may be devoted to commercial uses. Under section 631 of the CR provisions of the Zoning Regulations, however, a hotel is considered a residential use and not a commercial use.

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The Planned Unit Development

14. The Applicant proposes to renovate and reconfigure the existing hotel and to construct a two-story addition on top of the existing building. The existing hotel contains 350 rooms; the two-story addition will increase the total number of hotel rooms to approximately 440.
15. The new building will contain approximately 217,684 square feet of gross floor area and will have a floor-area ratio ("FAR") of 6.97. The addition will increase the maximum height of the hotel from 90 feet to approximately 110 feet.
16. In order to facilitate the construction of the planned addition, the Applicant has requested that the Commission rezone the property from R-5-E to CR.
17. There will be two phases of construction. Under the first phase of construction, the Applicant is modernizing the existing structure by replacing the building's single-glazed windows with new aluminum-framed windows. The concrete shrouds on the upper windows are being removed and new aluminum spandrel panels will be installed between the new windows. The split-faced concrete block will be painted a light gray to provide a more modern appearance. These renovations are proceeding as a matter of right.
18. The second phase of construction will center on the construction of the two-story addition on top of the existing building. The addition will be clad in metal and glass, which will distinguish the addition from the existing building's painted masonry façade. The Applicant also intends to make substantial improvements to the New Hampshire Avenue streetscape, including a reconfigured driveway entrance, a sidewalk café, and extensive landscaping.
19. As a result of withdrawing its request for C-3-C zoning, the Applicant amended its plans to comport with the CR height limitation of 110 feet. The proposed enclosed roof snack bar was replaced with an unenclosed roof terrace and decorative pergola and trellis, which will extend approximately 18.5 feet above the permitted 110-foot height for PUDs in the CR District. Because the trellis is decorative in nature and is uninhabitable space, the Commission finds that the pergola and trellis constitute a permissible rooftop embellishment.

Public Benefits and Amenities

20. The Commission finds that the following superior benefits and amenities will be created as a result of the Project:
 - a. *Contribution to D.C. Public Library Foundation.* The Applicant will contribute \$462,000 to the D.C. Public Library Foundation to be utilized for the benefit of the West End Branch Public Library, including the following: the design, development and installation of a computer lab; the cost of space build-out, acquisition of

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computers and computer stations and related office equipment and furniture; and the design, development and build-out of facilities for community and civic organizations, including furniture; and the necessary power and lighting modifications to accommodate the added facilities. To the extent feasible, the improvements paid for by this money will be capable of relocation.

- b. *Urban Design and Architecture.* Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The proposed new façade and two additional floors have been designed to complement the surrounding development and enhance the prominence of the intersection of New Hampshire and M Streets, N.W.. The new façade has been designed to provide a contemporary, updated look to an older and outdated 1960's façade. In addition to the façade, the Applicant will provide extensive streetscaping, including street trees and new sidewalk and driveway paving. A sidewalk café at north end of the site will further enhance the urban design and architecture of the proposed development.
- c. *Transportation.* Pursuant to section 2403.9(c) of the Zoning Regulations, “[e]ffective and safe vehicular and pedestrian access” is a representative public benefit and project amenity. The new driveway configuration has been designed to provide improved vehicular access for hotel guests by reversing the direction of the driveway flow so vehicles can pass into the garage directly from the drop-off without circulating back on to the streets.
- d. *Sustainable Design Features.* The PUD incorporates numerous “green building” practices into the design. Located in an urban center close to mass transportation, the PUD provides a high level of community connectivity and requires no additional parking for the increase in hotel use. The PUD’s specified lighting concept qualifies for light pollution reduction and the new landscape design will promote water efficiency. The building will optimize energy performance through new windows, which incorporate insulated, low-emitting coated glazing, and through new mechanical, electrical and plumbing systems. The indoor environmental quality is promoted through the use of low-emitting materials and 10% recycled materials. In addition, the PUD has been designed to achieve 18 LEED points through the inclusion of the following features: sustainable site; water efficiency in landscape design; improved energy efficiency and refrigerant management; recycled content in building materials; low-emitting materials; and the use of LEED-accredited professionals.
- e. *First Source Employment Agreement.* In furtherance of Mayor’s Order No. 83-265 and D.C. Law 5-93, the Applicant will execute a First Source Employment Agreement with the Department of Employment Services (“DOES”) in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent of the jobs created by the PUD. The Applicant intends to use DOES as its

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first source for recruitment, referral and placement of new hires for employees whose jobs are created by the PUD.

- f. *Small and Local Business Opportunities.* The Applicant will execute a Memorandum of Understanding with the D.C. Department of Small and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by small, local and disadvantaged businesses in the contracted development costs for the design, development, construction, maintenance and security for the project to be created as a result of the PUD. The Applicant's Memorandum of Understanding with the Department of Small and Local Business Development will contribute to the District's goal of ensuring adequate opportunities for small and local businesses to participate in development projects throughout the city.
- g. *Revenue for the District.* The addition of 90 rooms to the existing hotel will provide significant new tax revenue for the District. The hotel tax rate for the District is 14.5% and the average daily rate for the hotel rooms is expected to be \$225. Based on a 2006 hotel occupancy rate of 68.4% for the District, the Applicant estimates that the additional 90 rooms will generate increased tax revenues of approximately \$733,000 per year. The hotel will also generate an additional 12-15 jobs, further adding to the District's tax revenues.

Compliance with the Comprehensive Plan

21. The Commission finds that the Project is consistent with many of the Comprehensive Plan's major themes as follows:

- a. *Respecting and Improving the Physical Character of the District.* The PUD process will ensure the development of an exceptional design and appropriate density in this well-developed and established community. The PUD provides the existing building with a contemporary, updated façade that replaces the existing, outdated 1960's façade. The PUD is consistent and complementary to the density and layout of the immediately surrounding neighborhood.
- b. *Reaffirming and Strengthening District's Role as the Economic Hub of the National Capital Region.* The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The PUD takes advantage of this asset by its proximity to the Dupont Circle and Foggy Bottom Metrorail Stations and numerous Metrobus routes, which will promote and stimulate the use of existing mass transit service. In addition, the provision of 142 parking spaces on site will greatly reduce parking shortages in this area of the city.
- c. *Preserving and Ensuring Community Input.* The Applicant has met with representatives of the ANC and other community groups, such as WECA and

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FBA, in an effort to gather community input on the Project and to gain community support. Community concerns as to height and density have been thoroughly reviewed by the Applicant and thoughtfully incorporated into the applications. The Applicant also submitted the signatures of 45 area residents in support of the Applications.

22. The Commission finds that the Project furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

- a. *Land Use Element.* The PUD is consistent with the Generalized Land Use Map of the Comprehensive Plan which designates the property in the mixed-use high-density residential/medium density commercial land use category. Pursuant to section 1108.1(t) of the Comprehensive Plan, the proposed development furthers the goal of the District to "encourage the expansion of existing hotels."
- b. *Environmental Protection Element.* The policy of the Environmental Protection Element, pursuant to section 401.1 of the Comprehensive Plan is "to protect the environment, to resist threats to its overall quality, and to act to maintain and enhance its positive features in the interest of residents, workers and visitors." The proposed development furthers the policy of the Environmental Protection Element through its green elements, renovation of an existing structure and improved utilization of the Property.
- c. *Transportation Element.* One of the goals of the District, pursuant to section 503.2 (c) of the Comprehensive Plan, is to "[p]romote the increased use of mass transit, in the District and the region." The PUD is within close proximity to the Dupont Circle and Foggy Bottom Metrorail Stations and numerous Metrobus routes, which will promote and stimulate the use of existing mass transit.
- d. *Urban Design Element.* Two objectives of Urban Design Element of the Comprehensive Plan, pursuant to sections 702.1(b) and 702.1(d), are to "preserve and enhance the outstanding physical qualities of District neighborhoods" and to "encourage new development within areas of strong architectural character to contribute to the physical identity and character of the area." The new building façade and two-story addition have been designed to complement surrounding development and provide a contemporary look to a presently dull façade. In addition, the streetscape plan will complement and enhance the physical qualities and character of the neighborhood. As a result, the PUD furthers these two objectives of the Urban Design Element of the Comprehensive Plan.

23. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 2, as follows:

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- a. *Ward 2 Economic Development Element.* Pursuant to section 1301.1(a) of the Comprehensive Plan, the Ward 2 Economic Development element seeks to enhance the image of the ward as a place to do business and to reside. The proposed development will create a variety of employment opportunities for District residents, business opportunities for small and local businesses, and significant tax revenues via the District's hotel and income taxes. In addition, the proposed development will enhance the image of the ward as a place to do business.
- b. *Ward 2 Transportation Element.* The Comprehensive Plan identifies parking within the ward as a major problem due to evening visitors, student parking and the lack of adequate parking for residential dwellings. The Transportation Element of the Comprehensive Plan encourages strict adherence to the current parking requirements of the Zoning Regulations. The proposed development provides relief to the parking demands of the Ward. The proposed development will provide 142, which is 19 more spaces than the number of parking spaces required by the Zoning Regulations. In addition, the Property is in close proximity to the Dupont Circle and Foggy Bottom Metrorail Stations, providing excellent public transit access.
- c. *Ward 2 Urban Design Element.* One of the objectives for the Ward 2 Urban Design Element of the Comprehensive plan is to place special emphasis on the sensitive design of areas around Metrorail stations where new development is likely to occur, respecting the integrity of those areas adjacent to those sites. This element, pursuant to section 1317.1(c) of the Comprehensive Plan, states that pedestrian amenities, ease of access, lighting, security and signage befitting a portal to the city should be provided, in addition to adequate buffering and integration of new development into the surrounding area. The PUD satisfies this element by reconfiguring the driveway to the hotel for pedestrian safety and more efficient vehicular access and by providing pedestrian-friendly amenities, such as a sidewalk café. In addition, the architectural plans illustrate that the proposed development will enhance the physical character of the area and complement the surrounding neighborhood.

Office of Planning Report

24. By report dated March 12, 2007, the Office of Planning ("OP") recommended approval of the proposed PUD and related map amendment from R-5-E to the CR District to renovate the existing hotel and to construct two additional floors on top of the existing building. OP further supported the Applicant's request for: (1) flexibility from the rear yard requirements to permit a minimal reduction of the rear yard; (2) from the roof structure requirements to permit a roof structure that does not meet the setback requirements; and (3) from the parking requirements to permit the conversion of the existing three-level garage to all-valet parking which would accommodate 142 parking spaces. OP noted that the ANC recommended that the Applicant change its requested zoning from C-3-C to CR in order to protect the residential character of the surrounding neighborhood.

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District's Department of Transportation Report

25. By report dated March 21, 2007, the District's Department of Transportation ("DDOT") stated its support of the Applications, provided that the Applicant implement a valet parking operation to minimize parking overflow into the neighboring residential and retail business area.

Advisory Neighborhood Commission 2A

26. ANC 2A submitted a letter dated February 28, 2007, in support of the Applications, on the condition that (i) the applicant requests only CR zoning, (ii) that the applicant contribute \$300,000 to the West End Branch Library for a computer lab, and (iii) that the applicant contribute \$162,000 to the Department of Housing and Community Development for use in tenant rental or purchase assistance within the ANC 2A boundaries, excluding properties solely owned by the George Washington University. At the March 22, 2007 public hearing on the Applications, Michael Thomas, chair of ANC 2A, testified on behalf of the ANC. Mr. Thomas clarified that, as a result of DCHD's inability to direct the assistance funds to tenants within the ANC 2A boundaries, the ANC agreed with the Applicant's proposal to contribute the entirety of the \$462,000 contribution to the D.C. Public Libraries Foundation for the benefit of the West End Branch Library. Because the conditions of the ANC's approval recommendation had been met, the ANC supported the Applications.

West End Citizens Association

27. WECA also testified as a party in support of the Applications on the conditions that: (i) the Property only be rezoned to CR; (ii) there be no enclosed roof structure; and (iii) the community amenities be the same as those identified in the Applicant's opening remarks. WECA indicated it had worked closely with the Applicant to revise both its requested map amendment and its amenities package to more appropriately protect and benefit the Foggy Bottom/West End community.

Foggy Bottom Association

28. The FBA likewise testified as a party in support of the Applications. FBA stated that the Applicant's contribution to the D.C. Public Library Foundation is an amenity that will benefit all residents of the West End community.

CONCLUSIONS OF LAW AND OPINION

1. Pursuant to section 2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a PUD project "offers a commendable number or quality of public benefits, and that

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it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project (11 DCMR §2403.3).
3. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider these Applications as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts.
4. The development of this Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The Project meets the minimum area requirements of section 2401.1 of the Zoning Regulations.
6. The Project is within the applicable height, bulk and density standards of the Zoning Regulations. The Project involves the renovation and reconfiguration of an existing hotel and the construction of a two-story addition, consisting of 90 rooms, on top of the existing structure. Pursuant to section 1108.1(t) of the Comprehensive Plan, the Project furthers the goal of the District to "encourage the expansion of existing hotels." Accordingly, the Project should be approved. The impact of the Project on the surrounding area is not unacceptable. As set forth in the findings of fact, the proposed development has been appropriately designed to respect the neighboring properties in terms of height and mass and is complementary to adjacent buildings.
7. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
8. The Project's benefits and amenities are reasonable for the development proposed on the site.

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9. Evaluating the Project according to the standards set forth in section 2403 of the Zoning Regulations, the Commission concludes that the Applications qualify for approval. Judging, balancing and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits herein, in conjunction with the amenities discussed above, are appropriate in this case.
10. Approval of this Project is appropriate because the proposed development is consistent with the present character of the area.
11. Approval of this Project and change of zoning is not inconsistent with the Comprehensive Plan.
12. Approval of this Project and change of zoning is not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code §6-641.02, including as follows:
 - a. The proposed zone is not inconsistent with the Comprehensive Plan;
 - b. The proposed zone will not produce objectionable traffic conditions;
 - c. The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land;
 - d. Approval of this Project will promote health and general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services.
13. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
14. The applications for a PUD and map amendment will promote the 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.
15. The Applications for a PUD and map amendment are 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

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consolidated review of a Planned Unit Development and for a Zoning Map amendment from R-5-E to CR for the Property, located at 1143 New Hampshire Avenue, N.W., also known as Lot 74 in Square 72. This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Shalom Baranes Associates, submitted to the Zoning Commission on March 2, 2007, as Exhibits 27 and 27A to the Record, as modified by the guidelines, conditions and standards herein.
2. The Project shall be a hotel development consisting of approximately 217,864 square feet of gross floor area and a total density of approximately 6.97 FAR.
3. The Project shall have a maximum building height of 110 feet.
4. Landscaping for the Project shall provided consistent with the Landscape Plan provided at Exhibits 5, 14, and 48 in the Record.
5. The Applicant shall provide a minimum total of 142 parking spaces, consisting of both standard and stacked spaces. The Applicant shall maintain on the premises an all-valet parking program to ensure the efficient parking of automobiles.
6. Prior to the issuance of the building permit for the Project, the Applicant shall execute a First Source Employment Agreement with the Department of Employment Services and a Memorandum of Understanding with the Department of Small and Local Business Development.
7. Prior to the issuance of the Certificate of Occupancy for the Project, the Applicant shall contribute \$462,000.00 to the D.C. Public Library Foundation to be utilized for the establishment of a computer lab in the West End.
8. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.
9. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this order.
10. Pursuant to the Human Rights Act of 1977, D.C. Code Ann. § 2-1402.67 (2001), the Applicants is required to comply fully with the provisions of the Act, and this order is

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conditioned up full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

On March 22, 2007, the Zoning Commission approved the Applications by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons and Michael G. Turnbull to approve).

The order was adopted by the Zoning Commission at its public meeting on _____, by a vote of ___ ().

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 _____.

CAROL J. MITTEN
Chairman,
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning