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June 19, 2009

VIA HAND DELIVERY

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

**Re: Request for Extension of Time, Zoning Commission Order No. 06-31 and 06-31A
(Consolidated PUD and Related Zoning Map Amendment)
5220 Wisconsin Avenue, N.W.**

Dear Members of the Zoning Commission:

On behalf of the John Akridge Development Company ("Applicant"), the Applicant in the above-referenced case, this letter serves as a request for a two-year extension of the consolidated planned unit development ("PUD") approved in Zoning Commission Order No. 06-31 and Order No. 06-31A, copies of which are attached as Exhibit 1 and Exhibit 2 respectively. This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown herein. A completed application for the extension is submitted herewith, and a check in the amount of \$400.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning Regulations is also enclosed. The Applicant respectfully requests that the Zoning Commission consider this request at its July 27, 2009, public meeting.

I. INTRODUCTION

A. Factual Background

By Zoning Commission Order No. 06-31 ("Order No. 06-31"), the Zoning Commission approved a PUD for the property located at 5220 Wisconsin Avenue, N.W. (Lots 810, 811 and 812 in Square 1657) (the "Property") and a related application to amend the Zoning Map from the R-5-B District to the C-2-B District for the Property. The Property consists of approximately 22,500 square feet of land area and is located on the west side of Wisconsin Avenue between Harrison and Jenifer Streets, N.W.

ZONING COMMISSION
District of Columbia

ZONING COMMISSION

CASE NO. 06-31B
EXHIBIT NO. 1

The approved PUD includes construction of a residential development with ground floor retail, having a maximum FAR of 5.25 and containing between 60 and 70 residential units. The project will have a maximum height of 79 feet, with steps down in height on the Wisconsin Avenue frontage and at the rear as shown on the approved plans. The project will provide 1.2 parking spaces per residential unit plus fifteen retail parking spaces, three residential visitor spaces and two car sharing spaces, all in a below-ground parking garage. The project includes streetscape improvements and a variety of public benefits and project amenities, all as described in Order No. 06-31, which was effective October 26, 2007.

On October 31, 2007, Advisory Neighborhood Commission 3E ("ANC 3E") filed a motion for reconsideration of Order No. 06-31, requesting two modifications to clarify the commitments made by the Applicant. In response to ANC 3E's motion, the Applicant filed a response, generally agreeing to the two requested modifications. Accordingly, the Zoning Commission approved the modifications and issued Zoning Commission Order No. 06-31A ("Order No. 06-31A") reflecting those changes effective as of January 4, 2008.

On November 21, 2007, Friendship Neighborhood Association ("FNA"), a party to the original application, filed a petition for review requesting the D.C. Court of Appeals to review and set aside Order No. 06-31. On February 5, 2008, FNA filed a petition for review requesting the D.C. Court of Appeals to review and set aside Order No. 06-31A. The Applicant intervened in both of these cases, and the Court of Appeals consolidated the cases. FNA, along with the other parties to the court case, filed a Consent Motion to Dismiss Petitions for Review on May 28, 2008. By order dated June 2, 2008, the D.C. Court of Appeals dismissed the petitions for review. A copy of that dismissal order is attached as Exhibit 3.

Section 2408.13 of the Zoning Regulations states that in the event an appeal is filed, the time limitations of Sections 2408.8 and 2408.9 shall run from the decision date of the court's final determination of the appeal. Accordingly, based on the dismissal date of the appeal (i.e., June 2, 2008), the Applicant has until June 2, 2010, to file for a building permit and until June 2, 2011, to begin construction.

As discussed in more detail below, the Applicant is requesting a two-year time extension based upon unexpected delays beyond the Applicant's control.

B. Jurisdiction of the Zoning Commission

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

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;

- (b) There is no substantial change in any of the materials facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

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

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;
- (b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

II. THE EXTENSION REQUEST WAS SERVED ON ALL PARTIES

The parties to this case included ANC 3E, FNA, and Ward 3 Vision. As indicated on the Proof of Service attached hereto, the Applicant has served this request for extension of time on all parties to the initial PUD application, allowing them the required time period to respond.

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

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

Section 2408.11(a) supports the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. As the Commission has recognized in recent months, the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This unanticipated swift change in the market has rendered it practically impossible for the Applicant to obtain sufficient financing for the project, despite the Applicant's good faith efforts.

Specifically, the Applicant's intent was to move forward with the project as quickly as possible after approval; however, the Applicant was unable to do so initially as it needed resolution of the pending legal appeals before it could secure financing to move forward. Just a few months after the appeals were ultimately dismissed, the real estate market suffered this major crisis. A major part of this crisis was that banks began to either freeze lending for residential projects or cease lending operations entirely due to the uncertainty in market conditions and the softening of the housing market.

Despite these events, the Applicant has worked diligently to secure financing for the project. The Applicant has held numerous discussions with providers of equity and debt over the past eighteen months and has found the lending institutions to be increasingly reluctant to even consider financing a condominium projects, no matter the location, size or level of competition. The difficulties in the credit markets are further aggravated by the oversupply of new residential units at a time where demand has significantly decreased. Furthermore, while the Applicant has noted some decreases in construction costs in estimates from general contractors, these decreases are not sufficient to bring about acceptable financial pro formas nor do these increases change the overall attitude of financial institutions in lending money for residential projects.

Accordingly, the Applicant has been unable to obtain sufficient project financing to move this project forward following its diligent, good faith efforts because of changes in the economic and market conditions, which are beyond the Applicant's control. Thus, this request for extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

B. No Substantial Changes to Approved PUD

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

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

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

C. No Hearing is Necessary

Section 2408.12 of the Zoning Regulations provides:

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

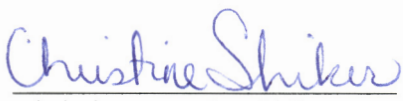
A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in §2408.11. There is no dispute that: (1) the Applicant has been unable to secure financing for the project, or (2) there are significant impediments in the market place to proceeding with a residential project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two-year extension of the approved PUD, such that an application must be filed for a building permit no later than June 2, 2012 and construction must start no later than June 2, 2013. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Christine Moseley Shiker

Attachments

cc: Matt Jesick, Office of Planning (Via Hand Delivery; w/atts)

PROOF OF SERVICE

I hereby certify that on June 19, 2009, a copy of the foregoing Applicant's Request for Extension of Time was served on the following persons or organizations as stated below:

Advisory Neighborhood Commission 3E (Via Hand Delivery)
c/o Lisner Home
5425 Western Avenue NW
Washington, DC 20015
Attention: Polly King Evans, Administrative Assistant

Cornish Hitchcock (Via Hand Delivery)
Counsel for Friendship Neighborhood Association
1200 G Street, N.W., Suite 800
Washington, DC 20005

Friendship Neighborhood Association (Via Hand Delivery)
4422 Garrison Street, N.W.
Washington, D.C. 20016

Ward 3 Vision (Via Hand Delivery)
c/o John Wheeler
4304 Yuma St., NW
Washington, DC 20016



Christine Moseley Shiker, Esq.
Holland & Knight

EXHIBIT 1

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 06-31
Z.C. Case No. 06-31
(Consolidated Planned Unit Development and Related
Zoning Map Amendment for The John Akridge Development Company at 5220 Wisconsin
Avenue, N.W.)
July 30, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 8, 2007 and April 12, 2007 to consider an application from The John Akridge Development Company (the "Applicant") for consolidated review and approval of a planned unit development and related zoning map amendment. 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 hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearings

1. On June 19, 2006, the Applicant filed the application for consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment of the property located at 5220 Wisconsin Avenue, N.W. (the "Site"), to rezone the Site to C-2-B (the "PUD Submission"). The PUD Submission is in the record at Exhibits 5 (PUD Submission Statement) and 6 (PUD Submission Plans).
2. At its September 11, 2006 public meeting, the Commission set the case for hearing.
3. The Applicant filed materials in its Prehearing Submission on November 13, 2006 (the "Prehearing Submission"), in the record at Exhibits 23 (Prehearing Submission Statement) and 24 (Prehearing Submission Plans). The Applicant then filed additional materials in its Modified Prehearing Submission on February 15, 2007, along with fully-re-issued plans and elevations (the "Modified Prehearing Submission"), in the record at Exhibit 42.

4. After proper notice, the Commission held a public hearing on the application on March 8, 2007.
5. The Commission determined the parties to the case at the March 8, 2007 public hearing. Parties in this case included the following: the Applicant; Advisory Neighborhood Commission ("ANC") 3E, the ANC within which the Site is located; Ward 3 Vision in support of the application; and Friendship Neighborhood Association ("FNA") in opposition to the application. ANC 3E and FNA are collectively referred to as the "Opposition."
6. The Applicant presented the following witnesses: Matt Klein and David Tuchmann representing the Applicant; Eric Colbert, architect with the firm of Eric Colbert and Associates; Osborne George and Iain Banks, traffic consultants with O.R. George & Associates; and Steven Sher, land planner with Holland & Knight. The Applicant also presented two additional witnesses in response to questions: Larry Demaree, a retail and retail leasing consultant with Demaree & Associates, Inc., and Eric Smart, an economic benefits consultant with Bolan Smart Associates, Inc. Messrs. Colbert, George, Banks, Sher, Demaree, and Smart were accepted as experts in their respective fields.
7. The Office of Planning ("OP") and the District Department of Transportation ("DDOT") each testified in support of the project.
8. The Commission held a continuation of the hearing for this case on April 12, 2007. At the continuation hearing, ANC 3E, Ward 3 Vision, and FNA presented their witnesses and testimony.
9. ANC 3E was represented by Commissioners Lucy Elridge and Carolyn Sherman. Their testimony reflected those issues set forth in the ANC 3E report and resolution, discussed in Findings 141 through 143.
10. Ward 3 Vision presented one witness, Tom Quinn, a member of the organization's Steering Committee, in support of the project. Ward 3 Vision is an organization of Ward 3 neighbors who advocate for "positive growth and forward-thinking development" and environmentally responsible building design in Ward 3. Ward 3 Vision testified that the project would benefit the community and is the type of transit-oriented development that the neighborhood needs. Ward 3 Vision was especially supportive of the retail aspect of the project, including the retail conditions proffered by the Applicant and set forth in Condition 11.
11. FNA presented the following six witnesses: David Frankel, a resident living near the project who testified regarding the context of the area surrounding the project and regarding a petition signed by residents who oppose development of the project other than within height and density limitations of R-5-B matter-of-right standards; George

Oberlander, an urban planning and zoning consultant, who testified as to the 1974 rezoning plan for the area, the project's inconsistency with the Comprehensive Plan, and the Applicant's development flexibility and incentives requested; Marilyn Simon, an area resident, who testified further to the context for height and density; Joe Mehra, a traffic and transportation consultant, who testified as to the traffic issues related to the project; Alta Mainer, a nearby resident who testified regarding traffic in the neighborhood; and William Vigdor, a nearby resident, who testified to adverse impacts of the project on the immediate area, including traffic, school overcrowding, and emergency response vehicles, as well as use of the alley for loading. Messrs. Oberlander and Mehra were accepted as experts in their respective fields.

12. Many persons and organizations testified in support of the project, and dozens of letters, including letters from both the former Ward 3 Councilmember Kathy Patterson and the current Ward 3 Councilmember Mary Cheh, were submitted to the record in support of the project. The project was endorsed by the D.C. Chapter of the Sierra Club and received recognition as an outstanding project by the Smart Growth Alliance.
13. Many persons and organizations testified in opposition to the project, and dozens of letters were submitted to the record in opposition to the project. The letters and testimony raised a number of issues, with the primary concerns being size and scale of the project and traffic generated by the project. In addition, the Opposition submitted a petition with approximately 500 names opposing any development not within the height and density maximums permitted in the R-5-B zone.
14. At its public meeting held on June 11, 2007, the Zoning Commission voted to re-open the record to receive an additional submission by ANC 3E, then took proposed action by a vote of 5-0-0 to approve with conditions the application, including PUD plans, as presented at the public hearings or as part of the written record.
15. The proposed action of the Commission was officially referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated July 12, 2007, found the proposed PUD and related map amendment would not affect the federal interests in the National Capital, or be inconsistent with the Comprehensive Plan for the National Capitol.
16. The Commission took final action by a vote of 5-0-0 to approve the applications at its public meeting held on July 30, 2007.

PUD Site and the Surrounding Area

17. The Site consists of Lots 810, 811, and 812 in Square 1657 and contains 22,500 square feet of land. The Site is currently improved with a used car dealership and repair bay as

well as a florist and abuts the Washington Metropolitan Area Transit Agency's ("WMATA") Western Bus Garage to the north and a Pepco substation to the south.

18. The Site is situated in Ward 3, mid-block on the west side of Wisconsin Avenue between Jenifer and Harrison Streets, N.W. The Site is located in the Friendship Heights neighborhood and is within 300 feet of the southern entrance to the Friendship Heights Metrorail Station. The general character of the area reflects the height, density, and use expected at a Metrorail station on a major commercial corridor, which includes the Mazza Gallerie Shopping Center, Chevy Chase Pavilion, Friendship Center, and Chevy Chase Plaza.
19. The PUD Site is not a designated historic landmark nor is it within a historic district.

Existing and Proposed Zoning

20. The Site was zoned R-5-B in 1974 when the zoning of the Friendship Heights area was being evaluated in light of concerns about traffic congestion. Zoning changes were first adopted on an emergency basis by Order No. 75 (October 18, 1973). Permanent amendments were adopted in Zoning Commission Case No. 73-29, Order No. 87 (February 12, 1974). The Site has not been rezoned since 1974. The Applicant requests that the Site be rezoned to C-2-B in conjunction with the PUD.
21. Wisconsin Avenue to the north of the project is the central core of Friendship Heights, with zoning categories of C-3-C, C-3-A, and C-2-B and many projects having been developed as PUDs.
22. The Wisconsin Avenue corridor to the south of the project is zoned C-2-A and is generally developed with neighborhood-serving commercial uses. Residential developments, zoned R-2, are found east and west of the Wisconsin Avenue commercial corridor.
23. The R-5 Districts are designed to permit flexibility of design by permitting in a single district all types of urban residential development that conform to the height, density, and area requirements established for each district. The R-5-B District permits moderate height and density, including a maximum height of 50 feet, with no limit on the number of stories, and a maximum density of 1.8 FAR. An apartment house in the R-5-B District is permitted as a matter-of-right. Retail is not permitted as a matter-of-right in the R-5-B District, although an accessory convenience store is permitted as a special exception. Parking for residential uses is required at a rate of one space for each two dwelling units. A PUD in the R-5-B District may have a maximum height of 60 feet, with no limit on the number of stories, and a maximum density of 3.0 FAR.

24. The C-2-B District is designated to serve commercial and residential functions. The C-2-B District permits a maximum height of 65 feet and a maximum density of 3.5 FAR, of which up to 1.5 FAR may be devoted to non-residential uses. For residential uses, parking is required at a minimum of one space per three dwelling units, and for retail uses, one parking space is required for each 750 square feet of gross floor area in excess of 3,000 square feet. A PUD in the C-2-B District may have a maximum height of 90 feet and a maximum density of 6.0 FAR, of which up to 2.0 FAR may be devoted to non-residential uses.

Rezoning to C-2-B

25. The Opposition argued that rezoning from R-5-B to C-2-B is incompatible with the Comprehensive Plan of 2006 and the Future Land Use Map and is inappropriate for the Site. ANC 3E recommended that, if rezoning was necessary, that the project be rezoned to C-2-A.
26. FNA, through its expert witness George Oberlander, argued that the R-5-B zoning from the 1974 rezoning and the attendant planning goals are still relevant. Mr. Oberlander concluded that rezoning the Site to C-2-B would violate the intent of these planning objectives. The goal of maintaining a buffer zone between the higher density regional center and lower density residential area, as proposed in the 1974 Friendship Heights Sector Development plan, was referenced often by the Opposition.
27. The Applicant argued, however, that the 1974 zoning is based on a more-than-30-year-old analysis that is outdated and has been overtaken by changes in the area. Furthermore, the District has gone through two Comprehensive Planning cycles (1998 and 2006), in which different planning goals and objectives were put in place. Steven Sher, the Applicant's expert in land planning, testified that the Future Land Use Map in the Comprehensive Plan of 2006 designates the Site for mixed-use medium-density residential, low-density commercial, and local public facilities. Furthermore, the Generalized Policy Map of the Comprehensive Plan of 2006 designates the Site in the Main Street Mixed-Use Corridor, for which the common feature is that developments have a pedestrian-oriented environment with traditional storefronts and upper-story residential or office.
28. Mr. Sher concluded that R-5-B is not consistent with the Plan. Mr. Sher further testified that the new Comprehensive Plan does not call for the Site to be a buffer.
29. Mr. Sher further testified that notwithstanding the inapplicability of the 1974 plan, the project is located and designed in a way that provides for a transition from the height and density of the project to the nearby lower scale neighborhoods. The height of the building at the southwest corner is only three stories above grade at Wisconsin Avenue and approximately 45 feet above the alley. This lower height portion of the building and

the open courtyard behind it represent about one-third of the Site. The seven-story portion of the building is removed from the southwest corner of the property more than 50 feet along the south property line and more than 95 feet along the west property line. Furthermore, the project abuts a 20-foot alley in the rear.

30. The Applicant's expert witness further testified that the juxtaposition of height and density permitted along the city's radial corridors adjoining lower density residential developed is a typical condition found throughout the District. This proposed development, with its steps in height, creates more of a transition and has less of an impact than is the case in many matter-of-right locations, where the zoning pattern was presumably determined to be consistent with the overall purposes and intent of the Zoning Regulations.
31. OP, in its report dated February 26, 2007, (Exhibit 112) (the "OP Report") stated that the Comprehensive Plan of 2006 serves as the primary guidance for land use planning and that the 1974 Friendship Heights Sector Development Plan is not relevant.
32. ANC 3E agreed with the Applicant's position that R-5-B was not the appropriate zone for the Site; however, ANC 3E argued that C-2-A was the appropriate zone, because C-2-B is not a medium-density residential zone.
33. The Commission agrees with Mr. Sher that the rezoning of the Site to C-2-B in the context of the PUD is not inconsistent with the Comprehensive Plan. Based on the existing zoning in the immediate area and the designations within the Comprehensive Plan, C-2-A is the zoning that is given to mixed-use moderate-density residential, not medium-density.
34. ANC 3E further argued that the rezoning would set an unwanted precedent for overdevelopment of other nearby sites that may soon be redeveloped. However, the Commission has twice held that "a map amendment granted as part of a PUD establishes no precedent." (5401 *Western Avenue, N.W.*, Zoning Commission Order No. 02-17, 50 DCR 7062, 7069 (2003), quoting, *Tenley Park LLC*, Zoning Commission Order No. 921, 48 DCR 10524-10525 (2001).)
35. The Zoning Commission finds that the C-2-B zone designation related to this PUD is the appropriate zone district based on the Land Use designation and categories set forth in the 2006 Comprehensive Plan.
36. The Zoning Commission finds that the project provides an appropriate massing and height and will include a transition on the Site from the Wisconsin Avenue frontage to the rear. Thus, the rezoning will not adversely impact the nearby lower scale neighborhood.

37. The Zoning Commission finds that rezoning the Site is consistent with the purposes and objectives of zoning as set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01) as follows:
- a. The proposed zone is not inconsistent with the Comprehensive Plan, as stated in Findings No. 105 through 128;
 - b. The proposed zone will not produce objectionable traffic conditions, as stated in Findings No. 52 through 61;
 - c. The requested rezoning will promote the health and general welfare by stabilizing land values, including the provision of home ownership in keeping the character of the surrounding area, and facilitating Metro ridership, as testified to by the Applicant's traffic expert and DDOT; and
 - d. The proposed rezoning will not lead to the overcrowding of land, as stated in Finding No. 82.
38. The Zoning Commission finds that in approving this project, it is not approving rezoning of any other project. The Commission will look at the individual project and the impacts related to the same for each project and will make its decision accordingly.
39. The Zoning Commission finds that the location of the Site, the character of the surrounding area, and the District's planning goals and objectives, including the policies supporting transit-oriented development, support the request for C-2-B zoning on the Site in the context of this PUD.

PUD Project

40. The Applicant proposes the construction of an apartment house that will contain 60 to 70 residential units and approximately 13,200 square feet of ground floor retail. The overall density for the project will be 5.25 FAR.
41. The maximum height of the project will be 79 feet. The massing of the project has been arranged such that the east façade facing Wisconsin Avenue is five stories, while the seven-story portion of the project is predominantly set back from the street. The project steps down to three stories at the rear of the project, closest to the lower scale residential community. The frontage of the project is a more traditional-style brick with punched windows with the remainder of the brick being more glass and modern design.
42. The project will include parking in a below-grade garage, accessed from the 20-foot alley at the rear of the building. Parking will be provided as follows: 1.2 spaces per residential unit based upon the final unit count, 15 retail space, 3 residential visitor spaces, and 2

car-sharing spaces. Based on the unit range of 60 to 70 units, there will be between 92 and 104 parking spaces in the below-grade parking garage.

43. The project will include two loading berths at 30 feet in length, one 20-foot service delivery space, and one 300-square-foot loading platform. Loading will be accessed from the 20-foot alley at the rear of the building.

Size and Scale of the Project

44. The Opposition's primary objection to the building was the size and scale of the project. ANC 3E testified that this project will be the third tallest building and the most dense development in the neighborhood, which is incompatible and out of scale with the adjacent two-story garden apartments and the single-family homes to the west and south. ANC 3E further argued that the project is outside the Friendship Heights Regional Center.
45. FNA similarly argued that the project was not in scale with the immediate neighborhood. FNA testified that the Commission should not approve the project, because the height and density would be among the highest found along the entire Wisconsin Avenue corridor.
46. Eric Colbert, the Applicant's expert witness in architecture, testified that the project was sensitively designed to respond to the various frontages, such as the more dense, commercial frontage along Wisconsin Avenue and the lower scale neighborhoods to the west.
47. Mr. Colbert further testified as to the appropriateness of the size of the Project when reviewed in context and in relation to the existing and approved developments in the area. The view analysis submitted with the Modified Prehearing Submission illustrates the minimum visual impact of the project and establishes that the project will not adversely impact the community or nearby residential properties.
48. The OP Report concluded that the overall massing and design was acceptable and that the project would not adversely impact the adjacent residential properties.
49. Mr. Sher further argued that that project should not be evaluated based on what exists surrounding the project today but rather by looking at development of the Wisconsin Avenue Corridor as it will be planned for the future based on the Comprehensive Plan of 2006. At this Site, designated for medium-density residential and proximate to a Metrorail station entrance, it is appropriate to construct a three- to seven-story residential building with ground floor retail.
50. The Commission concurs with the Applicant's testimony and evidence and OP's conclusions. The height and density of the project are appropriate for the area and serve

as a transition between the established lower density residential neighborhoods and the higher density commercial area.

51. The Commission finds that the height and the density of the project will not have adverse impact on the adjacent areas. The Commission finds that the project is not too big for the Site.

Traffic Impacts

52. A major issue raised by the Opposition was that the project will adversely impact traffic in a community characterized by gridlock. ANC 3E presented generalized concerns related to traffic impacts, including allegations that the project would create unacceptable traffic impacts, cut-through traffic on residential streets, and illegal vehicle traffic in other nearby alleys. FNA presented expert testimony in an effort to establish potential adverse impacts on traffic related to the project.
53. Osborne George of O.R. George & Associates, the Applicant's expert in traffic engineering and transportation planning, testified that the road network serving the project currently operates at acceptable levels of service and will continue to do so upon completion of the project, factoring in approved projects for the area as well as including a two percent annual growth rate to account for reasonable growth. Mr. George concluded that the project will not be objectionable to the adjacent properties.
54. Mr. George also testified about proposed roadway improvements, which it had coordinated with DDOT. These roadway improvements included the removal of designated parking near the intersection of Wisconsin Avenue and Harrison Street to provide for a shared left-turn/through lane and a dedicated right-turn lane. These improvements were offered to improve overall circulation and efficiency of this intersection, not to mitigate potential impacts of the project. Furthermore, in his rebuttal statement, Mr. George indicated that the impetus for encouraging the improvements arose from the Applicant's interaction with the community, during which residents requested that the Applicant analyze this intersection, and recent area studies conducted by DDOT to improve existing traffic issues.
55. In its initial report dated February 27, 2007 (Exhibit 119) ("DDOT Report"), DDOT supported the findings of the Applicant's traffic impact analysis that no adverse impacts would result from the development and that the proposed roadway improvements are likely to improve the overall traffic operations near the Site. Ken Laden, the Associate Director for the Transportation Policy and Planning Administration of DDOT, testified for DDOT at the hearing and confirmed these findings.
56. The Opposition argued that the Applicant's analysis of traffic impacts was flawed and indicated that the Project would create adverse traffic conditions. Mr. Mehra, FNA's

traffic expert, testified on behalf of FNA and critiqued the analysis presented by the Applicant's traffic expert.

57. Mr. Mehra raised the following issues (Exhibit 227): the Applicant's traffic study was incomplete, because it did not include certain analyses; the Applicant's traffic study included erroneous assumptions; the Applicant's traffic study included factual errors; and the Applicant's traffic study included erroneous modeling assumptions.
58. Prior to the continuation hearing on April 12, 2007, the Applicant submitted a Traffic Impact Assessment Amendment and Supplementary Information dated March 29, 2007 (Tab A of the Applicant's Submission of Additional Information, Exhibit 235). This supplemental analysis set forth revisions to the originally-submitted analysis and responded to some of the issues raised by FNA's traffic expert.
59. DDOT reviewed Mr. Mehra's report and the Applicant's supplemental analysis and responded in a report dated April 10, 2007 (Exhibit 245). In this report, DDOT reaffirmed its earlier finding that the project will not have an unacceptable impact on the surrounding transportation system.
60. The Applicant's traffic expert responded to the remaining issues raised by Mr. Mehra in his rebuttal testimony (Tab B of the Applicant's Rebuttal and Closing Statement, Exhibit 307).
61. The Commission adopts the Applicant's traffic expert's conclusions finding no adverse impact as a result of the project and DDOT's reports and conclusions confirming the findings and analysis of the Applicant's traffic expert. The Commission finds that the proposed measures at the intersection of Harrison Street and Wisconsin Avenue are not necessary mitigation measures for this project but instead will serve to improve existing traffic congestion in this area. The Commission, therefore, finds that the project will not have an adverse or unmanageable impact on the street system and other traffic conditions in the area.

Parking

62. The Opposition argued that the proposed parking is not sufficient to meet the demands of the project. The Opposition argued that, as a result, cars would spill into the neighborhood and further exacerbate the parking problems that exist today. The Opposition further argued that the provision of three visitor spaces would not adequately accommodate visitors to the residential portion of the project.
63. The Applicant submitted that its parking range of 1.2 parking spaces per unit plus parking spaces for retail users and visitors to the project would more than satisfy the parking demand for the project. Furthermore, the Applicant proffered to restrict the ability of

residents of the project to obtain Residential Parking Permits to help prevent excess cars from being parked on the residential streets.

64. The Applicant also testified that the project results in the elimination of the existing curb cuts on Wisconsin Avenue and results in the restoration of five on-street, metered parking spaces.
65. The report of the Applicant's traffic expert (Tab F to the PUD Submission) indicated that the parking provided was more than that required by zoning. Furthermore, the report noted that the project's parking supply had been planned to meet the projected need of the future land use to ensure no spill-over into the community.
66. The Commission finds that the parking provided is sufficient to accommodate the project, including visitors to both the retail and residential uses. Thus, the Commission finds that there will be no adverse impact on the nearby residential community.

Loading and Use of the Alley for Access to the Project

67. ANC 3E argued that the Applicant's plans to use the alley behind the project will create unacceptable gridlock.
68. ANC 3E further argued that use of the alley by the project will damage the quality of life for the residents who live adjacent to those alleys.
69. FNA testified similarly that the alley was not sufficient in size for use by loading vehicles and that too many conflicts would occur between vehicles accessing the parking garage and vehicles accessing the loading facilities.
70. The Commission requested that the Applicant review the issues raised by the Opposition and present a revised loading plan.
71. The Applicant, in its Submission of Additional Loading Information dated May 3, 2007 (Exhibit 303), set forth modifications to the loading facilities, addressing the adequacy of space for trucks to maneuver and the interaction between trucks and other vehicles utilizing the alley to access the residential and retail parking areas.
72. The primary changes included substantial expansion of the area in the P-1 level devoted to loading, relocation of the loading bays within the expanded loading area further inside the building away from the alley, movement of one car-share parking space and column into the building, and reconfiguration of the 300-square-foot loading platform area.
73. The Applicant's traffic expert stated that, with these modifications, trucks accessing all three loading bays will do so with ample clearance, even when all other bays are in use. In addition, the Applicant's traffic expert testified that vehicles using the bays will be able

to safely and efficiently complete movements, thereby quickly freeing up the 20-foot alley for other vehicles. Furthermore, the Applicant's Traffic Expert found that the new configuration also decreases the likelihood of trucks backing up into areas where car drivers do not see them approaching. Overall, the Traffic Expert concludes that the revised loading configuration will provide adequate, efficient, and safe access for the vehicles using the facilities.

74. Although given an opportunity to respond to the Applicant's revised loading submission, neither FNA nor ANC 3E submitted a response.
75. The Commission finds that the modified loading configuration, as shown in the plan attached as Tab D to the Applicant's Submission of Additional Loading Information, is superior to the previously proffered plan. Furthermore, the Commission agrees with the Applicant's traffic expert that the modified configuration will provide adequate, efficient and safe access for vehicles using the facilities.
76. The Commission further finds that the use of the alley for access to the project's loading and parking facilities will not adversely impact traffic in the alley and will not adversely impact the residents in this square.
77. The Opposition also raised concerns regarding accessing the loading facilities from the alley at all.
78. ANC 3E argued that the requisite trucks could not access the loading facilities due to the narrowness of the alley.
79. The Applicant argued that, of the two potential locations for access to the loading facilities (i.e., Wisconsin Avenue or the 20-foot wide public alley), access from the alley was the better option. The alley provides more than sufficient maneuvering space, especially with the modifications to the loading facility and as a result of the alley configuration itself, with an intersection of a 15-foot alley near the berths and the angled area all providing for improved maneuverability.
80. The Applicant further argued that Wisconsin Avenue would not be a desirable location for loading. Trucks accessing the loading berths would likely disrupt traffic on Wisconsin Avenue. Vehicles' use of the loading area would also pose dangers for pedestrians using the sidewalk when a truck backs into the loading berth across the sidewalk. Moreover, location of a loading dock off of Wisconsin Avenue would eliminate a substantial portion of the proposed retail frontage and would result in undesirable curb cuts as well as the inability to restore the on-street parking in this location.

81. The Commission also agrees with the Applicant and finds that loading should be located from the alley, which is the purpose for alleys in the District. The Commission finds that the 20-foot alley is dead-end and the current use of the alley by vehicles is minimal.

Development Flexibility and Incentives

82. The Applicant requests the following areas of flexibility from the C-2-B standards:

- a. *Rear Yard:* The Applicant seeks flexibility from the 15-foot rear yard requirement set forth in § 774.7 of the Zoning Regulations. The project provides a 10-foot rear yard (based on the Site abutting a 20-foot public alley) below the 20-foot horizontal plane; the project does not provide a rear yard above that horizontal plane. The project does not meet the normal rear yard requirement as a result of the project's reduced height and resulting design. The project has been designed to respond to its various frontages: the higher density and taller projects to the north in the Friendship Heights regional center as well as the lower scale residential development to the west and southwest. Due to the introduction of the residential courtyard in the middle of the building, which maximizes light and air to the residential units on the lower levels, the floor plates become wider and extend back toward the rear of the lot line. If a rear yard setback was incorporated on the first and second floors, the residential courtyard would be compromised or lost. This courtyard provides light and air for the residential units and is essentially relocated open space, achieving the goals of the rear yard requirement. In addition, if a rear yard were able to be provided, it would eliminate space that is currently provided for enclosed service facilities (such as the loading area and trash room).

Based on § 2405.5 of the Zoning Regulations, the Commission has the option to approve a rear yard greater or lesser than the normal requirement, depending upon the exact circumstances of the project. The Commission finds that, based on the circumstances of this project, as identified above, the rear yard requirement for this project can be reduced as proposed.

- b. *Lot Occupancy:* The Applicant seeks flexibility with respect to compliance with the lot occupancy requirements. Section 772.1 of the Zoning Regulations states that no building or portion of a building devoted to a residential use in a C-2-B District shall occupy the lot upon which it is located in excess of 80%. Because the project includes residential uses beginning on the first floor, lot occupancy of 80% must be achieved for each level. The first level, which contains only three residential units in the rear, has a lot occupancy of 100%. The second level has a lot occupancy of 84.7%, and the third level has a lot occupancy of 88.4%. Levels four through seven maintain a lot occupancy of less than 80%. The mean lot occupancy for the project is 75.5%. Similar to the rear yard flexibility, the

Applicant requests the lot occupancy relief so that it can configure the building in a manner that is sensitive to the lower scale projects to the west as well as achieve courtyards, usable retail space, and enclosed service facilities.

The Opposition testified that the requested lot occupancy removes important green space and public open space that the project should provide.

The Applicant responded that there is no requirement for open space on the lot to be publicly available or green. In fact, the open space would likely be paved and used for private gathering space or service-type activities.

Based on § 2405.4 of the Zoning Regulations, the Commission has the option to approve a lot occupancy greater or lesser than the normal requirement, depending upon the exact circumstances of the project. The Commission finds that there is no specific harm or impact from the requested flexibility from lot occupancy. The project has been designed to address its abutting and nearby property owners and the requested flexibility can be granted, given the balance of other factors. Thus, the Commission finds that based on the circumstances of this project, as identified above, the lot occupancy requirement for this project can be reduced as proposed.

- c. *Loading:* The Applicant seeks flexibility from the loading requirements set forth in Section 2201.1. Although the project provides a required loading berth at 30 feet, a service/delivery space of 20 feet, and loading platforms with more than 300 square feet, the Applicant does not provide the required loading berth of 55 feet. Instead, the Applicant provides an additional loading berth at 30 feet. A 55-foot berth is not necessary to serve this type of development, as was testified to by the Applicant's Traffic Expert. Furthermore, a 55-foot truck would be unable to access the rear of the project through the existing alley system, and therefore, even if a berth was provided, it would be unusable by the residents of the project.

Based on § 2405.6 of the Zoning Regulations, the Commission may reduce or increase the amount of loading facilities depending on the uses and location of the project. Based on this project's proposed use with a maximum of 70 residential units and approximately 13,200 square feet of retail use, the Commission finds that the loading requirements can be reduced as proposed.

- 83. The Applicant initially requested flexibility from the residential recreation space requirements; however, since that time, the residential recreation space requirements have been officially repealed by Zoning Commission Order No. 05-02.
- 84. As part of the PUD, the Commission may grant such flexibility without the need for variance approval from the Board of Zoning Adjustment or compliance with the variance standards that might otherwise apply.

Public Benefits and Project Amenities

85. The project incorporates the following public benefits and project amenities:

- a. ***Housing and Affordable Housing (§ 2403.9(f)).*** The project constitutes a new residential development adjacent to a Metrorail station that will provide residential space beyond that permitted under existing zoning.

The Applicant shall dedicate 12% of the bonus residential density (approximately 6,800 square feet of gross floor area) to on-site affordable units. The affordable units will be reserved for those District of Columbia residents making 80% or less of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Area.

In addition, the Applicant shall contribute \$500,000 to the Lisner-Louise-Dickson-Hurt Home (the "Lisner Home"), a home serving the indigent elderly located two blocks from the Site, to underwrite the housing costs of operating four units of housing in its Community Residential Facility (the "CRF") for a period of 15 years. This amenity provides housing for the indigent elderly. Residents of the CRF have fixed incomes well below the 30% AMI level (average of \$10,781), and the average age of residents is 81.

ANC 3E argued that affordable housing should not be considered an amenity, because it would otherwise be required in accordance with the Inclusionary Zoning regulations. Furthermore, ANC 3E argued that the donation to the Lisner Home should not be considered an amenity, because it did not create new affordable housing, rather it simply maintained existing affordable housing.

OP testified that the Inclusionary Zoning regulations had not yet gone into effect and thus do not apply to this development.

The Commission finds that the provision of additional housing and affordable housing – both the creation of new on-site affordable housing and the maintenance of off-site affordable housing for the elderly – are valuable community benefits of the PUD that should be recognized.

- b. ***Special Value to the Neighborhood (§ 2403.9(i)).*** The Applicant proposes several amenities that will provide special value to the neighborhood, including the following:
 - (1) *Enhancements to the Façade of the PEPCO Substation.* The Applicant shall update the PEPCO substation that is adjacent to the Site and has a bricked-over and damaged storefront façade. The Applicant proposes the following

improvements: installation of new retail storefront-type windows; improvements and/or restoration of the building façade materials; and improvements and/or replacement of the entry door and clock. In addition, the Applicant will improve and beautify the streetscape in the public space abutting the PEPCO Substation. The Applicant will upgrade this storefront and streetscape and will maintain these improvements until the earlier of the following: (a) 15 years after the issuance of a certificate of occupancy or (b) such time when PEPCO or a subsequent landowner of the substation property chooses to redevelop or otherwise substantially alter the substation at 5210 Wisconsin Avenue, N.W. The Applicant has coordinated with the DC Commission on Arts and Humanities ("CAH") to create a plan whereby CAH will administer, commission, and install art work (or a set of works) within the storefront windows.

ANC 3E argued that this amenity should not be considered in the balancing test, because it served to benefit the project itself and would likely be achieved with a matter-of-right project.

Subsection 2403.7 of the Zoning Regulations specifically recognizes public benefits as adding attractiveness, convenience, or comfort to the occupants of the project. In addition, § 2403.13 permits public benefits to be located within one-quarter mile of the PUD site "if there is a clear public policy relationship between the PUD proposal and the off-site benefit." Thus, the Commission finds that the proffer can be considered as an amenity based on these provisions of the Regulations. Furthermore, the Commission finds that this public benefit will serve as an aesthetic benefit to the entire community. Accordingly, this amenity should be considered as an amenity for the project.

- (2) *Contribution to the Janney School.* The Applicant shall donate \$100,000 to the Janney Elementary School (the "School") Parent-Teacher Association, a local public elementary school serving the project, with approximately 465 students located at 4130 Albemarle Street, N.W. This contribution will fund the following projects: (a) \$30,000 for field turf installation and grading improvements at the School's soccer field, including a set-aside for ongoing maintenance; (b) \$10,000 for consultation with a security and safety expert for lighting improvements to the School's grounds as well as the purchase and installation of such improvements; (c) \$10,000 for improvements to the temporary overflow classroom structure that sits in the School's playground; (d) \$15,000 for the purchase and installation of new playground equipment for the pre-kindergarten students as well as additional surface tiles for the ground; and (e) dedication of remaining funds (estimated to be \$25,000) for the purchase of classroom computers.

The Opposition argued that this amenity should be of a greater amount and/or be devoted to different uses. The Commission reviews the amenities package

presented by an applicant to determine whether it is appropriate given the development flexibility and incentives requested and the impacts of the project. The Commission does not make decisions as to whether certain amenities should be increased to the reduction or detriment of others. Thus, the Opposition's assertion is not appropriate for consideration by the Commission.

- (3) *Construction Management Plan.* The Applicant proposes a construction management plan intended to minimize potential adverse impacts resulting from the construction of the project.

ANC 3E generally argued that the construction management plan should not be considered an amenity, because it was inadequate and did not provide for protections for the neighborhood beyond that currently required. The only specific complaint set forth by ANC 3E relating to the construction management plan was that the plan did not specify that the Applicant would maintain a pedestrian walkway on the west side of Wisconsin Avenue throughout the construction process.

In response, the Applicant committed during its testimony to maintain a protected pedestrian walkway adjacent to the Site during construction at all times, with the limited exceptions when public space work must occur, such as sidewalk, curb, and gutter installation; utility work; and other associated tasks.

The Commission finds that a construction management plan such as that proposed by the Applicant is not required and constitutes a benefit of the project. Thus, the Commission finds that the proffered plan does provide protections for the neighborhood beyond those required. The Commission finds that the Applicant has also addressed the specific complaint of ANC 3E related to the construction management plan and the pedestrian walkway. Therefore, the Commission finds that this amenity can be considered in the required balancing test.

- c. *Social Services/Facilities (§ 2403.9(g)).* The Applicant shall contribute \$30,000 to IONA Senior Services to expand the services of the IONA Bus, which takes seniors (predominantly from the Friendship Heights and Tenleytown neighborhoods) to grocery stores, pharmacies, department stores, and restaurants as well as to lunch programs and exercise classes. This amenity will provide support for a 20% increase (i.e., an additional 15 to 20 hours of operation per week), including evening trips to artistic and cultural events. Funds will cover an added driver, bus operations, and insurance costs.
- d. *Environmental Benefits (§ 2403.9(h)).* The Applicant shall develop the project to achieve U.S. Green Building Council LEED Certification under the LEED-NC v2.2 guidelines.

The Applicant has agreed to post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy, in an amount equal to 2% of the construction cost for the project, such construction cost amount being that identified on the building permit application. When the project achieves LEED Certification, the Security will be released to the Applicant. In the event that the Applicant does not achieve LEED Certification for the project within 24 months after the date of the certificate of occupancy for the project, the Security will be released to the District, unless the District determines that the sustainable features, as built, provide value. If such finding is made, the District, in its sole discretion, shall determine whether the Security shall be released in part to the District and in part to the Applicant.

ANC 3E argued that the proffer of LEED Certification should not be considered an amenity, because it would be otherwise required by the Green Building Act, recently adopted by the D.C. Council. ANC 3E also argued that the proffer of LEED Certification does not result in any environmental benefits.

OP, in its supplemental report dated April 2, 2007 (Exhibit 234) (OP's Supplemental Report"), stated that the Green Building Act does not require (currently or in the future) LEED Certification at any level for private residential projects.

FNA further argued that LEED Certification should not be considered an amenity. FNA argued that, while the Applicant stated it would be the first residential building in the District to obtain this certification, in fact another residential building obtained certification in April 2007. FNA further argued that the Applicant's proffer only slightly exceeds the minimum requirement for LEED Certification.

The Applicant acknowledged the U.S. Green Building Council's recognition of another residential building in the District, but stated that this certification came well-after the Applicant's statement, at which point there were no such certified projects. Furthermore, the Applicant asserted that, while the project will not be the first residential project to obtain LEED Certification, it is still rare for a residential project to obtain this certification.

The Commission finds that, regardless of whether LEED Certification is rare for a residential project, the proffer is above what is required for a matter-of-right project and provides benefit. The Commission thus finds the LEED Certification, including the associated sustainable design features, to be an important environmental benefit and, thus, accepts the amenity as one to consider for this project.

- e. ***Landscaping (§ 2403.9(a)).*** The Applicant shall provide above-standard paving materials for the public space abutting the project to create an aesthetically-pleasing streetscape, generally as shown on the plans submitted with the Modified Prehearing Submission and as finally approved by the Public Space Management Division of DDOT.
- f. ***Transportation Management Measures (§ 2403.9(c)).*** The Applicant shall include two car-sharing parking space in the project. In addition, the Applicant shall contribute \$40,000 to the creation and funding of a Friendship Heights Transportation Management Coordinator, whose job will be to identify and address transportation issues currently existing in the Friendship Heights Area. DDOT supported this proposed amenity, as indicated in its report dated February 7, 2007 (Exhibit 32), noting that the amenity was intended to address area-wide transportation issues and was not needed to mitigate traffic impacts of the project.

The Commission raised concerns regarding how this amenity would be formatted, the types of uses for the money, and whether the money could be legally accepted by the District. DDOT submitted a supplemental response dated April 4, 2007, further detailing the types of uses for the money, in the record at (Exhibit 236).

However, the Office of the Attorney General had advised the Commission that it has determined that money paid to the District pursuant to a PUD condition is not a gift and may not be used by a District agency until there is an appropriation by Congress. Nevertheless, the Commission is confident that the money will eventually be used for the purpose intended and, therefore, finds that the amenity deserves recognition as a public benefit of the PUD.

- g. ***Employment and Training Opportunities (§ 2403.9(e)).*** The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (DOES). Under this Agreement, the Applicant shall be required to use DOES as its first source to fill all new jobs created as a result of the construction of the project. In addition, the Applicant will make best efforts to fill at least 51 percent of these newly created jobs for, and apprentice and trainee positions with, District residents.

The Applicant has also committed to make a bona fide effort to utilize Local, Small, or Disadvantaged Business Enterprises (“LSDBE”) certified by the D.C. Local Business Opportunity Commission (“LBOC”) in order to achieve, at a minimum, the goal of 35 percent participation in the contracted costs in connection with design, development, and construction of the project.

86. ANC 3E and FNA argued in general that the amenities and benefits were not commensurate with the flexibility and incentives requested and the adverse impacts of the project.
87. ANC 3E also argued that the Applicant did not hold a public meeting through the ANC to obtain public comment to the proposed amenities package.
88. The Applicant responded that it held a well-noticed, open, public meeting in the same location as ANC 3E's meetings to allow for public review and gather input as to the proposed project amenities and public benefits. The Applicant asserted that, as a result of this process, it has presented a thoughtful and comprehensive amenities package.
89. The Commission finds that the amenities have been tailored to specifically address items and programs within the immediate neighborhood, and the overall package was created as a result of community discussion and input.
90. The Commission finds that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects. The Commission finds that the benefits and amenities listed in Finding 85 are acceptable to be included as part of the balancing test required in § 2403.8 of the Zoning Regulations and deserve recognition as benefits and amenities of the PUD.

Compliance with PUD Standards

91. The application complies with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.
92. The Commission finds that the project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the application satisfies the balancing test required in § 2403.8 of the Zoning Regulations.
93. The PUD Site area is approximately 22,500 square feet, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-2-B District, in accordance with § 2401.1(c) of the Zoning Regulations.
94. ANC 3E argued that the project did not meet the one acre minimum area requirements for a PUD in the existing R-5-B Zone District; that the PUD therefore required a waiver of the minimum area requirements under § 2402.1; that the Applicant was required to demonstrate, pursuant to § 2402.1(a), that the PUD "is of exceptional merit and in the best interest of the city or country"; and that the Applicant had not met that test. The Commission finds that it has consistently applied the minimum area requirement based on the zoning requested under the PUD. As stated in Finding 93 above, the project—with

a site area of 22,500 square feet – meets the minimum area requirement of 15,000 square feet for a PUD in the C-2-B Zone District. Thus, the Commission finds that no waiver of the minimum area requirement is necessary.

95. The project has been evaluated under the PUD guidelines for the C-2-B District. The project is within the height and FAR permitted for a PUD within the C-2-B District. The height and mass have been sculpted to respond to the immediate context of the neighborhood.
96. The Opposition testified as to concerns related to the impact of the project on fire, school overcrowding, and emergency and medical services vehicles.
97. The Commission heard testimony from residents who believe emergency vehicles are currently using side streets to reach emergency calls due to congestion on Wisconsin Avenue.
98. According to the OP Report, Fire and Emergency Medical Services ("FEMS") responded that Wisconsin Avenue is wide enough to allow proper navigation through traffic and that it is rare that an emergency vehicle would use a side street to avoid traffic.
99. The Commission finds that, based on the minimal traffic created by this project and based on the FEMS response, there will be no adverse impacts on FEMS vehicles accessing emergency situations.
100. OP also indicated in its report that the Metropolitan Police Department ("MPD") expressed concern about the effect that construction could have on Wisconsin Avenue traffic flow.
101. In response, the Applicant committed during its testimony at the hearing to maintain the Wisconsin Avenue curbside lane open for traffic during the weekday morning rush hour, with limited exceptions during which times street improvements and/or utility work located in this public space must occur. The Commission finds that the Applicant's commitment addressed the concern raised by MPD.
102. The Applicant also testified that, based on similar projects in the area, there would be relatively few elementary school aged children in the project.
103. The Commission finds that there will be no adverse impact on the surrounding area. The Commission also finds that the project – incorporating only 60 to 70 additional residential units and approximately 13,200 square feet of retail space – will not have an adverse impact on the District's infrastructure, including schools, police, fire, and EMS services.

104. The Commission finds that the project will provide additional economic boost to the Friendship Heights area and the District of Columbia, as indicated in the Economic Impact Analysis attached as Tab G to the PUD Submission.

Consistency with Comprehensive Plan

105. At the time the application was filed, the governing comprehensive plan was the Comprehensive Plan of 1998. The Applicant, in its PUD Submission, set forth in detail the project's consistency with that plan.
106. On March 12, 2007, the Comprehensive Plan of 2006 came into effect and became the governing document. The Applicant's expert witness testified in detail and submitted a report to the Commission (Exhibit 210) regarding the project's compliance with the Comprehensive Plan of 2006.
107. The Future Land Use Map of the Comprehensive Plan of 2006 designates the Site for Low-Density Commercial/Medium-Density Residential/Local Public Facilities. The Medium-Density Residential designation defines neighborhoods or areas where mid-rise (i.e., four to seven stories) apartment buildings are the predominant use. The Low-Density Commercial designation defines shopping and service areas that are generally low in scale and character and can include areas that are small business districts or large business districts. The project is consistent with this designation.
108. The Generalized Policy Map of the Comprehensive Plan of 2006 includes the Site in the Main Street Mixed-Use Corridor, which has a common feature of pedestrian-oriented environment with traditional storefronts and many with upper story residential or office uses. The project is consistent with this designation.
109. The Land Use Element (Chapter 3) of the Comprehensive Plan of 2006 sets forth the importance of a focus on transit-oriented and corridor development, which is a central theme throughout many elements of the plan. The Comprehensive Plan of 2006 recognizes the importance of fully capitalizing on the investment made in Metrorail and states that this requires better use of the land surrounding transit stations and along transit corridors. The plan further states that much of the city's planning during the last five years has focused on making better use of transit areas. The plan sets forth certain principles for management of these lands, including the following: a preference for housing above ground-floor retail uses; a preference for diverse housing types, including both market-rate and affordable housing units; a priority on attractive, pedestrian-friendly design; and a stepping down of densities away from each station.
110. The Opposition argued that the Metro Core Capacity Study, dated December 20, 2001, found that in the future there would be insufficient system capacity during peak hours in

the central portion of the District and that the Commission should, therefore, not assume that the Metro can accommodate this development.

111. The Applicant noted for the Commission that the drafters of the Comprehensive Plan of 2006 were aware of and fully-informed by the Metro Core Capacity Study. Notwithstanding this information, the Comprehensive Plan of 2006 sets forth a central theme in the plan of concentrating future development near Metrorail and along transit corridors.
112. Furthermore, WMATA submitted a letter, dated April 10, 2007 (Exhibit 244), indicating that a number of the findings of the study no longer apply to current conditions or plans. Although WMATA did not take a position on this project, it did conclude that it enthusiastically supports vibrant, mixed-use, transit-oriented development.
113. The Commission finds that the Metro Core Capacity Study is not dispositive in its decision in this case, based on WMATA's letter and the specific findings of the Comprehensive Plan of 2006.
114. The Opposition further argued that, while the Applicant and OP term this project as a transit-oriented project, there are no standards or policies that define a transit-oriented development. Thus, identifying the project as transit-oriented development does not make it consistent with the Comprehensive Plan of 2006.
115. The Commission finds that the Comprehensive Plan of 2006 describes and discusses the principles of transit-oriented development in LU-1.3 and more specifically in § 306.4, which identifies the core principles for development of land around all of the District's neighborhood stations. The Commission finds that, based on these provisions, this project is consistent with and furthers the principles of transit-oriented development in the Comprehensive Plan of 2006.
116. The Comprehensive Plan of 2006 also stresses the critical housing issues facing the District, including, among other things, ensuring housing affordability, fostering housing production, and promoting home ownership. The new Housing Element recommends providing zoning incentives to developers proposing to build affordable housing, which should be considered as a public benefit for the purposes of granting density bonuses when new development is proposed. The PUD project is an ideal candidate for these incentives.
117. The Rock Creek West Area Element within which the Site is located, supports the development of underutilized sites along the major corridors. This area element, however, raises the issues of height, scale, character, and density as sources of concern. Policy RCW-1.1.1 encourages both residential and commercial development to be carefully managed to enhance existing scale, function, and character of the

neighborhoods. Policy RCW-1.1.4 encourages projects to combine housing and commercial uses rather than projects that contain single uses, so long as scale and character are appropriate.

118. The Opposition argues that the project does not appropriately address the issues of height, scale, character, and density. The Applicant, however, argues that the project has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the medium-density commercial and residential uses in the area, consistent with the Future Land Use Map.
119. The Commission finds that the project provides the needed stepping down of building heights intended in the Comprehensive Plan of 2006 and furthers the policy of providing for careful transitions along the avenues to nearby neighborhoods.
120. The Rock Creek West Area Element also emphasizes the need for a better variety of retail choices, including favoring neighborhood-serving retail, which this project provides. Policy RCW-1.1.3 promotes supporting and sustaining local retail uses. Similarly, Policy RCW-1.1.5 indicates a preference for local-serving retail uses providing a range of goods and services necessary to meet the needs of local residents.
121. The Rock Creek West Area Element raises the issues of traffic and parking. Specifically, the impacts of new developments on traffic and parking must be mitigated to the greatest extent feasible.
122. According to the Applicant, the PUD project will have no adverse impact on traffic, based on the findings of the Applicant's traffic expert as well as the conclusions of DDOT. Furthermore, the Applicant has provided more than sufficient parking in the project's below-grade parking garage and has agreed to prohibit residents of the project to obtain residential parking permits. The location of the project adjacent to multiple mass transit facilities, including the Metrorail station, as well as the project's incorporation of bicycle parking, shower, and changing room, and car-sharing spaces, all help to encourage reduced vehicle trips to and from the Site. The Applicant asserts that all of these efforts mitigate the impacts of the project on parking in the community.
123. The Opposition argues that the proposed project will adversely impact the traffic and parking in the area and thus the project is not consistent with the Comprehensive Plan.
124. The Commission finds that the Applicant's traffic expert's findings and DDOT's conclusions related to the impacts of the project, as well as various elements of the application to mitigate traffic and parking impacts, such as car sharing vehicles, provision of sufficient parking, and prohibition on residential parking permits for residents ensure that the Commission's land use decision, will not exacerbate congestion and parking problems in already congested areas. Furthermore, the Applicant's transportation

measures – such as the contribution towards a Friendship Heights Transportation Management Coordinator and support in encouraging the reconfiguration of the Harrison Street and Wisconsin Avenue intersection – will help improve traffic conditions in the area.

125. The Comprehensive Plan of 2006 recognizes the importance of neighborhood conservation. A guiding principle of the plan is to protect, maintain, and improve the residential character of neighborhoods. The Rock Creek West Element (RCW-1.1.1) requires that future development in both residential and commercial areas be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods.
126. The Applicant presented testimony that the impacts of the project would not adversely impact the residential character of the low-scale neighborhoods to the west. The project has been designed to recognize and respond to the scale of that development, while reflecting the more dense character of Wisconsin Avenue. The Applicant argued that impacts of this size apartment house – with only approximately 35 more units than could be built as a matter of right – along with approximately 13,200 square feet of ground floor retail are minimal on the immediate neighborhood.
127. The Commission agrees with the Applicant and finds that the proposed project will not adversely impact the adjacent neighborhood. The Commission finds that the project is not inconsistent with the goals of neighborhood conservation as set forth in the Comprehensive Plan of 2006.
128. The Commission finds that the project is not inconsistent with the Comprehensive Plan of 2006, including the Future Land Use Map, the Generalized Policy Map, and the text.

Office of Planning

129. By the OP Report and through testimony presented at the public hearing, OP recommended approval of the application subject to the following:
 - a. Clarification to the construction management plan regarding impacts to Wisconsin Avenue and pedestrian mobility during construction.
 - b. Prior to the issuance of a certificate of occupancy, submission of a financial instrument guaranteeing LEED certification.
130. In its testimony at the hearing, the Applicant addressed OP's issues as follows:
 - a. The Applicant agreed to maintain a protected pedestrian walkway adjacent to the Site during construction, with the exception of when public space work must

occur, such as sidewalk, curb, and gutter installation; utility work; and other associated tasks.

- b. The Applicant noted that it had already agreed to submit a Security related to its amenity of LEED certification.

- 131. The OP Report also raised the issue as to whether the Applicant would proffer First Source Employment and LSDBE agreements as amenities.
- 132. In response, the Applicant agreed to enter into First Source Employment and LSDBE agreements as part of its amenities package, as set forth in Finding No. 85(g).
- 133. OP testified and also set forth in the OP Report that the project would have no adverse impact on the surrounding area or District, was not inconsistent with the Comprehensive Plan of 1998 or the Comprehensive Plan of 2006, and recommended approval of the project.
- 134. In response to the Commission's request for clarification as to the scope of the Green Building Act, the OP Supplemental Report set forth the applicability of that Act. OP concluded that the Act does not regulate the construction of privately-financed residential buildings, so that Act would not apply now or in the future to this project.
- 135. The Commission finds that each of the issues set forth in Finding No. 129 and Finding No. 131 as issues raised by OP have been resolved by or addressed in Finding No. 130 and Finding No. 132.

District Department of Transportation

- 136. In the DDOT Report and through its testimony at the March 8, 2007 public hearing, DDOT recommended approval of the application.
- 137. In its Supplemental Report dated April 4, 2007 (Exhibit 236) DDOT responded to the Commission's request for additional information related to the transportation amenity, referenced in Finding No. 85(f). DDOT's Supplemental Report set forth clarifications as to the use for the proffer in response to the Commission's request for such information. DDOT's Supplemental Report also concluded that a direct proffer of funds to DDOT for an amenity would be inappropriate and prohibited by District law. However, the donation could be submitted through the Office of Partnerships and Grants Development ("OPGD"), assuming that OPGD carefully reviewed the proffer and determined that the donation is permissible. General Counsel to OPGD reviewed the proffer and determined that such donation could be legally accepted by the District (Exhibit 262).
- 138. DDOT submitted a second supplemental report dated April 10, 2007 ("DDOT's Second Supplemental Report"). DDOT's Second Supplemental Report (Exhibit 245), provided a

response to the supplemental traffic information submitted by the Applicant and a response to the testimony of Joe Mehra, FNA's traffic witness. DDOT concluded that, following a review of those materials, DDOT continued to support the project and application, finding that the project will not have a negative impact on the surrounding transportation system.

139. The Commission finds that DDOT's conclusions are persuasive. The Commission finds that the project will have no adverse traffic impacts. The Commission further finds that the transportation amenity can be accepted and will serve to benefit the transportation issues currently existing in the area.

ANC 3E Report and Testimony

140. By letter dated February 28, 2007 (Exhibit 117), ANC 3E indicated that it voted to oppose the project by a vote of 4-1. The bases for its opposition were as follows:
 - a. The requested map amendment is not appropriate.
 - b. The project will have serious adverse impacts on the community.
 - c. The proposed amenities package does nothing to alleviate the tremendous burdens this project will place on its closest residential neighbors.
141. ANC 3E also submitted a resolution, approved by ANC 3E on February 8, 2007 (Exhibit 50). This resolution sets forth issues and concerns similar to those discussed in Finding No. 140, but raises the following additional issues and concerns:
 - a. Use of the alley for access to both the PUD project's loading and the parking garage will turn the alley into a virtual street, seriously decreasing safety and quality of life for residents living nearby.
 - b. The loading docks cannot manage 30-foot trucks, with such length being inadequate and unrealistic, and a 30-foot truck cannot maneuver down the alley to access the loading dock.
 - c. The Applicant had only limited communications with concerned residents and did not meet with some community groups that had objections to the proposal in order to reach a consensus.
 - d. The Applicant did not work with ANC 3E to discuss the amenities package at a regular public ANC 3E meeting.

- e. The project will result in already scarce parking spaces being taken away from community residents by the project's customers, employees, and guests, because the project does not provide adequate parking.
 - f. The project will strain even further the District's infrastructure, including streets, schools, police, fire, and EMS services.
 - g. The construction management plan does not protect the neighborhood and does not specify that the developer would maintain a pedestrian walkway on the west side of Wisconsin Avenue throughout the construction process.
142. ANC 3E testified at the hearing through Commissioners Lucy Elridge and Carolyn Sherman. The primary issues raised in the oral testimony include the following:
- a. Rezoning to C-2-B with a PUD is incompatible with the Comprehensive Plans of 1998 and 2006 and is inappropriate for the Site, and rezoning to C-2-A would be compatible.
 - b. The project will have serious adverse impacts due to the scale and size of the project, loss of buffer zone, the entrance to the parking and loading facilities from the alley, increased traffic, and scarcity of on-street parking.
 - c. The amenities do not mitigate the adverse impacts.
143. ANC 3E also presented arguments in its filing dated April 9, 2007 (Exhibit 248), that primarily reference the importance of neighborhood conservation and impacts on neighborhoods as set forth in the Comprehensive Plan of 2006.
144. The Commission finds that the issues and concerns raised by ANC 3E have been fully addressed throughout this Order, and the Commission finds that all of the issues and concerns have been addressed or resolved. The Commission finds that the specific issues and concerns have been resolved as follows:
- a. The requested map amendment to C-2-B in the context of this PUD is appropriate and is consistent with the Comprehensive Plan of 2006, as set forth in Findings No. 25 through 39.
 - b. The project is not inconsistent with the Comprehensive Plan of 2006, as set forth in Findings 106 through 129.
 - c. The project will not have serious adverse impacts on the community, as follows:
 - (1) No adverse impact based on the size and scale of the project, as set forth in Findings No. 44 through 51.

- (2) No adverse impact based on loss of a buffer zone because the project does transition and step down from the more dense commercial corridor to the lower-scale residential, as set forth in Findings No. 44 through 51 and Finding No. 119.
 - (3) No adverse impact based on the use of the alley for the entrance to the loading and parking facilities, as set forth in Findings No. 67 through 81.
 - (4) No adverse impact based on traffic generated by the project, as set forth in Findings No. 52 through 61.
 - (5) No adverse impact based on parking on residential streets, as set forth in Findings No. 62 through 66.
 - (6) No adverse impact on the District's infrastructure, including schools, police, fire, and EMS services, as set forth in Findings No. 96 through 103.
- d. The Applicant did have meaningful contact with the community and ANC 3E to review the project and the proposed amenities package, as set forth in Findings No. 87 through 90 and Findings No. 146 through 149.
 - e. The proposed amenities package when balanced with the development incentives and flexibility requested and the impacts of the project are sufficient, as set forth in Findings No. 85 through 90.
145. The Commission afforded the views of the ANC 3E the "great weight" to which they are entitled.

Community Interaction

146. ANC 3E argued that the Applicant had only limited communications with concerned residents and did not meet with some community groups that had objections to the proposal in order to reach a consensus.
147. In its rebuttal statement (Exhibit 307), the Applicant set forth in detail the breadth of its community interaction, including that, over more than a year, the Applicant's team visited with neighbors living close to the Site on more than 50 occasions, the Applicant's team presented at or facilitated four public meetings, the Applicant disseminated hundreds of fliers, and the Applicant maintained a website with all materials posted and contact information for questions or comments.

148. The Applicant also set forth in its rebuttal a summary of modifications made to the project in response to comments from the community prior to submission of the application.
149. The Commission finds that, although greater consensus was not reached for this project, the Applicant has established that it did seek community input and comment. Furthermore, the Commission finds that the neighborhood is divided in its support and opposition for this project, finding that many organizations and residents support the project and many organizations and residents oppose the project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the construction of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than is achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse impact on any nearby properties. Residential use with ground floor retail is appropriate for the Site. The size and scale of the project are appropriate for the Site, as the project has been appropriately designed to respect the surrounding areas. The impact of the project on the surrounding area is not unacceptable.
6. The application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.

7. The number and quality of the project benefits and amenities offered are a sufficient trade-off for the flexibility and development incentives requested.
8. Approval of the application is appropriate, because the project is consistent with the present and future character of the area.
9. Approval of the application is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 3E's opposition and has responded to or addressed each of its issues and concerns.
11. The approval of the application will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
12. The rezoning of the PUD Site to C-2-B is consistent with the purposes and objectives of zoning as set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01).
13. Notice was provided in accordance with the Zoning Regulations and applicable case law.
14. The application is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.
15. The Commission is required under § Section 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 Findings No. 129 through 135). For the reasons stated above, the Commission concurs with OP's recommendations and has included the recommended conditions into this Order.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development and for a Zoning Map amendment to C-2-B. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Eric Colbert & Associates, dated February 15, 2007 (Exhibit 42), as supplemented by the

Post-Hearing Submission of Additional Loading Information (Exhibit 303) (collectively the "Plans), as modified by the guidelines, conditions, and standards herein.

2. The PUD shall be a residential project, containing between 60 and 70 residential units, with ground floor retail. The maximum density of the project shall be 5.25 FAR, or approximately 118,125 square feet of gross floor area, with approximately 13,200 square feet of gross floor area devoted to commercial use.
3. The maximum height of the building shall be 79 feet, with steps down in height on the Wisconsin Avenue frontage and at the rear of the building, as shown on the Plans. The project may include a roof structure with a height not to exceed 12 feet, with the setbacks shown on the Plans.
4. The project shall include 1.2 parking spaces per residential unit (rounded to the next whole number) in the below-grade parking garage, based upon the final unit count. In addition, the project shall also include 15 retail parking spaces, three residential visitor parking spaces, and two car-sharing spaces. The project shall provide loading as shown on the Plan dated May 1, 2007, submitted as Tab D of the Applicant's Post-Hearing Submission of Additional Loading Information.
5. The project shall include streetscape improvements for the public space abutting the project as shown on Sheet 29 of the Plans and the public space abutting the adjacent PEPCO substation, both of which are subject to final approval of the details by the Public Space Management Division of DDOT.
6. The Applicant shall provide affordable housing as described in the summary attached as Tab A in the Prehearing Submission (Exhibit 23). The Applicant shall have the flexibility to make minor modifications to the affordable housing program, so long as the total amount of affordable housing does not fall below 12% of the bonus residential density. The affordable units shall be reserved for households making no more than 80% of the Area Median Income.
7. The Applicant shall contribute \$500,000 to the Lisner Home to be used by the Lisner Home to underwrite the housing costs of operating four residential units in its Community Residential Facility for a 15-year period of time. The Applicant shall make this contribution, accompanied by a letter requesting that the contribution be placed in a restricted fund for this use, prior to the issuance of a certificate of occupancy for the project.
8. The Applicant shall upgrade the storefront façade of the adjacent PEPCO substation with the following improvements: installation of new retail storefront-type windows; improvements and/or restoration of the building façade materials; and improvements and/or replacement of the entry door and clock. The Applicant shall complete these

upgrades prior to the issuance of a certificate of occupancy. The Applicant shall maintain these improvements until the earlier of the following: (a) 15 years after the issuance of a certificate of occupancy for the subject PUD or (b) such time when PEPCO or a subsequent landowner of the substation property chooses to redevelop or otherwise substantially alter the substation at 5210 Wisconsin Avenue, N.W. The Applicant, in conjunction with PEPCO, shall make the display windows available for the installation of public artwork by the D.C. Commission on the Arts and Humanities, in accordance with Exhibit 2 of the Applicant's Modified Prehearing Submission.

9. The Applicant shall contribute \$100,000 to the Janney Elementary School PTA for the specific purposes set forth in Section III E of the Applicant's Prehearing Submission. The contribution shall be accompanied by a letter to the PTA stating the purposes for the money and the amount for each purpose, as set forth in Finding No. 85(b)(2) above. The Applicant shall make this contribution prior to the issuance of a certificate of occupancy.
10. The Applicant shall contribute \$30,000 to IONA Senior Services for purposes of expansion of the IONA Bus service, as more fully set forth in the Applicant's PUD Submission. The Applicant shall make this contribution prior to the issuance of a certificate of occupancy.
11. The Applicant shall provide approximately 13,200 square feet of ground floor retail space, as shown on the Plans, and that includes at least three distinct retail/service uses on the ground floor of the building. Each retail space shall have its primary entrance from the sidewalk on Wisconsin Avenue and shall be subject to the following further restrictions:
 - a. No more than 3,500 square feet shall be leased to a branch bank. ATMs (Automatic Teller Machines) shall be permitted but do not count toward the three distinct ground floor retail uses.
 - b. To ensure adequate window coverage on the Wisconsin Avenue retail portions of the building, the Applicant shall construct the retail space in accordance with the Plans and shall not alter this design through modifications or amendments to make the total glass area any smaller.
 - c. The restrictions set forth in Condition 11 shall remain in effect for a period of 15 years following the issuance of a certificate of occupancy.
12. The Applicant shall provide \$40,000 to the District of Columbia with the condition that the moneys may only be used to fund a Friendship Heights Transportation Management Coordinator, whose job would be to identify and address transportation issues currently existing in the Friendship Heights Area. This payment shall be made prior to the issuance of a building permit for the project.

13. The Applicant shall abide by the terms of the construction management plan proffered in the record at Tab B of the Prehearing Submission. In addition to the terms set forth therein, the Applicant shall maintain a protected pedestrian walkway adjacent to the Site during construction, with the exceptions of when public space work must occur, such as sidewalk, curb, and gutter installation; utility work; and other associated tasks. The Applicant shall also maintain the Wisconsin Avenue curbside lane open for traffic during the weekday morning rush hour, with limited exceptions during which times street improvements and/or utility work located in this public space must occur.
14. The Applicant shall obtain LEED Certification for the project. The Applicant shall post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy for the project, in an amount equal to 2% of the construction cost for the project shown on the building permit application. When the project achieves LEED Certification, the Security shall be released to the Applicant. In the event that the Applicant does not achieve LEED Certification for the project within 24 months after the date of the certificate of occupancy for the project, the Security will be released to the District.
15. The Applicant shall enter into and abide by the terms of a Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve the target goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, and construction of the project.
16. The Applicant shall enter into and abide by the terms of a First Source Employment Agreement with the Department of Employment Services. This Agreement will require the Applicant to make best efforts to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the new jobs created by the construction of the PUD project.
17. The Applicant shall include language in all documents related to the purchase and sale of the residential units that owners of the units in the building are prohibited from applying for residential permit parking stickers from the District of Columbia.
18. The Applicant 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 but not limited to partitions, structural slabs, doors, hallways, columns, stairways, bicycle storage rooms, shower and changing room, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;

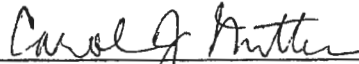
- c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction provided that there is no reduction in quality;
 - d. To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - e. To vary the number of units from 60 to 70 total apartment units, with a parking ratio of 1.2 spaces per unit based on the final count of apartment units;
 - f. To adjust the placement of windows, balconies, balcony railings, and privacy screens as necessary based upon the final unit count and layout of demising walls, so long as the adjustments do not materially change the exterior appearance of the building;
 - g. To vary the location and placement of the green roof on the highest roof level to maximize aesthetics and stormwater management considerations, so long as the proposed size of the green roof is not decreased;
 - h. To make refinements to the garage configuration, including layout, location and design of parking spaces and/or other elements, so long as the total number of parking spaces provided complies with the PUD approval and the configuration of the spaces, drive aisles, etc. comply with the dimensional requirements of the Zoning Regulations;
 - i. To install awnings over some or all of the retail space windows and to install signage for retail users based upon the retail leasing after construction of the project; and
 - j. To modify the number and location of doorway entrances from Wisconsin Avenue to the retail spaces based on the final configuration and location of the retail spaces in accordance with this Order.
19. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the Site and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such 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.

20. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
21. 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.
22. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, 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.

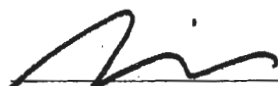
On June 11, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 30, 2007, by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to adopt).

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 OCT 26 2007.



CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 13, 2005

Plat for Building Permit of SQUARE 1657 LOTS 810,811,812

Scale: 1 inch = 30 feet. Recorded in A & T Book Page 3740-R

Receipt No. 23350

Furnished to: HOLLAND & KNIGHT

Robert H. Dwyer
Surveyor, D.C.

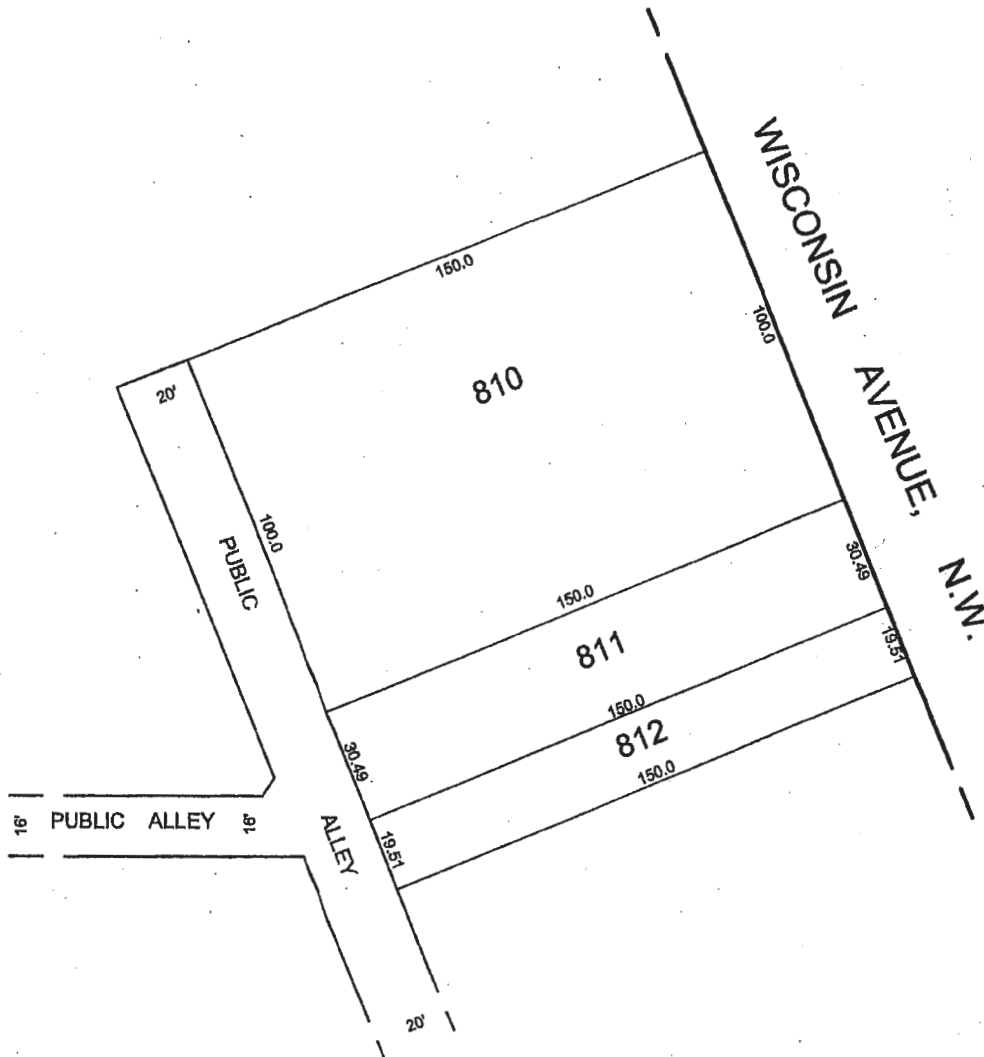
By: L.E.S. *WTO*

Date: _____

(Signature of owner or his authorized agent)

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon are 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 flats, 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.)

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.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-31

OCT 18 2007

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 06-31 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. D.C. Register | 7. Office of Planning (Harriet Tregoning) |
| 2. Christine Shiker, Esq.
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Washington, D.C. 20006 | 8. DDOT (Ken Laden) |
| 3. Amy B. McVey, Chair
ANC 3E
St. Mary's Church
5425 Western Avenue, N.W.
Washington, DC 20015 | 9. Acting Zoning Administrator (Matt LeGrant) |
| 4. Commissioner Carolyn M. Sherman
ANC/SMD 3E03
4341 Ellicott Street, N.W.
Washington, DC 20016 | 10. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 11. Office of the Attorney General
(Alan Bergstein) |
| 6. Councilmember Mary Cheh | 12. Ward 3 Vision
c/o J. Allie Hajian
4504 38 th Street, N.W.
Washington, D.C. 20016 |
| | 13. Friendship Neighbors Assn.
c/o Cornish Hitchcock
5301 Wisconsin Avenue, N.W., #35
Washington, D.C. 20015 |

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "Sharon S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

EXHIBIT 2

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-31A
Z.C. Case No. 06-31
(Consolidated Planned Unit Development and
Zoning Map Amendment for The John Akridge Development Company at 5220 Wisconsin
Avenue, NW)
November 19, 2007**

By Zoning Commission Order No. 06-31 in Zoning Commission Case No. 06-31C, the District of Columbia Zoning Commission ("the Commission") granted the application from The John Akridge Development Company (the "Applicant") requesting consolidated review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia, pursuant to Chapters 24 and 30 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The applications, filed on June 19, 2006, requested a consolidated review and approval of a PUD and a related map amendment to C-2-B for property located at 5220 Wisconsin Avenue, N.W. (the "Site"). After proper notice, the Commission held public hearings on March 8, 2007 and April 12, 2007. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 3E, the ANC within which the property is located, Friendship Neighborhood Association, and Ward 3 Vision.

On October 26, 2007, Zoning Commission Order No. 06-31 (the "Order") approving the applications was published in the *D.C. Register*. The Order became effective on October 26, 2007.

Pursuant to 11 DCMR § 3029.5, ANC 3E filed a motion for reconsideration of the Order by letter dated October 31, 2007. ANC 3E requested two modifications to the Order:

1. That the restriction on applying for Residential Parking Permits (RPPs) apply not only to owners of the project but also to tenants, as proffered by the Applicant. ANC 3E further requested that additional conditions as approved in Zoning Commission Order No. 04-16 be incorporated as well; and
2. That a condition be included in the Order restricting trucks longer than thirty feet from accessing the loading dock, as proffered by the Applicant.

In response to ANC 3E's motion, the Applicant filed a response on November 8, 2007, in accordance with 11 DCMR § 3029.7 of the Zoning Regulations. The Applicant responded to ANC 3E's motion as follows:

1. The Applicant agreed that the restriction on applying for RPPs should apply to all residents (both owners and tenants) and consented to a modification to Condition No. 17 to strike the word "owners" and substitute the word "resident." The Applicant disagreed that the additional conditions from Zoning Commission Order No. 04-16 be incorporated, noting that those conditions were specific to the facts of that case and that there was nothing in the record to support those additional conditions. Furthermore, the Applicant stated that even without the additionally proposed conditions, the neighborhood will receive all of the intended protections because residents of the project will be prohibited from obtaining RPPs under any and all scenarios; and
2. The Applicant agreed that the prohibition of trucks greater than thirty feet should be a condition to the Order and proposed a modification of Condition No. 4 accordingly.

On November 19, 2007, at its regularly scheduled meeting, the Commission considered ANC 3E's Motion for Reconsideration and the Applicant's Response to ANC 3E's Motion for Reconsideration. The Commission concluded that the two changes to the Order as agreed to by the Applicant should be made, in order to accurately reflect the commitments of the Applicant.

For the above-stated reasons, the Commission concludes that the Motion for Reconsideration is granted and that the Order shall be modified as follows:

Condition No. 4 shall now read as follows (addition in underline):

4. The project shall include 1.2 parking spaces per residential unit (rounded to the next whole number) in the below-grade parking garage, based upon the final unit count. In addition, the project shall also include fifteen retail parking spaces, three residential visitor parking spaces, and two car sharing spaces. The project shall provide loading as shown on the Plan dated May 1, 2007, submitted as Tab D of the Applicant's Post-Hearing Submission of Additional Loading Information. The Applicant shall prohibit all trucks with a length of greater than thirty feet from accessing the loading facilities for this project.

Condition No. 17 shall now read as follows (addition in underline, deletion in strike-through):

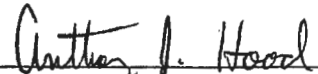
17. The Applicant shall include language in all documents related to the purchase and sale of the residential units that ~~owners~~ residents of the units in the building are

Z.C. ORDER NO. 06-31A
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PAGE 3

prohibited from applying for residential permit parking stickers from the District of Columbia.

Vote of the Commission taken at the regular public meeting on November 19, 2007: 4-0-1 (Anthony J. Hood, John G. Parsons, Gregory N. Jeffries, and Michael G. Turnbull to approve; Curtis L. Etherly, not having participated, not voting).

In accordance with 11 DCMR § 3028.8, this final Order is final and effective upon its publication in the D.C. Register on JAN - 4 2008



ANTHONY J. HOOD
CHAIRPERSON
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING *L*

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



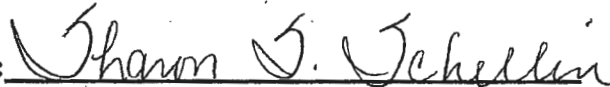
Z.C. CASE NO.: 06-31

JAN 14 2008

As Secretary to the Commission, I hereby certify that on JAN 14 2008 copies of this Z.C. Order No. 06-31A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 8. DDOT (Ken Laden) |
| 2. Christine Shiker, Esq.
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Washington, D.C. 20006 | 9. Zoning Administrator (Matt LeGrant) |
| 3. Amy B. McVey, Chair
ANC 3E
St. Mary's Church
5425 Western Avenue, N.W.
Washington, DC 20015 | 10. Jill Stern, Esq.
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Washington, D.C. 20002 |
| 4. Commissioner Carolyn M. Sherman
ANC/SMD 3E03
4341 Ellicott Street, N.W.
Washington, DC 20016 | 11. Office of the Attorney General
(Alan Bergstein) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 12. Ward 3 Vision
c/o John H. Wheeler
4304 Yuma St., NW
Washington, DC 20016 |
| 6. Councilmember Mary Chén | 13. Friendship Neighbors Assn.
c/o Cornish Hitchcock
5301 Wisconsin Avenue, N.W., #35
Washington, D.C. 20015 |
| 7. Office of Planning (Harriet Tregoning) | |

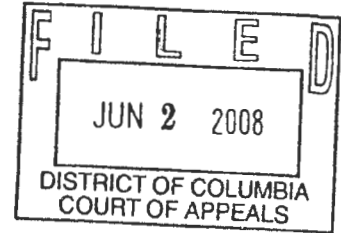
ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

EXHIBIT 3

**District of Columbia
Court of Appeals**



Nos. 07-AA-1270 & 08-AA-63

**FRIENDSHIP NEIGHBORHOOD
ASSOCIATION,**

Petitioner,

ZC31-06

v.

DC ZONING COMMISSION,

Respondent,

and

5220 WISCONSIN LLC, *et al.*,

Intervenors.

ORDER

On consideration of petitioner's consent motion to dismiss these petitions for review, it is

ORDERED that the motion is granted and these petitions for review are hereby dismissed. *See* D.C. App. R. 13 (b).

BY THE COURT:

A handwritten signature in black ink, appearing to read "Eric T. Washington", followed by a horizontal line.

ERIC T. WASHINGTON
Chief Judge

Copies to:

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Todd Kim, Esquire
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dln