

**BEFORE THE ZONING COMMISSION**  
**OF THE DISTRICT OF COLUMBIA**

**Application of District of Columbia for a Consolidated Planned Unit Development  
at 3910-3912 Georgia Avenue, N.W.**

**STATEMENT OF EXPLANATION AND JUSTIFICATION**  
**IN SUPPORT OF PUD APPLICATION**

April 9, 2008

**I. APPLICANT**

This Statement of Explanation and Justification in Support of Application for a Consolidated Planned Unit Development ("Statement") is submitted on behalf of the District of Columbia, owner of the subject property, by and through 3910 Georgia Avenue Associates Limited Partnerships I and II (collectively referred to herein as "Applicant"), by 3910 Georgia Avenue Associates Limited Partnerships I and II's attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire and Lyle M. Blanchard, Esquire.

**II. PROJECT BACKGROUND, INCLUDING PRIOR BZA APPROVAL**

Approval of Proposed Development Project by Board of Zoning Adjustment and Effect on Project of Delay in Implementation of Inclusionary Zoning Regulations.

The Board of Zoning Adjustment ("BZA") approved the development project proposed by the Applicant – which is a mixed-use building with ground floor retail uses, an apartment building of 130 units on floors two through six and structured and surface parking (as described in greater detail below) – in Application No. 17636A by an Order dated July 12, 2007. The development project is known as Georgia Commons (the "Project" or "Georgia Commons"). Unfortunately, the Applicant had assumed that the Inclusionary Zoning ("IZ") regulations would

**ZONING COMMISSION  
District of Columbia**

**ZONING COMMISSION  
District of Columbia**

**CASE NO. 08-08 CASE NO. 08-08**

**EXHIBIT NO. 4 EXHIBIT NO. 4**

be in effect at the time of the BZA action<sup>1</sup> and designed the development project to include the density bonuses that are an integral part of the IZ regulations. However, as of the dates of the BZA public hearing and the issuance of the BZA Order, the IZ regulations were not yet legally effective. As a result of the delay in the implementation of the IZ program, the Applicant's proposed project, while it would have been in compliance with the FAR and lot occupancy requirements provided as a matter-of-right under IZ, exceeded the allowable FAR and lot occupancy provisions at the time of the BZA public hearing. Because the Applicant was advised by the Office of Planning ("OP") that it would not support the FAR and lot occupancy variances, the Applicant withdrew its request for such relief and modified its plans.

A brief description of the initial application submitted to the BZA, which depicted a building that contains 130 residential units, and a description of the revised BZA application, which depicted a building of 115 residential units, follows in order to fully describe the situation as it developed at the BZA and the situation in which the Applicant currently finds itself, particularly since the IZ regulations are still not legally effective.

The BZA Application was initially filed on March 2, 2007 ("Initial Application"). The Initial Application sought area variances from the floor area ratio, lot occupancy, parking and loading requirements. A revised BZA Application was filed on June 21, 2007 ("Revised BZA Application"). The Revised BZA Application continued to seek area variances from the parking and loading requirements. However, in response to OP's opposition discussed above, the Revised BZA Application eliminated the variance relief from the floor area ratio (FAR) and lot

---

<sup>1</sup> The Inclusionary Zoning ("IZ") regulations were adopted by the Zoning Commission in August, 2006 but were not legally effective.

occupancy requirements. It also added a special exception to permit the construction of a building on a lot that has twelve thousand square feet (12,000 sq. ft.) or more in land area located in the *then-proposed* Georgia Avenue Commercial Overlay District.<sup>2</sup>

In its Pre-Hearing Submission to the BZA, the Applicant set forth the background for and an explanation of the elimination of FAR and lot occupancy relief under the Revised BZA Application and the submission of “Interim Plans” and “Final Plans”. [The “Final Plans” proposed a building with 130 units and the “Interim Plans” depicted a building with 115 units.] The background and explanation was as follows:

- a. Upon adoption by the Zoning Commission in August, 2006 of the Inclusionary Zoning (IZ) requirements, Applicant determined to develop a project that complied with and is fully consistent with the IZ program.
- b. Applicant caused its architects and engineers to prepare plans and drawings of a residential building that would satisfy the affordability requirements of the IZ program and which, as a quid pro quo for complying with such requirements, would achieve “bonus density” in the form of increased residential FAR and lot occupancy.
- c. After plans and drawings were prepared that were based on the IZ program and numerous meetings were held with the ANC and other community organizations, Applicant learned in early 2007 that the IZ program was being

---

<sup>2</sup> At the time of the BZA public hearing on the Applicant’s proposal for a mixed use development at 3910 Georgia Avenue, N.W., the Georgia Avenue Commercial Overlay District was the subject of a Text and Map Amendment Application that had been “set down” by the Zoning Commission for a public hearing Commission. However, no public hearing, proposed action or final action had been taken by the Zoning Commission at such time. This

delayed.

- d. Based on the foregoing, Applicant filed an application with the BZA, submitted plans and drawings that depicted a project that was in compliance with the IZ program (at 130 residential units) and sought variances from the FAR and lot occupancy provisions because the IZ “bonus density” was not then legally effective EVEN THOUGH THE FAR AND LOT OCCUPANCY REQUESTED WOULD BE ALLOWED AS A MATTER OF RIGHT WHEN THE IZ REGULATIONS BECOME EFFECTIVE.
- e. Applicant was advised by the Office of Planning that it would not support the requested FAR and lot occupancy variances. OP further opined that a recent *sua sponte* review by the Zoning Commission of a similar case made it unlikely that the BZA would approve such variances.
- f. Applicant choose to withdraw such FAR and lot occupancy variance requests and opted to delay the prosecution of an application for a building permit until the IZ regulations become effective.
- g. As a result of the above, the Applicant prepared and submitted to the BZA two sets of plans and drawings. The first set of plans – referred to in the BZA proceeding as “INTERIM PLANS” -- depicted a building that contains 115 units and complies with the FAR and lot occupancy in effect as of the date of the BZA proceeding. The second set of plans – referred to in the BZA

---

proposed Overlay District was applicable to the property at 3910 Georgia Avenue and, thus, the Applicant’s project.

proceeding as "FINAL PLANS" -- depicted a building that contains 130 units and that will comply with the FAR and lot occupancy provisions that will be in effect when the IZ regulations are fully and lawfully effective.

The Applicant then set forth in the Pre-Hearing Submission its intention, given the unusual situation described above, to (i) seek BZA approval of the INTERIM PLANS and, as soon as the IZ regulations become effective, (ii) seek BZA approval of the FINAL PLANS pursuant to Section 3129 of the Zoning Regulations ("Modification of Approved Plans"). At the public hearing held by the BZA, the Applicant summarized the facts and circumstances above and requested that the Board approve the project as represented by the INTERIM PLANS. In its final Order in Application No. 17636-A, the BZA approved the Application and the INTERIM PLANS without condition in a Summary Order. The Board's vote was unanimous.<sup>3</sup> Because of on-going uncertainty (i) about the date that the IZ regulations will be legally effective and (ii) with respect to the administrative and other requirements of the IZ program which are still unresolved, the Applicant has chosen to file the subject PUD Application in order to obtain approval for the building with 130 residential units.

### **III. SUBJECT PROPERTY AND PROPOSED DEVELOPMENT PROJECT**

**Property and Area Description and Existing and Intended Use of Property Under PUD.** The property is located on the west side of the 3900 block of Georgia Avenue, N.W. in the Petworth neighborhood of Ward 4, between Randolph Street and Shepherd Street, N.W. (Square 2906, Lots 848 and 849) ("Property"). The Property contains approximately 31,000 square feet of land. A fifteen foot (15 ft.) wide public alley is located adjacent to the Property to the north

---

<sup>3</sup> The vote was 4-0-1 with Curtis L. Etherly, Jr., Marc D. Loud, Ruthanne G. Miller and John A. Mann II to approve.

and to the west. The Property is zoned C-3-A and is located within the Georgia Avenue Commercial Overlay District.<sup>4</sup>

The Property is currently improved with a vacant commercial building which will be razed. The Georgia Avenue/Petworth Metro Station is located two (2) blocks to the south on Georgia Avenue between Quincy Street and New Hampshire Avenue, N.W., approximately 690 feet from the Property. (See attached Exhibit "A".)

Pursuant to the Final Plans submitted to the BZA and the plans submitted to the Zoning Commission to accompany the PUD Application, the Applicant seeks to construct a mixed-use building to include first floor retail, service and/or medical uses and 130 dwelling units. The proposed building will have the following characteristics and features:

- six (6) floors;
- shared outdoor residential space in the second floor courtyard and on the rooftop;
- landscaping and passive recreation space;
- a dwelling unit mix that will include studios, studios with a loft, one-, two-, and three-bedrooms, and one-, two-, and, three-bedrooms with loft;
- ground floor retail, service and/or medical uses; and
- forty percent (40%) of the dwelling units of the proposed building will be offered as affordable housing.

---

The Zoning Commission member did not vote, not having participated in the case.

<sup>4</sup> This Overlay District was adopted and became effective on January 25, 2008.

#### **IV. COMMUNITY PARTICIPATION AND SUPPORT FOR PROJECT BY PUBLIC AGENCIES**

In conjunction with the BZA application, the Applicant worked closely and cooperatively in the design and development of the project with ANC 4C, the Office of Planning, D.C. Department of Transportation, other governmental agencies and other stakeholders. As a result, the following reports or other submissions – all of which are supportive of the Applicant’s project – by community organizations and governmental agencies were submitted to the BZA and included in the official file of Application No. 17636A:

- Letter dated June 26, 2007 of ANC 4C in support of the project which stated, inter alia, that the developer made several presentations of the plans and the ANC indicated its support for both the interim (115 units) and final (130 units) plans. [The ANC’s letter is attached hereto as Exhibit “B”.]
- Report of the Office of Planning dated July 3, 2007 recommending approval of the application and stating that OP supports the redevelopment of the subject property with a mixed use development that is generally consistent with the requirements of the proposed Georgia Avenue Commercial Overlay District. OP also supported the granting of the requested variances from the parking and loading requirements since they would not be detrimental to the surrounding residents and businesses. The redevelopment would help to continue the revitalization of the Georgia Avenue corridor and would provide affordable housing. [The OP Report is attached hereto as Exhibit “C”.]
- Report of the District Department of Transportation (“DDOT”) dated July 6, 2007 that recommended approval of the application with the inclusion of an additional 30’ loading berth

in place of one parking space. [Note: The BZA approved the project without this additional berth]. [The DDOT Report is attached hereto as Exhibit “D”.]

## **V. PROJECT BENEFITS**

### **a. Housing and Affordable Housing**

The Applicant has committed to the former NCRC and to the Deputy mayor for Planning and Economic Development (as successor to the NCRC) that 40% of the housing units will be dedicated to affordable housing. The amount of housing is in excess of the affordability requirement under Inclusionary Zoning. The Applicant is providing 40% of the 130 units (which equals 62 units) as opposed to the 8% set aside required by Inclusionary Zoning (which equals 10 units for a 130 unit project). The proposed residential element of the development will help to increase the supply of decent, affordable rental housing in the District. The dwelling units are expected to be targeted to households with incomes between 30% to 60% of area median income even though the IZ regulations require a less stringent 50%-80% of the area median income for moderate income households. The project will also qualify for tax credit financing.

### **b. Neighborhood serving ground floor uses**

Georgia Commons will also include ground floor retail and services uses which will benefit the Petworth community. Mary’s Center is a likely tenant for the entire ground floor space with a medical clinic as the primary use along with a pharmacy. The Mary’s Center would function as a community health center using a model proposed by the D.C. Primary Health Care Association. Medical services would include primary health care on an out-patient basis

including family practice, women's health services, dental services, pharmacy services and associated programs such as WIC programs and Even Start programs. These programs would provide essential family-oriented medical services at a neighborhood level.

c. Effective and safe vehicular and pedestrian access; transportation management measures; connections to public transit service; and other measures to mitigate adverse traffic impacts.

With regard to public transit, several Metrobus routes are located in the vicinity of the Property, with bus stops near the intersections of Georgia Avenue and both Shepherd and Randolph Streets, N.W. There are several Metrobus routes which run along Georgia Avenue, N.W., in addition to many along nearby New Hampshire Avenue, N.W. Furthermore, the Georgia Avenue – Petworth Metrorail Station is located just two (2) blocks south of the Project. As such, excellent public transit options exist near the Project. Further information concerning the proposed project and its impact on the adjacent road network from the perspective of trip generation, parking or access is provided in the Traffic Impact Analysis [attached hereto as Exhibit "E"].

d. Environmental benefits, such as stormwater runoff controls.

The project has been selected as a demonstration site for the new LEED Neighborhood Development (ND) certification. LEED ND focuses on smart growth, transit oriented, mixed use and pedestrian friendly urban infill developments such as Georgia Commons. Other sustainable design features of Georgia Commons include a "Green Roof" that will help reduce stormwater run-off from the site and reduce heat island effect of the building as well as providing a site amenity for the residents. An energy model is being used to help design an energy efficient

building envelope and to optimize natural day lighting. In addition, the Project will require recycling of on-site construction waste and will feature low VOC adhesives, paints and other construction materials in order to promote indoor air quality. Many of the building materials will include recycled contents.

## VI. PLANNING ANALYSIS

### a. Land Use Impact

The development of Georgia Commons as proposed under this PUD application is consistent with the existing land uses in the area and with the objectives of the Rock Creek East Area Element of the Comprehensive Plan as discussed below. Specifically, the PUD project will increase neighborhood livability and economic development along the Georgia Avenue corridor. The construction of the mixed-use building will help to promote the revitalization of the area and the creation of an inviting addition to the Petworth neighborhood.

### b. Zoning Impact

The proposed development is consistent with the existing C-3-A zoning, the GA Overlay District and the Inclusionary Zoning provisions. The height of the project is consistent with the PUD guidelines for the C-3-A zone district and the GA Overlay. The 4.7 FAR density slightly exceeds the PUD standard of 4.5, but the proposed density is within the 5% allowance under Section 2405.3 and is well within the 4.8 FAR which would be allowed as a matter-of-right pursuant to Inclusionary Zoning. See further discussion of zoning issues in Section “VIII” below (“Zoning Analysis and Relief Requested”).

### c. Environmental Impact

The applicant seeks to construct a LEED certifiable building which will reduce the building's impacts on occupants' health and the environment. Stormwater will be collected and managed by a stormwater management system. Efforts are being made to reduce the amount of impervious surface area within the site through a "green roof" in order to reduce the peak stormwater discharge from the site. Runoff from this project will be directed through the internal stormwater management system and into a stormwater management system. Final and formal approval of the stormwater management facility will be made by the D.C. Department of the Environment. All of the proposed connections for storm drainage will be coordinated with DC WASA and the D.C. Department of the Environment.

d. Traffic Impact

The Applicant will mitigate the impacts of traffic from the development by providing 120 parking spaces on site. The impact from the retail/service element of the development is expected to be reduced due to the neighborhood-serving aspect of the intended retail and service uses. Furthermore, with the close proximity of the Georgia Avenue Metrorail station and multiple Metrobus lines along Georgia and nearby New Hampshire Avenues, it is anticipated that many residents will utilize Metro for transportation.

## **VII. COMPREHENSIVE AND AREA PLANS**

This project is consistent with the 2006 revised District of Columbia comprehensive Plan and with adopted policies and programs. Moreover, the PUD is consistent with and fosters a number of goals and policies stated in the revised Comprehensive Plan.

A. The proposed PUD and map amendment comply with the following policies of the Citywide Elements of the revised Comprehensive Plan:

## **1. Land Use Elements.**

*“Facilitate orderly neighborhood revitalization and stabilization by focusing District grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need. Use social economic, and physical indicators such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate as key indicators of need. §309.7” (Policy LU-2.1.2: Neighborhood Revitalization).*

*“Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to ‘create successful neighborhoods’ in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others. §309.8” (Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods).*

*“Reduce the number of vacant and abandoned buildings in the city through renovation, rehabilitation, and where necessary, demolition. Implement programs that encourage the owners of such buildings to sell or renovate them, and apply liens, fines, and other penalties for non-compliant properties. §310.4” (Policy LU-2.2.3: Restoration or Removal of Vacant and Abandoned Buildings).*

*“Encourage projects which improve the visual quality of the District’s neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements. §310.5” (Policy LU-2.2.4: Neighborhood Beautification).*

The Applicant seeks to construct a new building in an area and a commercial corridor which is planned for revitalization by the District government. The site contains a vacant retail store and parking lot. The new development will help to prompt revitalization in the block, enhancing the vibrancy of the Georgia Avenue corridor. The proposed design of the building will utilize modern “Greenscreen” façade features and fenestration to give the building a distinct presence on Georgia Avenue. Furthermore, the new building will also bring much desired retail and service uses to the neighborhood. Finally, the building will introduce 130 needed new affordable dwelling units in the community, 40% of which will be affordable.

## **2. Housing Element.**

*“Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. §503.5” (Policy H-1.1.4: Mixed Use Development).*

*“Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood. §503.6” (Policy H-1.1.5: Housing Quality).*

As stated above, the proposed project will introduce a new concentration of both retail/service and residential uses along the Georgia Avenue, N.W., bringing energy to the neighborhood. The modern design of the building is oriented on Georgia Avenue and will help to stimulate subsequent housing development in Petworth. The residential portion of the Project condominium will provide amenities such as a roof level meeting room and green roof for its occupants. A courtyard will also be available to all residential occupants for passive recreation.

## **3. Economic Development Element.**

*“Create additional shopping opportunities in Washington’s neighborhood commercial districts to better meet the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites. Promote the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences. §708.7 (Policy ED-2.2.3: Neighborhood Shopping).*

The proposed project will establish new neighborhood-serving retail and service uses for the area along Georgia Avenue, near the Georgia Avenue – Petworth Metro station, as sought after by the community. As well, new retail is anticipated pursuant to the Georgia Avenue –

Petworth Metro Station Area and Corridor Plan, in order to increase neighborhood livability and economic development along the corridor.

B. The PUD also complies with the Rock Creek East Area Element (Chapter 22) of the revised Comprehensive Plan.

According to the Planning and Development Priorities under Section 2207.2 of the Comprehensive Plan, through workshops held with communities located in Rock Creek East, the neighborhoods of Rock Creek East seek to protect their established neighborhoods while also recognizing the need to provide a variety of housing choices which are “economically integrated.” (§ 2207.2(b)). The community also noted the importance of upgrading and expanding neighborhood-serving commercial facilities, and “enhancing neighborhood identity through façade improvements, landscaping, signage, and lighting.” (§ 2207.2(c)). Furthermore, the “General Policies” of the Rock Creek East Area Elements specifically seek economic development around the Georgia Avenue/Petworth Metrorail station area, particularly providing improved “visual and urban design qualities in order to create a unique destination for the local community to enjoy.” (§ 2208.4). Another “General Policy” for the community is to “[m]aintain and encourage the development of multi-use neighborhood shopping and services in those areas designated for commercial or mixed uses on the Future Land Use Map” (§ 2208.5). and to “improve housing affordability … [with] the production of new mixed income housing along Georgia Avenue . . .” (§ 2208.7). The proposed project will encourage this revitalization process, by promoting a return to neighborhood-serving commercial corridor and aiding to re-establish the community’s identity.

C. Generalized Land Use Map.

The proposed project also complies with the Generalized Land Use Map (Map 4), which designates the site as moderate density commercial and medium density residential.

### **VIII. ZONING ANALYSIS AND RELIEF REQUESTED**

The Application seeks approval of a consolidated Planned Unit Development pursuant to Chapter 24 of the Zoning Regulations. No amendment to the zoning map is sought in conjunction with the PUD Application.

Please be advised that based on recent meetings with OP and other stakeholders, the Applicant expects to make several modifications to the plans subsequent to the filing of the PUD Application and prior to the public hearing. Such plan modifications will most likely include the following: (i) increasing the building height from 70 feet to 78 feet, (ii) relocating the projections on the Georgia Avenue side of the building to either the alley on the North side or to the rear of the building, and (iii) increasing the lot occupancy of the building if the projections are relocated to the rear of the building. Copies of such plan modifications will be filed with the Pre-hearing Statement prior to the public hearing and will be made available to the public upon request.

The Property is zoned GA/C-3-A. The C-3-A zone district is a medium bulk major business and employment center. The Georgia Avenue Commercial Overlay District is intended, among other purposes, to implement the objectives of the Georgia Avenue – Petworth Metro Station Area and Corridor Plan, encourage residential uses along the Georgia Avenue corridor and establish guidelines for development review through the PUD and special exception proceedings.

Under the PUD guidelines, a project in the C-3-A zone district may be developed to a height of ninety (90) feet and a FAR of 4.5. The Applicant proposes to construct a mixed use

building at a height of approximately seventy-eight (78) (based on modified plans to be submitted prior to the public hearing) feet and a FAR of 4.7.

Pursuant to Section 2405.3, the Applicant requests a 0.2 FAR increase above the standard of 4.5 FAR provided in the C-3-A zone district under a PUD as it is within five percent (5%) of the FAR of the underlying zone district. The requested increase in FAR will provide additional light and air to residential units, including the affordable units. These affordable housing and other residential units advance the purpose of the PUD regulations to promote public welfare (Section 2400.3) and meet the PUD evaluation standards (Section 2403.6) by providing a level and quality of affordable and other housing that is superior to that which could be provided as a matter-of-right. Moreover, this request for increased density is also consistent with Section 1331.1(a) in that the additional density will be for the residential portion of the Project. Based on the foregoing, the Applicant submits that the requested increase in FAR is “essential to the successful functioning of the project” and “consistent with the purpose and evaluation standards of this [PUD] chapter” as required by § 2405.3.

The attached plans show a 70 foot high structure proposed to the BZA. Although a maximum height of 65 feet is allowed matter-of-right in the C-3-A District, an additional five (5) feet of height is allowed pursuant to Section 1328.10 of the Georgia Avenue Commercial Overlay District (“GA”). The Applicant would like to add an additional eight (8) feet of height to the project and spread the additional height throughout all the residential floors to achieve greater flexibility in the proportions of each floor (e.g., nine (9) foot ceiling heights). Pursuant to Section 1331 of the GA Overlay, additional height (and floor area) can be permitted through a PUD as long as the additional height is devoted to residential use only. The additional height being requested by the Applicant is well within the 90 foot maximum height allowed for a PUD

in the C-3-A Zone District under a PUD. Revised elevations and sections will be submitted for the Commission's review in a supplemental filing.

The Applicant submits that, based upon (i) its PUD Application and the materials submitted in conjunction therewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted subsequent hereto, it will satisfy and comply with the applicable legal standards and burdens of proof for the Planned Unit Development and the following special exception and area variances (which are typically referred to in the context of a PUD application as zoning relief or deviations from zoning requirements).

Special Exception for Development on Large Lots in Georgia Avenue Commercial Overlay

District

Under Section 1330.1(b) of the Zoning Regulations, the construction of a building on a lot that has twelve thousand square feet (12,000 sq. ft.) or more of land area within the Georgia Avenue Overlay District is permitted only by special exception pursuant to Sections 1304, 3104 and 1330.2. Such special exception approval can be granted by the Zoning Commission in conjunction with a PUD.

The Applicant also requests a special exception (pursuant to Section 1330.2) from the strict interpretation of Section 1328.9 with regard to both the "uniform" floor to ceiling height and "clear" height requirements. The topography of the Site (see Exhibit "L") along the front of the building on Georgia Avenue slopes down from a high point at the South to a low point at the North. The entrance for the residential lobby is at 12.5 feet and has a ramp down to the floor plate in order to achieve the minimum 14 feet height. The entrance in the center of the building to the lobby that will serve the Mary's Center use is at a height of 14 feet. The entrance to the

Mary's Center pharmacy is at a height of 15.5 feet due to the change in grade. Thus, while the ceiling height is 14 feet or more for the most part throughout the ground floor along Georgia Avenue, it is not "uniform" due to these individual structural or circulation-related circumstances. Given this practical difficulty imposed by the Site topography, the Applicant requests special exception relief from the "uniform" height requirement. Additionally, the Applicant seeks relief from the "clear" height requirement. The Applicant has measured the 14 feet clear height from the floor slab to the underside of structural slab, not the underside of the finished ceiling. There are structural drops at beams and column caps throughout the ground floor level, dropping ceiling heights in various locations. The Applicant will meet the spirit and intent of Section 1328.9 since the ground floor level will meet or exceed (at the northern end of the building) the minimum 14 feet floor height requirement which is geared toward ensuring a more attractive and marketable ground floor space to retail, service or medical tenants and their patrons. Thus, the impact of this special exception will not adversely affect the use of neighboring property.

The PUD Application will satisfy the requirements of Section 3104.1 of the Zoning Regulations which require all special exceptions to be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and to not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps... ." In addition, the Application will comply with the requirements of Section 1330.2 of the Zoning Regulations which are set forth and discussed below.

The proposed building will not cause objectionable conditions or adversely affect neighboring or nearby property. The new construction will redevelop property which is currently occupied by a deteriorating vacant commercial building. The mixed-use building will bring a

significant number of new residential units and neighborhood-serving services to the Petworth area, as envisioned by the *Georgia Avenue – Petworth Metro Station Area and Corridor Plan*. Furthermore, because the property is located near a Metro Station, the new construction will encourage transit use and the construction of other transit oriented development in the neighborhood along Georgia Avenue. In addition, the Project will promote improved development in the neighborhood and help establish a strong neighborhood center.

The PUD Application also complies with the special exception requirements of proposed Section 1330.2, as set forth below.

- The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located. (§ 1330.2(a)).*

The proposed building will feature architectural design details that will enliven the street features of Georgia Avenue, a major north-south thoroughfare. Utilization of distinct vertical elements, streamlined horizontal fenestration patterns and judicious use of a “Greenscreen” façade to soften the architecture with landscape elements will break down the overall building massing to give the building a distinct presence at the corner of Georgia Avenue and Randolph Street. In addition, as a LEED Neighborhood Development, the building will have a reduced impact on the surrounding infrastructure, specifically with the green roof which will mitigate the demands on the stormwater management system. The building will also be a recognizable landmark in an area lacking distinctive urban features, especially given the gentle topography of the street and the building’s prominent placement in the established streetscape.

- Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function*

*efficiently, and create no dangerous or otherwise objectionable traffic conditions (§ 1330.2(b)).*

The new development project will include parking spaces in the rear of the Property as well as in several half levels of a parking garage. Access to both the parking surface in the rear yard (consistent with Section 1328.11) and the parking garage will be available via the existing alleyways located adjacent to the Property to the north and to the west. These alleyways may be accessed from Georgia Avenue, Randolph Street or Shepherd Street, N.W. By using existing alleyways for vehicular access and egress, any potential conflict with pedestrian walkways are minimized and no dangerous or otherwise objectionable traffic conditions are created.

*□ **Parking and traffic conditions associated with the operations of a proposed use shall not significantly affect adjacent nearby residences.***

*(§1330.2(c)).*

The Applicant will provide sufficient parking for the residents of the apartments and patrons of the retail, service and/or medical establishments. Furthermore, such uses planned for the Property are neighborhood-oriented and will seek their users from the occupants of the building and from the surrounding neighborhood. As a result, it is expected that some parking spaces required for the service, retail and/or medical component of the building will not be necessary even though Georgia Commons will provide 120 parking spaces, which is 10 more than required. These additional spaces may be needed to accommodate an electrical vault or will be utilized for flex-car, zip-car or additional bicycle spaces or could be made available to the community. Furthermore, with the close proximity of the Georgia Avenue Metrorail station and

multiple Metrobus lines along Georgia and nearby New Hampshire Avenues, it is anticipated that many residents will utilize Metro for transportation.

- Noise associated with the operation of a proposed use shall not significantly affect adjacent or nearby residences. (§ 1330.2(d)).***

The proposed mixed-use building will not generate objectionable amounts of noise which would significantly affect adjacent or nearby residences. None of the proposed retail/service or residential uses will generate inappropriate levels of noise. Furthermore, since the courtyard is surrounded by the building and the rooftop is seventy (70) feet above the adjacent grade, noise will not spill over onto adjacent properties from the courtyard or the rooftop terraces.

Thus, the use of construction of a mixed-use building on the Property is in harmony with the surrounding neighborhood and the general purposes and intent of the Zoning Regulations and Zoning Map, and will not have any adverse impacts on surrounding properties nor the present or future character of the neighborhood.

#### Zoning Relief: Loading

With regard to the Applicant's request for relief from the requirement for loading, the PUD Application satisfies the requirements of the Zoning Regulations.

As indicated above, the PUD Plans will have one hundred thirty (130) dwelling units. In accordance with Section 2201.1, an apartment house or multiple dwelling with fifty (50) or more dwelling units in any zone district is required to provide one (1) loading berth of a depth of fifty-five feet (55 ft.), one (1) two hundred square foot (200 ft<sup>2</sup>) loading platform and one (1) service delivery loading space of a depth of twenty feet (20 ft.).

The proposed building will provide approximately 28,000 gross square feet of retail/service space. A retail or service establishment in the C-3-A zone district with more than 20,000 square feet of gross floor area as provided pursuant to the PUD Plans is required to provide two (2) loading berths of a depth of thirty feet (30 ft.), two (2) one hundred square foot ( $100 \text{ ft}^2$ ) loading platforms and one (1) service delivery loading space of a depth of twenty feet (20 ft.).

The Applicant's proposal is to provide two (2) loading berths of a depth of thirty feet (30 ft.), two (2) one hundred square foot ( $100 \text{ ft}^2$ ) loading platforms and one (1) service delivery loading space of a depth of twenty feet (20 ft.). Thus, the Applicant seeks relief from the requirements for the fifty-five foot (55 ft.) loading berth, the two hundred square foot ( $200 \text{ ft}^2$ ) loading platform and one (1) twenty foot (20 ft.) service/delivery loading space.

If the loading requirements were strictly applied, the building would be required to provide a total of three (3) loading berths, two (2) service/delivery spaces and three (3) loading platforms, an amount more typical for large downtown office building three or four times the size of the proposed building.

The loading berths and spaces to be provided by the Applicant are sufficient for both the residential and retail/service users and adequate to service the public. The loading berth and delivery areas will be used by residents when they move in. However, subsequent use of the loading facilities by residents will only be very occasional and, as such, can be restricted to times which pose the least amount of conflict with retail/service users. Likewise, retail and service users can be restricted to the use of loading facilities during times which cause the least amount of conflict with the loading needs of the residents. The Applicant will work with DDOT once the

building is constructed to remove the two (2) curb cuts in front of the building on Georgia Avenue, thus freeing up curbside space for parking and loading for retail uses. The Applicant also intends to ask DDOT for metered parking and a 20 ft loading zone in lieu of the 40 ft. loading zoning area on Georgia Avenue that was sought for the previously proposed retail uses. Further, it is likely that the timing of build-outs for retail or service tenants will be different from move-in dates of the residential tenants because such build-outs will generally occur after the residents have moved in. Thus, through contractual restrictions, any conflict between the loading needs of residents and retail and service tenants will be minimized.

The Applicant submits, in support of the requested relief from loading requirements, that providing the additional berths and service/delivery spaces would be impractical and would adversely impact the amount of parking spaces provided, the preferred residential and retail components, the building footprint and the design of the building. Zoning relief from the loading requirements will not result in substantial detriment to the public good or the zone plan. The proposed building will provide substantial benefits to the community, including affordable housing, underground parking, ground floor retail and quality residential space. There will also be a lack of adverse impacts from the zoning relief requested.

#### **IX. ESTIMATED WATER AND SEWER DEMAND**

The average daily demand for both water and sanitary sewer flow to be generated by the proposed mixed-use building is estimated to be approximately 1,326 gallons per minute. Storm sewer usage is estimated to be 1.28 cubic feet per second (“cfs”). The methods used to determine the quantity of stormwater generated was the calculation of the allowable release from the

predevelopment condition for a fifteen (15) year storm event. Estimated quantities of potable water were derived from the water meter calculations on WASA's Meter Sizing Worksheet, and the sanitary sewage calculation was derived from the maximum capacity of the outflow pipe as designed by the plumbing engineer. Please note that this pipe was sized by calculations of the drainage fixture units as required by WASA. Final and formal determination of water and sewer availability will be made by the D.C. Water and Sewer Authority ("DC WASA") and will include tests to determine adequacy. All of the proposed connections for sanitary sewer will be coordinated with the DC WASA.

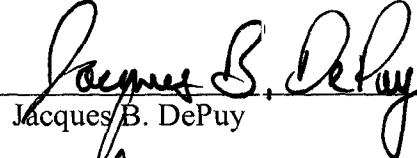
#### X. CONCLUSION

Conclusion. For the reasons set forth above, the Applicant, by and through counsel, submits that its PUD Application will satisfy all applicable zoning requirements and the burden of proof for the requested zoning relief and, therefore, should be granted.

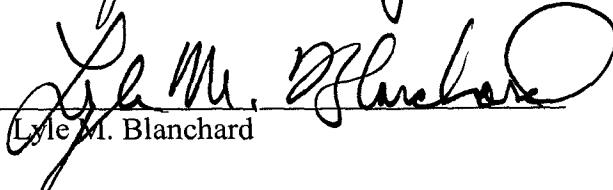
Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By:

  
Jacques B. DePuy

By:

  
Lyle M. Blanchard

334925v1