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October 4, 2007

VIA HAND DELIVERY

Carol J. Mitten
Chairperson, D.C. Zoning Commission
441 Fourth Street, N.W.
Second Floor
Washington, D.C. 20001

Phil Feola
Phone: 202.663.8789
phil.feola@pillsburylaw.com

Kate Myers
Phone: 202.663.8049
kate.myers@pillsburylaw.com

Re: Broadcast Center Partners, LLC, Z.C. Case No. 07-07

Dear Chairperson Mitten:

Enclosed please find twenty copies of the Proposed Findings of Fact and Conclusions of Law of Broadcast Center Partners, LLC for a consolidated Planned Unit Development and corresponding Zoning Map Amendment for the property located at 7th Street, N.W. between S and T Streets, N.W.

If you have any questions regarding the proposed order, please call the undersigned at (202) 663-8789 or (202) 663-8049.

Sincerely,

Phil Feola

Kate Myers

Attachment

cc: Roy "Chip" Ellis
Stan Voudrie

2007 OCT -4 PM 3:34

D.C. OFFICE OF ZONING

RECEIVED

ZONING COMMISSION
District of Columbia

CASE NO. 07-07

EXHIBIT NO. 41


CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2007 a copy of the Proposed Findings of Fact and Conclusions of Law for Zoning Commission Case No. 07-07 was served by hand and/or by U.S. Mail on the following:

Dee Hunter, Chairperson, ANC1B
2124 12th Place NW
Washington, DC 20009

D.C. Office of Planning
801 North Capitol Street, NE, Suite 4000
Washington, DC 20002
Attn: Travis Parker

Myla Moss, ANC 1B01
335 U St., NW
Washington DC 20001


Kate Myers

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Zoning Commission Order No. 07-07

Consolidated Planned Unit Development and Amendment to the Zoning Map for

Broadcast Center One

_____, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on September 20, 2007, to consider an application from Broadcast Center Partners, LLC for the consolidated review and approval of a Planned Unit Development and a corresponding Zoning Map Amendment for the property located in Square 441, Lots 21, 66, 97, 814, 815, and 854, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on October 14, 2007, the Commission took proposed action by a vote of _____ to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to Section 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated _____, found that the proposed PUD _____.

2007 OCT -14 PM 3:24

D.C. OFFICE OF ZONING

RECEIVED

The Commission took final action to approve the application on _____, by a vote of _____.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. The property that is the subject of this application consists of Lots 21, 66, 97, 814, 815, and 854 in Square 441 and is located on 7th Street, N.W. between S and T Streets, N.W. in the Shaw neighborhood of Ward 1 (“Property”). The Property consists of approximately 51,062 square feet of land area and is located in the ARTS/C-2-B Zone. (Exhibits 24 and 24-A, p. 1)

2. Broadcast Center Partners, LLC (“Applicant”) is comprised of Ellis Enterprises, LLC, The Jarvis Company, and Four Points, LLC, who collectively have extensive experience in developing mixed-use projects and build-to-suit facilities. (Exhibit 3, p.2-4)

3. On March 15, 2007, the Applicant filed an application with the Zoning Commission for review and approval of a transit-oriented Planned Unit Development (“PUD”). The PUD project is a mixed-use project featuring the restoration and integration of the historic and historically-contributing buildings located on the Property and the construction of a new retail/arts, residential and office building (“Project”). The Project proposes to add new street-level retail uses and return the headquarters of Radio One, a major African-America communications/broadcast company, back to the District. The original application did not request a related zoning map amendment. However, the

application requested an increase in density and relief from the following zoning requirements: the roof structure setbacks, residential recreation space, lot occupancy, and loading. (Exhibit 3, p.1, 12-14).

4. At a regularly scheduled public meeting on April 9, 2007, the Zoning Commission voted 4-0-1 to set the case down for public hearing. At that meeting, the Commission members requested the following modifications and information: a related map amendment to ARTS/C-2-C; detailed descriptions with regard to public amenities; detailed descriptions and commitments with regard to the green building elements of the Project; a revised roof plan to better describe the green elements; discussion on the potential for antenna/satellite dishes on the roof; turning diagrams to show loading accessibility of trucks in the alley; clarification on the signatories to a Memorandum of Understanding between the Applicant and community organizations; and enhancements to the Metro Plaza. (Transcript from April 9, 2007, p. 51-62)

5. In its Pre-Hearing Submission, dated July 5, 2007 (Exhibits 24 and 24-A of the record), the Applicant addressed and submitted information with regard to the above-mentioned recommendations and questions from the Commission.

6. In addition, as a result of both the recommendation from the Office of Planning's March 30, 2007 set down report (Exhibit 22) and the Zoning Commission's comments provided at the set down hearing, the Applicant revised its proposal and applied for a PUD related map amendment from ARTS/C-2-B to ARTS/C-2-C. Further, it eliminated its requested relief for residential recreational space.

7. The Applicant requested, by letter (Exhibit 35), the Commission waive its rules with regard to one of the hearing notice requirements of the Regulations. The Applicant inadvertently listed the incorrect date of the public hearing on the Notices posted on the Property. However, the date on the posted notices was actually an earlier date than the actual hearing date. Because all other notice requirements were fulfilled and any interested person still had the opportunity to participate in the hearing subsequent to the date listed on the posters on the Property, the Commission voted to waive this requirement of the rules.

8. The Zoning Commission held a public hearing on the above-mentioned application on September 20, 2007, which was conducted in accordance with the provisions of 11 DCMR § 3022.

9. At the September 20, 2007 public hearing, Phil Feola of Pillsbury Winthrop Shaw Pittman LLP presented the case on behalf of the Applicant. The Commission accepted Marshall Purnell of Devroux & Purnell Architects/Planners, P.C. as an expert in architecture and Edward Papazian of Kimley-Horn and Associates, Inc., as an expert in traffic engineering. (Transcript from September 20, 2007 ZC Public Hearing, p. 9)

10. At the hearing, the Applicant submitted into the record as Exhibit 38 revised plans showing an added third level of parking and information on the sustainable features for both the office and residential buildings as Exhibit 39. (Transcript from September 20, 2007 ZC Public Hearing, p. 28)

PUD SITE AND SURROUNDING AREA

11. The Property is composed of approximately 51,062 square feet of land and is located on 7th Street, N.W. between S and T Streets, N.W. in the Shaw neighborhood adjacent to the Shaw-Howard University Metrorail station. It is in Ward 1 and within the jurisdiction of ANC 1B. A portion of the Property is vacant and a portion is improved with low scale, underused and vacant commercial buildings. (Exhibits 24 and 24-A, p.1)

12. The neighborhood contains the historic Howard Theatre, the Dunbar Theater, and parts of the Greater U Street and LeDroit Historic Districts. Several of the existing structures on the Property fronting both 7th and T Streets are contributing buildings in the Greater U Street Historic District. (Exhibits 24 and 24-A, p.2)

13. In March 2005, the Applicant received preliminary approval from the National Capital Revitalization Corporation (“NCRC”), a publicly chartered corporation responsible for overseeing the redevelopment of underused and emerging areas of the District of Columbia, to develop the Property as a mixed-use complex. (Exhibit 3, p.1, Exhibits 24 and 24-A, p.1)

14. The area of the subject site has been the object of two major Office of Planning initiatives, the “DUKE” Plan for Greater Shaw/U Street, and the Convention

Center Area Strategic Development Plan, both of which recommend a large mixed-use project at the Property to anchor the revitalization of the area. (Exhibit 33, p.1)

DESCRIPTION OF THE PUD PROJECT

15. The proposed development contains approximately 319,917 square feet of gross floor area, which includes 192,511 gross square feet of residential uses (180 apartments), 24,323 gross square feet of retail/arts uses, and 103,083 gross square feet of office use. The development will preserve the architectural traditions of the local historic districts by incorporating the historically-contributing buildings into the Project. The FAR is 6.3 and the Project will have a total lot occupancy of 88%. (Exhibits 24 and 24-A, p. 3-5 and Ex. A.)

16. Viewing the Project from 7th Street, N.W., there will appear to be two new, distinct structures: a glass office component on the southern portion of the site and masonry residential component to the north. The facades of the historic buildings at the northern end of the Property will be rehabilitated and the depth of those buildings will be maintained to a minimum of 40 feet, while elements of the new residential building will feature terraced setbacks so as not to encroach upon the existing historic buildings. The height of both the residential and office elements is 90 feet – nine floors in the residential portion and seven floors in the office portion. At the street level, the Project establishes an open plaza located between the Shaw-Howard University Metrorail Station entrance and the main entrance of the office element. (Exhibits 24 and 24-A, p.3-4, Ex. A)

17. Special attention will be paid to the landscaping along 7th and T Street, N.W. in order to activate the streetscape leading from the Metrorail station along the proposed open plaza. (Exhibits 24 and 24-A, p. 4)

18. Recreation space in the residential building includes private terraces and a large rooftop terrace open to all of the Project's residents. (Exhibits 24 and 24-A, p. 4)

19. The Property is in ARTS/C-2-B Zone District. Under PUD guidelines, the C-2-B Zone District allows a total FAR of 6.0, with a non-residential FAR of 2.0 and a height of 90 feet. The Office of Planning, in its March 30, 2007 report, recommended a map amendment to ARTS/C-2-C to allow for zoning consistency. (Exhibit 22, p.4)

20. The Applicant revised its proposal to incorporate the recommendation from the Office of Planning and applied for a Map Amendment for the property from ARTS/C-2-B to ARTS/C-2-C. (Exhibits 24 and 24-A, p.5)

21. The PUD project complies with the broad parameters for PUDs in the C-2-C Zone District and the ARTS Overlay pursuant to 11 DCMR Chapter 24. However, the design scheme proposed does not meet all of the exact requirements for this zone. Therefore, relief is requested to permit additional 5% (0.30 FAR) density (pursuant to § 2405.3), as well as relief from the following: the roof structure setback, lot occupancy and loading requirements. (Exhibits 24 and 24-A, p.5)

- a. *Additional 5% (0.30 FAR) density:* the Applicant requests that the Commission utilize its discretion to permit the Project to achieve an additional 5% (0.30 FAR) of density pursuant to 11 DCMR § 2405.3 due

to the extensive amount of ground-floor retail/arts space proposed and the provision of such a large amount of affordable housing in the Project.

- b. *Roof structure requirement:* the Applicant requests relief from the roof structure requirements of the Regulations that requires housing for mechanical equipment to be set back from exterior walls at a distance equal to its height above the roof. The proposed roof structure configuration is a result of the Historic Preservation Review Board-approved design which pushes the mass of the building away from the historically contributing buildings on 7th Street, N.W.
- c. *Lot Occupancy:* the Applicant also seeks relief from the lot occupancy requirement. The deviation is necessary because the footprints of the historic buildings occupy a large percentage of the Property and, pursuant to direction from the HPRB, construction over those historic building is discouraged.
- d. *Loading Requirements:* the Applicant requests flexibility from the loading requirements of the Regulations. The Regulations require five loading berths, four at 30 feet deep and one loading berth at 55 feet deep. The Project provides five loading berths at 30 feet deep all accessed from the public alley at the rear of the buildings. Due to configuration of the site, the access constraints of retaining the historic structures on the site and the requirements of the program make it impossible to provide a 55-foot deep

loading berth. The Applicant believes that with proper management, the proposed loading facilities will be adequate to service the Project without creating adverse impacts on the public.

SATISFACTION OF PUD EVALUATION STANDARDS

22. Through written submissions and testimony to the Commission, the Applicant and its representatives asserted that the Project will provide a high quality metro-oriented residential, commercial and retail/arts development on the Property with significant public benefits to the neighborhood and the District as a whole.

23. The Applicant's representative, Roy "Chip" Ellis, testified that the Applicant has tried to ensure that the mixed-use development is in lock step with the Office of Planning's DUKE plan and in keeping with the community's needs. This has been accomplished by the Applicant's continued work with the Office of Planning and in the negotiation of a Memorandum of Understanding with the community that outlines a number off issues important to both the community and the Applicant. (Transcript from September 20, 2007 ZC Public Hearing p. 14-15)

24. The Project satisfies the PUD requirement that it be of exemplary urban design and architecture. The proposed development is located along 7th Street, N.W. -- a major arterial -- and it is immediately adjacent to the Shaw-Howard University Metrorail Station. Given the prominence of the site - at an entrance to a Metrorail station and along a leading commercial corridor with a rich cultural history - the Property offers an important opportunity and the Project fulfills the site's potential. It provides exciting new

housing opportunities, especially for a substantial number of moderate-income households. Moreover, it possesses multiple retail opportunities, particularly for arts-related uses. (Exhibits 24 and 24-A, p.8)

25. This mixed-use development maintains the general character of 7th Street in the Shaw neighborhood while taking full advantage of its prominent, transit-oriented location to create a landmark project that is convenient to Metrorail. The Project blends traditional and modern elements into a signature architectural statement that accommodates an appropriate density without an imposing visual and physical impact on the street. This effect is achieved by: (1) concentrating the mass of the residential portion toward the rear of the site; (2) partitioning the residential portion into three distinct masses; (3) setting back of the office portion behind a sidewalk plaza; and (4) preserving the historically-contributing buildings along 7th Street. The restored historic buildings, window openings, balconies and terraces of the apartment portion and the glass curtain wall of the office portion all combine to create a sense of scale and visual interest. (Exhibits 24 and 24-A, p.8-9)

26. The proposed landscaping incorporates the trees that are an integral part of the District's streets and includes landscaping on the roof and on the private terraces which will add to the overall greenery of the site. Additionally, a generous sidewalk plaza area between the office portion of the Project and the Metrorail entrance is proposed. (Exhibits 24 and 24-A, p.9)

27. The Project satisfies the PUD evaluation criteria that it exemplify high quality site planning. It will both create and take advantage of a vibrant street life on 7th Street through the new retail and arts uses on the ground floor, the renovation of the historically-contributing buildings, and the sidewalk plaza area. Using the alley as the means of entry to the garage and loading area allows the preservation of substantial street parking in front of the building. (Exhibits 24 and 24-A, p.9)

28. The Project's design simplifies vehicular and pedestrian access to promote vehicular and pedestrian safety as required by the PUD review standards. The garage has one point of entry and exit, from the alley to the rear of the building (which has existing access points on S and T Streets), thus improving pedestrian safety and convenience along the busiest street (7th Street) bordering the property. Numerous pedestrian access points to the building along 7th and T Streets encourage walking. (Exhibits 24 and 24-A, p.10)

29. Based on the Traffic Impact Study prepared by Kimley-Horn and Associates, the proposed development is anticipated to generate 140 AM peak hour vehicular trips and 176 PM peak hour vehicular trips. The proposed development would account for approximately 6% of the total AM and PM peak hour traffic volumes at the intersections of 7th and T Streets and approximately 8 to 9% of the total AM and PM peak hour trips at the intersection of 7th and S Streets and not have a significant adverse effect on traffic flow in the area. In addition, the study found that the site and surrounding area are well served by transit including Metrorail and Metrobus and, as a result, there will be

ample opportunities for travel by alternatives to the automobile. (Exhibits 24 and 24-A, Ex. B, p.26).

30. The addition of approximately 180 new households, neighborhood-serving retail and a major media employer (Radio One), will result in the generation of significant additional tax revenues in the form of recordation, transfer, property, income, sales, use and employment taxes for the District, estimated to be approximately \$13.7 million over the next 10 years and more than \$27 million over the next 20 years. (Exhibits 24 and 24-A, p.10)

31. The Project provides approximately 180 new housing units, of which 45 will be affordable. The need for dedicated affordable housing is particularly acute in the neighborhood of the Project, where the lack of large development, combined with increased neighborhood desirability, has recently driven up overall housing prices substantially. (Exhibits 24 and 24-A, p.10-11)

32. The Applicant will enter into an agreement with the Department of Employment Services (“DOES”) for the First Source Employment Program, to promote and encourage the hiring of District residents. During the construction phase, the Project will generate 835 jobs (based on the one-year full-time equivalent) with approximately 426 available to District residents. Once complete, the Project will generate 44 new permanent retail jobs of which at least 22 will be available to District residents. (Exhibits 24 and 24-A, Ex. C)

33. The Applicant will enter into a Memorandum of Understanding (“MOU”) with the Local Business Opportunity Commission (“LBOC”) to use the resources of the LBOC to utilize local business enterprises in the development of the Project. Further, many of the Broadcast Center Partners professional team and partners are Local, Small, Disadvantaged Business Enterprises (“LSDBEs”). (Exhibits 24 and 24-A, p.11)

34. The Project will contribute positively to the natural environment as required by the PUD evaluation standards. The Project site is directly accessible to both the Shaw-Howard University Metrorail Station and to Metrobus routes providing opportunity for alternative transportation for residents and users of the Project. The office component’s penthouse will store water for use for the green roof system and for other site vegetation. The Project will utilize low flow faucets and shower heads and dual or low flush water toilets. Both the office and residential elements will make use of low-emitting adhesives and sealants, paints, carpets and other finishes. During the construction phase, recyclable materials used for construction will be store in appropriate containers for re-use. The reuse and restoration of the existing historic buildings on 7th Streets is an environmentally sound practice. In addition, a program will be implemented to limit construction waste by the general contractor.

35. To further its commitment to an environmentally sound Project, the office component will use some products, such as pre-cast concrete, that are manufactured within a 500 mile radius from the Property. Its HVAC system will be a vertical self-contained system that will be located on every floor and also use high R-value insulation in the walls. The roof area of the office component will use a high albedo (white

reflective) roof system which will reduce cooling energy costs by reflecting away most of the solar energy that strikes its surface. The residential component will feature a number of environmentally friendly elements including light pollution reduction, recyclable storage and collection, operable windows to provide ventilation effectiveness, controllability of lighting and low energy lighting fixtures.

36. The Project will have a substantial “Green Roof” that incorporates green roof design elements to reduce storm water quantity and quality controls while also incorporating light colored pavers and roof membranes: 71% of the residential roof (not including the historic properties) will be green (14,585 out of 20,599 square feet) and 52% of the office roof will be green (7,873 out of 15,142 square feet). (Exhibits 24 and 24-A, p.19)

37. In order to provide special value to the neighborhood, the Applicant, Advisory Neighborhood Commission 1B, Advisory Neighborhood Commission 2C, Shaw Main Streets, Organizing Neighborhood Equity DC, formerly Manna Community Development Corporation (collectively, the “Community”), and the National Capital Revitalization Corporation (“NCRC”) entered into an Agreement (“MOU”), later updated and amended in May 2007, that established a series of priorities for the community’s involvement in the Project (Exhibits 24 and 24-A, Ex. D). These priorities, in summary, are:

- a. The Applicant will provide both affordable and workforce housing units of at least twenty-five percent (25%) of the total number of residential units and insure that these units are spread throughout the development;
- b. The Applicant will require commercial tenants of the Project to make reasonable efforts to employ residents of the community at newly created entry level, management and professional jobs and the Applicant will work with the community to provide construction training and apprenticeship opportunities to member of the community;
- c. The Applicant shall include between 35-50% participation of local, small business (LSDBE) vendors in the Project and use LSDBE contractors for a number of services such as, without limitation, title, insurance, property management, moving services and parking operators;
- d. The Applicant will construct and operate the project with a mix of retail tenants and assist qualified existing local businesses move into the Property. The Applicant shall also designate, and provide reduced rents to 3,000 square feet (10% of the retail space) for existing or emerging local businesses at reduced rents;
- e. The Applicant made a commitment to provide \$350,000 to a Community Development Initiative Fund (“CDI Fund”) to be used to support local residents and benefit the local needs of the Shaw community. The CDI Fund will be managed by the Community Foundation of the National

Capitol Area. The Applicant will donate seventy-five thousand dollars (\$75,000) to the CDI Fund upon the recordation of the Planned Unit Development covenant and provide another seventy-five thousand dollars (\$75,000) on first anniversary date of the completion of the construction of the Project, as defined by permanent financing of both the residential and office components. Another \$100,000 will be donated at the settlement of permanent financing on the stabilized residential and commercial elements. Finally, a \$100,000 donation will be made if the Project is refinanced or sold.

The Fund will support local community organizations and families in need and will be used for the following projects and community needs: (1) resources to prevent tenant and homeowners displacement; (2) tax relief for senior citizen homeowners; (3) job training for young adults and adolescents; and (4) cooperative business training.

38. The PUD is consistent with the District of Columbia Comprehensive Plan. The 2006 Generalized Land Use Map recommends the site for a mix of medium density residential and commercial uses. Thus, the PUD is consistent with the Generalized Land Use Map designation for the Property. (Exhibit 3, p.29.)

GOVERNMENT REPORTS

39. In its September 10, 2007 report and through testimony at the public hearing, the Office of Planning ("OP") recommended that the Zoning Commission

approve the Project. OP determined that the Project is consistent with the goals and objectives of the Comprehensive Plan since it is a well-designed development in an area that is vacant, underused and deteriorated and it is providing new housing to meet the needs of present and future District residents. The Project will also provide significant investment and a catalyst for further redevelopment in the area. OP opined that the proposal is consistent with the DUKE and Convention Center Plans, each calling for development of a retail corridor along 7th Street anchored by a medium-density mixed-use development at this location. (Exhibit 33, p.7-8)

40. By written report dated September 12, 2007, the District Department of Transportation (“DDOT”), stated that it had no objection to the proposed PUD provided that the applicant continues to coordinate with DDOT staff. The report stated that several issues have to be resolved as the project plans are refined, including: the location of new Pepco vaults to serve the building, placement of bike racks, alley improvements and streetscape improvement plans for 7th Street, S Street and T Street, N.W. (Exhibit 34, p.2)

41. The Project has received Conceptual Approval from the District of Columbia Historic Preservation Review Board. (Exhibits 24 and 24-A, p. 5)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

42. Based on the testimony of Myla Moss, ANC Commissioner of 1B01, and by letter dated August 4, 2007, the ANC 1B voted to unanimously support the Project at its August 2, 2007 regularly scheduled meeting (Exhibit 27). Ms. Moss testified at the

hearing that ANC 1B has worked with the Applicant, One DC, the LeDroit Park Civic Association, and residents of the neighborhood on a community benefits package and that there is strong community support for this PUD. (Transcript from September 20, 2007, p.41-43)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2.

2. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested discretion to allow the Project to achieve an additional 5% of density, relief from the roof structure setbacks, lot occupancy and loading requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

3. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

4. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a building with more attractive and efficient overall planning and design not achievable under matter-of-right development.

5. The Commission agrees with the written submissions and testimony of the Applicant's representatives and the project architect that the project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right project on the Property would provide. The Commission finds that the mix of residential, commercial, retail and arts uses, the reuse of the historic buildings, the metro-oriented design, the commitment to green architecture, the provision of affordable housing and the revitalization of this underused property, are all significant project amenities and exemplify superior features of urban design, architecture and site planning.

6. The Commission concludes that the density and building height of the PUD is appropriate at this location immediately adjacent to a Metrorail Station.

7. The Commission concludes that the proposed community amenities will provide appropriate benefits to members of the surrounding area and the District as a whole.

8. The Commission agrees with the written submissions of the Applicant as well as the recommendations of the Office of Planning that approval of the proposed Project is not inconsistent with the Comprehensive Plan. The Commission finds that the Project is consistent with and fosters numerous themes and elements of the

Comprehensive Plan. Specifically, the Commission believes that the Project furthers the themes of: well-designed development in an area that is vacant, underused and deteriorated and it is providing new housing to meet the needs of present and future District residents. The Project will also provide significant investment and a catalyst for further redevelopment in the area. The Commission also finds that the proposed PUD is also consistent with the DUKE area plan. The Commission finds that the PUD is consistent with the mixed use, medium density residential and commercial categories of Generalized Land Use Map of the Comprehensive Plan shown for the Property.

9. The Commission agrees with the conclusions of the Applicant's expert transportation consultant and the District of Columbia Department of Transportation that the proposed Project will not create any adverse traffic or parking impacts on the surrounding community.

10. The Commission concludes that the proposed PUD-related rezoning of the Property is appropriate given the superior features of the PUD project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.

11. In accordance with D.C. Code § 1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 1B voted unanimously and unconditionally in favor of approving the application.

12. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission concurs OP that the PUD should be granted.

13. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

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

15. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9) and as provided for in Condition 13 herein, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. In this case, the Commission believes that the proposed PUD-related map amendment of the Property to the ARTS/C-2-C Zone District is appropriate

given the superior features of the PUD project and District planning initiatives supporting the change in zoning.

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

DECISION

In consideration of the Finding 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 application and Zoning Map Amendment to the ARTS/C-2-C Zone District for Lots 21, 66, 97, 814, 815, and 854 in Square 441. The approval of this PUD is subject to the following guidelines, conditions and standards of this Order.

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 24, 24-A and 38 of the record, as modified by the guidelines, conditions and standards of this Order.

2. The Project shall be a mixed-use development containing residential, office and retail/arts uses with below-grade parking.

3. The floor area ratio (FAR) of the project shall not exceed 6.3 of which a maximum of 2.5 shall be devoted to office/retail/arts use with a minimum of 3.8 devoted to residential use.

4. The height of the Project shall not exceed ninety (90) feet.

5. The total lot occupancy of the Project shall not exceed eighty-eight (88) percent.

6. The Project shall include parking with a minimum of 177 spaces as shown on the revised parking plans, submitted into the record as Exhibit 38.

7. The Applicant shall work with DDOT regarding location of new Pepco vaults needed to serve the building, placement of bicycle racks, alley and streetscape improvements for 7th, S and T Streets, N.W.

8. The Applicant will provide the following community amenities:

- a. *Affordable Housing and Work Force Housing:* The Applicant shall provide both affordable housing and workforce housing units equaling at least twenty-five percent (25%) of the total number of residential units. The Applicant also shall insure that these units are spread throughout the Project.
- b. *Employment and Training Opportunities:* The Applicant shall require commercial tenants of the Project to make “reasonable efforts” to employ residents of the community at newly created entry level, management and professional jobs. The Applicant will also work with the community to provide construction training and apprenticeship opportunities to members of the community;

- c. *Local, Small, Disadvantaged Business Enterprises:* The Project will include 35-50% participation by local, small business vendors including use of LSDBE contractors for, without limitation, title, insurance, property management, moving services and parking operators.
 - d. *Retail Space:* The Applicant shall construct and operate the Project with a mix of new tenants and shall assist qualified existing local businesses to move into the Project. It shall designate, and provide reduced rents to, 10% of the retail space for existing or emerging local businesses.
 - e. *Community Development Initiative Fund:* The Applicant shall establish a Community Development Initiative Fund to be administered by the Community Foundation of the National Capitol Region to support Shaw Community initiatives. The initial contribution shall be \$75,000 upon recordation of the PUD Covenant. An additional \$75,000 contribution shall be made upon completion of the Project.
9. The Project shall include the low-impact development features including the green roof elements specified in Exhibits 24, 24-A and 39 of the record.
10. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit D of Exhibits 24 and 24-A of the record.

11. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit C of Exhibits 24 and 24-A of the record.

12. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;
- To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
- To make minor refinements to exterior details and dimensions, including the flexibility to shift the location of the doors to the retail/arts uses, balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

13. The change of zoning from ARTS/C-2-B to ARTS C-2-C for the Property shall be effective upon recordation of a PUD covenant pursuant to 11 DCMR § 2407.3.

14. The PUD shall be valid for a period of two years from the effective date of Zoning Commission Order No. 07-07. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1, the filing of the building permit application will vest the Zoning Commission Order.

15. The Office of Zoning shall not release the record of this case to the Department of Consumer and Regulatory Affairs (“DCRA”) and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to constrict and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

16. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial

status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

VOTE:

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

ANTHONY HOOD

Chairperson

District of Columbia Zoning Commission

JERRILY R. KRESS, FAIA

Director

Office of Zoning