

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 09-08

Z.C. Case No. 09-08

Brookland Artspace Lofts, LLC

(Consolidated Approval for a Planned Unit Development for Property Located in Square 3831, Lot 47 ("Northern Parcel") and First-Stage Approval for Property Located in Square 3832, Lot 803 and a One Block Portion of Kearny Street ("Southern Parcel") (Northern Parcel and Southern Parcel Collectively Referred to as, "Property") and PUD-Related Map Amendment for Property)

October 19, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 23, 2009, to consider an application from Brookland Artspace Lofts, LLC ("Applicant") for consolidated review and approval of a planned unit development and related zoning map amendment for property located at 3305-3313 8th Street, NE (Square 3831, Lot 47) ("Northern Parcel") and First-Stage review and approval of a planned unit development and designation of the appropriate zoning classification for property located at 3225 8th Street, N.E. (Square 3832, Lot 803) and a one-block portion of Kearny Street immediately east of 8th Street, N.E. (collectively, "Southern Parcel"). The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application and Procedural Action

1. The project site consists of Square 3831, Lot 47 and Square 3832, Lot 803 ("Property"). The Property is bounded by 8th Street, N.E. to the west, railroad tracks to the east, and private property to the north and south. The Property is bisected by Kearny Street, which dead-ends at the railroad tracks. The Property is approximately one quarter mile from the Brookland/CUA Metrorail Station. In total, the Property is approximately 25,017 square feet in size. The Northern Parcel has a land area of approximately 14,375 square feet, the parcel south of Kearny Street is approximately 6,727 square feet in size and Kearny Street consists of approximately 3,915 square feet. (Exhibit 4, pp. 3-4; Exhibit 25, pp. 2-4.)
2. The Applicant initially filed its application on April 20, 2009. (Exhibit 1, pp. 1-2.) It was set down for a public hearing at the Commission's public meeting on May 11, 2009.

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EXHIBIT NO.

ZONING COMMISSION
District of Columbia
CASE NO. 09-08
EXHIBIT NO. 47

The Commission simultaneously granted the Applicant's request for a waiver of hearing fees for the residential portion of the project pursuant to § 3042.1 of the Zoning Regulations. (May 11 Transcript ("Tr.", pp. 16-20.)

3. The Commission accepted the Applicant's initial filing as satisfaction of 11 DCMR § 3013 and scheduled a public hearing for July 23, 2009.
4. The Applicant timely filed a supplemental submission on July 6, 2009. (Exhibit 25.)
5. A public hearing was held on July 23, 2009. Advisory Neighborhood Commission ("ANC") 5C was automatically made a party to the application. There were no other parties to the case.
6. The Commission accepted the Applicant's witness, Laurence Caudle, as an expert in architecture. It heard testimony from Mr. Caudle and the Applicant's two other witnesses, Heidi Kurtze and Carla Perlo. It also heard testimony from Matt Jesick of the Office of Planning, Jeff Jennings of the District Department of Transportation ("DDOT"), and Silas Grant, a representative of ANC 5C.
7. At the close of the hearing on July 23, 2009, the Commission took proposed action to approve the application. It left the record open to allow DDOT and the ANC to respond to the traffic summary submitted by the Applicant.
8. DDOT submitted additional comments on July 24, 2009.
9. The Commission re-opened the record to include the Applicant's letter dated September 28, 2009 which attached revised plans responding to DDOT's comments regarding trash removal, and suggested revised draft conditions regarding the timing and effect of the PUD-related map amendment.
10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated September 24, 2009 and sent to the Commission by letter dated October 6, 2009, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.
11. The Commission took final action to approve the application in Case No. 09-08 on October 19, 2009.

The Applicant

12. Brookland Artspace Lofts, LLC, the Applicant, is affiliated with Artspace Projects, Inc. ("Artspace"). Artspace is a non-profit corporation that began in Minnesota in 1979 as an

advocate for artists' space needs. It ultimately transitioned from being an advocate to a developer. Today, it is a nationwide corporation with projects in Minnesota, Oregon, Pennsylvania, Nevada, Texas, Illinois, Washington, Maryland, New York, Florida, and Connecticut. In all, their projects represent more than 720 live-work units for artists. (Exhibit 4, p. 5; Exhibit 25, p. 5.)

13. The owners of the Property, James R. Epstein of Brookland Studios and Carla Perlo of Dance Place, submitted letters into the record authorizing the application submitted by Brookland Artspace Lofts. (Exhibit 4, Exhibit C.)
14. Heidi Kurtze and Carla Perlo testified on behalf of the Applicant at the public hearing. (July 23, 2009, Tr., pp. 17-25.)

The PUD Project

15. The Property consists of approximately 25,017 square feet of land area and has its primary frontage along 8th Street, N.E. The Property is currently located in the C-M-1 Zone District and will be rezoned in a PUD-related map amendment to the C-2-B Zone District. Properties to the north and south of the Property are located in the C-M-1 Zone District and properties to the west are located in the R-4 Zone District. The Property is approximately 1.5 blocks away from The Catholic University of America's south campus, an application for which is pending before the Commission, to rezone portions of the campus to the C-2-B Zone District. (Exhibit 4, pp. 3-4; Exhibit 25, pp. 3-4.)
16. The Property is currently improved with "Brookland Studios" and "Dance Place". The PUD calls for redeveloping both sites. Brookland Studios will be razed and replaced with 41 artist live-work units. Dance Place will be replaced with a state-of-the-art dance studio. The Applicant will request to close Kearny Street to serve as a plaza between both parcels (collectively, "Project"). There will be no improvements on Kearny Street. (Exhibit 4, p. 3; Exhibit 25, p. 3.)
17. The Project will consist of two separate buildings on separate lots. The maximum building height will be 50 feet and the floor area ratio ("FAR") for the entirety of the Project will be 2.7, including a 0.7 FAR dedicated to commercial uses. The lot occupancy for the Project is 77%. The artist live-work units will include a below-grade garage with 23 parking spaces and 16 bicycle spaces. (Exhibit 25, pp. 8-9).
18. Fifty percent of the artist live-work units will be available to households with an income that is 60% or less of the Area Median Income ("AMI") and the other 50% of units will be available to households with an income that is 50% or less of AMI. (Exhibit 4, p.13; Exhibit 25, p. 15.)

19. The artist live-work units will be constructed as a part of the consolidated PUD. The closing of Kearny Street and redevelopment of Dance Place will be included in a second-stage PUD application. (Exhibits 4 and 25, preface.)
20. The artist live-work units will incorporate several “green features,” including a green roof and “green screens.” It will also include a mosaic on its western façade that the Applicant envisions will be created by the community. (Exhibit 25, pp. 7-8.)
21. The project design responds to the needs of the users, represents the industrial character of its surroundings, and respects the neighboring residential community. The building heights and project density are consistent with that area of Northeast Washington. (Exhibit 4, pp. 14-16; Exhibit 25, pp. 15-18.)
22. The Applicant submitted a traffic analysis prepared by Gorove Slade which confirmed that the Project will not cause adverse traffic impacts. The analysis stated that because there are only 41 residential units and because the tenants of the units will be working where they reside, the residents will not have typical traffic patterns and will not contribute to peak-hour traffic. The summary concludes that the development will not have an adverse impact on the surrounding roadway or parking network because the development supports residents working in their homes, provides access to convenient bus lines and the Brookland/CUA Metrorail station, and is not projected to generate significant peak hour volumes. (Exhibit 29.)

Zoning Map Amendment

23. The Future Land Use Map designates the Property as appropriate for Production, Distribution and Repair. The Future Land Use Map is not, however, intended to serve as a “general” zoning map nor does it mandate a parcel-by-parcel limitation on permitted development. (Exhibit 4, pp. 14-15; Exhibit 25, p. 16.)
24. The City adopted a Small Area Plan (“SAP”) for the Brookland/ CUA Metro Station area. The SAP calls for new residential infill including artist housing and cultural facilities. Specifically, it seeks new, moderate density residential uses north of Kearny Street and low to moderate density residential and cultural facilities south of Kearny Street. The PUD-related map amendment is consistent with the SAP. (Exhibit 4; p. 15, G; Exhibit 25; pp. 16-18.)
25. The Property is currently located in the C-M-1 Zone District. As a matter-of-right, the C-M-1 Zone District does not permit residential uses. It permits a 3.0 FAR, and a maximum height of 40 feet. (Exhibit 4, p. 8; Exhibit 25, p. 8.)
26. The Property will be rezoned to the C-2-B Zone District with a PUD-related Zoning Map amendment. The PUD guidelines for the C-2-B Zone District allow a 6.0 FAR, with a

maximum commercial density of 2.0 FAR, a maximum height of 90 feet, and a lot occupancy of 80% for residential uses and 100% for commercial uses. Id.

27. The requested rezoning to the C-2-B Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. In Zoning Commission Order No. 921, a PUD and Zoning Map amendment case, the Commission clearly articulated the legal standard for reviewing PUD-related Zoning Map amendments:

A PUD Map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17 (COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

Id. at 16 (COL 6).

28. In this case, the Commission finds that the proposed PUD-related map amendment of the Property to the C-2-B Zone District is appropriate given the superior features of the Project, particularly when compared to the existing uses of the Property and the limited amount of flexibility the Applicant seeks beyond the matter-of-right parameters of the Property's zoning designation. The Commission's conclusion is consistent with OP's recommendation to approve the Project and the PUD-related map amendment.
29. The Commission believes that the Project will enliven a stretch of 8th Avenue, N.E. that is currently underutilized. It also finds that the designation of 100% of the units to affordable housing for artists will be an asset for the community.
30. Although the Comprehensive Plan calls for production, distribution, and repair uses, rezoning the Property to the C-2-B Zone District is consistent with surrounding uses and

with the SAP for the neighborhood. The rezoning is consistent with the themes, elements, and policies of the Comprehensive Plan as well as the purposes of the Zoning Regulations.

Development Incentives and Flexibility

31. The Applicant requested the following areas of flexibility from the Zoning Regulations. (Exhibit 4, p. 9; Exhibit 25, pp.9-10.)
 - a. Rear Yard: The Project is required to provide a minimum of 15 feet of rear yard space. It is providing a minimum of six feet, 11 inches on the Northern Parcel and is not providing a rear yard on the Southern Parcel.
 - b. Rooftop Structures: The Project is providing three rooftop structures on the Northern Parcel. The structures will be of varying heights. Pursuant to §§ 411.4 and 411.5, only one roof structure is permitted and it must be a uniform height.
 - c. Parking: The Applicant seeks relief from the parking requirement for the dance studio. Pursuant to § 2101.1, a school is required to provide two parking spaces for every three teachers in addition to one space for every 10 auditorium seats. As such, the dance studio generates a requirement for 24 spaces but only nine spaces will be provided. The Project also requires flexibility to locate the dance studio spaces on the Northern Parcel and to provide compact spaces without meeting the threshold of 25 regulation-sized spaces.
32. The Commission questioned at the hearing whether the Project also required side yard relief for the dance studio. It now finds that side yard relief is not necessary. If Kearny Street is closed during the Second-Stage PUD, the side yard for the dance studio will satisfy the Zoning Regulation requirements.

Public Benefits and Amenities

33. The Applicant, in its written submissions and testimony before the Commission, noted the following benefits and amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403.
 - Urban Design, Architecture, and Landscaping: From a sustainability perspective, reducing parking supplies near transit nodes is good and encourages non-auto modes of transportation. The Property is located within walking distance of the Brookland/CUA Metrorail Station and will provide less parking than would otherwise be required under the Zoning Regulations. This is consistent with the Small Area Plan, which calls for “adequate” parking but at “low transit-oriented development parking ratios.”

- Site Planning: The Project will develop the Property to create superior buildings serving similar needs for the existing buildings. Both properties are currently located in the C-M-1 Zone District. Rezoning the Property to the C-2-B Zone District will allow for a more efficient and higher quality development. The proposed rezoning of the Property is fully consistent with the Brookland/CUA Small Area Plan.
- Effective and Safe Vehicular and Pedestrian Access: The existing buildings on the Property provide surface parking spaces and four extended curbcuts. The Applicant's proposal will reduce the number of curbcuts to two: one will be located on the northern site, the other will remain at Kearny Street. All parking will be provided in a garage, which will improve pedestrian safety and provide more efficient and effective vehicular circulation. It will also provide environmental benefits, such as reducing stormwater runoff from the Property.
- Affordable Housing: The PUD will provide a number of benefits and amenities for the community. The residential component of the project will be entirely affordable. Each of the artist studios will be available to households with an annual income no more than 60% of the AMI; in fact, half of the units will be available to households with an annual income no more than 50% of the AMI.
- Cultural Uses: The PUD will also provide cultural benefits for the community. The dance studio will be open to the greater community and will also host events throughout the year. The artist studios will also be open for events throughout the year to display the artists' work, and provide a modern practice studio, administrative space, and instruction space for Dance Place.
- Green Design: The PUD will incorporate green design principles – a vast improvement over the existing buildings on-site, which were constructed in an era in which building environmentally sound developments was not a priority.
- Consistency with the Comprehensive Plan. The PUD advances the major themes as well as policies and objectives of the elements of the Comprehensive Plan. The Project furthers social and economic development of the District through the creation of 41 new residential units on underutilized land, with a significant affordable housing component and a highly-developed green design program

(Exhibit 4, pp. 12-14; Exhibit 25, pp. 13-15.)

Compliance with PUD Standards

34. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) Given the

level of project amenities and public benefits provided and the amount of flexibility requested, the Commission finds that the Project is appropriate. The Commission also finds that the requested areas of flexibility are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this Project.

35. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.

Government Agency Reports

36. By reports dated May 1, 2009, and July 13, 2009, and by testimony at the public hearing, OP recommended approval of the application. OP in its report and in oral testimony indicated that “[t]he proposed development would be acceptable in all public benefit and amenity categories and is particularly strong in the affordable housing; uses of special value to the neighborhood; and efficient land utilization categories. The Office of Planning indicated that the amenities are sufficient for approval of the application, especially given the limited nature of the flexibility sought with the PUD.” (Exhibit 11; Exhibit 26, p. 9.)
37. By its report dated July 24, 2009, and filed on August 4, 2009, DDOT recommended conditional support of the Applicant’s request for a PUD-related map amendment. It recommended additional bike spaces, a transportation demand management (“TDM”) program, regular meetings with the ANC, and removal of a retaining wall. DDOT also cited concerns with relying on the use of Kearny Street. In response to its recommendations, the Applicant will implement TDM measures consistent with DDOT recommendations: it will distribute information about Zipcar to new residents upon buildout and it will distribute bicycle route maps and safety information to all residents upon move-in. Further, the owners of Dance Place currently meet with the ANC on a regular basis and will continue to do so. Finally, the Applicant seeks flexibility to change the location of its trash room to address DDOT’s concerns regarding the use of Kearny Street. (Exhibit 38.)

ANC 5C Report

38. By letter dated July 21, 2009, and by testimony at the public hearing, Single Member District representative Silas Grant indicated that at a duly noticed meeting on July 21, 2009, with a quorum present, ANC 5C voted to support the PUD. Specifically, it noted that the Applicant met with the ANC on three occasions and hosted four additional community meetings and was responsive to community questions. (Exhibits 28 and 33.)

Parties/Persons in Support and Opposition

39. Anne Corbett testified in support of the application, stating that the project would stimulate the economy and improve the quality of life for the District. (Exhibit 36.)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

40. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-2-B Zone District are appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of OP that the proposed Project and rezoning are not inconsistent with the Comprehensive Plan, specifically the Small Area Plan for Brookland/CUA Metro Stop.
41. The Commission accords ANC 5C the "great weight" to which it is entitled. In so doing, the Commission fully credits the unique vantage point that ANC 5C holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission recognizes that the Applicant has responded to the majority of the ANC's concerns. The Commission notes that ANC 5C, by resolution, supports this application.
42. The Commission does not share some of the concerns cited by DDOT's report. It notes that given the development will not have an adverse impact on traffic, it believes requiring the Applicant to subsidize Zipcar and MetroCards is neither necessary nor practical. It also notes that requiring 110 bicycle spaces on-site is excessive for a 41-unit building, particularly in light of the fact that the Applicant is already providing eight times the number of bicycle spaces required under the Zoning Regulations. Finally, the Commission does not believe the six inch tall retaining wall will create pedestrian and vehicular conflicts. The Commission is persuaded, however, that the Applicant should have the flexibility to re-evaluate its trash removal practices in light of DDOT's testimony that Kearny Street may be closed in the future.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities" (11 DCMR § 2400.1). The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience" (11 DCMR § 2400.2).
2. Under the PUD process, the Commission has the authority to consider the application as a consolidated PUD and as a first-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right

standards identified for height, 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 (11 DCMR § 2405).

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.
4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The application meets the contiguity requirements of § 2401.3.
6. The proposed height and density will not cause an adverse effect on any nearby properties; the impact of the Project on the surrounding area is not unacceptable. As demonstrated in the Traffic Summary submitted by the Applicant, the Project will not cause adverse traffic impacts.
7. The application can be approved with some flexibility to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.
8. The application seeks a PUD-related zoning map amendment to the C-2-B Zone District, and an increase in height as permitted under the PUD guidelines. The application also seeks flexibility from the parking, rear yard, and rooftop structure requirements. The benefits and amenities provided by the Project, particularly its affordable housing and green design features, are reasonable trade-offs for the requested development flexibility.
9. Approval of the PUD and a change in zoning is not inconsistent with the Comprehensive Plan. The future land use map is a helpful tool, but is not determinative of a property's zoning designation. The Commission finds that rezoning the site to allow residential use is consistent with the Comprehensive Plan, specifically the Upper Northeast Area Element and with the surrounding uses.
10. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, as well as the goals and policies of the Upper Northeast Area Element.
11. The Commission is required under D.C. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 5C voted to support the application. The Commission agrees with the ANC that this Project should be approved and that the proposed uses are appropriate.

12. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04.) The Commission gives OP's recommendation to approve the PUD great weight and concurs with its conclusions.
13. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
14. Notice of the public hearing was provided in accordance with the Zoning Regulations.

PUD Related Zoning Map Amendments.

15. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§ 2408.8 and 2408.9), the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the C-2-B Zone District is appropriate given the superior features of the PUD project.
16. The applications for a PUD and related map amendment are 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 this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment for the property located at 3305-3313 8th Street, N.E. (Square 3831, Lot 47) and first-stage review and approval and designation of the appropriate zoning classification for property located at 3225 8th Street, NE (Square 3832, Lot 803) and a one-block portion of Kearny Street. The approval of this PUD is subject to the following conditions. For the purposes of the following conditions, the term "Applicant" shall be the person owning fee simple title to the Property or that person's agent.

1. The consolidated PUD for the Northern Parcel shall be developed and the first-stage PUD for the Southern Parcel is approved in accordance with the plans prepared by Hickok

Cole Architects and marked as Exhibits 4, 25, 32, and 41 in the record, as modified by the guidelines, conditions and standards herein.

2. The first-stage PUD for the Southern Parcel is approved in accordance with the plans prepared by Hickok Cole Architects and marked as Exhibits 4, 25, and 32 in the record as modified by the guidelines, conditions, and standards herein.
3. The second-stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 4, 25, and 32 of the record, as modified by the guidelines, conditions, and standards of this Order and shall include all public benefits described herein.
4. The Applicant shall submit, as part of the second-stage application for the Southern Parcel, landscape plans, detailed architectural plans, and elevations indicating the design treatment of the dance studio.
5. The change in zoning from the C-M-1 Zone District to the C-2-B Zone District for the Northern Parcel shall be effective upon the recordation of the covenant discussed in Condition No. 12, pursuant to 11 DCMR § 3028.9.
6. The change in zoning from the C-M-1 Zone District to the C-2-B Zone District for the Southern Parcel shall not be effective until approval of an application for a second-stage PUD and upon recordation of a PUD Covenant, pursuant to 11 DCMR § 3028.9.
7. An application for second-stage PUD approval shall address the status of closing Kearny Street. If Kearny Street is not closed by the time of the public hearing for the second-stage PUD, the Commission shall address the implications of removing Kearny Street from the Property.
8. The Project shall have flexibility from the rear yard, parking, and rooftop structure requirements as necessary, per the approved plans.
9. The Applicant will distribute information about Zipcar to new residents upon completion of construction of the Northern Parcel and it will distribute bicycle route maps and safety information to all residents upon their move-in.
10. The Applicant shall have flexibility with the design of the Project in the following areas:
 - a. To vary the location and design of all interior components, including, but not limited to, partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structures.

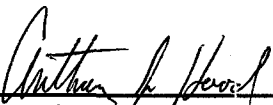
- b. To vary final selection of the exterior materials within the color ranges and materials types as proposed, without a reduction in quality, based on the availability at the time of construction.
 - c. To make minor refinements to exterior details and dimensions, including belts, courses, sills, bases, cornices, railings, and trim or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.
 - d. To refine and make adjustments to the trash room on the Northern Parcel for the purpose of developing an alternative system for removing trash from the facility, provided the alternative does not use Kearny Street for trash removal. The Applicant shall be given the flexibility to alter the garage, including a reduction of up to two parking spaces, should the Applicant need to use it for trash removal.
 - e. To refine and make adjustments to its landscape plans pending comments from District entities, including Fire and Emergency Management Services and the District of Columbia Water and Sewer Authority.
11. The Applicant shall reserve 50% of the residential units for households with an income no greater than 60% of AMI and the other 50% of the residential units for households with an income no greater than 50% of AMI.
12. No building permit shall be issued for the Northern Parcel until the Applicant has recorded a covenant among 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 Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Northern Parcel in accordance with this order and any amendment thereof by the Commission.
13. The consolidated PUD approved by the Commission for the Northern Parcel shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed by the Applicant for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin on the Project within three years of the effective date of this order.
14. The first-stage approval for the Southern Parcel is valid for a period of three years, within which time a second-stage application shall be filed.
15. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or

perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On September 14, 2009, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the applications by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Michael G. Turnbull, and Peter G. May to approve; William W. Keating, III to approve by absentee ballot.)

On October 19, 2009, upon the motion of Vice 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 § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on February 12, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 13, 2009

Plat for Building Permit of: SQUARE 3831 LOT 47

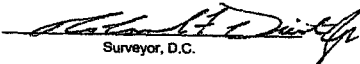
Scale: 1 inch = 20 feet

Recorded in Book 182 Page 4

Receipt No. 01336

Furnished to: P W S P

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 2% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)


Surveyor, D.C.

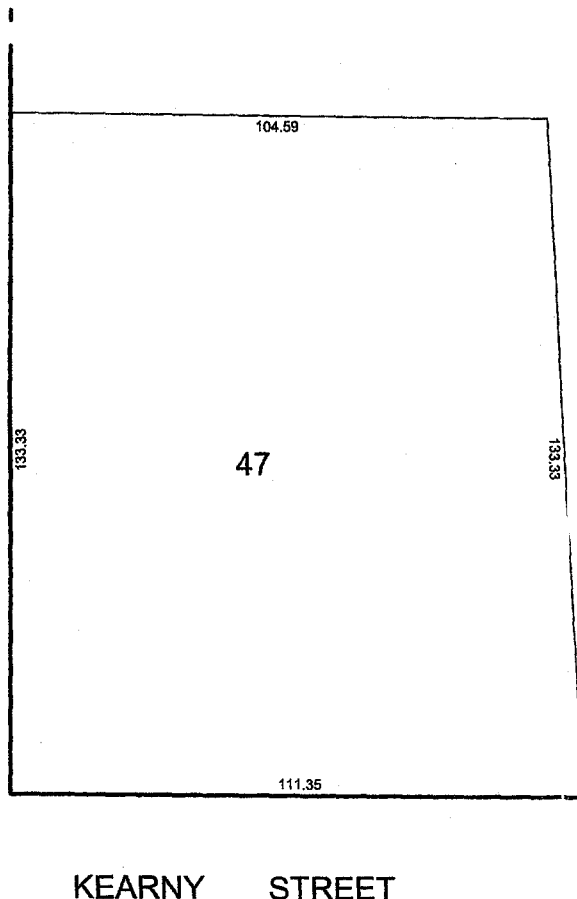
Date: _____

By: A.S. 

(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.

8th STREET, N.E.



KEARNY STREET

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., February 17, 2009

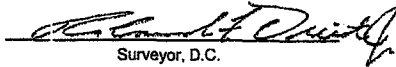
Plat for Building Permit of: SQUARE 3832 LOT 803

Scale: 1 inch = 30 feet Recorded in Book A & T Page 3530 - H

Receipt No. 01337

Furnished to: P W S: P

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)


Surveyor, D.C.

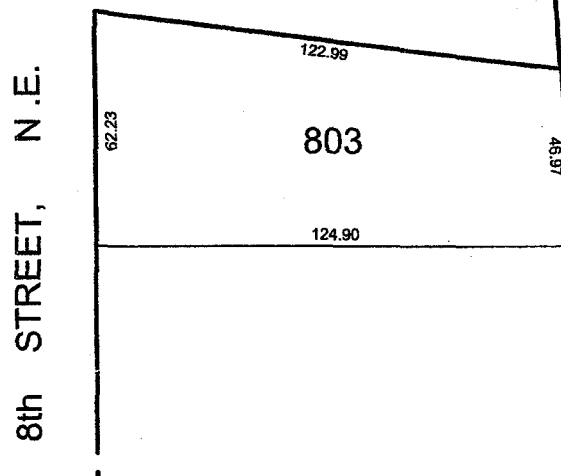
Date: _____

By: A.S. 

(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.

KEARNEY STREET, N.E.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-08

FEB 17 2010

As Secretary to the Commission, I hereby certify that on FEB 17 2010 copies of this Z.C. Order No. 09-08 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|--|
| 1. <i>D.C. Register</i> | 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Allison Prince, Esq.
Pillsbury
2300 N Street, N.W.
Washington, D.C. 20037 | 6. Councilmember Harry Thomas, Jr. |
| 3. Anita Bonds, Chair
ANC 5C
P.O. Box 77601
Washington, DC 20013 | 7. DDOT (Karina Ricks) |
| 4. Commissioner Silas H Grant, Jr.
ANC/SMD 5C09
2830 6 th Street, N.E.
Washington, DC 20017 | 8. Melinda Bolling, Acting General Counsel
DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | 9. Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:



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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF ZONING

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