



PLANNED UNIT DEVELOPMENT COVENANT

THIS COVENANT made as of this 29th day of February, 2008 by and between the DISTRICT OF COLUMBIA HOUSING AUTHORITY ("DCHA ") an independent authority of the District of Columbia and the DISTRICT OF COLUMBIA (the District) a municipal corporation DCHA and the District solely in its capacity as owner of the District Property (as defined herein below) are collectively referred to herein as the "Declarants

WITNESSETH

WHEREAS DCHA is the owner of certain real property consisting of Square 5040 Lot 804 in the District of Columbia (the DCHA Property"), and

WHEREAS the District the owner of certain real property consisting of a portion of Parcel 170/28 and Parcel 170/27 in the District of Columbia (the District Property') (together with the DCHA Property the Subject Site) and

WHEREAS an application on behalf of the Declarants was filed for a Planned Unit Development and Zoning Map Amendment, and the Declarants intend to develop the portions of Subject Site included in the application for use as a Planned Unit Development (hereinafter referred to as the Project) under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No 06 30 effective January 25 2008 in Zoning Commission Case No 06 30

WHEREAS said Chapter 24 and Zoning Commission Order No 06 30 requires the Declarants to enter into this Covenant with the District assuring the Declarants' and their respective successors and assigns in title development and use of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to

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ZONING COMMISSION
District of Columbia
CASE NO 06-30
EXHIBIT NO 57
ZONING COMMISSION
District of Columbia
CASE NO.06-30
EXHIBIT NO.57

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as the "Zoning Commission") in Order No 06-30, and any modifications, alterations or amendments thereto

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

1 Approved Plans The terms and conditions of the Zoning Commission's approval of the Planned Unit Development and Amendment to the Zoning Map under Order No 06-30, effective January 25, 2008 (as the same may be amended and/or modified from time to time, collectively the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. As required by the Order, the Subject Site will be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or the Zoning Commission may authorize, pursuant to 11 DCMR §§ 2409.6 and 2409.9 respectively. Each of the Declarants covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

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

3 Default In the event that Declarants, their successors or assigns fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to section 2408 10, the benefits granted by the Order shall terminate pursuant to Section 2400 7 of the Zoning Regulations

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

5 Successors and Assigns The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns Such covenants are not binding upon any party who no longer has a property interest in the Subject Site In the event all or part of the Subject Site that is owned by the District is sold or otherwise conveyed, the purchaser or transferee and its successors and assigns shall be considered a Declarant and the District shall continue to be deemed a party to the Covenant for the purposes of enforcing all covenants, conditions and restrictions contained herein applicable to the Subject Site and/or Declarants

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

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

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

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, as of the date first written above, the DISTRICT OF COLUMBIA HOUSING AUTHORITY, intending to be legally bound, has caused this PUD Covenant to be executed by MICHAEL KELLY, its EXECUTIVE DIRECTOR, for purposes of executing, acknowledging and delivering this PUD Covenant, as the free act and deed of said DISTRICT OF COLUMBIA HOUSING AUTHORITY for the uses and purposes herein contained

DISTRICT OF COLUMBIA HOUSING
AUTHORITY, an independent authority of
the District of Columbia

By


Name Michael Kelly

Title Executive Director

DISTRICT OF COLUMBIA, ss

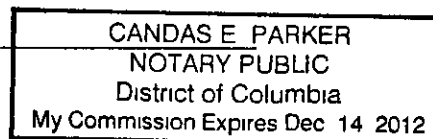
I, Candace Parker, a Notary Public in and for the District of Columbia, do hereby certify that MICHAEL KELLY, the EXECUTIVE DIRECTOR of DCHA, itself A NON PROFIT CORPORATION of THE DISTRICT OF COLUMBIA, a limited liability company, party to the foregoing Covenant, personally appeared before me and, being personally well known to me, acknowledged said Covenant to be the act and deed of said ~~limited liability~~ company and that he delivered the same as such

GIVEN under my hand and seal this 29 day of February, 2008

Candace E. Parker
Notary Public

My commission expires


[NOTARIAL SEAL]



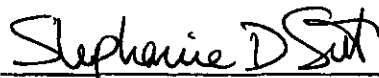
IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, and intending to be legally bound, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D C, who has hereunto set her hand and affixed the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

WITNESS

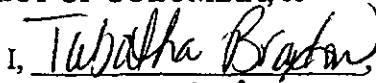

DISTRICT OF COLUMBIA,
a municipal corporation




(Corporate Seal)

By 
Secretary, D C

DISTRICT OF COLUMBIA, ss

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

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


Notary Public, D C

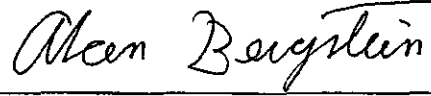
My commission expires TABATHA BRAXTON
[NOTARIAL SEAL] Notary Public District of Columbia
My Commission Expires May 14, 2012

APPROVED

Matth Z. Zell 2-11-08

Zoning Administrator, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY



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

EXHIBIT A

Zoning Commission Order No 06-30

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-30

Z C. Case No 06-30

**Consolidated Planned Unit Development and Related Zoning Map Amendment – Pollin
Memorial Community Development LLC – Consolidated PUD & Related Map
Amendment @ Square 5040 & Parcels 170/27 and 170/28
December 10, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 23, 2007, to consider an application from Pollin Memorial Community Development, LLC ("PMCD"), on behalf of the District of Columbia (the "District"), owner of Parcels 170/27 and 170/28, the District of Columbia Housing Authority ("DCHA") owner of Lot 804 in Square 5040, and the National Park Service ("NPS") (collectively referred to herein as the "Applicants"), for consolidated review and one-step approval of a planned unit development ("PUD") and related zoning map amendment for the unzoned portions of the property included 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

Application, Parties, and Hearings

- 1 On June 16, 2006, PMCD, on behalf of the District and DCHA, filed an application with the Commission for the consolidated review and one-step approval of a PUD for property consisting of Lot 804 in Square 5040, Parcel 170/28 and a portion of Parcel 170/27 (the "Subject Property"), as well as a related amendment of the Zoning Map to have the unzoned portion of the Subject Property zoned R-5-A (the "Initial Application").
- 2 Parcels 170/27 and 170/28 are owned in fee by the District. Lot 804 in Square 5040 is owned in fee by DCHA. The property included in the Initial Application consisted of approximately 459,939 square feet of land area and is located in the northeast quadrant of the District. Lot 804 in Square 5040 is zoned R-5-A and is bounded by Anacostia Avenue, Hayes Street, Barnes Street, and Grant Street. Parcels 170/27 and 170/28, which are triangular in shape, are not now included in a zone district, and are collectively bounded by Hayes Street, Anacostia Avenue, and Kenilworth Park.

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- 3 The proposed project contains approximately 193 688 square feet of gross floor area dedicated to residential uses, with 91 row dwellings eight 3 unit apartment buildings and five flats, amounting to a total of 104 residential buildings and 125 units on the Subject Property The project includes 83 homeownership units and 42 rental replacement public housing units The buildings will be constructed to a maximum height of three stories The project will include at least one off street parking space for each of the 125 units as well as 150 on street parking spaces The project will have an overall density of approximately 0.8 FAR and an overall lot occupancy of approximately 31%
- 4 Prior to set down of the application NPS submitted a letter marked as Exhibit 18 of the record in this case indicating that NPS has administrative jurisdiction over a portion of Parcel 170/27 and Parcel 170/28 by virtue of a transfer of administrative jurisdiction from the District to NPS recorded on October 12 1950
- 5 At its public meeting held on July 24, 2006 the Commission deferred action on the Initial Application pending resolution of the jurisdiction issue raised by NPS
- 6 On April 26 2007 the Applicants submitted a letter marked as Exhibit 19 of the record in this case indicating that the jurisdiction issue had been resolved with the relinquishment of administrative jurisdiction by NPS for the area to be included in the application Specifically the application was amended to include NPS as a co-applicant as evidenced by the Application for Consolidated Approval of a Planned Unit Development and an Application to Amend the Zoning Map signed by NPS as well as a letter in support of the project from NPS In addition the Applicants submitted a revised site plan identifying the land included in the project, and a revised Lot Tabulation sheet reflecting the modified project area and development data (the "Amended Application Materials")
- 7 The letter submitted by NPS expressed its support for development of the portion of the Subject Property identified in the Amended Application Materials as affordable housing and indicated that NPS believes that, in light of the ongoing revitalization of the neighborhood the availability of both affordable housing as well as parkland for its residents as specified in the proposed PUD is an important amenity
- 8 The Amended Application Materials modified the total land area included in the Initial Application Specifically the Amended Application Materials limited development of the project to a defined 178 641-square foot portion of the land located within the boundaries of the transfer of jurisdiction The project continues to include a portion of Parcel 170/28 not included in the transfer of jurisdiction as well as the entirety of Lot 804 in Square 5040 The land removed from the Initial Application and hence no longer included in the PUD will remain within the administrative jurisdiction of the NPS for

park purposes, whereas the area within the project will no longer be in the administrative jurisdiction of the NPS

- 9 At its public meeting held on May 14 2007 the Commission voted to schedule a public hearing on the application
- 10 On May 21 2007 the Applicants submitted a Prehearing Statement along with revised Architectural Plans and Elevations, marked as Exhibit 21 of the record in this case ("the May 21st Plans")
- 11 On July 3 2007 the Applicants submitted Supplemental Hearing Materials (Exhibit 27) which included a certification prepared by Greenhorne & O'Mara confirming that the project meets all applicable requirements for new construction within the 100 year floodplain, the final Transportation Impact Study prepared by Wells & Associates LLC and updated Architectural Plans and Elevations (the "July 3rd Plans") The July 3rd Plans, which supersede the plans filed with the Initial Application and the May 21st Plans include information regarding accessibility of the Subject Property to Metro options, the location of the proposed First Tee site plan (which is not a part of the Applicants' project) information regarding façade materials, updated site sections showing compliance with the requirements for new construction within the floodplain an updated grading plan and stormwater management plan showing the boundary of the current and proposed floodplain and compliance with the requirements for new construction within the floodplain, and an updated Parking and Circulation Plan
- 12 On July 16 2007 the Applicants submitted additional Supplemental Hearing Materials (Exhibit 32) which included a certification prepared by Greenhorne & O'Mara indicating the process it will follow to amend the floodplain designation of the Subject Property to a moderate or low risk designation a letter prepared by the Applicants' insurance consultant indicating the estimated flood insurance premium for the units if necessary an updated Lot Tabulation sheet an updated stormwater management plan incorporating revisions agreed upon with the D C Department of the Environment (DCDOE) a description of the *Green Communities* program and the project's sustainable design features a fully executed First Source Employment Agreement and the resumes of the Applicants' expert witnesses The updated plan sheets supersede those sheets included in the July 3rd Plans
- 13 After proper notice the Commission held a public hearing on the application on July 23 2007 The parties to the case were the Applicants and Advisory Neighborhood Commission ("ANC") 7D the ANC within which the Subject Property is located
- 14 The Applicants presented six witnesses at the Commission's hearing of July 23 2007 including John Stranix of PMCD Lawrence Murphy Antoine of Torti Gallas and Partners Inc Ben Allen of Greenhorne & O'Mara Lisa Hodges of DCHA Bhavna

Mistry of Enterprise Homes and Steven E Sher of Holland & Knight LLP Also available to testify were Christopher L Kabatt of Wells & Associates, LLC and Lee Schmelz of RCM&D Inc Based upon their professional experience as evidenced by the resumes submitted for the record and prior appearances before the Commission Messers Stranix Antoine, Allen Kabatt, and Sher were qualified by the Commission as experts in their respective fields

- 15 Five individuals signed up to testify regarding the project (Exhibit 44) However, none of these individuals indicated whether they were proponents or opponents and none of the individuals testified at the hearing
- 16 Enterprise Community Partners submitted a letter in support of the project (Exhibit 38)
- 17 Gregory C Syphax submitted a letter in opposition of the project (Exhibit 37)
- 18 ANC 7D submitted three letters regarding the proposed development and ultimately voted 4-1 to support the proposed PUD The first letter dated July 13 2006 (Exhibit 16) indicates that ANC 7D voted to support the project The second letter, filed on July 16 2007 (Exhibit 29) indicates that on June 12 2007 the ANC voted not to support the proposed project The third letter filed on September 24 2007 (Exhibit 47) indicates that ANC 7D strongly supports the project, and voted 4-1 to recommend that the Commission approve the application at the Commission's October 15 2007 public meeting without the need for any continued public hearing on the project
- 19 On August 21, 2007 the Applicants submitted a Post Hearing Submission (Exhibit 46) which included a section and drawing providing more detail regarding the proposed retaining wall details regarding the rear yard fencing a revised site and grading plan and illustrative storm drain and stormwater management plan and a draft relocation plan for the public housing units prepared by DCHA The updated Sheets S18 and S20 supersede those sheets included in the July 3rd Plans
- 20 On September 26 2007 at the request of ANC 7D the Applicants submitted a chart identifying the maximum income per household size for the rental and homeownership units included in the development
- 21 At its public meeting held on October 15 2007 the Commission took proposed action by a vote of 3 0-2 to approve with conditions the application and plans that were submitted to the record
- 22 The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act NCPC by action dated November 29 2007 found that 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

- 23 The Commission took final action to approve the application on December 10 2007 by a vote of 3 0-2

The PUD Project

- 24 The proposed project contains approximately 193 688 square feet of gross floor area dedicated to residential uses with 91 row dwellings, eight 3 unit apartment buildings, and five flats amounting to a total of 104 residential buildings and 125 units on the Subject Property. The project includes 83 homeownership units and 42 rental replacement public housing units. The rental and homeownership units will be interspersed throughout the economically diverse neighborhood. The project also includes a community park at the center of the neighborhood.
- 25 The buildings will be constructed to a maximum height of three stories. The project will include at least one off street parking space for each of the 125 units as well as 150 on street parking spaces. The project will have an overall density of approximately 0.8 FAR and an overall lot occupancy of approximately 31%.
- 26 The Subject Property is situated in Ward 7. The Future Land Use Map of the Comprehensive Plan designates the Subject Property in both the medium density residential and moderate density residential categories. The Generalized Policy Map designates the Subject Property in the Neighborhood Enhancement Area category.
- 27 The Applicants propose to provide a range of housing types including apartments, stacked flats, and townhouses. The development plan also includes a range of bedroom sizes to accommodate single occupancy as well as families. The homeownership units are projected to have three bedrooms and to serve buyers between 40% and 100% of the area median income. The rental units will have one, two, and three bedrooms and will target renters at or below 30% of the area median income. The replacement DCHA units as well as the ownership units of varying income targets will be architecturally indistinguishable from one another and mixed throughout the project.
- 28 A key component of the project is the redevelopment of the existing public housing site known as Parkside Additions that is currently owned and operated by DCHA on Lot 804 in Square 5040. Parkside Additions was built in 1959 and is functionally obsolete. DCHA does not anticipate receiving capital grant funds or HOPE VI funds to rehabilitate or reconstruct the development. As part of the development the Applicants plan to accommodate the eligible public housing families currently living at Parkside Additions within the new community. Thus there will be a one-for-one replacement of the 42

Parkside Additions rental units currently funded with Annual Capital Contribution (ACC) subsidies

- 29 The row dwellings tie into the existing Parkside fabric and reflect the character of traditional northeast District neighborhoods The stacked units and small apartment buildings will maintain the scale and attributes of the rowhouses having individual entries stoops and porches addressing the public street At least five percent of the project will meet accessibility requirements for residents with mobility impairments including the ownership units Accessible one- and two-bedroom units are accommodated in ground floor flats while three bedroom family units are in rowhouses modified to incorporate a residential elevator
- 30 At the center of the project is a new, intimately-scaled neighborhood park The park which will be owned by the District will encourage active and passive recreation with a children s play area, landscaping shade trees and benches Row dwellings will front the streets surrounding the park, framing the open space and allowing supervision from front porches and stoops There is also a small more resident focused green space located just west of the neighborhood park In addition green space located in the street right of way will also be landscaped
- 31 The proposed internal public streets are designed to encourage walking and to promote safe interaction between pedestrians and automobiles The Applicants also propose to install new shade trees and to construct and install new sidewalks and streetlights abutting the project's boundaries All new streets will accommodate on street parking

Matter of Right Development under Existing and Proposed Zoning

- 32 The Subject Property includes land zoned R 5 A and land that is not currently included in a zoning district The Applicants are seeking to have the entire property zoned R 5 A in connection with this application
- 33 The R-5 Districts are general residence districts designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the applicable height density and area requirements (11 DCMR §350 1) The R 5 Districts are subdivided into a number of districts including the R 5-A District which permits low height and density developments (11 DCMR § 350 2) The R-5 A District permits a maximum height of 40 feet and three stories (11 DCMR §400 1) In the R-5 A district, the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story (11 DCMR § 199 1 (definition of "Building height of"))
- 34 A maximum density of 0.9 FAR is permitted in the R-5-A District (11 DCMR § 402 4) The maximum percentage of lot occupancy in the R 5 A District is 40% (11

DCMR § 403 2) Rear yards in the R 5 A District must have a minimum depth of 20 feet (11 DCMR § 404 1) A side yard is not required along a side street abutting a corner lot in a residence district (11 DCMR § 405 5) However when a side yard is provided, it must have a minimum width of three inches per foot of height of building but not less than eight feet (11 DCMR § 405 9) If provided, open courts in the R 5 A District must have a minimum width of four inches per foot of height but not less than 10 feet (11 DCMR § 406 1) Parking is required at a rate of one parking space for each dwelling unit (11 DCMR § 2102 1) Under the PUD guidelines for the R 5 A District the maximum permitted height for a residential use is 60 feet and the maximum density is 1 0 FAR (11 DCMR §§ 2405 1 and 2405 2)

Development Incentives and Flexibility

35 The Applicants requested the following areas of flexibility from the Zoning Regulations

- a *Flexibility From Lot Area Requirements for Semi Detached Buildings* Semi detached dwellings in the R 5 A district are required to have a minimum lot area of 3 000 square feet However the project includes a number of individual semi detached dwellings with a lot area of less than 3 000 square feet Those units are essentially the same as the rowhouse units which they adjoin except that they are on the end of a row Although a number of the individual units do not meet the minimum lot area the overall average lot area is approximately 3,663 square feet per unit which exceeds the minimum requirement
- b *Flexibility from Yard Requirements* Pursuant to § 405 9 of the Zoning Regulations side yards provided in the R 5 A District must have a minimum width of eight feet A rear yard with a minimum depth of 20 feet is also required (11 DCMR §404 1) The Applicants request flexibility from these requirements because a number of the rear yards and side yards provided are less than the required width and depth The Applicants have designed the layout of the proposed development to meet as many of the applicable zoning requirements as possible However due to design and massing features of the project the existing fixed dimension of the distance between Anacostia Avenue and Barnes Street, and the clustering of units to ensure open space a number of the units do not have complying yards However the project includes a significant amount of open green space
- c *Flexibility From Open Court Width Requirements* Where provided, open courts in the R 5 A District must have a minimum width of four inches per foot of height but not less than 10 feet (11 DCMR § 406 1) The project includes five triangular open courts that do not meet the minimum width requirement (See units G1 G7 O1 O5 and P1) Each of these triangular courts occurs at the end of a row of the units along Hayes Street since the units have been designed to

have a continuous face along Hayes Street and are themselves orthogonal whereas Hayes Street does not run perpendicular to the intersecting street grid. The triangular open courts open onto public space and are indistinguishable from those open areas.

- d *Flexibility From Lot Occupancy Requirements of § 403.2* Under § 403.2 of the Zoning Regulations, a building in the R 5 A District may not occupy more than 40% of the lot upon which it is located. Due to design and layout features of the project and the clustering of units to provide useable open space, a number of units exceed the maximum permissible lot occupancy on individual lots. The highest lot occupancies are located between Anacostia Avenue and Barnes Street where the Subject Property is uniquely shaped and developable area is limited. The lots located west of Anacostia Avenue are generally larger and have lower lot occupancies. Moreover, the overall lot occupancy is 32% which is less than the maximum permissible and the project includes a large amount of open space such as generously-sized rear yards and two public parks.
- e *Flexibility From Street Frontage Requirements of § 2516.5* When the application was initially filed, flexibility from the street frontage requirements was not necessary because § 410 of the Zoning Regulations permitted groups of buildings constructed in R 5 and R-4 Districts to be deemed a single building for zoning purposes and each 'single building' in the project has street frontage. However, the Commission repealed § 410 pursuant to Z.C Order No. 06-05. Thus, the proposed units are now being developed as separate theoretical lots under § 2516.5 of the Zoning Regulations.

Section 2516.5 of the Zoning Regulations allows theoretical lots to be created that have no public street frontage. § 2516.5(b) requires that the units that do not front on a public right of way must provide a front yard with a depth equivalent to the required rear yard. A number of lots included in the project, such as Lots K3 and K4, have no frontage onto the proposed right of way.

The front of each building is the side upon which the principal entrance is located as required under § 2516.5(a). Each of these lots is accessible from the proposed sidewalk. Moreover, the proposed alley provides vehicular access to the lots and each of the units has private parking pads located at the rear of the unit. The units include front yards measuring five feet, one inch. The Applicants cannot, however, increase the depth of these yards due to the proposed lot depth and unit layout, as well as the desire to keep consistent street frontages. However, the units have ample rear yards ranging from 25 to 37 feet, which exceeds the minimum rear yard requirements.

Public Benefits and Amenities

36 The Commission finds that the following benefits and amenities will be created as a result of the PUD

- a *Housing and Affordable Housing* The single greatest benefit to the area, and the city as a whole is the creation of new housing consistent with the goals of the Zoning Regulations the Comprehensive Plan and the Mayor's housing initiative. The proposed PUD will contain approximately 193,688 square feet of gross floor area dedicated to residential uses with approximately 91 row dwellings, eight 3 unit apartment buildings and five flats. Moreover, all of the units will be affordable. The 42 replacement public housing rental units will be dedicated for families earning up to 30% of the area median income ("AMI"). A total of 83 homeownership units will be constructed, with approximately 23 units dedicated for families earning up to 100% of AMI, approximately 25 units dedicated for families earning up to 75% of AMI, approximately 27 units dedicated for families earning up to 65% of AMI and approximately eight units dedicated for families earning up to 40% of AMI.
- b *Environmental Benefits* The site plan is designed to be highly efficient in land utilization and provides a significant amount of open green space. Existing trees on the Subject Property will be preserved wherever possible and new shade trees will be provided throughout the development. Moreover, the PUD project has been designed to be energy efficient and to promote comfort through the use of energy efficient appliances and fixtures and through the provision of higher levels of insulation and efficient heating and cooling. Both the project architect and general contractor have staff that is certified in Green construction which will provide expertise in implementing the green building elements.

In addition, all appliances, lighting fixtures and heating and cooling equipment will be Energy Star rated. The units will be constructed exceeding the D.C. Energy Code for exterior envelope insulation, doors and windows. A barrier membrane wrap, Tyvek or approved equal, will be provided to minimize air infiltration. Slab on grade construction will include a vapor barrier system. In addition to the barrier membrane wrap, the Applicants will further insulate the windows with a Tyvek Flashing Systems™ or similar equivalent with integral flanged windows that seal the window with a nine inch weather resistive barrier. Windows will be upgraded vinyl thermal break, draft efficient, doubled glazed with low E glass. Performance specifications meet or exceed ANSI/AAMA/NWDA 101/IS 2 specifications for aluminum vinyl and wood windows and glass doors. The exterior walls will be framed with 2 x 6 s for all four floors to allow for R-19 fiberglass batt insulation, well above the R-13 minimum required by code. R-38 insulation will be provided in the ceiling as

required by code. Finally, the contractor will use low-toxic, solvent-free, low-VOC paints, primers, adhesives, and sealants.

The proposed PUD also includes a number of enhanced stormwater management features. On July 18, 2007, the Applicants met with DCDOE to review the proposed grading and stormwater management plan and to discuss and agree upon certain concepts for implementation of the plan. Based upon review and discussion of the grading plans and sections, DCDOE confirmed that the project, as designed, meets the applicable flood hazard rules in Title 20, DCMR, Chapter 31. DCDOE also indicated that quantity stormwater management practices would not be needed for this project because of the adjacent proximity to the Anacostia River and Watts Branch that are subject to tidal and riverine flooding, and because there is very little gradient in the unnamed tributary to Watts Branch. The following stormwater management practices were discussed and have been incorporated into the development: (1) incorporation of "Filterra" tree box filters, (2) use of amended soil filtration areas on the Subject Property as a combination filtering and infiltration quality measure, (3) placement of rain barrels at 21 locations throughout the project, each approximately 80 gallons, to allow for recycling rain water for planter and lawn irrigation in the vicinity of rain barrel, and (4) the use of Bay Saver Separator units and pre-treatment at eight catch basins and nine grate inlets. A memorandum signed by DCDOE concurring with these measures is marked as Exhibit 40 in the record of this case.

- c *Urban Design, Architecture, Landscaping, and Open Space* The project's design contributes a significant amount of public benefit to Ward 7 and the city. The proposed plan extends and enhances the Parkside street grid to the north. The design incorporates walkable streets defined by ordered strings of townhouses, stacked flats, and small apartment buildings, lined by trees and streetlights. Cassell Place NE, which currently ends at the rear of the DCHA garden apartments, now terminates in a new landscaped park, intimately scaled for the neighborhood. The park will contain benches, plantings, and a children's playground, fostering both passive and active use. Row dwellings throughout the community will be designed with façades, details, and landscaping that reinforce the individuality of the homes. A variety of porches, porticoes, stoops, and entries will support this distinctiveness and maintain a lively streetscape. The project is located adjacent to Kenilworth Park, part of the river park system envisioned by the Anacostia Waterfront Corporation and the Office of Planning.
- d *Infrastructure Improvements* The project includes a significant investment in improving the sidewalks, streets, and alley system in the neighborhood with the construction of new public sidewalks, streets, and alleys. The construction of these new public sidewalks, streets, and alleys accomplishes a significant

infrastructure upgrade that will benefit both the immediate neighborhood and the District

- e *Employment and Training Opportunities* Expanding employment opportunities for residents and local businesses is a priority of the Applicants. Therefore, the Applicants have entered into a First Source Employment Agreement with the Department of Employment Services ("DOES"). The Applicants have also executed a Local, Small, and Disadvantaged Business Enterprises ("LSDBE") Memorandum of Understanding with the District's Office of Local Business Development.
- 37 A major concern regarding the project was construction of residential units within the 100-year floodplain. In order to address this concern, the Applicants submitted a certification letter prepared by Greenhorne & O'Mara, the Applicants' engineering expert, confirming that the grading plan conforms to all applicable requirements (Exhibit 27). Specifically, the memorandum indicated that pursuant to 20 DCMR § 3104.2, construction is permitted within the floodplain provided that the lowest floor (including basement) of any new construction of residential structures located within any floodplain is at least one and one-half feet above the 100-year flood elevation. Moreover, with respect to streets, 20 DCMR § 3104.5(e) provides that the finished elevation of all new streets constructed within a floodplain must be no more than one foot below the regulatory flood elevation and meet the requirements of the Federal Highway Water Quality Standards. Greenhorne & O'Mara further certified that once fill is added to the site, they intend to seek a Letter of Map Revision Based on Fill (LOMR-F) to obtain FEMA's determination that the grading has been elevated on fill and should therefore be excluded from its current floodplain designation and will thus result in the Subject Property being designated in a moderate or low risk area (Exhibit 32).
- 38 The Applicants' grading plan and sections indicate that all first floor slab elevations are at or above the minimum required elevation and that the finished elevation of all new streets and alleys are at or higher than the required minimum elevation (Exhibits 27 and 46).
- 39 Since there are existing regulations governing flood plain construction and the Applicants are both aware of these regulations and have sought through its design to comply with the applicable requirements, the Commission need not further address the issue.

Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, effective March 8, 2007)

- 40 The Future Land Use Map designates the Subject Property in both the medium-density residential and moderate-density residential categories. The portion of the Subject Property located southeast of Anacostia Avenue is designated in the medium-density

residential category, which defines neighborhoods or areas where mid-rise apartment buildings are the predominant use, but pockets of low- and moderate- density housing may exist within these areas. The R-5-B and R-5-C Zone districts are generally consistent with the medium density designation, although other zones may apply (§ 224 8). The portion of the Subject Property located northeast of Anacostia Avenue is designated in the moderate-density residential category, which defines the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two to four unit buildings, row houses, and low-rise apartment buildings. The R-3, R-4, and R-5-A Zone districts are generally consistent with the moderate density residential category and the R-5-B district and other zones may also apply in some locations (§ 224 7).

- 41 The Generalized Policy Map designates the Subject Property in the Neighborhood Enhancement Area category. Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant residentially zoned land and are primarily residential in character, and present opportunities for compatible small-scale infill development, including new single family homes, townhomes, and other density housing types (§ 223 6). The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development "fits-in" and responds to the existing character, natural features, and existing/planned infrastructure capacity (§ 223 7).
- 42 The proposed PUD is consistent with the Future Land Use Map and Generalized Policy Map designations for the Subject Property. The existing and proposed R-5-A zoning of the Subject Property is consistent with the moderate-density residential land use designation. The project's overall density of 0.8 FAR is less than the R-5-A matter-of-right density of 0.9 FAR and the PUD density of 1.0 FAR. In addition, a significant amount of the project's land area will be devoted to open, green space. Moreover, the project will have an overall lot occupancy of 31%, which is less than the maximum lot occupancy of 40% in the R-5-A District. The proposed residential uses are consistent with, and respond to, the existing character of the neighborhood.
- 43 The proposed PUD is also consistent with many guiding principles in the Comprehensive Plan, including managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities, as follows:
 - a *Managing growth and change* The Comprehensive Plan states that change in the District is both inevitable and desirable, and that the key is to manage change in ways that protect the positive aspects of life in the city and reduce negative aspects (§ 2 3, ¶ 217 1). A diversity of housing types developed for households of different sizes, including growing families as well as singles and couples, is also encouraged (§ 2 3, ¶ 217 3). The Comprehensive Plan further states that the District needs residential growth to survive, and also recognizes that much of the growth forecast during the next 20 years is expected to occur on large sites that

are currently isolated from the rest of the city (§ 2 3, ¶ 217 4) These sites are encouraged to be developed as part of the city's urban fabric through the continuation of street patterns, open space corridors and compatible development patterns where they meet existing neighborhoods (§ 2 3, ¶ 217 5) Moreover, redevelopment and infill opportunities along corridors and near transit stations is an important component of reinvigorating and enhancing neighborhoods (§ 2 3, ¶ 217 6) The proposed PUD is fully-consistent with each of these goals The proposed PUD will significantly increase the availability and variety of housing in the District Moreover, the proposed residential use will create a stable and vibrant neighborhood with residents of diverse income levels

- b *Creating successful neighborhoods* A guiding principle for creating successful neighborhoods is the production of new affordable housing to avoid the deepening of racial and economic divides in the city (§ 2 3, ¶ 218 3) The proposed PUD furthers this goal with the construction of approximately 185,234 square feet of gross floor area dedicated to residential uses, with approximately 91 row dwellings, eight 3-unit apartment buildings, and five flats Moreover, all of the units will be affordable The 42 replacement public housing rental units will be dedicated for families earning up to 30% of the area median income ("AMI") A total of 83 homeownership units will be constructed, with approximately 23 units dedicated for families earning up to 100% of AMI, approximately 25 units dedicated for families earning up to 75% of AMI, approximately 27 units dedicated for families earning up to 65% of AMI, and approximately 8 units dedicated for families earning up to 40% of AMI The rental and homeownership units will be interspersed throughout the economically diverse neighborhood
- c *Connecting the city* An important goal of this element is the utilization of transportation and streetscape improvements to connect the District (§ 2 3, ¶ 220 3) The proposed PUD is consistent with this objective since the development includes a significant investment in improving the sidewalks, streets, and alley system in the neighborhood with the construction of new public sidewalks, streets, and alleys The construction of these new public sidewalks, streets, and alleys accomplishes a significant infrastructure upgrade that will benefit both the immediate neighborhood and the District
- d *Building green and healthy communities* The Comprehensive Plan provides that as the nation's capital, the District should be a role model for environmental sustainability and new developments should minimize the use of non-renewable resources, promote energy and water conservation, reduce harmful effects on the natural environment, and improve the quality of surface and groundwater (§ 2 3, ¶¶ 221 3 and 221 4) As discussed in the Environmental Benefits section of this Order, the proposed PUD includes a significant number of low impact

development measures designed to promote environmental sustainability and mitigate development impacts on the environment

44 The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows

- a *Land Use Element* Major goals of the Land Use Element include ensuring the efficient use of land resources to meet long-term neighborhood, city-wide, and regional needs, protecting the health, safety, and welfare of District residents and businesses, sustaining, restoring, or improving the character and stability of neighborhoods in all parts of the city, and effectively balancing the competing demands for land to support the many activities that take place within District boundaries (§ 302 1) This element also recommends better utilization of land around transit stations and along transit corridors as a means to accommodate the growth of the city and minimize the number and length of auto trips generated by households (§ 306 3) The development of diverse housing types, including both market-rate and affordable units and housing for seniors and others with mobility impairments, as well as attractive, pedestrian-friendly design are also encouraged (§ 306 4)

The proposed PUD responds to these goals with the development of a high-quality residential project that includes housing opportunities for a range of incomes, and is within close proximity of a Metro station The proposed PUD is also fully-consistent with and implements the following policies

- 1) Policy LU-2 1 1 Variety of Neighborhood Types - The proposed PUD adds to the variety of neighborhood types in the District and preserves and enhances the positive elements that create the identity and character of the project's neighborhood
- 2) Policy LU-2 1 3 Conserving, Enhancing and Revitalizing Neighborhoods - As discussed above, the proposed PUD increases the District's housing supply and enhances the character of the immediate neighborhood.
- 3) Policy LU-2 1 8 Zoning of Low- and Moderate-Density Neighborhoods - The proposed PUD is consistent with the existing residential zoning and uses In addition, the requested Zoning Map amendment to have the unzoned portion of the Subject Property zoned R-5-A is consistent with the existing zoning of the immediate area.
- 4) Policy LU-2 1 11 Residential Parking Requirements - The proposed PUD includes at least one parking space per unit The parking will be accommodated in a manner that maintains an attractive environment and minimizes interference with traffic flow

5) Policy LU-2.2.4 Neighborhood Beautification – The proposed PUD improves the visual quality of the neighborhood, and includes landscaping and tree planting, removal of obsolete public housing buildings, the construction of new public streets, alleys, and sidewalks, and a central community park area

- b *Transportation Element* The overall goal of the Transportation Element is to create a safe, sustainable efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors, supports local and regional economic prosperity, and enhances the quality of life for District residents (§ 401.1). The proposed PUD is consistent with this element. Streets in the development are designed to encourage walking and to promote safe interaction between pedestrians and automobiles. Along existing streets, new shade trees will fill gaps between preserved existing trees, and new sidewalks and streetlights will provide a pleasant pedestrian experience that brings the existing streets up to modern District Department of Transportation ("DDOT") standards. New streets around the neighborhood park are narrow to promote walkability and slow automobiles, appropriate to their roles as short, local, residential streets. All streets will accommodate on-street parking. Moreover, as indicated in the Transportation Impact Study prepared by Wells & Associates LLC, the proposed development will not have an adverse impact on existing or future traffic conditions. DDOT also submitted a memorandum indicating that the proposed project will not have an adverse traffic or parking impact on the neighboring residential area, and thus DDOT has no objection to the project (Exhibit 45).
- c *Housing Element* The overall goal of the Housing Element is to develop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District (§ 501.1). Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. The Housing Element encourages the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives (§ 503.2). In addition, the production of housing for low and moderate income households is a major civic priority and the Comprehensive Plan calls for investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing (§§ 504.8, 504.10). The proposed PUD will contain approximately 185,234 square feet of gross floor area dedicated to residential uses, with approximately 91 row dwellings, 24 3-unit apartments, and 10 flats. Moreover, all of the units will be affordable. The replacement DCHA units, as well as the ownership units, will be architecturally indistinguishable from one another, and mixed throughout the project. The 42 replacement public housing rental units will be dedicated for families earning up to 30% of the area

median income ("AMI") A total of 83 homeownership units will be constructed, with approximately 23 units dedicated for families earning up to 100% of AMI, approximately 25 units dedicated for families earning up to 75% of AMI, approximately 27 units dedicated for families earning up to 65% of AMI, and approximately eight units dedicated for families earning up to 40% of AMI

- d *Environmental Protection Element* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources This element provides policies and actions on important issues such as energy conservation and air quality, and specific policies include the following
- 1) Policy E-1 1 1 Street Tree Planting and Maintenance – The proposed PUD includes the planting and maintenance of street trees on the new sidewalks to be constructed immediately adjacent the project's boundaries
 - 2) Policy E-1 1 3 Landscaping – As shown on the landscape plan include in the Plans, the proposed PUD incorporates landscaping to beautify the Subject Property, help reduce stormwater runoff, and create a stronger sense of character and identity
 - 3) Policy E-1 3 3 Reducing Sedimentation - As discussed above, the proposed PUD includes a number of stormwater management measures, including regular maintenance of storm drains and catch basins and the use of amended soil areas, where appropriate, that will contribute to reducing sedimentation
 - 4) Policy E-2 2 1 Energy Efficiency – The project includes a number of features designed to promote the efficient use of energy and a reduction of unnecessary energy expenses
 - 5) Policy E-3 1 3 Green Engineering – As shown on the stormwater management plan included in the Plans, the proposed PUD incorporates a number of green engineering practices for water and wastewater systems, including the placement of rain barrels at locations throughout the project to allow for re-cycling rain water for planter and lawn irrigation in the vicinity of rain barrel and the use of Bay Saver Separator units and pre-treatment facilities
 - 6) Policy E-3 4 1 Mitigating Development Impacts – The proposed PUD includes a number of features designed to mitigate impacts on the natural environment, including street tree planting and maintenance, landscaping, energy efficiency and the use of renewable materials, methods to reduce stormwater runoff, and other green engineering practices

- e *Urban Design Element* A major goal of the Urban Design Element is to create successful neighborhoods that strengthen the defining visual qualities of the District's neighborhoods and relate the scale of infill development to the existing neighborhood context. (§ 910 6) Creating visual interest through well-designed building facades and maintaining façade lines are specified policies (§§ 910 12, 910 13) The Urban Design Element also states that overpowering contrasts of scale, height and density must be avoided as infill development occurs (§ 910 14) In addition, new developments on parcels that are larger than the prevailing neighborhood lot size are encouraged to carefully integrate with adjacent sites and structures on such parcels should be broken into smaller, more varied forms (§ 910 15)

The proposed PUD is consistent with these policies The development ties into the existing Parkside fabric, and reflects the character of the neighborhood The elevations respond to their Parkside context in their scale, proportion, and detail, and also produce streetscapes that fit in with the immediately recognizable residential character In addition, a mix of porches, porticoes, and stoops will add further variety to the streetscapes At the center of the project is a new neighborhood park that will encourage active and passive recreation with a children's play area, landscaping, shade trees, and benches Moreover, green space located in the street right-of-way in front of units will be landscaped to subtly reinforce the threshold between the public street and the private houses Further, streets in the development are designed to encourage walking and to promote safe interaction between pedestrians and automobiles Along existing streets, new shade trees will fill gaps between preserved existing trees, and new sidewalks and streetlights will provide a pleasant pedestrian experience that brings the existing streets up to current standards

- f *Far Northeast and Southeast Area Element* The major themes of the Far Northeast and Southeast Area Element are guiding neighborhood growth, as well as conserving and enhancing community resources Policy FNS-111 recommends that the Comprehensive Plan and zoning designations for neighborhoods in the Far Northeast and Southeast reflect and protect the existing low density land use pattern while allowing for infill development that is compatible with neighborhood character (§ 1808 2) Policy FNS-112 encourages new housing on vacant lots and around Metro stations within the community (§ 1808 3) The conservation and improvement of Watts Branch and Pope Branch as safe, healthy natural resource areas, as well as linking the neighborhoods of Far Northeast and Southeast to the Anacostia River through trail, path, transit, and road improvements are important policy goals (§§ 1809 1 and 1809 2) The proposed PUD has an overall density of 0.8 FAR, which is consistent with the existing character of the neighborhood Moreover, the units have been designed to be compatible with the character of existing homes in the

neighborhood The proposed PUD also includes significant infrastructure improvements, such as new sidewalks, that will help connect the neighborhood to the Anacostia River

- g *Kenilworth-Parkside Element* The Kenilworth Parkside Element encourages taking advantage of the area's proximity to the Minnesota Avenue Metrorail station to accommodate housing that is well-connected to transit and open space, in addition to improving vehicular, pedestrian and bicycle access to the Kenilworth/Parkside area (§ 1516.6 and § 1516.9). The proposed PUD is consistent with this element since the project includes new residential development within close proximity to the Minnesota Avenue Metrorail station and other transit stops. Moreover, the development will include two new park areas.

Strategic Neighborhood Action Plan

- 45 The 2003 Strategic Neighborhood Action Plan ("SNAP") process identified near-term goals for individual neighborhood clusters. The Subject Property is part of Cluster 30, which includes the Mayfair and Central NE neighborhoods. Cluster workshop participants were asked to identify priorities for additional action planning. Area residents identified abandoned housing, public safety, commercial development and youth development as being of top priority. The proposed PUD furthers the public safety objective through the addition of residential development and "eyes on the street". The proposed PUD will create a broad mix of housing at various income levels targeted for rental and ownership. Creating new public and private affordable housing and utilizing vacant land will also improve the overall character of the community and the new residents will support neighborhood retail centers and schools.

Office of Planning Report

- 46 By reports dated July 14, 2006 and May 4, 2007, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the application (Exhibits 17 and 20).
- 47 By report dated July 13, 2007, OP recommended final approval of the application, subject to the incorporation of additional low impact development techniques (Exhibit 28). OP indicated that the application will further a number of the Guiding Principles of the Comprehensive Plan and is not inconsistent with the Plan's policies and land use maps, and OP supported all of the requested zoning flexibility necessary to create the traditional layout of the community. OP also indicated that the Applicants' amenity package is adequate in magnitude and appropriate to the neighborhood, subject to the inclusion of additional environmental features. As noted above, the Applicants met with DCDOE on July 18, 2007 (subsequent to the filing of the OP final report) and

revised the Stormwater Management Plan to incorporate low impact development techniques acceptable to DCDOE, and DCDOE signed a memorandum indicating its approval of such design features (Exhibit 40) OP stated during the public hearing on July 23, 2007 that the measures incorporated into the project satisfied OP's concerns

Other Government Agency Reports

- 48 In an email to OP on July 5, 2007, the D C Department of Parks and Recreation ("DPR") indicated that the existing recreational amenities in the area of the Subject Property cannot support the growing housing stock planned for this area of the District (Exhibit 28) DPR suggested that the Applicants either work with the Neville Thomas Elementary School regarding recreation amenities, or work with DPR to develop a trail leading from this neighborhood to the Kenilworth-Parkside Community Center and it's surrounding fields However, as noted by OP and the Applicants, DDOT has already planned a trail to connect the entire Anacostia riverfront, and is close to the design phase for the segment linking this neighborhood with areas to the north, including the Kenilworth-Parkside Community Center
- 49 DCDOE submitted a letter dated July 16, 2007 strongly supporting the Applicants' commitment to meet Green Communities minimum development standards DCDOE also recommend that the Applicant consider a number of enhancements to reduce the impacts of stormwater runoff through on-site infiltration, storage and reuse options As noted in Finding of Fact No 35, the Applicants subsequently met with DCDOE on July 18, 2007 and revised the Stormwater Management Plan to incorporate features acceptable to DCDOE, and DCDOE signed a memorandum indicating its approval of such design features (Exhibit 40)
- 50 DOES submitted a memorandum dated July 3, 2007 to OP recommending that no action be taken on the PUD until the applicant executes a First Source Agreement On July 16, 2007, the Applicants submitted a fully-executed First Source Employment Agreement (Exhibit 32)
- 51 The D C Water and Sewer Authority ("DCWASA") submitted a memorandum dated July 6, 2007, indicating that existing infrastructure is adequate to accommodate the proposed construction DCWASA further stated that it would coordinate with the Applicants on the already-planned upgrade of a sanitary sewer line in Anacostia Avenue DCWASA also noted that this application would need to conform to DCDOE standards for stormwater runoff and erosion control during the building permitting process
- 52 DDOT submitted a memorandum dated July 19, 2007 (Exhibit 45), indicating that the proposed project will not have an adverse traffic or parking impact on the neighboring residential area Accordingly, DDOT has no objection to the project

- 53 AWC submitted a letter dated July 16, 2007 (Exhibit 30), indicating that the PUD fulfills many objectives of the Waterfront Area Elements of the Comprehensive Plan. AWC recommended that OP work with the Applicants on green building, stormwater management, site planning, and control of erosion and runoff during and after construction of the project. AWC also recommended that the Applicants conduct additional community outreach efforts.

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 which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
- 3 Development of the property included in this application 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.
- 4 The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
- 5 The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
- 6 The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
- 7 The Applicants' request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.

- 8 Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
- 9 The Commission is required under D C Code Ann § 1-309 10(d)(3)(A) to give great weight to the affected ANC's recommendation. In this case, ANC 7D ultimately voted to strongly support the project and recommended that the Commission approve the application at the Commission's October 15, 2007 public meeting (Exhibit 47). The Commission has given ANC 7D's recommendation great weight in approving this application.
- 10 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 (as reflected in ¶ 46-47). For the reasons stated above, the Commission notes the Applicants have addressed OP's concerns and concurs in OP's recommendation for approval of the PUD.
- 11 The application for a PUD is subject to compliance with D C Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review and approval of a planned unit development ("PUD") and related amendment to the Zoning Map from unzoned to the R-5-A District for the unzoned portions of the Subject Property, subject to the following guidelines, conditions, and standards:

- 1 The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners, dated July 3, 2007, marked as Exhibit 27 in the record (the "Plans"), as modified by Exhibit 32 and Exhibit 46, and as further modified by the guidelines, conditions and standards herein.
- 2 The PUD shall be a residential development as shown on the approved plans. The PUD shall have a maximum density of 0.8 FAR and a combined gross floor area of no more than 193,688 square feet. The project shall contain no more than 125 dwelling units, including flats, apartments, and row dwellings.
- 3 The maximum height of the new units shall be 40 feet and three stories.

- 4 The Applicants are granted flexibility from the lot area requirements for semi-detached buildings, rear yard depth, side yard width, open court width, lot occupancy requirements of § 403 2, and street frontage requirements of § 2516 5, consistent with the Lot Tabulation sheet on the Plans, as modified by Exhibits 32 and 46
- 5 The 42 replacement public housing rental units shall be targeted for families earning up to 30% of the area median income ("AMI") The 83 homeownership units shall be targeted for the following levels approximately 23 units dedicated for families earning up to 100% of AMI, approximately 25 units dedicated for families earning up to 75% of AMI, approximately 27 units dedicated for families earning up to 65% of AMI, and approximately eight units dedicated for families earning up to 40% of AMI
- 6 The project shall include a minimum of 125 off-street parking spaces
- 7 The Applicants shall include landscaping, streetscape, open-space, and stormwater management features for the project as shown on the Plans, as modified by Exhibits 32 and 46
- 8 Construction of the residential units shall comply with all applicable provisions of the District of Columbia Municipal Regulations regarding construction within the horizontal plane of the 100-year floodplain
- 9 No building permit shall be issued for this PUD until the Applicants have submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") a fully-executed agreement with the District of Columbia Department of Small and Local Business Development
- 10 The Applicants shall have flexibility with the design of the PUD in the following areas
 - a To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium 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, and
 - 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 Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals

- 11 No building permit shall be issued for this PUD until the Applicants have recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
- 12 The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicants have filed a copy of the covenant with the records of the Zoning Commission.
- 13 The change in zoning from unzoned to R-5-A for the unzoned portions of the Subject Property approved by this Order shall be effective upon the recordation of the covenant discussed in Condition No. 10.
- 14 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. Construction shall begin within three (3) years of the effective date of this Order.
- 15 The Applicant is required to comply fully with the provisions of 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, 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. 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.

On October 15, 2007, the Zoning Commission **APPROVED** the application by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Gregory N. Jeffries to approve, Carol J. Mitten and John G. Parsons, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on December 10, 2007 by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to

Washington, D.C., June 7 2005

Scale: 1 inch = 100 feet

Recorded in Book A&T Page 2080-P

Stamp: No. 005-03

Published by: **HOLLAND & KNIGHT**

[Signature]
Harvey, U.C.

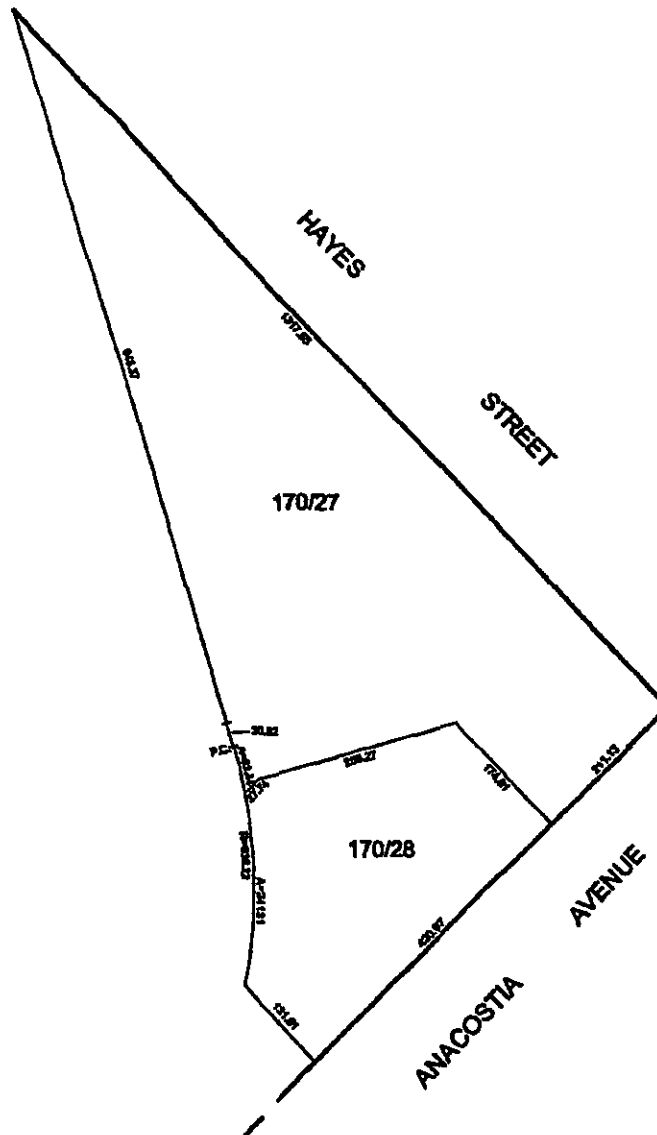
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Date _____

(Signature of owner or his authorized agent)

NOTE: Only shown for Assessment and Capital Levy or Property Tax in accordance with the amounts of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with local jurisdiction.



Z.C Case 06-30

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington D.C. May 18, 2006

Plat for Building Permit of SQUARE 5040 LOT 804

Scale 1 inch = 80 feet Recorded in A&T Book Page 3671 W

Receipt No 00256

Furnished to HOLLAND & KNIGHT (FREDA HOBAR)

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)


Surveyor D.C.

Date. _____

By D.M. 

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue Assessment Administration, and do not necessarily agree with deed description.

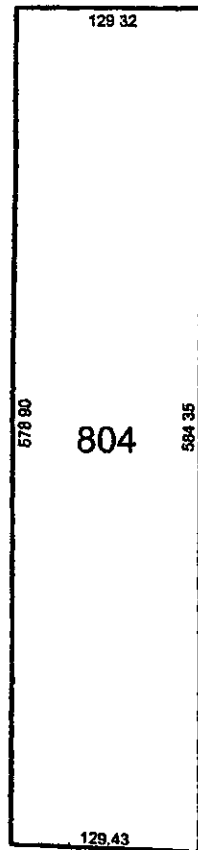
GRANT STREET

STREET

BARNES

AVENUE

ANACOSTIA



HAYES STREET

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-30

As Secretary to the Commission, I hereby certify that on JAN 23 2008 copies of this Z.C. Order No 06-30 were mailed first class, postage prepaid or sent by inter-office government mail to the following

1	<i>D C Register</i>	Washington, D C 20004
2	Whayne S Quin, Esq Holland & Knight, LLP 2099 Pennsylvania Ave , N W Washington, D C 20006	6 Councilmember Yvette Alexander
		7 DDOT (Ken Laden)
		8 Zoning Administrator (Matt LeGrant)
3	Dorothy Douglas, Chair ANC 7D 5140 Nannie Helen Burroughs Ave , N E Washington, DC 20019	9 Jill Stern, Esq General Counsel - DCRA 941 North Capitol Street, N E Suite 9400 Washington, D C 20002
4	Commissioner Michelle Starr 7D07 P O Box 90246 Washington, 20090	10 Office of the Attorney General (Alan Bergstein)
5	Gottlieb Simon ANC 1350 Pennsylvania Avenue, N W	

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

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Filed & Recorded in Official Records of
WASH DC RECORDER OF DEEDS LARRY TODD

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Sylvia Bellway



THIS IS TO CERTIFY THAT THIS IS A TRUE COPY MAR 06 2008

James J. Todd
Recorder of Deeds, D.C.

Washington, DC 20006
Suite 100

2099 Pennsylvania Avenue

Kyrus L Freeman
Holland and Knight LLP

MAR 06 2008