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ZONING COMMISSION
District of Columbia

CASE NO. 09-05

EXHIBIT NO. 38

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 09-05

Z.C. Case No. 09-05

Consolidated Planned Unit Development and Zoning Map Amendment

United House of Prayer for All People

(Square 442, Lots 115, 116, 117, 118 and 119)

October 19, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on September 10, 2009, to consider applications from the United House of Prayer for All People (the "Applicant"), owner of Lots 115, 116, 117, 118, and 119 in Square 442, for the consolidated review and approval of a planned unit development ("PUD") and a Zoning Map amendment to rezone the subject property from the R-4 Zone District to the C-2-B Zone District. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On March 23, 2009, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD and a Zoning Map amendment to rezone Lots 115, 116, 117, 118, and 119 in Square 442 (the "Subject Property") from the R-4 Zone District to the C-2-B Zone District.
2. The Subject Property has a land area of approximately 16,320 square feet and is located on the north side of Rhode Island Avenue, N.W., between 6th and 7th Streets, N.W. The Subject Property is located in the R-4 Zone District. The property has approximately 93 feet of frontage on Rhode Island Avenue, N.W.
3. Square 442 is located in the northwest quadrant of the District and is bounded by S Street to the north, 6th Street to the east, Rhode Island Avenue and R Street to the south, and 7th Street, N.W. to the west. The site is within walking distance of the Shaw-Howard University Metrorail Station, which has an entrance located on the north side of R Street, between 7th and 8th Streets, which is approximately 450 feet from the Subject Property, and an entrance located at the northeast corner of 7th and S Streets, which is approximately 600 feet from the Subject Property.
4. A small parcel of land owned by the District of Columbia and a 15-foot-wide public alley are located to the immediate west of the Subject Property. A 20-foot-wide public alley abuts the northern portion of the Subject Property. An approximately three-story building is located to the immediate east of the Subject Property. This building is known

as the "Molumba House" and is being used as a transitional housing program operated by Catholic Charities.

5. The Applicant is seeking approval to develop a multiple-family dwelling building on the Subject Property in accordance with the C-2-B PUD zoning requirements. The project will contain approximately 32,125 square feet of gross floor area, with an overall floor area ratio ("FAR") of 1.97 and a maximum building height of approximately 49 feet. The project will include a total of 16 residential units, eight of which will be affordable to households earning 60 – 80% of the Area Median Income ("AMI"). The project also includes 10 surface parking spaces which will be accessed from the public alley adjacent to the Subject Property.
6. At its public meeting held on May 11, 2009, the Commission voted to schedule a public hearing on the application.
7. On July 2, 2009, the Applicant submitted a Prehearing Statement, along with revised Architectural Plans and Elevations (the "Plans"), marked as Exhibits 16 and 17 of the record in this case. The prehearing statement included revised Plans incorporating additional detail, a LEED checklist indicating the sustainability features to be incorporated into the project, and the other information required pursuant to § 3013 of the Zoning Regulations.
8. After proper notice, the Commission held a public hearing on the application on September 10, 2009. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2C (the ANC within which the Subject Property is located).
9. Three principal witnesses testified on behalf of the Applicant at the public hearing, including Megan Mitchell, on behalf of Suzane Reatig Architecture, as an expert in architecture; Osborne R. George, on behalf of O.R. George & Associates, Inc., as an expert in transportation planning and analysis; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Ms. Mitchell, Mr. George, and Mr. Sher were qualified by the Commission as experts in their respective fields.
10. The Office of Planning ("OP") testified in support of the project.
11. The District Department of Transportation ("DDOT") submitted a report regarding the project, but did not attend the hearing. At the conclusion of the public hearing on September 10, 2009, the Commission left the record open to allow DDOT to submit additional materials to supplement its recommendations. DDOT submitted a supplemental report on October 15, 2009.

12. ANC 2C submitted a letter in support of the application. (Exhibit 26.) ANC 2C's letter of support indicated that at a duly noticed public meeting on December 3, 2008, at which notice was properly given and a quorum was present, ANC 2C unanimously voted 4-0-0 to recommend that the Commission approve the Applicant's proposed PUD and Zoning Map amendment.
13. At the conclusion of the public hearing held on September 10, 2009, the Commission took proposed action to approve the application and plans that were submitted to the record.
14. On October 1, 2009, the Applicant submitted a post-hearing submission. (Exhibits 32-35.) The post-hearing submission included a proposed order and supplemental Plan sheets which addressed the architectural issues raised during the public hearing, including: (1) an enlarged entry elevation; (2) updated roof plan and elevation showing general area for condensers and plantings; (3) an indication of the material of the eastern party wall; and (4) a range of potential colors for the project's windows and canopies.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on September 10, 2009 under the terms of the District of Columbia Home Rule Act (Exhibit 31). NCPC, by action dated September 24, 2009, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 36.)
16. The Commission took final action to approve the application on October 19, 2009.

The Subject Property

17. The Subject Property has a land area of approximately 16,320 square feet and is located on the north side of Rhode Island Avenue, N.W., between 6th and 7th Streets, N.W. The Subject Property is located in the R-4 Zone District. The property has approximately 93 feet of frontage on Rhode Island Avenue, N.W.
18. The eastern portion of the Subject Property is designated in the Moderate-Density Residential land use category and the western portion of the Subject Property is designated in the Medium-Density Commercial/Medium-Density Residential categories on the District of Columbia Comprehensive Plan Future Land Use Map. The Subject Property is designated in a Neighborhood Enhancement Area on the District of Columbia Comprehensive Plan Generalized Policy Map.
19. The area surrounding the Subject Property is characterized by a mix of residential and commercial uses. In Square 442, the property to the east of the Subject Property and

along 6th Street, N.W. includes single-family row dwellings that range from two to three stories in height and a three-story building. There are commercial uses and some vacant property located in the square along S and 7th Streets, N.W. Square 444, which is located across Rhode Island Avenue and to the south of the Subject Property, includes single-family row dwellings, flats, and a five-story multiple dwelling building. Additional multiple dwelling buildings are located to the west and northwest of Square 442.

20. Square 442 is split-zoned R-4 and ARTS/C-2-B, with the ARTS/C-2-B zoning located on the properties fronting on 7th Street and the R-4 zoning located generally to the east of the public alley which divides the square. The property to the east of Square 442 is also zoned R-4, while the area to the south is zoned R-4 and C-2-A, the area to west is zoned ARTS/C-2-B and R-5-D, and the area to the north is zoned R-4 and ARTS/C-2-B.

Development Under Existing Zoning

21. The Subject Property is currently zoned R-4. The Applicant is seeking to rezone the Subject Property to C-2-B in connection with this Application.
22. The R-4 zoning classification is designed to include areas developed with row dwellings and dwellings for two or more families. (11 DCMR § 330.1.) R-4 Zone Districts permit residential uses, child/elderly development centers, hospitals, churches, public and charter schools, and other similar uses as a matter-of-right. (11 DCMR § 330.5.)
23. The maximum permitted matter-of-right height in the R-4 Zone District is 40 feet with a maximum of three stories. 11 DCMR § 400.1. The R-4 Zone District requires a minimum lot area ranging from 1,800 square feet to 9,000 square feet (depending on the use), and a minimum lot width ranging from 18 feet to 120 feet (depending upon the use). (11 DCMR § 401.3.) There is no prescribed maximum density in the R-4 Zone District. (11 DCMR § 402.4.)
24. The maximum percentage of lot occupancy in the R-4 Zone District ranges from 40% to 60%, depending upon the use. (11 DCMR § 403.2.) Moreover, pursuant to § 404.1 of the Zoning Regulations, a rear yard with a minimum depth of 20 feet must be provided for each structure in the R-4 Zone District. Side yards generally are not required in the R-4 Zone District. However, if a side yard is provided, it must be at least three inches wide per foot of building height, but not less than eight feet. (11 DCMR § 405.6.)
25. Where an open court is provided in the R-4 Zone District for anything other than a one-family dwelling, the court must have a minimum width of four inches per foot of height of court, but not less than 10 feet. (11 DCMR § 406.1.) Where a closed court is provided in the R-4 Zone District for anything other than a one-family dwelling, the court must have a minimum width of four inches per foot of height of court, but not less than 15 feet,

and an area of twice the square of the required width of court dimension based on the height of court, but not less than 350 square feet.

26. An apartment house or multiple dwelling in the R-4 Zone District is required to provide one parking space for each three dwelling units. (11 DCMR § 2101.1.) The loading requirement for an apartment house or multiple dwelling with 50 or more dwelling units in all zoning districts is one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. (11 DCMR § 2201.1.)
27. Development of the Subject Property under the PUD guidelines for the R-4 Zone District would allow a maximum building height of 60 feet, and a maximum density of 1.0 FAR, all of which would be devoted to residential use. (11 DCMR §§ 2405.1 and 2405.2.)

Development under Proposed C-2-B Requirements

28. The Applicant proposes to rezone the Subject Property to C-2-B in connection with this Application. The C-2-B Zone District is designed to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed-uses. (11 DCMR § 720.6.) The C-2-B Zone Districts are compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) Buildings may be entirely residential or a mixture of residential and commercial uses in the C-2-B Zone District. (11 DCMR § 720.8.)
29. The C-2-B Zone District includes the following development requirements:
 - A maximum matter-of-right height of 65 feet with no limit on the number of stories (§ 770.1), and a maximum height of 90 feet under the PUD requirements (§ 2405.1);
 - A maximum matter-of-right density of 3.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses (§ 771.2), and under the PUD guidelines, a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to non-residential uses (§ 2405.2);
 - A maximum lot occupancy of 80% (§ 772.1);
 - A minimum rear yard depth of 15 feet (§ 774.1) and, if provided, a side yard at least two inches wide per foot of building height, but not less than six feet (§ 775.5);
 - If provided for a residential use, a minimum court width of four inches per foot of height, but not less than 15 feet (§ 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (§ 776.4);

- For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 350 square feet of gross floor area and cellar floor area (§ 2101.1) and for an apartment house or multiple dwelling with 50 or more units, one off-street parking space for each three dwelling units (§ 2101.1); and
- For a retail establishment with 5,000 to 20,000 square feet of gross floor area, one loading berth at 30 feet deep and one loading platform at 100 square feet (no service/delivery loading space is required) (§ 2201.1) and for an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (§ 2201.1).

Development Incentives and Flexibility

30. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- a. *Flexibility from Roof Structure Requirements.* The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because, as shown on the Roof Plan sheet included in the Plans, there will be multiple roof structures (§§ 411.3 and 770.6(a)), and each roof structure cannot be set back from all exterior walls a distance equal to its height above the roof (§§ 411.2 and 770.6(b)). Each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. Moreover, the location and number of structures on the roof is driven by the layout and design of the residential units within the building. In addition, the Applicant is providing the greatest setbacks possible given the size of the roofs and the internal configuration of the proposed building. The requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.
- b. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
 - i. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.

- ii. To make refinements to the parking configuration, including layout, number of parking spaces, and/or other elements, provided the number of zoning-compliant parking spaces is not reduced below 10 spaces.
- iii. 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 curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit.

Public Benefits and Amenities

31. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
- a. *Urban Design, Architecture, Landscaping and Open Space.* As shown on the Architectural Plans and Elevations, the project architect has designed a building that will have a positive impact on the visual character of the immediate neighborhood, and will thus further the goals of urban design and enhance the streetscape. Moreover, the project includes a significant amount of landscaping, garden, and open space features.
 - b. *First Source Employment Agreement.* The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. Execution and implementation of this agreement will help to expand employment opportunities for residents and local businesses which is a priority of the Applicant.
 - c. *Housing and Affordable Housing.* The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The proposed PUD includes 29,144 square feet of residential gross floor area, half of which will be designated as affordable housing units for households earning 60-80% of the AMI. This substantially exceeds the amount of affordable housing that would be required under the Inclusionary Zoning requirements set forth in § 2603.1 of the Zoning Regulations. The affordable housing units will be distributed throughout the building in a ratio and locations consistent with the ratio and locations of the market rate units.
 - d. *Environmental Benefits.* The proposed development will help to ensure the environmental, economic and social sustainability of the residents through the

implementation of sustainable design features. The Applicant's goal is to provide high quality affordable housing that will promote a healthy living environment, reduce life cycle costs for long term property management, promote efficient utility costs for residents and create a synergy that will enhance interest in practical green building in the community. Thus, the Applicant has committed to seeking LEED certification at a minimum of the certified level for the project.

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

32. The Subject Property is on the boundary of an area designated in the Moderate-Density Residential land use category and another area designated in the Medium-Density Residential/Medium-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map.
33. The Moderate-Density Residential designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, two to four unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, and R-5-A Zone Districts are generally consistent with the Moderate-Density Residential category; the R-5-B Zone District and other zones may also apply in some locations.
34. The Applicant's proposal to rezone the property from the R-4 Zone District to the C-2-B Zone District to construct a residential development on the Subject Property is consistent with the Comprehensive Plan designation of the Subject Property. The Applicant proposes to construct 1.97 FAR of residential use on the Subject Property, which is consistent with the amount of residential density permitted in moderate-density zones (i.e., a PUD in the R-5-D Zone District may have a density of up to 3.0 FAR). The project's height of 48.6 feet, with four stories, is also consistent with other low-rise residential uses in moderate density residential areas. Albeit a commercial zone, the proposed C-2-B zoning classification is specifically identified as a moderate-density zone district, and the proposed project is all residential.
35. The Subject Property is designated in a Neighborhood Enhancement Area on the District of Columbia Comprehensive Plan Generalized Policy Map. Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant residentially zoned land. They are primarily residential in character. Many of these areas are characterized by a patchwork of existing homes and individual vacant lots, some privately owned and others owned by the public sector or non-profit developers. These areas present opportunities for compatible small-scale infill development.

36. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development “fits-in” and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place. New development in Neighborhood Enhancement Areas should improve the real estate market, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents.
37. The proposed PUD is consistent with this designation. The Applicant proposes to redevelop the Subject Property, which is currently an underutilized residentially-zoned site, and to construct a residential development on the Subject Property. As shown on the Architectural Plans and Elevations, this new development includes a significant amount of green space, and is compatible with the surrounding uses. Moreover, the project's height of 48.6 feet, with four stories, is consistent with the Moderate-Density Residential designation of the Subject Property.
38. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:
 - a. *Managing Growth and Change.* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. (§ 2.3, ¶ 217.6). The proposed PUD is fully-consistent with each of these goals. Redeveloping the Subject Property into a residential development will further the revitalization of the neighborhood.
 - b. *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 2.3, ¶ 218.8). The proposed PUD furthers this goal since, as part of the PUD process, the Applicant has worked with ANC 2C, the ANC within which the Subject Property is located, to ensure that the development provides a positive impact to the immediate neighborhood. Indeed, ANC 2C voted unanimously 4-0-0 to support the proposed development.
 - c. *Building Green and Healthy Communities.* One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy

and water conservation, and reduce harmful effects on the natural environment. (§ 2.3, ¶ 221.3) As discussed in more detail herein, the Commission finds that the building will include a significant number of sustainable design features.

39. The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the report and testimony of the Applicant's land use and zoning expert and the report of the Office of Planning. The Commission finds that approval of the PUD and map amendment would not be inconsistent with the Comprehensive Plan.

Office of Planning Report

40. By report dated May 1, 2009, OP indicated that it supports the applications and that the proposed PUD and Zoning Map amendment are not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Exhibit 13.)
41. By report dated August 31, 2009, OP recommended final approval of the application. (Exhibit 25.) OP indicated that the proposed project is consistent with the PUD evaluation standards, that the application will further a number of the elements and principles of the Comprehensive Plan, and the project is not inconsistent with the Comprehensive Plan's policies and land use maps. OP also indicated that the project includes an appropriate amount of public benefits and amenities. OP also supported the requested zoning flexibility from the roof structure requirements. OP requested in its report that the Applicant: (1) provide sample materials for the proposed security gates; (2) provide more information regarding the dimensions and treatment of the public space adjacent to the Subject Property on Rhode Island Avenue; and (3) reconsider the materials proposed for the dumpster enclosure gate to make the dumpster less visible.
42. The Commission finds that the Applicant has satisfied each of these conditions. The Applicant submitted and presented at the public hearing a PowerPoint presentation and revised Plans which indicate that the Applicant has provided the information requested by OP. (Exhibit 30.) OP also stated at the hearing that the Applicant has appropriately responded to the issues raised in its report and that OP supports approval of the project.

DDOT Report

43. DDOT also submitted a memorandum dated September 4, 2009, indicating that DDOT supports the Applicant's request for a PUD and map amendment for the Subject Property. (Exhibit 22.) DDOT indicated that the project will not have a significant vehicular traffic impact on the surrounding network of neighborhood streets. DDOT also commended the Applicant for planning a low number of parking spaces in the project. DDOT

recommended that the proposed parking spaces be made available only to residents of the project, and that trash removal and recycling pick-up occur through the alley. DDOT also recommended that the Applicant implement a number of transportation demand management measures. DDOT also made a number of public space recommendations.

44. DDOT submitted a second memorandum on October 15, 2009, marked as Exhibit 37, requesting that the Commission require the Applicant to submit a Transportation Demand Management ("TDM") program for the project.
45. Based upon the testimony of the Applicant's expert in transportation analysis and planning, the Site Access and Impact Analysis included with the application (Exhibit 6), and the Applicant's presentation and testimony during the hearing, the Commission finds that the project will have a very minor vehicular trip generation for the Subject Property and the levels of service for the nearby street intersections would not be affected. The Applicant's expert in transportation analysis and planning testified that TDM measures are typically provided for projects much larger in scale than the Applicant's proposed project. Moreover, given the size of the project and the anticipated resident profile, the Commission finds that the proposed bike storage facility is a sufficient transportation management measure for the project. The Commission also finds that the Applicant's PowerPoint presentation and revised Plans (Exhibit 30) submitted at the public hearing indicate that trash and recycling removal will occur through the alley adjacent to the Subject Property. With respect to DDOT's proposed TDM measures, the Commission finds that these measures are not necessary in this case given the project's size, the lack of any evidence demonstrating the need to mitigate traffic or vehicle trips generated from the project, and the cost of implementing DDOT's recommendations. Finally, the Commission finds that DDOT's public space concerns will be addressed during the permitting process, which the Commission finds is the most appropriate setting for resolving those issues for this project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading,

yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Subject Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under D.C. Official Code Ann. § 1-309.10 to give great weight to the affected ANC's recommendation. In this case, ANC 2C voted unanimously to support the project and recommended that the Commission approve the application. (Exhibit 14.) The Commission has given ANC 2C's recommendation great weight in approving this application.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. In this case, OP recommended approval of the project and the Commission has given OP's recommendation great weight.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for the consolidated review and approval of a planned unit development and a Zoning Map amendment to rezone Lots 115, 116, 117, 118, and 119 in Square 442 from the R-4 Zone District to the C-2-B Zone District subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Suzane Reatig Architects, dated March 20, 2009, marked as Exhibit 5 in the record (the "Plans"); as modified by the revised architectural plans submitted at the public hearing on September 10, 2009 and marked as Exhibit 30, and the supplemental sheets submitted on October 1, 2009 and marked as Exhibit 35; and as further modified by the guidelines, conditions, and standards herein.
2. The PUD shall have a maximum density of 1.97 FAR and a gross floor area of no more than 32,125 square feet dedicated to residential uses. The project shall contain no more than 16 residential units.
3. The maximum height of the building shall be 49 feet.
4. The project shall include a minimum of 10 striped off-street parking spaces.
5. The project shall include a minimum of eight affordable units devoted for use by households earning between 60% and 80% of the AMI for the Washington, D.C. metropolitan area. The affordable units shall be located within the building as identified on Sheet A1.1 of the Plans. (Exhibit 17.)
6. The project shall achieve a LEED certification at a minimum of the certified level for the project.
7. The Applicant is granted flexibility from the roof structure number and setback requirements (§§ 411 and 770), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
8. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.

- b. To make refinements to the parking configuration, including layout, number of parking spaces, and/or other elements, provided the number of striped parking spaces is not reduced below 10 spaces.
 - c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit.
9. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicants and all successors in title to construct on and use the Subject Property in accordance with this Order or amendment thereof by the Zoning Commission.
10. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
11. 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that 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 Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On September 10, 2009, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to approve.)

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On October 19, 2009, upon the motion of Chairman Hood as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to adopt.)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on January 8, 2010.

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DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 22, 2008

Part for Building Permit of SQUARE 442 LOTS 115, 116, 117, 118, & 119

Scale: 1 inch = 30 feet

Recorded in Book 202 Page 74

Receipt No. 00018

Furnished to: HOLLAND & KNIGHT (FREDA HOBAR)

Surveyor, D.C.

By: A.S. (S) *[Signature]*

[illegible]

Date: _____

(Signature of owner or his authorized agent)

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

