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November 30, 2009

By Hand Delivery

Anthony Hood, Chairperson
D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

Re: Zoning Commission Case No. 08-24 and 08-24A/04-25 – Abdo Development, LLC and The Catholic University of America – Response to OAG and OP Comments on Benefits and Amenities Chart and Final Approved Plans and Materials

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Dear Chairperson Hood and Members of the Commission:

Pursuant to the procedures established at the November 9, 2009, public hearing, Abdo Development, LLC and The Catholic University of America (collectively, the “**Applicant**”) hereby respond to the comments received from the Office of the Attorney General and the Office of Planning (via a telephone conversation with Jacob Ritting on November 20, 2009) regarding the benefits and amenities information presented to the Zoning Commission on November 16, 2009.

The Applicant has attached the conditions of approval of the PUD and Zoning Map Amendment application that address the minor comments received from the Office of the Attorney General and the Office of Planning. For your convenience, clean and black-lined copies of the proposed conditions of PUD approval (noting the differences with the conditions that were submitted to the Zoning Commission on November 16, 2009) are attached.

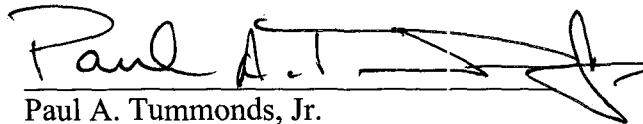
In addition, the Office of the Attorney General noted that the Applicant’s proposed Condition No. 16, which addressed the reduced lease rates for the artist studio spaces in Block C, did not specify the amount of the discount that will be provided. The Applicant believes that the provision of this artist studio space is, in

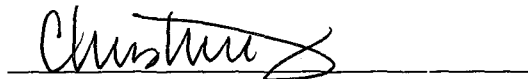
ZONING COMMISSION
District of Columbia
CASE NO. 08-24
EXHIBIT NO. 170

and of itself, a significant project amenity as artists have great difficulty securing permanent and suitable studio space. In the post-hearing submission, the Applicant estimated the artist studio subsidy to be 50% of market rate rents for retail space. However, this was only an estimate, provided at the request of the Zoning Commission, to help provide a general sense of the value of the amenity (which is a difficult task to achieve). This estimate was not intended to bind the Applicant to a precise rental rate, as market rents for retail space will likely fluctuate over the life of the development. The Applicant believes that its proposed condition, which requires that lease rates for the artist studio spaces will be below the average rent for all retail on the Subject Property for the life of the improvements on Block C, is appropriate and is consistent with the information submitted into the record of this case.

On October 26, 2009, the Applicant requested that it be allowed to submit one final set of plans and materials depicting the approved project prior to the Zoning Commission taking Final Action on this PUD and Zoning Map Amendment application. The final set of plans and materials of the approved project is attached to this letter. Accepting this submission into the record will allow the Zoning Commission's order approving the application to refer to a single exhibit and will make it easier for the Office of Zoning and the Zoning Administrator to process and approve the building permit applications necessary to construct the various structures included in this project.

Respectfully submitted,

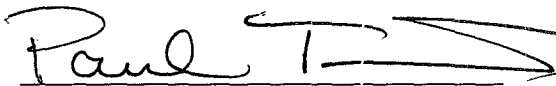

Paul A. Tummonds, Jr.


Christine Roddy

Enclosures

Certificate of Service

I certify that on November 30, 2009, a copy of the foregoing document was hand delivered to the addressees listed below.


Paul Tummonds

ANC 5C
c/o Anita Bonds, Chairperson
202 Bates Street, NW
Washington, D.C. 20001

D.C. Office of Planning
c/o Matthew Jesick
2000 14th Street, NW
4th Floor
Washington, DC 20009

Office of the Attorney General
c/o Jacob Ritting, Assistant Attorney General
1100 15th Street, NW
Suite 800
Washington, DC 20005

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 this application for Consolidated Review of a Planned Unit Development, related Zoning Map amendment, and amendment to an approved Campus Plan for the Subject Property (Square 3654, Lots 4, 5, 6, 10, 12, 15, 16, 17, 801, 802, 803, 804, 805, 806, 811; Square 3655, Lot 1; Square 3656, Lot 800; Square 3657, Lots 805, 821, 826; Square 3831, Lot 818). The approval of this PUD is subject to the following conditions:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit [to be added prior to Final Action] of the record, as modified by the guidelines, conditions and standards of this order.
2. The Applicant shall make the following financial contributions within the specified time period:
 - Monroe Street Bridge Improvements: The Applicant shall make a financial contribution of \$50,000 to fund aesthetic improvements to the Monroe Street Bridge. The contribution shall be made prior to the issuance of a certificate of occupancy for the Block E building.
 - 12th Street Retail Façade Improvement Grant: The Applicant shall make a financial contribution of \$25,000 to the existing 12th Street retail façade program currently administered by DC Department of Small and Local Business Development (DSLBD). The contribution shall be made prior to the issuance of above-grade building permits for the first building to be constructed on the Subject Property.
 - Brookland-Edgewood Retail Strategy Study: The Applicant shall make a financial contribution of \$25,000 to engage a reputable third-party retail consultant to study and prepare a report on the retail needs for the Brookland and Edgewood communities and recommend the appropriate allocation of retail uses among 4th Street (Edgewood), 12th Street (Brookland), and the proposed retail on Monroe Street. The report shall be completed and submitted to the Office of Planning, ANC 5A, ANC 5C, and the Edgewood Civic Association prior to receipt of above-grade building permits for Block A1.
 - Ward 5 Scholarships: The Applicant shall make a financial contribution of \$35,000 to Trinity College and \$40,000 to The Catholic University of America for scholarships for

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academically qualified Ward 5 residents. The contributions shall be made prior to receipt of the certificate of occupancy for Block E.

- **Dance Place:** The Applicant shall install a “sprung floor” in the Arts Flex Building (Block D) to accommodate dance classes and recitals (estimated cost \$40,000) and provide a \$15,000 financial contribution to the Next Generation Youth Program. The sprung floor shall be completed prior to receipt of the certificate of occupancy for the Block D building. The \$15,000 monetary contribution shall be made prior to receipt of the first above-grade building permit for the Subject Property.
 - **Fatherhood/Career Development Program at Luke C. Moore Academy:** The Applicant shall provide a financial contribution of \$45,000 to the HELP Foundation (or the relevant administering organization) in support of the fatherhood/career development program administered at the Luke C. Moore Academy located at 1001 Monroe Street, NE. The financial contribution shall be made prior to receipt of first above-grade building permit for the Subject Property.
3. Once the financial contribution is paid to the organization within the specified time period, there is no further obligation on the part of the Applicant. The Commission will require those organizations receiving a monetary contribution to present evidence to the Office of Zoning’s Compliance Review Manager demonstrating that the money has been applied to the designated use within six months of receiving the contribution. If the money has not been applied to the designated use within six months, the recipient must provide a reasonable explanation to the Office of Zoning’s Compliance Review Manager as to why not and must present evidence to the Office of Zoning’s Compliance Review Manager within one year indicating that the contribution has been properly allocated.
 4. The Applicant shall establish a transportation demand management program that includes the following:
 - Coordination with a local car-sharing vehicle service to reserve parking spaces, provided there is interest from said services in locating car-sharing vehicles at this site;
 - Providing all initial residents, upon move-in, a SmarTrip card (a cost of \$5 per card to the Applicant) to encourage the use of mass transit;
 - Allocate a space on the Subject Property for a Smart Bike station to be provided by DDOT; and
 - Designate a transportation management coordinator.
 5. The Applicant will make a formal written request to DDOT to establish a permanent 55-foot loading space on the north side of Monroe Street, in front of Block C.
 6. The Applicant will provide signage at the entrances to the alley adjacent to Block C prohibiting trucks larger than 30 feet from entering the alley.

7. The Applicant will incorporate loading operations into the Rules and Regulations provided to all tenants of Block C. The Rules and Regulations for the loading operations will inform tenants that all trucks larger than 30 feet are prohibited from using the alley and are required to use the dedicated loading space on Monroe Street.
8. The Applicant will designate a member of the on-site staff as the freight manager, who will be responsible for enforcing the Rules and Regulations regarding loading operations in Block C.
9. The project shall reserve a total of 63,000 square feet of gross floor area as affordable housing to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). A proportionate amount of affordable housing will be provided in each Phase of the PUD's development and will be distributed throughout each of the multi-family buildings, except for the two upper stories of each building. The affordable housing unit types shall be comparable to the market rate mix of unit types in each building. The calculation of the 63,000 square feet of affordable gross floor area includes three 14 foot-wide townhouses that will be distributed evenly throughout the 21-unit townhouse string along Kearny Street.
10. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in substantial conformance with the First Source Agreement submitted as Exhibit F of Exhibit 18 of the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of the first above grade building permit for the Subject Property.
11. The Project shall be designed to satisfy LEED certification but it shall not be required to be LEED certified.
12. The Applicant shall realign the intersection of 7th Street and Michigan Avenue to create a four-legged intersection with the entrance of Catholic University, as provided for in the approved plans. The Applicant shall coordinate the final design and construction of the intersection, including all pedestrian facilities, with DDOT staff and all plans and construction shall be consistent with DDOT standards. This intersection realignment will be undertaken at the same time or prior to the construction of Block B.
13. The Applicant shall reconfigure the intersection of Michigan Avenue and Monroe Street to establish a "T" intersection, as provided for in the approved plans. The Applicant shall coordinate the final design and construction of the intersection, including all pedestrian facilities, with DDOT staff and all plans and construction shall be consistent with DDOT standards. This intersection realignment will occur at the same time as or prior to the construction of Block A1.
14. The Applicant shall incorporate the Metropolitan Branch Trail on Block C, as provided for in the approved plans. The Applicant shall coordinate the final design and construction of the Metropolitan Branch Trail with DDOT staff and all plans and construction shall be consistent with DDOT standards. The Metropolitan Branch Trail

extension on Block C will be undertaken at the same time as the construction of the buildings on Block C.

15. The Applicant shall provide space for a shuttle bus drop-off area on the west side of 7th Street between Michigan Avenue and Monroe Street that will be available to a limited number of private shuttles accessing the Metrorail station from the west side of the railroad tracks and shall be eliminated at such time that the existing shuttle buses serving the hospitals along Michigan Avenue are consolidated through a circulator bus or consolidated shuttle bus service.
16. The Applicant shall provide the artist studio spaces in Block C at lease rates below the average rent for all retail on the Subject Property for the life of the improvements on Block C.
17. The Applicant shall permit ANC 5A, ANC 5C, and the Edgewood Civic Association to use the Arts Flex Building on Block D for their scheduled monthly meetings without charge. Other community groups that have a duly elected board, hold tax-exempt status and have a membership, the majority of which live within 1 mile of the Subject Property, can use the Arts Flex Building for a nominal fee, in order to cover maintenance and staffing costs.
18. 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 structures;
 - 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; and
 - To make minor refinements to exterior details and dimensions, including 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.
 - To allow the Applicant or future homeowners to construct detached garages on lots 7-15, 24-30 and 41-45 in Block A2. If constructed, the garages are limited to a maximum gross floor area of 450 square feet, a 15 foot (1 story) height, can be up to 25 feet in depth and extend to the rear and side property lines. The garage, in combination with the house, cannot exceed a lot occupancy of more than 80%.
 - To use Block E as a surface parking lot until such time that retail parking spaces are established in Block A1. Access to the interim parking lot on Block E must occur via existing curb cuts or curb cuts proposed in connection with the development of Block E.
19. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of 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 the Department of Consumer and Regulatory Affairs

(DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the Subject 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.

20. The change of zoning from the R-4, R-5-A, C-1 and C-M-1 Zone Districts to the C-2-B and R-5-B Zone Districts shall be effective upon the recordation of the covenant discussed in Condition No. 17, pursuant to 11 DCMR §3028.9.
21. The PUD shall be valid for a period of three years from the effective date of Zoning Commission Order No. 08-24 and 08-24A/04-25. Within such time, an application must be filed for a building permit for the construction of Block B, C, or D as specified in 11 DCMR Section 2409.1; the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within ten (10) years of the issuance of the final certificate of occupancy for the first building.
22. 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.

On _____, 2009, the Zoning Commission approved the application by a vote of _____. This order was adopted by the Zoning Commission at its public meeting held on _____, by a vote of _____.

In accordance with the provisions of 11 DCMR § 2038, this order shall become final and effective upon publication in the D.C. Register; that is, on _____.

Anthony Hood, Chairman
Zoning Commission

Jamison Weinbaum
Director, Office of Zoning

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 this application for Consolidated Review of a Planned Unit Development, related Zoning Map amendment, and amendment to an approved Campus Plan for the Subject Property (Square 3654, Lots 4, 5, 6, 10, 12, 15, 16, 17, 801, 802, 803, 804, 805, 806, 811; Square 3655, Lot 1; Square 3656, Lot 800; Square 3657, Lots 805, 821, 826; Square 3831, Lot 818). The approval of this PUD is subject to the following conditions:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit [redacted] [to be added prior to Final Action] of the record, as modified by the guidelines, conditions and standards of this order.
2. The Applicant shall make the following financial contributions within the specified time period:
 - **Monroe Street Bridge Improvements:** The Applicant shall make a financial contribution of \$50,000 to fund aesthetic improvements to the Monroe Street Bridge. The contribution shall be made prior to the issuance of a certificate of occupancy for the Block E building.
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On _____, 2009, the Zoning Commission approved the application by a vote of _____. This order was adopted by the Zoning Commission at its public meeting held on _____, by a vote of _____.

In accordance with the provisions of 11 DCMR § 2038, this order shall become final and effective upon publication in the D.C. Register; that is, on _____.

Anthony Hood, Chairman
Zoning Commission

Jamison Weinbaum
Director, Office of Zoning

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