

# Exhibit A-1

Government of the District of Columbia  
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629  
Case No. 88-16C  
(PUD @ 901 New York Avenue, N.W.)  
September 11, 1989

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on May 15 and 22, 1989. At those hearing sessions, the Zoning Commission considered an application from the Jerome Golub Realty and Willco Construction Company, Inc. for consolidated review and approval of a Planned Unit Development (PUD), pursuant to Section 2400 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Chapter 30 of the title.

FINDINGS OF FACT

1. The original application, filed on June 14, 1988, requested consolidated review and approval of a PUD for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, 840-852, in Square 372 located at 901 New York Avenue, N.W.
2. The original application was for construction of a 130 foot building for general office and retail use with a gross floor area of 486,250 square feet and an FAR of 9.5. The office building was intended to provide the economic support for a second mixed use PUD with 145 apartment units at 910 M Street, N.W. in Square 369 (Z.C. Case No. 88-17C). The PUDs were to be considered as one project. The 910 M Street PUD also included a small SP-type office component.
3. On November 8, 1988, the applicants withdrew Case No. 88-17C (PUD @ 910 M Street in Square 369), pursuant to 11 DCMR 3029.3.
4. On November 21, 1988, the applicants submitted a revised PUD application. The revised application included two sets of architectural drawings for the proposed project (Scheme A and Scheme B).

- a. Scheme A was for the construction of a 9.5 FAR office and retail building. This alternative included an off-site amenity package of 34 townhouses to be constructed at 910 M Street, N.W. and the renovation of a building containing 20 to 25 dwelling units to be occupied by families of low or moderate income within close proximity to the subject PUD.
  - b. Scheme B was for a 9.2 FAR office and retail building with an off-site amenity of 20 to 25 low and moderate housing units to be renovated in the adjacent area. In addition, both schemes would provide approximately 55,000 square feet of floor space devoted to retail, service and Convention Center support space, with up to fifty (50) percent of the space reserved for use by the Convention Center. The applicants also proposed landscape and streetscape improvements.
5. In the applicants' prehearing submission filed on March 16, 1989, the alternative Scheme B included in the November 1988 revised application was withdrawn.
  6. The PUD site is located to the immediate southwest of Mount Vernon Square and is bounded by 9th, 10th and K Streets and New York Avenue, N.W. The PUD site comprises approximately 51,246 square feet of land area, and is presently zoned HR/C-3-C and C-3-C. No change of zoning is requested. The subject property is currently used as a surface parking lot.
  7. The applicants propose to construct an office and retail building with 486,250 square feet of gross floor area. The FAR is 9.5 and the maximum height is 130 feet. The building will contain parking for 400 cars, of which 292 spaces are within the boundaries of the site and 108 are in vault space. The Zoning Regulations require 288 spaces.
  8. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one hundred percent.
  9. The HR (hotel/residential incentive overlay) permits development incentives for residential and hotel uses, only, to a maximum FAR of 8.5 and a maximum height, as permitted by the "Act to Regulate the Height of Buildings, June 1, 1910, as amended". The HR District is mapped in combination with other Districts.

10. Under the PUD Regulations, the Zoning Commission has authority to impose development conditions, guidelines and standards which may exceed or may be less than the matter-of-right standards identified above. The Zoning Commission may also approve uses that are permitted as a special exception by the Board of Zoning Adjustment (BZA) or approve development variances that are required by the project design.
11. The District of Columbia Generalized Land Use Element of the Comprehensive Plan for the National Capital designates the subject site for mixed-use high density residential and commercial development.
12. The zoning pattern in the area includes C-4 to the west, one block away; HR/C-3-C to the south and southeast; and HR/SP-2 to the north along Massachusetts Avenue.
13. The subject site is triangular in shape and constitutes the entirety of Square 372 with the exception of one small lot on K Street, N.W. To the south of the subject site across New York Avenue is the Convention Center, while to the north is Mt. Vernon Place Church. To the east of the site is Mount Vernon Square which includes the Old Carnegie Library presently used by the University of the District of Columbia (UDC). The Techworld complex is presently under construction to the southeast of the site, and to the west across 10th Street is the recently approved PUD at 1001 New York Avenue, N.W. To the northwest is the site for the proposed UDC Campus, which is presently vacant and used for storage and parking. The subject site is located within the Central Employment Area.
14. The proposed project is consistent with the goals and objectives of the PUD process and will provide significant benefits to the District of Columbia and the neighborhood, including the following:
  - a. The applicants will purchase a building at 919 L Street containing 23 apartment units for the 919 L Street Tenants Association. The units are to be occupied by low and moderate income families;
  - b. The applicants will provide for the renovation and return to the District of 149 city-controlled housing units for low and moderate income families;
  - c. Approximately 30,000 square feet of floor area will be devoted to Convention Center support, retail and service space;

- d. The project will significantly upgrade this important gateway to Downtown, by replacing an existing surface parking lot with a well-designed office building;
  - e. The project will provide approximately 5,000 square feet of public open space along New York Avenue, with a full height triangular setback serving as a retail plaza at street level and providing relief to the building mass above;
  - f. The project will include improvements to public space surrounding the building, including an improved streetscape. The applicants have reached an agreement-in-principle with the National Park Service (NPS) to landscape and maintain the Federal parkland facing 9th Street in Square 372 and the parkland in Square 371. In addition, the applicant proposes to cooperate with the Convention Center in the design and maintenance of the landscape for the median of New York Avenue in the front of the project;
  - g. The project will provide parking in excess of that required by the Zoning Regulations, and will be made available for the use of visitors to the D.C. Convention Center;
  - h. The project will include a day care center with subsidized rents; and
  - i. The project will produce economic benefits to the District and its residents through:
    - 1. Increased real estate tax revenues;
    - 2. Commitment to jobs for minorities in the construction of the project through the Minority Business Opportunity Commission ("MBOC"); and
    - 3. First Source Employment for construction jobs.
15. The site plan indicates two office wings joined by a rotunda entrance in the center. The two office wings form a triangular park space midway along New York Avenue. This public open space serves as a pedestrian plaza for adjoining retail activity. The rotunda, the major project entrance, anchors the plaza and connects the two secondary lobbies, which are off of K and 10th Streets.
16. The height and FAR proposed is appropriate for the site

and consistent with buildings in the vicinity including the proposed Hadid project at 1001 New York Avenue and Techworld to the southeast. Both of these buildings are 130 feet in height.

17. The architect requested flexibility in certain design details of the project to ensure that minor refinements and improvements made during the process of design development and construction documents will be consistent with the intent of the proposed design.
  18. Handicapped access is provided at both the 10th and K Streets lobby entrances. Handicapped access will also be provided from New York Avenue to the retail plaza and designed in accordance with D.C. Building Codes.
  19. Portions of the proposed office building above the 110 feet height do not meet the normal 45 degree setback of the underlying HR district. The additional setback required by the HR district would reduce the usable area on the top two floors and impose severe restrictions on the layout of tenant area. Approximately fifty (50) percent of the proposed building perimeter meets the setback requirements of the HR district, and the setbacks at the corners of the building significantly exceed the HR district guidelines.
  20. Proposed landscaping for Federal Reservations No. 175 and 70 is to be accomplished in a manner similar to the original plan of the parks and is to be maintained for a 5 year period through the Adopt-A-Park Program with the National Park Service.
  21. The street tree planting along New York Avenue is in conformance with the Downtown Streetscape Guidelines. Pruning of the curbside trees to a height of 10-12 feet will minimize potential damage from trucks.
  22. At ten intersections in the area, the levels of service vary from A to C, which is well within acceptable limits of the District of Columbia. The site is served by 9 Metrobus routes and by two Metrorail Stations (Gallery Place and Metro Center) within a 6 to 8 minute walk. The project will generate approximately 375 cars during the peak hour, which will not change any of the current levels of service.
  23. The proposed parking and loading are adequate and there will be no adverse impacts in terms of traffic. The design of the loading and parking entrances ensure pedestrian safety.
  24. The applicants' real estate appraiser, by testimony
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presented at the public hearing and by supplemental report, stated that the highest and best use of the site is clearly commercial. Residential or hotel use of the site is not feasible. As a matter-of-right, the applicants could develop a commercial office building of 333,099 square feet of gross floor area. Without the PUD, there is no reason to expect that any housing will be provided on-site.

25. The applicants' market and economic consultant, in testimony at the public hearing, stated that from a market and economic viewpoint, it is not feasible to develop the site for hotel or residential uses.
26. The market and economic consultant further stated that the applicants' offer to provide space for the Convention Center will have to be subsidized and represents an amenity.
27. The market and economic consultant indicated that the annual revenue benefits to the city from the project are estimated to be over \$2.9 million, including real and personal property taxes, parking, sales taxes and income taxes from office employment. He also indicated that the city should receive an additional \$892,000 from income taxes on construction employment. The consultant estimated that the project would generate 607 office jobs and 468 construction jobs for D.C. residents.
28. The District of Columbia Office of Planning (OP), by memorandum dated May 5, 1989 and by testimony presented at the public hearing, recommended that the application be approved indicating that the proposal is generally responsive to the type of commercial development and activity that are appropriate for that area of the city. OP further stated that the entire amenity package is substantial and has been carefully measured relative to the applicants' requests.
29. The Office of Business and Economic Development (OBED), by memorandum dated April 21, 1989, indicated that OBED can not support the applicants' proposal because it is not in compliance with designated land use objectives. OBED noted that the proposed project is not in conformance with the objectives of the Comprehensive Plan because it does not include a hotel or an on-site residential component. OBED further stated that the proposed PUD project does not respect the underlying zoning district.
30. The D.C. Department of Housing and Community Development (DHCD) submitted a report dated May 12, 1989 to the Office of Planning regarding the PUD

project. DHCD's letter identified the 149 housing units to be renovated under the PUD. The work is to commence as soon as the building permits are obtained and to reach substantial completion by August 1990. The units are as follows:

3275 15th Place, S.E.	13 units
3281 15th Place, S.E.	13 units
3287 15th Place, S.E.	13 units
2525 Minnesota Ave., S.E.	40 units
1624 27th Street, S.E.	27 units
706 Brandywine St., S.E.	13 units
1424 W Street, N.W.	20 units
336 Adams Street, N.E.	8 units
1343 First Street, N.W.	2 units

31. The Soil Resources Branch of the Department of Consumer and Regulatory Affairs, by letter dated March 20, 1989, stated that the applicants must provide a storm water management facility for the project, pursuant to D.C. Law 5-188, Secs. 509-519. It noted that the developer should submit the conceptual design for the stormwater management facility for review before a final design is done.
32. The D.C. Department of Public Works (DPW), by testimony at the public hearing, stated that the proposed parking and loading is adequate, except that the applicants need to show the location of service/delivery space. In addition, DPW indicated that it is in the process of changing the operation of K Street, between 9th and 10th Streets, from two-way to one-way heading west.
33. The applicants, by supplemental submission dated May 26, 1989, have identified the service/delivery space.
34. The applicants' traffic consultant, by report dated May 23, 1989, noted that the proposal to change K Street had been discussed with representatives of DPW. The traffic consultant agreed with DPW that the plan would be beneficial for traffic operations in general, and for the subject development in particular.
35. DPW, by a supplemental report dated June 21, 1989, indicated that DPW plans to make K Street one-way westbound between 9th and 10th Streets and to change the operation of 10th Street between K and L Streets to two way, so as to provide a better circulation for traffic in this area. DPW further stated that these changes in traffic flow on both K and 10th Street will not be implemented until the reconstruction of New York Avenue, between 9th and 13th Streets, is completed.
36. DPW noted that the proposed curbcut for the truck



entrance on K Street is 36 feet in width and does not comply with DPW standards. DPW recommended that the applicants revise the truck driveway to comply with the DPW policy which limits curbcut to a 25 foot width, unless a 5 foot-wide divider for pedestrian storage is provided.

37. Councilmember John A. Wilson (Ward 2), by a letter dated February 6, 1989, supported the application.
38. Councilmember Hilda Howland M. Mason, by a letter dated May 16, 1989, supported the application.
39. Advisory Neighborhood Commission (ANC) 2C, by report dated May 9, 1989 and by testimony presented at the public hearing, supported the application with conditions including the following:
  - a. That the applicants provide an additional \$600,000 for the renovation of the housing at 919 L Street, N.W., and that the applicants assure that the units in this building be offered at a price affordable by present tenants, and other low income families;
  - b. That the applicants sign a covenant limiting the future development of the 910 M Street site to residential use only; and
  - c. That the applicants sign a Memorandum of Understanding with ANC 2C to give ANC-2C residents priority for jobs associated with both the construction and subsequent operation of the building, as well as provide a training (apprenticeship) program and provide a compliance program to monitor efforts and successes regarding the Memorandum.
40. ANC-2C expressed concern that not enough of the housing units proposed for renovation would be located within the ANC 2C area. The ANC also stated that the loss of the HR overlay on the site at 901 New York Avenue, N.W. represents the loss of potential housing in the local community, and also further erodes the concept of living downtown by supporting additional northward encroachment of office uses without the tempering effect of adjacent or nearby housing.
41. Representatives of the 919 L Street Tenants Association and Washington Innercity Self Help (WISH), by testimony at the public hearing, spoke in favor of the PUD. Particular emphasis was devoted to the support for the purchase, on behalf of the Tenants Association, of the apartment building at 919 L Street as a part of the

PUD. The representatives of WISH indicated that the tenants would be able to utilize the building as collateral to obtain a loan to renovate the building. The representatives of WISH also stated that other public and private sources of subsidy would be sought to help with the building's renovation.

42. Justice for Janitors Organizing Committee (JFJ), by letter dated November 7, 1988, by subsequent correspondence and by testimony presented at the public hearing, opposed the application because it believed that one of the applicants was in violation of the Human Rights Act of the District of Columbia.
43. JFJ, by submission dated May 1, 1989, requested party status. JFJ's stated reasons for party status were to ensure that any PUD approval be conditioned on full compliance with the District's laws, including the Human Rights Act, that PUD approval not be used to further ongoing violations of the Human Rights Act, and that appropriate regulations be established to govern access to and use of public areas of the project.
44. By a letter dated May 12, 1989, the applicants requested that JFJ's motion for intervention as a party be denied. The applicants stated that JFJ did not meet 11 DCMR 3022.3 which provides the standards which persons desiring to participate as a party must meet.
45. At the public hearing on May 15, 1989, the Zoning Commission determined that JFJ did not meet the standards for party status and subsequently denied JFJ's request.
46. The Commission concurs in general with the position of OP and the applicant for the following reasons:
  - a. Although the purpose of the HR Overlay Zone is to encourage the development of housing in the downtown area, the Commission agree that this PUD site does not lend itself to successful residential or hotel development;
  - b. The proposed 130 foot height and 9.5 FAR of the project are appropriate for this site. A height of 130 feet and a FAR of 8.5 could be established on the site as a matter-of-right, provided that at least 2.0 FAR of hotel or residential use was provided on the site. Through the PUD process, the Zoning Commission has the authority to grant increased height and density in exchange for the provision of certain amenities;
  - c. The Commission has considered the existing HR

overlay zoning of the site and the downtown residential land use objectives of the Comprehensive Plan, and finds that approval of this project is justified by the applicants' commitment to purchase a building at 919 L Street (1 1/2 blocks from the PUD site) and the renovation on 149 housing units identified by the Department of Housing and Community Development.

- d. The Commission finds that the amenities provided by the applicants are sufficient to justify the approval of the additional height and density;
  - e. A nexus between the proposed project and the off-site housing amenity is established because the subject PUD offers housing opportunities both immediately adjacent to the PUD and at other locations.
47. The Commission does not concur with the recommendation of ANC 2C that the applicants provide an additional \$600,000 to renovate the building at 919 L Street, N.W., nor with the ANC's request to place a covenant on 910 M Street limiting the use of that site to residential uses. The Commission finds that the housing assistance that is proposed by the applicant is substantial.
48. The Commission concurs with OP and the applicants and finds that the public amenities offered as a part of the PUD are significant, particularly the provision of renovated housing for low and moderate income families, the provision of support space for the Convention Center, the provision of a day care center, and the project's retail plaza and landscaping.
49. The Commission does not concur with the conclusions of the Office of Business and Economic Development that the project is not in conformance with the Comprehensive Plan because housing or hotel uses are not provided on site. The Commission finds that the applicants' substantial off-site housing package is appropriate and not inconsistent with the Comprehensive Plan.
50. The Commission concurs with DPW and the applicants and finds that the applicants have adequately addressed the issues of traffic. In terms of the proposed changes to K Street, the Commission finds that if DPW determines to make K Street one-way westbound between 9th and 10th Streets, such a proposal will not negatively impact the project.
51. As to the concern of DPW regarding the width of the

curbcut, the Commission finds that the issue of the curbcut has yet to be resolved and because the curbs are located in public space, should more appropriately be addressed by the applicants and DPW.

52. As to the concern regarding violations of the Human Rights Act, the Commission finds that it is appropriate that the requirements of the Act apply to this process, and believes that it has adequately addressed the matter in its decision.
53. The Commission finds that the applicants have met the intent and purpose of the Zoning Regulations and further finds that the proposal is suitable for the site, and that the design, height, density, and scale are compatible with the subject neighborhood.
54. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Governmental and Government Reorganization Act. The NCPC, by report dated September 11, 1989, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal establishment or other Federal interests in the National Capital or be inconsistent with the Comprehensive Plan for the National Capital.

#### CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use 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.
3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.
5. The approval of this application is consistent with the purposes of the Zoning Act.
6. The proposed application can be approved with

conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.

7. The approval of this application will promote orderly development 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.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2C the "great weight" consideration to which it is entitled.
9. This application 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 herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a Planned Unit Development ("PUD") for Lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, 840-852, in Square 372 located at 901 New York Avenue. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the plans prepared by Clark, Tribble, Harris and Li Architects marked as Exhibit No. 35B of the record as modified by the guidelines, conditions and standards of this Order.
2. The PUD project shall be developed as a general office building with a ground floor retail component.
3. The height of the building shall not exceed one hundred and thirty (130) feet excluding the roof structure. Setbacks shall be as shown on Exhibit No. 35B.
4. The floor area ratio ("FAR") of the project shall not exceed 9.5.
5. The total lot occupancy of the project shall not exceed eighty-six percent (86%) of the site.
6. The applicants shall provide a minimum of 288 parking spaces, consisting of full size, compact and handicapped spaces. The applicants may provide additional parking in the vault space as shown on the plans, Exhibit No. 35B.

7. The project shall include the amenities package proposed as part of this application and described in detail in findings and record of this case, as follows:

- a. The applicants shall provide funding for the purchase of the building at 919 L Street, N.W. containing 23 apartment units for the 919 L Street Tenants Association.
- b. The Tenants Association shall use the building for housing families of low and moderate income.
- c. The applicants shall provide for the renovation and return to the District of 149 city-controlled housing units for low and moderate income families. The units to be renovated are as follows:

3275 15th Place, S.E.	13 units
3281 15th Place, S.E.	13 units
3287 15th Place, S.E.	13 units
2525 Minnesota Ave., S.E.	40 units
1624 27th Street, S.E.	27 units
706 Brandywine St., S.E.	13 units
1424 W Street, N.W.	20 units
336 Adams Street, N.E.	8 units
1343 First Street, N.W.	2 units

- d. The PUD shall include approximately 30,000 square feet of floor space devoted to Convention Center support, retail, and service space.
- e. The PUD shall provide approximately 5,000 square feet of public open space along New York Avenue.
- f. The applicants shall improve the public space surrounding the building including improving the streetscape in compliance with and exceeding D.C. Streetscape regulations. The applicants shall have the flexibility depending upon the species of trees to reduce the height of the planters along K Street and have the planters a maximum of no more than two feet above the adjacent grade.
- g. The applicants shall enter into and comply with the terms of a written agreement between them and the National Park Service (NPS) to address improvements and maintenance of U.S. Reservations 70 and 175 adjacent to the PUD site. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicants have filed a copy of the required agreement between them and NPS.

- h. The applicants shall implement, in cooperation with the Convention Center, the design and maintenance of the landscape for the median of New York Avenue in the front of the project.
  - i. The applicants shall provide a day care center with subsidized rents. The day care center shall be approximately 2,500 square feet in size. A subsidy of \$200,000 shall be provided. The space shall be provided at a reduced rate of \$8.00 per square foot below market rates for 6 years to a center to be operated by an organization licensed to provide child care. The remaining funds will be used for build out of the day care center space and roof top recreation area. The applicants shall coordinate with the organization that will be operating the child care center to insure that children in the neighborhood as well as children of workers in the building receive priority for the services of the day care center.
8. The facade design treatment and materials of the proposed building shall be generally consistent with the plans marked as part of Exhibit No. 67(I) in the record of the case, consistent with the areas of flexibility requested by the applicants noted in Condition No. 9. The building materials are as follows:
  - a. Predominant masonry material Light, grey, limestone architectural precast concrete
  - accent Pink, flamed and polished granite
  - b. Window mullions Factory Painted Aluminum
  - c. Office windows Off-white or glass with blue tint
  - d. Retail window mullions Factory Painted Aluminum  
    Color: Blue-Grey
  - e. Retail windows Clear Tempered Glass
  - f. Retail awnings Medium blue
  - g. Side walk pavers D.C. standard precast concrete with pink granite, flamed and polished
9. The applicants shall have flexibility with respect to the following matters:

- a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses;
  - c. Varying the location and type of exterior lighting fixtures.
  - d. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at time of construction;
  - e. Varying the species of plant materials;
  - f. Varying landscape and paving details to accommodate utilities requirements and minor refinements incorporating comments of the streetscape committee;
  - g. Allowing the flexibility permitted pursuant to the provisions of 11 DCMR, Chapter 24.
10. The Zoning Commission reserves the discretion to determine the proceedings by which it will consider any matter submitted to it pursuant to Paragraph f. of condition numbered 9 of this order.
  11. Handicapped access to the retail plaza shall be provided from New York Avenue. Other handicapped access to the project shall be provided in accordance with Exhibit No. 35B.
  12. Subject to the direction of traffic flow on K Street, the applicants shall have the flexibility to switch the ingress/egress lanes for the parking and loading facilities. Other than the aforementioned, the K Street parking and loading entrances shall be developed in accordance with Exhibit No. 35B.
  13. Roll down doors for the loading and parking entrances shall be provided in accordance with Exhibit No. 35B.
  15. Antennas within the screen walls of the mechanical penthouse areas may be permitted in accordance with the



Zoning Regulations.

16. The applicants shall enter into a Memorandum of Understanding with the Minority Business Opportunity Commission, which requires the applicants to make a bona fide effort toward at least thirty-five (35) percent of the construction related contracts for the project to certified minority business enterprises.
17. The applicants shall comply with its First Source Agreement with the Department of Employment Services ("DOES") which provides that the applicants will use DOES as its first source for the recruitment, referral and placement of employees in connection with the construction of the project.
18. No building permit shall be issued for the site until the applicants have recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia satisfactory to the Office of Corporation Counsel and the Zoning Regulatory Divisions of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all successors in title to construct on and use of the property in accordance with this Order and amendments thereto of the Zoning Commission.
19. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Divisions of the DCRA until the applicants have filed a certified copy of said covenant with the records of the Zoning Commission.
20. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application must be filed for a building permit as specified in Subsection 2407.1 DCMR Title 11. Construction shall start within three years of the effective date of this Order.
21. Pursuant to D.C. Code SEc. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicants are required to comply fully with the provisions of D.C. Law 2038, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicants fail to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting on June 12, 1989: 4-0 (John G. Parsons, Maybelle Taylor Bennett and Lindsley Williams to approve with conditions, William L.


Ensign, to approve by proxy - Lloyd D. Smith, not voting having recused himself).

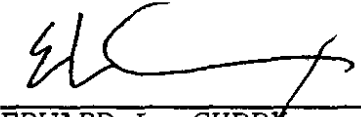
The guidelines, conditions and standards were approved by the Zoning Commission at the public meeting on July 10, 1989 by a vote of 4-0 (John G. Parsons, Maybelle Taylor Bennett, William L. Ensign and Lindsley Williams, to approve as amended - Lloyd D. Smith, not voting having recused himself).

This order was adopted by the Zoning Commission at the public meeting on September 11, 1989 by a vote of 3-0 (John G. Parsons, Maybelle Taylor Bennett and William Ensign to adopt; Lloyd D. Smith, not voting, having recused himself; and Tersh Boasberg, not voting, not having participated in the case).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on

OCT 13 1989

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

# Exhibit A-2

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-A  
Case No. 88-16C  
(Willco - PUD)  
June 11, 1990

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the District of Columbia approved an application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a Planned Unit Development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of eighty-six (86%) percent. The PUD project has yet to be constructed.

In addition to the previously-mentioned development standards, other conditions of approval were contained in Z.C. Order No. 629, including the approved architectural drawings.

Pursuant to 11 DCMR 3028, Z.C. Order No. 629 became final and effective upon publication in the D.C. Register; that is on October 13, 1989.

11 DCMR 3029.5, in part, requires that a party in a contested case proceeding file its motion for reconsideration no more than ten (10) days after an order becomes effective. Counsel for the applicants, by letter dated March 9, 1990, filed a motion for reconsideration of Z.C. Order No. 629.

The motion for reconsideration requested the Zoning Commission to waive applicable rules of practice and procedure to allow for consideration of the substance of the motion. The motion stated the following:

1. The applicants seek to modify two (2) conditions of

Z.C. Order No. 629: Condition No. 8 regarding changes to the window millions, the glass, the awnings, and the granite; and Condition No. 9(b) concerning adjustments to the fenestration. The requested modifications to Conditions No. 8 and 9 are based upon design refinements and project evolution intended to make the project evolution intended to make the project more in character with Washington architecture.

2. The requested modifications to Condition 8 are as follows:
  - a. accent Change from pink, flamed and polished granite to grey flamed or honed granite;
  - b. Window mullions Change from Factory Painted Aluminum to light bronze anodized mullions;
  - c. Office windows Change from Off-white or glass with blue tint to clear or light grey tinted vision glass with glass and/or solid spandral;
  - d. Retail window Mullions Change from Factory Painted Aluminum (Blue-Grey) to light bronze anodized retail mullions;
  - e. Retail windows (no change)
  - f. Retail awnings Change from Medium blue to blue, green, or red awnings; and
  - g. Side walk pavers Change from D.C. standard precast concrete with pink granite, flamed and polished to D.C. standard precast with grey flamed granite.
3. In Z.C. Order No. 629, the applicants were granted the flexibility under Condition No. 9(b) of "making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and

vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses". The applicants request the following modifications:

- b. Adjustments to the fenestration, including:
  - i. providing punched windows in the end bays;
  - ii. using three windows per bay in lieu of two windows per bay at the 3rd, 5th and 9th floors;
  - iii. modifying fenestration adjacent to the excluded parcel (lot 32) to conform to current Building Code interpretations;
  - iv. modifying railing details at 8th, 9th and 12th floors;
  - v. reducing the masonry opening width and pier width at the 10th and 11th floors; and
  - vi. modifying the opening expression at the 12th floor and setting the 12th floor back one foot.

The applicants indicated that granting this request without a further public hearing will not prejudice the rights of any parties in the case. In addition, there are no issues involved in this request for modification that were at-issue in the original PUD proceeding.

The District of Columbia Office of Planning (OP), by memorandum dated April 10, 1990, supported the design modifications and recommended that they be adopted without further hearings. OP noted that the proposed changes/refinements bring about a significant improvement in the design of the 901 New York Avenue PUD, as follows:

1. The vertical collection of punched windows and more masonry at each of the corners along New York Avenue and at intervals along K Street creates a hierarchy lacking before which breaks up the length of the two major facades and provides each with a more definite end.
2. The addition of cornices and the changed fenestration treatment of the 3rd, 8th and 9th floors creates stronger horizontal lines which serves to balance the vertical expression of the individual bays.
3. The crown of the building is accentuated by setting it back slightly and increasing the amount of glass.

4. The original cut out quality of each bay has been softened and scaled down by adding spandrels at each floor, again creating a better horizontal/vertical balance.
5. The addition of classical/historic elements to a starkly modern frame has had a significant impact on the scale of the facades.
6. The replacement of slightly reflective blue tinted glass with clear glass.
7. The change to a slightly warmer color for the masonry exterior.

Advisory Neighborhood Commission - 2C, by letter dated March 28, 1990, supports the applicants' request for the modifications.

On April 16, 1990, at its regular monthly meeting, the Zoning Commission waived applicable rules of practice, and considered the applicants' motion for reconsideration, the OP report, and the letter from ANC-2C.

The Zoning Commission concurs with the applicants, ANC-2C, and OP, and believes that its decision is reasonable and will protect the interest of all parties.

The Zoning Commission further believes that the proposed modifications to Z.C. Order No. 629 are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

The proposed action of the Zoning Commission to approve the modifications was referred to the National Capital Planning Commission, as a matter of courtesy. NCPC, by report dated June 5, 1990, found that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.


In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of modifications to Z.C. Order No. 629 to permit the design modifications, as describe herein.

Vote of the Zoning Commission taken at the public meeting on April 16, 1990: 4-0 (John G. Parsons, Maybelle Taylor Bennett, Tersh Boasberg, and William L. Ensign, to approve - Lloyd D. Smith, not voting not having participated in the case).

This order was adopted by the Zoning Commission at its regular monthly meeting on June 11, 1990 by a vote of 4-0: (John G. Parsons, Maybelle Taylor Bennett, William L. Ensign and Tersh Boasberg, to adopt as corrected - Lloyd D. Smith, not voting not having participated in the case).

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 JUN 29 1990.

  
\_\_\_\_\_  
TERSH BOASBERG  
Chairman  
Zoning Commission

  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat



# Exhibit A-3

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-B

Case No. 88-16C

(PUD @ 901 New York Avenue, N.W.)

May 13, 1991

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the District of Columbia approved an application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a Planned Unit Development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of eighty-six (86%) percent. The PUD project has yet to be constructed.

In addition to the previously-mentioned development standards, other conditions of approval were contained in Z.C. Order No. 629, including reference to the approved architectural drawings.

Pursuant to 11 DCMR 3028, Z.C. Order No. 629 became final and effective upon publication in the D.C. Register; that is, on October 13, 1989.

11 DCMR 3029.5, in part, requires that a party in a contested case proceeding file any motion for reconsideration no more than ten (10) days after an order becomes effective. Counsel for the applicants, by letter dated March 9, 1990, filed a motion for reconsideration of Z.C. Order No. 629.

The motion for reconsideration requested the Zoning Commission to waive applicable rules of practice and procedure to allow for consideration of the substance of the motion. The applicant requested the Zoning Commission to allow for certain design modifications to the project.

Z.C. Order No. 629-A was adopted by the Zoning Commission at its regular monthly meeting on June 11, 1990. In accordance with the provisions of 11 DCMR 3028, the order became final and effective

Z.C. ORDER NO. 629-B  
CASE NO. 88-16C  
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upon publication in the D.C. Register; that is, on June 29, 1990.

Counsel for the applicant, by letter dated March 19, 1991, filed a motion for a two-year extension of time for Z.C. Orders No. 629 and 629-A, pursuant to Section 2406.10 of the Zoning Regulations.

Counsel for the applicant further contends that the request for a two-year extension is necessary because "under the current terms of Z.C. Order No. 629, which became effective upon publication in the D.C. Register on October 13, 1989, a building permit application with a complete set of plans must be filed within two (2) years; that is, by October 13, 1991. At this time, the applicant requests a two-year extension of the order to October 13, 1993 before plans must be filed for a building permit. Importantly, this extension is necessary because if it is not granted, the applicant will have only approximately 6 to 7 months to prepare and file, working drawings for the building permit.

The applicant also indicated that Advisory Neighborhood Commission (ANC) 2C, party to the case, were notified in writing of the extension request. By letter dated April 4, 1991, ANC-2C voted to support the applicant's request.

The Zoning Secretariat received a letter dated April 3, 1991, from the law firm of Dow, Lohnes and Albertson requesting the Zoning Commission for a waiver of its rules of practice to either grant party status to the firm's client or to allow a non-party to submit comments on the requested extension. The Zoning Secretariat by memorandum dated April 5, 1991 recommended that the Zoning Commission deny the waiver request.

By letter dated April 8, 1991, counsel on behalf of the applicant filed a letter in opposition to the request of Dow, Lohnes and Albertson stating that, "... procedurally it is not appropriate to admit new parties to an application after an order has been final for approximately a year and a half."

At the Zoning Commission's regular monthly meeting of April 8, 1991, the Commission concurred with the recommendation of the Zoning Secretariat and the position of the applicant and denied the above-mentioned request of Dow, Lohnes and Albertson by a vote of 3-0 (John G. Parsons, Maybelle Taylor Bennett and William L. Ensign, to deny - Tersh Boasberg, abstained and Lloyd D. Smith, not voting, not having participated in the case).

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval.

Z.C. ORDER NO. 629-B  
CASE NO. 88-16C  
PAGE NO. 3

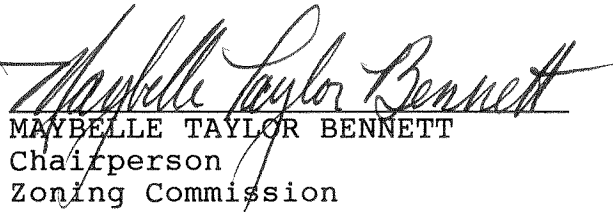
On April 8, 1991, at that same meeting, the Zoning Commission considered the request of the applicant dated March 19, 1991 and determined that an extension of time is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.


In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Orders No. 629 and 629-A be **EXTENDED** for a period of **TWO YEARS**; that is, until October 13, 1993. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2406.8. Construction shall start within five (5) years of the final and effective date of Z.C. Order No. 629; that is, October 13, 1994.

Vote of the Zoning Commission taken at the monthly meeting on April 8, 1991: 3-0 (John G. Parsons, Maybelle Taylor Bennett, and William L. Ensign, to extend for two-years - Tersh Boasberg, abstained and Lloyd D. Smith, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at the public meeting on May 13, 1991, by a vote of 3-0 (William Ensign and Maybelle Taylor Bennett, to approve, John G. Parsons to approve by proxy - Tersh Boasberg and Lloyd D. Smith, not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is on MAY 31 1991.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

zc629-B/LJP

# Exhibit A-4

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-C  
Case No. 88-16C  
(PUD @ 901 New York Avenue, N.W.)  
October 18, 1993

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the District of Columbia approved an application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a planned unit development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of eighty-six (86%) percent.

By Z.C. Order No. 629-A dated June 11, 1990, the Zoning Commission approved modifications to Condition No. 8 of Z.C. Order No. 629 regarding changes to the window mullions, the glass, the awnings and the granite; and Condition No. 9(b) concerning adjustments to the fenestration.

By Z.C. Order No. 629-B, dated May 13, 1991, the Zoning Commission extended the validity of Z.C. Order Nos. 629 and 629-A for two years; that is, until October 13, 1993. Prior to the expiration of that time, the applicants shall file an application for a building permit; with construction to begin on or before October 13, 1994, pursuant to 11 DCMR 2406.8 and 2406.9.

By letter dated July 19, 1993, the counsel for the applicants filed a motion requesting the Commission to further extend the validity of Z.C. Order Nos. 629, 629-A and 629-B for three years, pursuant to 11 DCMR 2406.10.

The motion summarizes the applicants basis for a three-year extension request as follows:

**A. Actions by Applicant Pursuant to PUD Approval**

1. The applicant has already provided \$860,000 to the 919 L Street Tenants Association as part of its amenity package. The applicants' letter to the Commission verifying such payment, dated July 14, 1989, is in the record of this case as Exhibit 97. Such funds were provided up front in the anticipation that the 901 New York Avenue PUD would proceed expeditiously. Given current market trends, as further detailed below, a time extension is necessary to continue to look for a lead tenant so that the up-front amenity funds are not lost.
2. In addition to providing the funds to the 919 L Street Tenants Association, the applicants committed as part of their amenity package to rehabilitate 149 units of D.C. owned property under the Homestead Program. Even though the applicants have not yet applied for a building permit for the PUD, they have begun the rehabilitation of the housing units. As noted in an affidavit of Richard S. Cohen, to date, 20 units have been completed and 13 more have been credited as completed, for a total of 33 units.
3. The cost of these renovations and the acquisition of 919 L Street, N.W. to date has exceeded \$1,640,000.
4. The applicants have entered into an agreement with the National Park Service and the National Park Foundation regarding Reservations 70 and 175. Under the Agreement, the applicants have agreed to construct improvements in Reservation No. 175. Further, in lieu of maintaining Reservations 70 and 175, the applicants have agreed to pay to the National Park Foundation \$50,000 as an endowment for the continued maintenance of those reservations.

**B Market Conditions and Due Diligence**

1. The applicants have not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt on almost all new private construction projects in the past two years. The applicants have been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased. As the affidavit of Richard S. Cohen states, the applicants have been continuously marketing the project for a lead tenant since project approval.

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2. The applicants believe, and the amenities already provided, confirm that the proposed project will make a worthwhile contribution to the City, Advisory Neighborhood Commission (ANC) 2F (the project and the off-site amenity at 919 L Street were previously located in ANC 2C) and the development of the East End. The applicants, in good faith, have made substantial housing contributions in reliance upon the Zoning Commission's approval of this PUD. At the same time, the applicants have continuously marketed this project for a lead tenant.

The applicants, by an attachment to its letter, certified that Advisory Neighborhood Commission (ANC) 2F was served a copy of the extension request on July 19, 1993.

By letter dated September 7, 1993, ANC-2F supported the applicants' request to extend the validity of the PUD.

The District of Columbia Office of Planning (OP), by memorandum dated August 2, 1992 (intended to read 1993); indicated that the zoning of the site has changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD was approved before of the enactment of the Downtown Development District (DDD) regulations. The promulgation of the DDD regulations were to help accomplish the land use and development policies of the Comprehensive Plan relating to various subareas of the downtown. The overall goals of these DDD regulations are to create a balanced mixture of uses -- retail, hotel, residential, entertainment, arts, and cultural; and to guide and regulate office development.

The OP memorandum further indicated that the Generalized Land Use Map of the Comprehensive Plan approved in 1985 includes the subject property in the mixed-use high density commercial/high density residential land use category. The Comprehensive Plan Amendments Act of 1989, which became effective on May 23, 1990, did not change the land use classification of the site, nor did Council Resolution 9-275, dated July 7, 1992, which "corrected" the Generalized Land Use Map. Overall, the classification has not changed since the Zoning Commission approved this application.

The OP added that the subject PUD would comply with the overall intent and purpose of the DD District because of the proposed mix of office, residential and retail uses and that given the time required for the applicants to secure financing and a major tenant for the project, the Office of Planning recommended that the Zoning Commission grant the applicants' request to extend the deadline for the filing of an application for a building permit to October 13, 1995, and to extend the deadline for commencing construction to October 13, 1996.



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Pursuant to Section 2406.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On September 13, 1993 at its regular monthly meeting, the Zoning Commission considered the applicants' request for a three-year extension of the validity of Z.C. Order Nos. 629, 629-A and 629-B, and concurred with the recommendation and position of OP and ANC-2F. The Commission considered the applicants' request for a three-year extension as opposed to a two-year extension, and decided to extend the validity of the PUD for two years instead of three years.

The Commission determined that an extension of the validity of the PUD is reasonable and would not adversely affect any party or person.

The Commission believes that its proposed action to grant the request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order Nos. 629, 629-A and 629-B be **EXTENDED** for a period of **TWO YEARS**; that is, until October 13, 1995. Prior to the expiration of that time, the applicants shall file an application for a building permit, as specified in 11 DCMR 2406.8 and construction to start on or before October 13, 1996.

Vote of the Commission taken at the monthly meeting on September 13, 1993 3-0: (John G. Parsons, William L. Ensign and Maybelle Taylor Bennett, to extend for **TWO YEARS** - Jerrily R. Kress and William B. Johnson, not voting having not participated in the decision).

This order was adopted by the Zoning Commission at the public meeting on October 18, 1993 by a vote of 3-0: (John G. Parsons and Maybelle Taylor Bennett to adopt, and William L. Ensign to adopt by absentee vote - William B. Johnson and Jerrily R. Kress not voting not having participated).

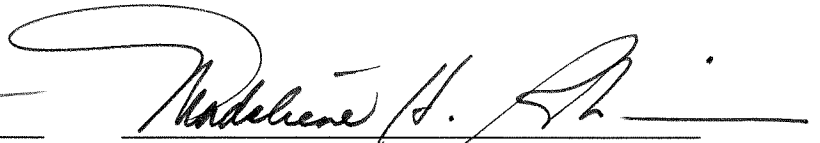
ZONING COMMISSION ORDER NO. 629-C  
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In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on

~~NOV 06 1993~~



MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission



MADELIENE H. ROBINSON  
Director  
Office of Zoning

zco629C/VE/LJP

# Exhibit A-5

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 629-D

Case No. 88-16C

(PUD @ 901 New York Avenue, N.W.)

August 7, 1995

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the District of Columbia approved an application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a planned unit development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of eighty-six (86) percent.

By Z.C. Order No. 629-A dated June 11, 1990, the Zoning Commission approved modifications to Condition No. 8 and 9 (b) of Z.C. Order No. 629. Condition No. 8 addresses the window mullions, the glass, the awnings and the granite; and Condition No. 9(b) addresses the fenestration.

By Z.C. Order No. 629-C, dated October 18, 1993, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A and 629-B for two years; that is, until October 13, 1995. Prior to the expiration of that time, the applicants shall file an application for a building permit; with construction to begin on or before October 13, 1995, pursuant to 11 DCMR 2406.8 and 2406.9.

By letter dated April 11, 1995, the counsel for the applicants filed a motion requesting the Commission to further extend the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C for two years, that is, until October 13, 1997, pursuant to 11 DCMR 2406.10.

The bases for the instant motion are the same as in the previous extension requests. The instant motion summarizes the applicants basis for a two-year extension as follows:

**A. Actions by Applicant Pursuant to PUD Approval**

1. The applicants have already provided \$860,000 to the 919 L Street Tenants Association as part of the amenity package. The applicants' letter to the Commission verifying such payment, dated July 14, 1989, is in the record of this case as Exhibit 97. Such funds were provided upfront in the anticipation that the 901 New York Avenue PUD would proceed expeditiously. Given current market trends, as further detailed below, a time extension is necessary to continue to look for a lead tenant so that the upfront amenity funds are not lost.
2. In addition to providing the funds to the 919 L Street Tenants Association, the applicants committed, as part of their amenity package, to rehabilitate 149 units of D.C. owned property under the Homestead Program. Even though the applicants have not yet applied for a building permit for the PUD, they have begun the rehabilitation of the housing units. As noted in an affidavit of Richard S. Cohen, to date, 20 units have been completed and 13 more have been credited as completed, for a total of 33 units.
3. The cost of these renovations and the acquisition of 919 L Street, N.W. to date has exceeded \$1,640,000.
4. The applicants have entered into an agreement with the National Park Service and the National Park Foundation regarding Reservations 70 and 175. Under the Agreement, the applicants have agreed to construct improvements in Reservation No. 175. Further, in lieu of maintaining Reservations 70 and 175, the applicants have agreed to pay to the National Park Foundation \$50,000 as an endowment for the continued maintenance of those reservations.

**B Market Conditions and Due Diligence**

1. The applicants have not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt on almost all new private construction projects in the past two years. The applicants have been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased. As the affidavit of Richard S. Cohen states, the applicants have been continuously marketing the project for a lead tenant since project approval.

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2. The applicants believe, and the amenities already provided confirm, that the proposed project will make a worthwhile contribution to the City, Advisory Neighborhood Commission (ANC) 2F (the project and the off-site amenity at 919 L Street were previously located in ANC 2C) and the development of the East End. The applicants, in good faith, have made substantial housing contributions in reliance upon the Zoning Commission's approval of this PUD. At the same time, the applicants have continuously marketed this project for a lead tenant.

The applicants, by an attachment to their letter, certified that Advisory Neighborhood Commission (ANC) 2F, Cooperative Association, Inc., and the Washington Inner City Self-Help, were served copies of the extension request.

By letter dated May 5, 1995, ANC-2F supported the applicants' request to extend the validity of the PUD. The letter indicated that the applicants have provided part of the PUD's amenity package.

The District of Columbia Office of Planning (OP), by memorandum dated May 31, 1995 indicated that the zoning of the site has changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD was approved, and that the PUD was approved before the enactment of the Downtown Development District (DDD) regulations. The promulgation of the DDD regulations were to help accomplish the land use and development policies of the Comprehensive Plan relating to various subareas of the downtown. The overall goals of the DDD regulations are to create a balanced mixture of uses -- retail, hotel, residential, entertainment, arts, and cultural; and to guide and regulate office development.

The OP memorandum further indicated that the Generalized Land Use Map of the Comprehensive Plan approved in 1985 includes the subject property in the mixed-use high density commercial/high density residential land use category. The Comprehensive Plan Amendments Act of 1989, which became effective on May 23, 1990, did not change the land use classification of the site, nor did Council Resolution 9-275, dated July 7, 1992, which "corrected" the Generalized Land Use Map. Overall, the classification has not changed since the Zoning Commission approved this application.

The OP added that the subject PUD would comply with the overall intent and purpose of the DD District because of the proposed mix of office, residential and retail uses, and that given the time required for the applicants to secure financing and a major tenant for the project, the Office of Planning recommended that the Zoning Commission grant the applicants' request to extend the deadline for

Z.C. ORDER NO. 629-D  
CASE NO. 88-16C  
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the filing of an application for a building permit to October 13, 1997, and to extend the deadline for commencing construction to October 13, 1998.

Pursuant to Section 2406.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On June 12, 1995 at its regular monthly meeting, the Zoning Commission considered the applicants' request for a two-year extension of the validity of Z.C. Order Nos. 629, 629-A, 629-B, and 629-C and concurred with the recommendation and position of OP and ANC-2F, that the extension be granted.

The Commission determined that the reasons advanced by the applicants for the extension request constitute good cause and that the request was filed timely, pursuant to Section 2406.10 of the Zoning Regulations. The applicants have demonstrated their willingness to go forward with the development of the project as soon as market conditions improve, and have provided substantial upfront amenities associated with the project.

The Commission determined that an extension of the validity of the PUD is reasonable and would not adversely affect any party or person.

The Commission believes that its proposed action to grant the request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C be **EXTENDED** for a period of **TWO YEARS**; that is, until October 13, 1997. Prior to the expiration of that time, the applicants shall file an application for a building permit, as specified in 11 DCMR 2406.8 and construction to start on or before October 13, 1998.

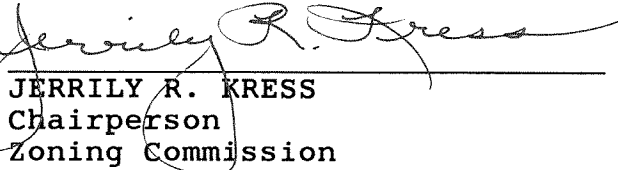
Vote of the Commission taken at the monthly meeting on June 12, 1995 4-0: (Maybelle Taylor Bennett, John G. Parsons and Jerrily R. Kress, to extend for **TWO YEARS**, William L. Ensign to extend by absentee vote).

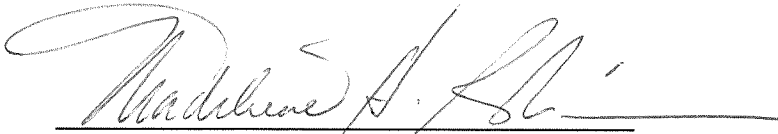
Z.C. ORDER NO. 629-D  
CASE NO. 88-16C  
PAGE NO. 5

This order was adopted by the Zoning Commission at its public meeting of August 7, 1995, by a vote of 4-0: (John G. Parsons, William L. Ensign, and Maybelle Taylor Bennett, to adopt, Jerrily R. Kress, to adopt by absentee vote).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on

NOV 1 1995

  
JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

zco629-D/VE/LJP



# Exhibit A-6

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 629-E**  
**CASE NO. 88-16C**  
**(PUD @ 901 New York Avenue, N.W. – Golub/Willco)**

**January 12, 1998**

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the district of Columbia approved the application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a planned unit development (PUD) for lots 18-20, 23, 27-31, 804-806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of 86 percent.

By Z.C. Order No. 629-A, dated June 11, 1990, the Zoning Commission approved modifications to Condition No. 8 and 9(b) of Z.C. Order No. 629. Condition No. 8 addressed the window mullions, the glass, the awnings and the granite; and Condition No. 9(b) addressed the fenestration.

By Z.C. Order No. 629-B, dated May 13, 1991, the Zoning Commission extended the validity of Z.C. Order Nos. 629 and 629-A for two years, until October 13, 1993.

By Z.C. Order No. 629-C, dated October 18, 1993, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A and 629-B for two years, until October 13, 1995.

By Z.C. Order No. 629-D, dated August 7, 1995, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C for two years; that is, until October 13, 1997. Prior to the expiration of that time, the applicants were required to file an application for a building permit; with construction to begin on or before October 13, 1998.

By letter dated August 6, 1997, counsel for the applicants filed a motion requesting the Commission to further extend the validity of Z.C. Order Nos. 629, 629-A, 629-B, 629-C and 629-D for ten years, until October 13, 2007, pursuant to 11 DCMR 2408.10.

The motion noted that the sole criteria for determining whether a PUD should be extended is whether there is "good cause shown" (see 11 DCMR 2408.11). In its Order No. 810, the Zoning Commission adopted as final "good cause" text amendments for PUD time extensions.

Paragraph 2408.11(a) of the regulations specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criterion for establishing good cause for a time extension.

In terms of Section 2408.11(a), the Commission specifically found, in Order No. 629-D, that the applicants had not proceed with construction (or filing for a building permit) since the PUD's approval "... solely because of unfavorable market conditions. These conditions have placed a halt on almost all new speculative private construction projects in the District of Columbia during the past several years. The applicants have been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased."

The affidavit of William C. Smith, Senior Vice President of H/P Companies L.C., and the supporting documentation from the applicant details diligent marketing of the project for office and hotel uses, and other potential uses. Since the Zoning Commission's time extension approval in 1995, the applicant has demonstrated diligent efforts to market the project. The applicant provided documentation showing it has spent considerable time and expense marketing the property, but has been unsuccessful in its efforts so far. Documentation of efforts shows contacts with numerous hotel users, office users, the Washington Opera and potential purchasers.

While not specifically criteria under Section 2408.11, the Zoning Commission, in Order No. 629-D, found:

1. The applicants have already provided \$860,000 to the 919 L Street Tenants Association as part of the amenity package. The applicants' letter to the Commission verifying such payment, dated July 14, 1989, is in the record of this case as Exhibit 97. Such funds were provided up-front in the anticipation that the 901 New York Avenue PUD would proceed expeditiously. Given current market trends, as further detailed below, a time extension is necessary to continue to look for a lead tenant so that the up-front amenity funds are not lost.
2. In addition to providing the funds to the 919 L Street Tenants Association, the applicants committed, as part of their amenity package, to rehabilitate 149 units of D.C.-owned property under the Homestead Program. Even though the applicants have not yet applied for a building permit for the PUD, they have begun the rehabilitation of the housing units. As noted in the affidavit of Richard S. Cohen, to date, 20 units have been completed, and 13 more have been credited as completed, for a total of 33 units.

3. The cost of these renovations and the acquisition of 919 L Street, N.W. to date have exceeded \$1,640,000.
4. The applicants have entered into an agreement with the National Park Service and the National Park Foundation regarding Reservations 70 and 175. Under the Agreement, the applicants have agreed to construct improvements in Reservation No. 175. Further, in lieu of maintaining Reservations 70 and 175, the applicants have agreed to pay to the National Park Foundation \$50,000 as an endowment for the continued maintenance of those reservations.

The applicants' motion also discussed Paragraph 2408.10(b) of the Regulations. Paragraph 2408.10(b) of the "good cause" text amendment provides:

2408.10 The Zoning Commission may extend the periods set forth in Subsections 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; Provided, that the Zoning Commission determines that the following requirements are met:

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and

The applicants' motion stated that there have been no changes impacting the PUD since Order No. 629-D was issued approving the third time extension.

The applicants' motion stated that no hearing is necessary regarding this time extension request. Subsection 2408.12 provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in Subsection 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

The motion states that the applicants meet the criteria under Paragraph 2408.11(a) as a demonstration of good cause. Thus, there is no need for a Subsection 2408.12 hearing to determine whether a material factual conflict exists with respect to the criteria of Subsection 2408.11.

By letter dated October 9, 1997, Advisory Neighborhood Commission (ANC) 2F supported the applicants' request to extend the validity of the PUD for a ten-year period. The letter indicated that the applicants had provided some of the amenities required by the PUD.

The District of Columbia Office of Planning (OP), by memorandum dated October 16, 1997, indicated that the zoning of the site had changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD was approved, and that the PUD was approved before the enactment of the Downtown Development District (DDD) regulations. The DDD regulations were enacted to help accomplish the land use and development policies of the Comprehensive Plan relating to various subareas of Downtown. The overall goal of these regulations is to create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Plan and to guide and regulate office development. The subject PUD would comply with the overall intent and purpose of the DD District.

The OP memorandum further indicated that the Generalized Land Use Map of the Comprehensive Plan approved in 1985 designated the subject property as mixed-use high-density commercial/high-density residential. The Comprehensive Plan Amendments Act of 1989, which became effective on May 23, 1990, did not change the land use classification of the site, nor did Council Resolution 9-275, dated July 7, 1992, which "corrected" the Generalized Land Use Map. In addition, the classification was not changed by the Comprehensive Plan Amendments Act of 1994, effective October 6, 1994.

The OP noted that the applicant had expended approximately \$1.64 million toward the off-site amenities as required for the project, including funds for the acquisition of 919 L Street, N.W. (apartment building) by the tenants association and the rehabilitation of 33 of a total of 149 D.C.-owned units under the Homeloan Program. These up-front, good faith investments were made with the expectation that the project would proceed quickly.

Pursuant to Subsection 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On October 23, 1997, at its regular monthly meeting, the Zoning Commission considered the applicants' request for a ten-year extension of the validity of Z.C. Order Nos. 629, 629-A, 629-B, 629-C and 629-D and concurred with the recommendation and position of OP and ANC-2F, that an extension should be granted. The Commission granted the extension for two years rather than the requested ten years.

The Commission determined that the reasons advanced by the applicants for the extension request constitute good cause and that the request was filed timely, pursuant to Subsection 2408.10 of the Zoning Regulations. The Commission determined that the applicant had demonstrated its willingness to go forward with the development of the project as soon as market conditions improve, and had provided substantial up-front amenities associated with the project.

The Commission determined that an extension of the validity of the PUD is reasonable and will not adversely affect any party or person. The Commission, however, believes that, because of the location of the PUD, immediately adjacent to both the proposed new convention center and the existing convention center, a two-year, rather than a ten-year, time extension is appropriate.

The Commission believes that its proposed action to grant the request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

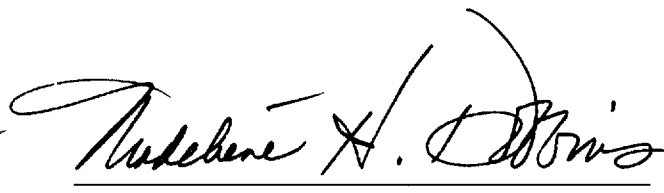
In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C be **APPROVED** for a period of **TWO YEARS**, until October 13, 1999. Prior to the expiration of that time, the applicants shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before October 13, 2000.

Vote of the Commission taken at the monthly meeting on October 23, 1997: 3-0 (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to extend for two years; Jerrily R. Kress, not present, not voting).

This order was adopted by the Zoning Commission at its public meeting of January 12, 1998, by a vote of 3-0: (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to adopt; Jerrily R. Kress, not voting, not having participated).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on JAN 30 1998.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. DOBBINS  
Director  
Office of Zoning

# Exhibit A-7

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 629-F**  
**CASE NO. 88-16C**  
**PUD @ 901 New York Avenue, N.W. -**  
**(Peterson/Monument Realty)**

**May 10, 1999**

By Z.C. Order No. 629, dated September 11, 1989, the Zoning Commission for the District of Columbia approved the application of Jerome Golub Realty and the Willco Construction Company, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning.

The application was for consolidated review of a planned unit development (PUD) for lots 18, 20, 23, 27-31, 804, 806, 816-819, 821, 823, 827-831, 835-837, and 840-852 in Square 372 located at 901 New York Avenue, N.W.

The PUD approval was for the construction of a mixed-use commercial building, containing office and retail uses, to a height of 130 feet, a floor area ratio (FAR) of 9.5, and a lot occupancy of 86 percent.

By Z.C. Order No. 629-A, dated June 11, 1990, the Zoning Commission approved modifications to Condition No. 8 and 9(b) of Z.C. Order No. 629. Condition No. 8 addressed the window mullions, the glass, the awnings and the granite; and Condition No. 9(b) addressed the fenestration.

By Z.C. Order No. 629-B, dated May 13, 1991, the Zoning Commission extended the validity of Z.C. Order Nos. 629 and 629-A for two years, until October 13, 1993.

By Z.C. Order No. 629-C, dated October 18, 1993, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A and 629-B for two years, until October 13, 1995.

By Z.C. Order No. 629-D, dated August 7, 1995, the Zoning Commission extended the validity of Z.C. Order Nos. 629, 629-A, 629-B and 629-C for two years; that is, until October 13, 1997. Prior to the expiration of that time, the applicants were required to file an application for a building permit; with construction to begin on or before October 13, 1998.

By letter dated March 12, 1999, counsel for the applicants filed a motion requesting the Commission to further extend the validity of Z.C. Order Nos. 629, 629-A, 629-B, 629-C, 629-D and 629-E for two years until October 13, 2001, pursuant to 11 DCMR 2408.10.



In its Order No. 810, the Zoning Commission adopted as final "good cause" text amendments for PUD time extensions.

Paragraph 2408.11(a) of the regulations specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criterion for establishing good cause for a time extension.

The Applicant's rationale for the requested PUD time extension states that poor market conditions have had a negative impact on the progress of this PUD. In terms of ¶2408.11(a), the Commission found, in Orders No. 629-D and 629-E, that the Applicant had not proceeded with construction (or filing for a building permit) since the PUD's approval "...solely because of unfavorable market conditions. These conditions have placed a halt on almost all new speculative private construction projects in the District of Columbia during the past several years. The Applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased."

In Order No. 629-E, the Commission also specifically found that the Applicant had demonstrated diligent efforts to market the project. The Applicant provided documentation showing it has spent considerable time and expense marketing the property, but has been unsuccessful in its efforts so far. Documentation of efforts shows contacts with numerous hotel users, office users and potential purchasers.

Since the issuance of Order No. 629-E in October, 1997, the Applicant has continued its efforts to develop the subject property. Such efforts are described in the affidavit of William C. Smith, Senior Vice President of The Peterson Companies. These efforts resulted in the Applicant entering into a purchase agreement with a predecessor in interest to Monument, for the sale of the property. The original closing date for this sale was scheduled to be March 1, 1999. Due to the complicated nature of the approvals needed to develop this property, the need to study alternative uses, the state of the leasing and user market as well as the difficulties in obtaining financing, the closing date was extended until May 5, 1999.

Since the property has been under contract, Monument has been performing and continues to perform a feasibility study, evaluating a wide range of uses for the subject property. The potential uses being examined have included: (1) an updated office building use taking into account changes in the office building market since the PUD was originally approved in 1989, (2) a 1400 room hotel, which would have combined the property at 1000 K Street, N.W. with the subject site, and (3) a stand-alone hotel of 900 to 1,000 rooms on the subject site. Due to various complexities involved in the 1,400 room hotel option, this last alternative is not feasible.

However, both the updated office alternative and the stand-alone 900 to 1000 room hotel are still being vigorously evaluated.

The final sale of the property, even if completed by the anticipated May 5, 1999 closing date, will not afford sufficient time for Monument to proceed with the preparation of working drawings and the acquisition of a building permit. Once Monument owns the property, it intends to continue its analysis of the PUD either proceeding with the option of developing a hotel on the subject property or continuing the approved office use while further pursuing the rezoning the subject property to a C-4 Zone District consistent with the recently amended Comprehensive Plan.

The Zoning Commission believes that it is in the best interest of the District to continue the PUD approval for an additional two-year period. Given the excellent real estate climate, the contract purchaser is more likely than ever to secure a lead tenant necessary for the approved PUD project or to secure the hotel entity necessary to move forward with a modified PUD project. The District's interests would be best served by encouraging development of the site to replace the existing parking lot. Extending the PUD will put the subject site in the best position to be redeveloped.

Significant amenities related to this PUD have been provided. These include: \$860,000 to the 919 L Street Tenants Association, the rehabilitation of housing units under the Homestead Program, endowments to the National Park Foundation and improvements on Reservation 175. The amenities provided represent a total expenditure of \$1.64 million. In anticipation of the ultimate development of the Subject Property, Monument has entered into an agreement with Advisory Neighborhood Commission (ANC) 2F, the Logan Circle Community Association and the Blagden Alley Association to provide \$1,500,000 of market rate housing within the boundaries of ANC 2F.

While not one of the criteria specifically set out under §2408.11 as evidencing good cause, the provision of these amenities up-front evidences the good faith efforts, present from the very beginning, to follow through with this PUD.

Paragraph 2408.10(b) of the Zoning Regulations provides that:

§2408.10 The Zoning Commission may extend the periods set forth in §§2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; Provided, that the Zoning Commission determines that the following requirements are met:

There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD;

Order No. 629-E evaluated whether there had been any substantial change impacting the PUD since its approval and found that there had been none. Order No. 629-E provided:

The District of Columbia Office of Planning (OP), by memorandum dated October 16, 1997, indicated that the zoning of the site was changed from HR/C-3-C and C-3-C to DD/C-3-C since the PUD and that the PUD was approved before the enactment of the Downtown Development District (DDD) regulations. The DDD regulations were enacted to help accomplish the land use and development policies of the Comprehensive Plan relating to various subareas of the downtown. The overall goal of the DDD regulations is to create a balanced mixture of uses identified in the Plan and to guide and regulate office development. The subject PUD would comply with the overall intent and purpose of the DD District.

The OP memorandum further indicated that the Generalized Land Use Map of the Comprehensive Plan approved in 1985 includes the subject property in the mixed-use high density commercial/high density residential land use category. The Comprehensive Plan Amendments Act of 1989, which became effective on May 23, 1990, did not change the land use classification of the site, nor did Council Resolution 9-275, dated July 7, 1992, which "corrected" the Generalized Land Use Map. In addition, the classification was not changed by the Comprehensive Plan Amendments Act of 1994 Effective October 6, 1994.

Furthermore, since Order No. 629-E was issued approving the fourth time extension, the Comprehensive Plan has been amended to add to the Zoning Commission's basis for its approval of the PUD. Pursuant to the Comprehensive Plan Act of 1998, the subject site was changed from mixed use high density commercial/high density residential to high density commercial. Such a land use classification makes the approved PUD even more well-suited to its broader geographic area.

Moreover, the pending Comprehensive Plan states that it is appropriate to grant additional PUD extensions if significant amenities have been provided such as in this case.

The Office of Planning (OP) by memorandum dated April 5, 1999, recommended that the Applicant's request for an extension of the PUD be granted. The OP report further stated that:

The enactment of the DD District regulations did not change the underlying zoning of the site, and the Office of Planning believes that the PUD, if developed as either an office building or a hotel, will not be inconsistent with the DD District Regulations. During deliberations on the DD District regulations, the Zoning Commission was cognizant that the subject PUD was located within the area boundaries of the proposed DD District and, accordingly, took this into consideration. Furthermore, the Commission has approved previous time extensions in this case notwithstanding the DD District regulations then in place because the goals of the DD District regulations and the subject PUD are similar.

The Generalized Land Use Map of the Comprehensive Plan of the District of Columbia, most recently amended in 1994, designates the site for high-density commercial/high-density residential land uses. However, pursuant to the Comprehensive Plan Amendment Act of 1998, which is expected to become final by mid-April, 1999, the designation of the subject site will be changed from mixed-use high density commercial/high density residential to high density commercial. Such a change in land use designation does not conflict with the PUD, and in fact, serves to make the PUD and its potential commercial components even more compatible with the Comprehensive Plan.

By letter dated February 15, 1999, Advisory Neighborhood Commission (ANC) 2F supported the Applicants' request to extend the validity of the PUD for a two year period.

Pursuant to Subsection 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On April 12, 1999, at its regular monthly meeting, the Zoning Commission considered the Applicants' request for a two year extension of the validity of Z.C. Order Nos. 629, 629-A, 629-B, 629-C, 629-D and 629-E and concurred with the recommendation and position of OP and ANC 2F, that an extension should be granted. The Commission granted the extension for two years.

The Commission determined that the reasons advanced by the Applicant for the extension request constitute good cause and that the request was filed timely, pursuant to Subsection 2408.10 of the Zoning Regulations. The Commission determined that the Applicant had demonstrated its willingness to go forward with the development of the project as soon as market conditions improve, and had provided substantial up-front amenities associated with the project.

The Commission determined that an extension of the validity of the PUD is reasonable and will not adversely affect any party or person.


The Commission believes that its proposed action to grant the request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby ORDERS that the request to extend the validity of Z.C. Order Nos. 629, 629-A, through 629-E, be APPROVED for a period of TWO YEARS, until October 13, 2001. Prior to the expiration of that time, the Applicants shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before October 13, 2002.

Vote of the Commission taken at the monthly meeting on April 12, 1999: 4-0 (John G. Parsons, Herbert M. Franklin, Jerrily R. Kress and Anthony Hood to adopt; Angel Clarens, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its public meeting of May 10, 1999, by a vote of 5-0: (Angel F. Clarens, Herbert M. Franklin, Jerrily R. Kress, Anthony J. Hood, to adopt, and John G. Parsons, to adopt by absentee vote).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on JUL 30 1999.

  
**ANGEL F. CLARENS**  
**Chairman**  
**Zoning Commission**

# Exhibit A-8

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 920**  
**Zoning Commission Case No. 99-6M/88-16C**  
**(Modification to the Planned Unit Development**  
**at 901 New York Avenue, N.W.)**  
**April 10, 2000**

Pursuant to notice, the Zoning Commission for the District of Columbia scheduled a public hearing on January 31, 2000, to consider an application from NDH 901 New York LLC for a modification to an existing planned unit development (PUD) and a related Zoning Map amendment from C-3-C, HR/C-3-C and DD/C-3-C to C-4, pursuant to Chapters 1 and 24 of the D.C. 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.

**FINDINGS OF FACT**

1. By letter dated January 6, 2000, the Downtown Housing Now Committee (DHNC) requested party status in Case No. 99-6M/88-16C. At the public hearing, the applicant opposed the DHNC's request for party status on the grounds that the DHNC did not demonstrate that its interests would be significantly, distinctively or uniquely affected by the proposed zoning action more than those of the general public, as is required for party status under 11 DCMR 3022.3. The applicant argued that the Commission's rule that provides hearing notice to all properties within 200 feet of the subject site should serve as guidance to the Commission as to the proximity of properties to be considered uniquely affected by a proposed project. In the instant case, the DHNC building closest to Lots 32 and 33 of Square 372 is located approximately 1,500 feet away, or approximately 7 ½ times the distance requirement for public notice. For this reason, the DHNC properties are not uniquely affected by the proposed project. The Commission agreed with the reasoning advanced by the applicant and unanimously voted to deny party status to the DHNC.
2. On September 16, 1999, NDH 901 New York LLC (the applicant) filed an application for a modification to a PUD previously approved by the Zoning Commission in Order No. 629, Case No. 88-16C, as modified and extended by Z.C. Order Nos. 629-A, 629-B, 629-C, 629-D, 629-E and 629-F (hereinafter the

original PUD) for the property located at 901 New York Avenue, N.W., Lots 32 and 33 in Square 372. The applicant simultaneously filed an application for a related Zoning Map amendment to change the zoning of the subject property to C-4.

3. The original PUD included only Lot 33 of Square 372 and permitted the construction of a mixed-use commercial building containing office and retail uses to a height of 130 feet with setbacks, a floor area ratio (FAR) of 9.5, and a lot occupancy of 86 percent. The project was to provide parking for 288 automobiles. (Z.C. Order No. 629.)
4. The original PUD included an amenities package consisting of:
  - a. Funding for the purchase of the building at 919 L Street, N.W. for the L Street Tenants Association;
  - b. The renovation of 149 city-controlled housing units for low and moderate income families;
  - c. 30,000 square feet of floor space within the building devoted to Convention Center support, retail and service space;
  - d. Improvement of the public space surrounding the subject property;
  - e. An agreement with the National Park Service to address improvements and maintenance of U.S. Reservations 70 and 175;
  - f. Improvement and maintenance of the median of New York Avenue in front of the project; and
  - g. Provision of a day care center in the building, with subsidized rent. (Z.C. Order No. 629.)
5. Since the original PUD was approved in 1988, Lot 33 has had several owners. In May of 1999, the applicant purchased Lot 33.
6. The original PUD has been extended by the Commission such that the applicant may now apply for a building permit on or before October 13, 2001, and may start construction by October 13, 2002. By complying with these deadlines, the applicant has the absolute right to construct the office building approved by the original PUD. (Z.C. Order 629-E.)
7. In response to encouragement from the Office of Planning (OP), as well as land planning and site development considerations, the applicant purchased Lot 32,



consisting of approximately 2,006 square feet on the K Street side of Square 372. Thus, the applicant now owns all of Square 372.

8. The subject property is currently vacant and is situated in Ward 2, within the New York Avenue corridor. It is bounded by K Street on the north, 10<sup>th</sup> Street on the west, New York Avenue on the south, and U.S. Reservation 175 on the east.
9. The squares directly surrounding the subject property contain a mix of uses. On the west side of 10<sup>th</sup> Street is Square 343. That portion of Square 343 east of the public alley is currently a parking lot and is controlled by a PUD for either a 9.3 FAR office building or, in the alternative, a 10.5 FAR hotel. The southwest corner of the square, at the intersection of 11<sup>th</sup> Street and New York Avenue, is an automobile rental business. To the south of the subject property, across New York Avenue, is Square 373, which is occupied by the existing Washington Convention Center. Diagonally southeast, across the intersection of 9<sup>th</sup> Street and New York Avenue, is the Renaissance Washington Hotel and the Techworld office building complex in Square 403. U.S. Reservation 175 lies directly to the east of Square 372. Farther east across 9<sup>th</sup> Street is Mount Vernon Square and the Carnegie Library. To the northeast of the subject property, diagonally across the intersection of 9<sup>th</sup> and K streets, is Square 402, one of several squares under construction with the new Convention Center. Across K Street to the north is Square 371, developed primarily with the Mount Vernon Place United Methodist Church, an affiliated building and parking lots. The remainder of Square 371 is developed with the Henley Park Hotel.

Diagonally to the northwest of the site, across the intersection of 10<sup>th</sup> and K streets, is Square 342. The southwest corner of Square 342 is developed with several small, boarded-up commercial buildings and an eight-story building used as a youth hostel. The northwest corner of the square is developed with a six-story office building which houses the American Road and Transportation Builders Association at 1010 Massachusetts Avenue. The northeast corner of the square, with an address of 1000 Massachusetts Avenue, is developed with a seven-story office building which houses the Cato Institute. The four-story National Medical Association office building is located at 1012 10<sup>th</sup> Street. The eight-story Carpenter's Union office building is located on the southeast corner of the square. There is a souvenir shop on the ground floor of this building.

10. The underlying zoning of the subject property is C-3-C, HR/C-3-C and DD/C-3-C. That portion of the property facing Mount Vernon Square is zoned C-3-C. The C-3-C District is designed to accommodate important sub-centers supplementary to the retail and office centers of the downtown core. It is intended to permit medium-high density development, including office, retail, housing, and mixed-use development. The C-3-C District permits matter-of-right development

to a height of 90 feet (with no limit on the number of stories), a maximum permitted FAR of 6.5, and a maximum lot occupancy of 100 percent.

11. The underlying zoning of the vast majority of Lot 33 is HR/C-3-C. The HR/C-3-C District permits both office and hotel uses as a matter-of-right. The HR District was established to encourage the development of an adequate number of hotels within a convenient distance of the existing D.C. Convention Center. The HR District is applied in combination with the underlying zoning of the area, not instead of the underlying zoning of the area. In the HR Incentive District, a hotel or apartment house may be built to a height in excess of that permitted in the underlying zone, but not to exceed 130 feet. The HR District allows a maximum FAR of 8.5 for apartment house or hotel use.
12. Lot 32 in Square 372 (not part of the original PUD) was rezoned from HR/C-3-C to DD/C-3-C in 1991. The DD District is intended to accomplish the land use and development policies of the Comprehensive Plan, including the creation of a balanced mixture of uses downtown, in part through the monitoring and regulation of office development. Within the DD/C-3-C District, the maximum height permitted is 130 feet, the maximum matter-of-right FAR permitted is 9.5, at least 3.5 of which shall be devoted to residential use as permitted in Chapter 17 of 11 DCMR, and a maximum FAR of 10.0 is permitted if transferable development rights (TDRs) are acquired. The maximum lot occupancy permitted is 100 percent. Lot 32 is located in DD Housing Priority Area B, known as the Mount Vernon Square South area.
13. Under the PUD regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed or may be less than the matter-of-right standards identified above. The Zoning Commission may also approve uses that are permitted as special exceptions by the Board of Zoning Adjustment (BZA) or may approve development variances that are required by a project design.
14. The applicant has researched the feasibility of both an office building and a convention hotel on the subject property. The applicant has determined that a convention hotel would only be possible with tax increment financing. After inquiry to the District government, it is apparent that tax increment financing is not available for this project. The applicant has determined that an office building is a very feasible use of the property and has proceeded with plans to develop such.
15. The applicant proposes to build an office building consisting of 10.0 FAR and approximately 532,505 square feet of gross floor area. The building will be 130 feet in height with setbacks, and will have 11 floors. Underground parking for a minimum of 404 cars will be provided.

16. The applicant has worked closely with OP, the Blagden Alley Association, the Logan Circle Community Association, and Advisory Neighborhood Commission (ANC) 2F in regard to the different aspects of the project. As a result of the continuing discussions, the applicant has agreed to invest \$1.5 million in market rate housing within the boundaries of ANC 2F and to meet the housing requirement of Lot 32 in accordance with the Downtown Development District regulations.
17. As a further result of discussions with OP and community groups, the applicant has included certain design features aimed at improving the quality of the ground floor retail including: a 13'4" slab to slab height; kitchen exhaust shafts for food service in some spaces; functional loading and servicing; canopies or signbands with back-lighted tenant signage; flexible storefront systems to allow for multiple entry locations; prominent entries at the two focal corner locations; and a storefront pulled out to the property line along New York Avenue to engage pedestrians.
18. The applicant has worked with the National Park Service (NPS) in an effort to reach a final design for adjacent and nearby U.S. Reservations 175 and 70. Furthermore, the applicant has agreed to increase this amenity by undertaking both the design and construction of Reservation 7019. The project architect, Douglas Carter, recognized as an expert in architecture by the Zoning Commission, testified as to the differences between the design of the original PUD and the currently proposed office building, including: the inclusion of Lot 32 and a corresponding increase in building FAR from 9.5 to 10.0; reduction in the number of stories from 12 to 11; relocation of loading docks from K Street to 10<sup>th</sup> Street; an increase in parking from 288 spaces to a minimum of 404 spaces; and various interior and exterior design improvements.
20. Mr. Carter explained that many of these design changes were made in order to make the office building compatible with the high technology needs of today's companies.
21. Mr. Carter also described how the proposed design of the office building's exterior places it within the context of Mount Vernon Square as well as New York Avenue.
22. James Prost, the applicant's economic consultant, was accepted as an expert by the Commission. Through written and verbal testimony, Mr. Prost stated that during the construction period the project will generate a total of approximately 473 construction jobs. Mr. Prost stated that during construction, the project would generate \$801,000 in tax revenues and that the construction payroll would reach approximately \$18.2 million. Mr. Prost further indicated that permanent

on-site employment would reach approximately 4,426 jobs, with an annual payroll of approximately \$168.4 million. Mr. Prost testified that the District's permanent annual tax revenue from the project's economic benefits would add up to a capitalized value of approximately \$55.4 million.

23. In testimony at the public hearing and in a traffic analysis submitted with a statement, Martin Wells, the applicant's traffic engineer, accepted by the Commission as an expert, stated that the project would not have an adverse transportation impact on the surrounding neighborhood.
24. Steven E. Sher, the applicant's land planning expert, submitted written testimony and testified at the hearing that the proposed modification and related map amendment are not inconsistent with the Comprehensive Plan, that they are consistent with and meet the standards and objectives of the PUD and map amendment processes, and that they are compatible with the planned character of the area and should be approved.
25. Mr. Sher testified specifically that, pursuant to the Comprehensive Plan Amendments Act of 1998, the Generalized Land Use Map designation in the Comprehensive Plan for the subject property was changed from mixed-use high density residential/high density commercial to high density commercial, making the requested Zoning Map amendment to C-4 not inconsistent with the Comprehensive Plan.
26. The District of Columbia Office of Planning (OP), by memorandum dated January 19, 2000, and by testimony at the hearing, indicated that it had worked closely with the applicant. OP concluded that the proposed PUD modification and related map amendment are not inconsistent with the Comprehensive Plan and recommended that the Zoning Commission approve the modified project with the following conditions:
  - a. Require that leasable space on the first floor be retail space because of the project's critical location between the new Convention Center and downtown;
  - b. Restrict exterior lighting, other than first floor lighting for retail signage, to a low-level wash that would be less intense than lighting proposed for the Carnegie Library or the new Convention Center.
  - c. Request that the applicant continue working with the National Park Service to improve the park design for U.S. Reservation 175 to provide a better relationship between the planned retail space and pedestrian linkages; and

- d. Allow the applicant to meet the housing requirements for Lot 32 through, at its discretion, either a slight modification of the combined lot provisions of 11 DCMR 1706.5 and 1708, or through the on-site/off-site/affordable housing trust fund provisions of 11 DCMR 1706.5 (c) and (e) and Section 1706.24.
27. Advisory Neighborhood Commission (ANC) 2F voted unanimously in support of the PUD modification. Chairperson Leslie Miles testified for the ANC as a party. She testified that the PUD modification and Zoning Map amendment were discussed extensively by the ANC and that there was no opposition expressed. Ms. Miles further testified that the ANC fully supports the investment of \$1.5 million by the applicant for market-rate housing within ANC 2F.
  28. In response to requests by the Zoning Commission, the applicant timely submitted post-hearing materials consisting of:
    - a. A revised landscape plan;
    - b. A detailed elevation/section showing the type and placement of building materials;
    - c. Drawings showing the potential retail awning/canopy variety;
    - d. A drawing showing the newly designed loading dock doors;
    - e. A First Source Employment Agreement, signed by the applicant, creating a hiring obligation that would not exist absent the PUD;
    - f. Letters from and to the National Park Service concerning the applicant's agreement to construct and maintain in perpetuity U.S. Reservations 70 and 175;
    - g. A draft set of conditions to be applicable to the planned unit development and to be incorporated into the applicant's proposed findings of fact and conclusions of law addressing issues raised at the public hearing; and
    - h. A copy of the applicant's agreement with the community in regard to the \$1.5 million investment for housing.
  29. In order for the Commission to approve the PUD project, the applicant must meet its burden of demonstrating the public benefits and other meritorious aspects of the proposal. The Commission finds that the applicant has met its burden of proof.

30. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated March 29, 2000 found that proposal would not affect the federal interest nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

### **CONCLUSIONS OF LAW**

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.
2. The development of this PUD project 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.
3. Approval of this application as a modification to the original PUD is provided for under the regulations and is appropriate within this regulatory scheme for carrying PUDs to final completion.
4. Approval of this PUD is not inconsistent with the Comprehensive Plan, including the designation of the site for high density commercial use.
5. The proposed PUD meets the minimum area requirements of Subsection 2401.1 of the Zoning Regulations.
6. Approval of this PUD application is appropriate because the application is generally consistent with the present character of the area.
7. The Commission takes note of the position of Advisory Neighborhood Commission 2F, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.
8. The approval of the application will promote the orderly development of the site 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 proposed modification can be approved with conditions which will ensure that development will not have an adverse effect on the surrounding area.

10. The application 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 this application for modification to the original PUD approved by Zoning Commission Order Nos. 629 and 629-A through 629-F, and a related map amendment from C-3-C, HR/C-3-C and DD/C-3-C to C-4 for property located in Square 372, Lots 32 and 33, subject to the following guidelines, conditions and standards:

1. The PUD site shall be developed in accordance with the plans prepared by Davis Carter Scott, marked as Exhibits 20 and 44 and as modified by the guidelines, conditions and standards of this order.
2. The modified PUD shall be an office building with all the leasable space on the ground floor devoted to retail. The building will have a maximum FAR of 10.00 or 532,505 square feet of gross floor area. The height of the building shall not exceed 130 feet. It shall have a maximum lot occupancy of 92 percent. Underground parking shall be provided for a minimum of 404 cars through a combination of self-park, tandem and vault spaces, if vault spaces can be obtained from the District of Columbia.
3. The uses on the ground floor of the building shall consist of one or more of those uses listed in 11 DCMR Sections 1710 and 1711, subject to the limitations set forth in 11 DCMR Subsection 1702.1.
4. The applicant shall invest \$1.5 million in market rate housing within the boundaries of ANC 2F pursuant to the terms of the agreement submitted as Exhibit 44.
5. The applicant shall meet the housing requirement of Lot 32 in accordance with the Downtown Development District regulations, provided that, if the combined lot development option is selected by the applicant, housing shall be constructed in Housing Priority Area B or Housing Priority Area C.
6. Landscaping shall be as provided in the plans submitted with the applicant's submission of February 18, 2000, marked as Exhibit 44.

7. The applicant shall develop and maintain U.S. Reservations 70 and 175 pursuant to the written agreement between the applicant and the National Park Service dated April 7, 2000 and the plans submitted therewith.
8. With regard to retail tenant signage and awnings, the applicant shall be permitted to install a variety of retail tenant signage and awnings via one or a combination of the following methods: (i) colored signage and awnings with applied tenant lettering located on the sign panel and backlighting, or (ii) metal signband with tenant lettering inset into signband and backlighting, as shown in Exhibit 44. Awnings may be installed at the ground level of the building. Covering materials may be canvas or similar non-rubberized cloth material, glass, or metal. Vinyl, or other plastic-like sheeting is not acceptable. Awning surfaces may not be of any color or pattern. Awning edges shall be straight lines; scallops, curves, fringes, etc. are not acceptable. Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Lettering and logos may not be placed on sides, tops, or sloping surfaces of the awnings.
9. The applicant shall make the parking garage in the building available for use by the public after normal building hours, at prevailing market rates and subject to the needs of tenants in the building.
10. The design of the loading dock doors and interiors shall reflect the plans shown in Exhibit 44.
11. The exterior lighting of the building, other than first floor lighting for retail signage, shall be restricted to a low-level "wash" that will be less intense than lighting proposed for the Carnegie Library or the new Convention Center.
12. The applicant shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including partitions, slab configuration, doors, hallway columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change materially the exterior configuration of the building or the ability of the applicant to meet the other provisions of this order.
13. The applicant shall enter into a Memorandum of Understanding with the D.C. Department of Human Rights and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by small, local and disadvantaged businesses in connection with the construction and operation of the project to be created as a result of the PUD project.
14. The applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (DOES) in order to achieve the goal of



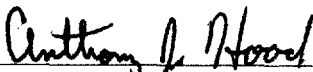
utilizing District of Columbia residents for at least 51 percent of the jobs created by the PUD project.


15. The change of zoning from C-3-C, DD/C-3-C and HR/C-3-C to C-4 for the subject property shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3, and discussed in paragraphs 16, 17 and 18 of this order. Pursuant to the intent of 11 DCMR 2407.3, no building permit shall be issued for this PUD modification until the applicant has recorded a "Notice of Modification" of Z.C. Order No. 629 in the Land Records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order Nos. 629, 629-A, 629-B, 629-C, 629-D, 629-E and 629-F and this Order that the Director of the Office of Zoning has so certified. The recordation of the Notice of Modification shall bind the applicant, and the successors in title to the property, to construct on and use this site in accordance with this order and any amendments thereof.
16. After recordation of the Notice of Modification, the applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.
17. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA) until the applicant has filed a certified copy of the covenant with the records of the Zoning Commission.
18. The PUD modification approved by the Zoning Commission shall be valid until October 13, 2001, by which time an application must be filed for a building permit as specified in 11 DCMR 2409.1. Construction shall begin by October 13, 2002.
19. Pursuant to D.C. Code Section 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified at D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at its public meeting on March 13, 2000 by a vote of 5 – 0 (Kwasi Holman John G. Parsons, Herbert M. Franklin, Anthony J. Hood and Carol J. Mitten, to approve)

The Order was adopted by the Zoning Commission at its public meeting on April 10, 2000 by a vote of 5 – 0 (John G. Parsons, Carol J. Mitten, Kwasi Holman, Anthony J. Hood, and Herbert M. Franklin, to **APPROVE**).

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 APR 21 2000.

  
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**ANTHONY J. HOOD**  
Chairperson  
Zoning Commission

  
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**JERRILY R. KRESS, FAIA**  
Director  
Office of Zoning

# Exhibit A-9

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 920-A**  
**Zoning Commission Case No. 01-01MM/99-6M/88-16C**  
**(Modification to the Planned Unit Development**  
**at 901 New York Avenue, N.W.)**  
**February 12, 2001**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia was held on February 12, 2001. At the meeting, the Zoning Commission approved an application from NDH 901 New York LLC for a minor modification to an existing planned unit development (PUD) and a related Zoning Map amendment from C-3-C, HR/C-3-C and DD/C-3-C to C-4 pursuant to Chapters 1 and 24, and the Consent Calendar Regulations of Chapter 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. Because the modification was deemed minor, a public hearing was not conducted.

The Zoning Commission determined that this modification request is properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

**FINDINGS OF FACT**

By Zoning Commission Order No. 920, dated April 10, 2000, the Commission modified an approved PUD for Lot 33, Square 372 (containing a land area of 51,246 square feet), by adding Lot 32 (containing 2,006 square feet). The Commission approved a redesign of the proposed office building, which would be allowed to be constructed to a height of 130 feet with a 10.0 FAR. The Subject Property is situated in Ward 2, along the New York Avenue corridor and is bounded by K Street, on the north, 10<sup>th</sup> Street, on the west, and New York Avenue, on the south, and U.S. Reservation 175, on the east.

NDH 901 New York LLC seeks a minor modification in the approved PUD so as to permit NDH 901 New York LLC to utilize the proposed amendments to the text of the Zoning Regulations proposed by the Office of Planning for public hearing in Case No. 00-30T, heard on January 29, 2001. Those provisions would permit NDH 901 New York LLC, pursuant to a proposed revised §1708, to proceed with its commercial development through combined lot development by posting with an escrow agent certain funds to be dedicated for housing use and secured through a covenant without the current impediments of the linkage of certificates of occupancy between the commercial and residential project.

To date, NDH 901 New York LLC has been unable to secure a site or enter into a combined lot development for the provision of the approximately 4,213 square feet of residential development to be provided in Housing Priority Areas B or C as permitted pursuant to Zoning Commission Order No. 920. This situation has a potentially chilling effect on securing tenants and financing for the approved PUD. Consequently, NDH 901 New York LLC has been unable to locate a residential developer who will commit to the timely production of the housing that is reasonably required by the commercial office developer so that the commercial project is not at risk in the event that the residential project does not move forward in a timely fashion.

The requested minor modification will further District of Columbia development objectives for the subject site and the area near the Convention Center and does not affect the design of the approved PUD itself. None of the parameters of the development of the office building approved in Zoning Commission Order No. 920 are changed by the proposed modification. The request simply permits NDH 901 New York LLC to implement the proposed regulations to address an issue that the regulations specifically were designed to address.

On January 19, 2001, a copy of the PUD modification application was mailed to ANC 2F, party to the approved PUD. ANC 2F did not participate in this minor PUD modification application.

On February 12, 2001, at its regularly scheduled meeting, the Zoning Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modification to the PUD.

The Zoning Commission concurs with NDH 901 New York LLC that approving the application is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this application, the Zoning Commission concludes that the proposed modification is minor and consistent with the intent of the previously approved PUD, Zoning Commission Order No. 920. Further, the Commission believes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the requested minor modification will not affect any of the other conditions to

the approved PUD. The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

### **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 modification to the original PUD approved for property located in Square 372, Lots 32 and 33, subject to the following guidelines, conditions and standards:

The applicant shall meet the housing requirement of Lot 32 in accordance with the Downtown Development District regulations, provided that, if the combined lot development option is selected by the applicant, housing shall be constructed in Housing Priority Area B or Housing Priority Area C, or, in the alternative, the Applicant may meet the housing requirement of Lot 32 through a contribution to the Housing Production Trust Fund for use for affordable housing projects in Housing Priority Areas A, B and C and ANC 2F.

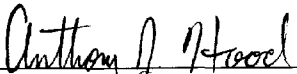
Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs (“DCRA”) for the minor PUD modification until the applicant has recorded a “Notice of Modification” of Zoning Commission Order No. 920 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Zoning Commission Order No. 920 and this order, which the Director of the Office of Zoning has certified. The recordation of the Notice of Certification shall bind NDH 901 New York LLC and any successors in title to construct on and use this site in accordance with this order and any amendments thereof.

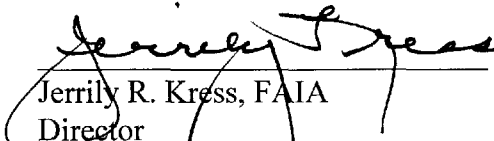
After recordation of the Notice of Modification, NDH 901 New York LLC shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.

The minor PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in §§ 2409.2 and 2409.3 of the Zoning Regulations. Construction shall start within three years of the effective date of this order.

Vote of the Zoning Commission taken at its public meeting on February 12, 2001: 5-0 (Herbert M. Franklin, Kwasi Holman, Anthony J. Hood, Carol J. Mitten, John G. Parsons)

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 MAR-9 2001

  
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Anthony J. Hood  
Chairperson  
Zoning Commission

  
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Jerrily R. Kress, FAIA  
Director  
Office of Zoning