

Law Offices

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006 - 6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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November 9, 2001

WHAYNE S. QUIN
202-663-7274

Internet Address:
wquin@hklaw.com

VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001
Attn: Mr. Alberto Bastida

Re: Zoning Commission Case No. 01-07C
1700-1730 K St., N.W., PUD and Airspace Applications

Dear Members of the Commission:

On behalf of Commerce Building Associates, a Joint Venture, and Riddell Building Joint Venture, we are submitting herewith the Applicants' Proposed Findings of Fact, Conclusions of Law, and Order in the above-referenced case. This letter also responds to the supplemental letter filed on October 31, 2001, by David Brooks on behalf of the owners of the Barr Building.

Projections into Public Airspace

a. Location of Projection Does Not Impinge Upon the Barr Building.

In his letter submitted October 31, 2001, Mr. Brooks reiterates his support for the project but continues his objection to the projection into public airspace. The proposed projection is located at the north end of a rectangular alley cul-de-sac, which measures approximately 39.5 feet wide by 27 feet deep. The new building will include a minor 5.5 foot projection into this cul-de-sac. The remaining distance of 21.5 feet between the perimeter walls of the PUD and the Barr Building will continue to be the greatest distance between the two structures, as shown on page A-6 of the architectural drawings dated September 2001. Other portions of the Barr Building are located within five or ten feet of the proposed PUD. The 21-foot separation between the two buildings is also greater than a required side yard would be for the Barr Building, if one were provided. At a height of 110 feet, the Barr Building would require a side yard of 18.3 feet, based on a width of two inches for each foot of building height. Consequently, the

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modest use of public airspace will not impinge upon the Barr Building in any way. Moreover, it will have absolutely no impact on the direct sunlight into any light well or other windows of the Barr Building. Instead, as shown on the sun angle diagrams prepared by Pei Cobb Freed & Partners, the projection will actually *increase* the primary reflected sunlight on the alley elevation of the Barr Building during the summer.

b. Zoning Commission's Role Under the Public Space Utilization Act.

Mr. Brooks suggests that the applicants must demonstrate a public benefit or need for the use of public airspace. Mr. Brooks has confused the standards for the lease of public airspace with the PUD process. Under the Public Space Utilization Act, the Zoning Commission's sole criteria for evaluating an application for lease of public airspace is, first, to determine the appropriate zoning classification for the airspace based on the abutting property and, second, to determine if the proposed use meets those standards. Here, because all the surrounding property is zoned C-4, the Zoning Commission must evaluate the proposed use of 225 square feet of public land area in accordance with the C-4 regulations with respect to height, offstreet parking, floor area ratios, and easements of light, air and access. The two projections meet these limitations and requirements. The height of the projections will be 130 feet, parking will be provided in conjunction with the main structure, the floor area ratio of the projections is 9.97, and the projections will not encroach upon any easements of light, air and access.

Under the Public Space Utilization Act, the applicants do not need to demonstrate a public benefit for the use of public airspace. Contrary to the assertions of Mr. Brooks, it may be used simply to increase the net leaseable area of a building. For example, in Z.C. Order No. 166, the Zoning Commission approved the application of The John Akridge Company to lease a portion of the public airspace in Square 216 for a new commercial office structure located in the C-4 District. There was no public benefit associated with the airspace application.

While the applicants do not need to demonstrate a public benefit, there nevertheless will be significant improvements to the PUD design as a result of the public airspace projections. The "pinched" center portion of the site can be expanded by 5.5 feet to accommodate appropriate spatial configurations for floor plates, corridors, and tenant layouts in conformance with current market demands. It also allows for significant setbacks along the public frontage of K Street at the twelfth and ground floor level to complement the building's prominent location at Connecticut Avenue and K Street, and which can be enjoyed by the public at large. Pedestrians will experience a wider sidewalk, retail shoppers will be protected from the elements, and the apparent height of the building will be reduced.

17th Street Elevation

Similarly, the 17th Street façade of the proposed PUD was carefully designed to complement its setting across from Farragut Square and adjacency to the Gothic Revival Barr Building. To respect the architectural character of the Barr Building, Pei Cobb Freed created a design to mirror the massing of the building at 900 17th Street to properly frame the Barr Building. The masonry wall at 17th Street is extended above the twelfth floor level as an architectural embellishment that serves to screen the penthouse of the project. Mr. Brooks suggested that this elevation should be set back to match the existing conditions on the two "bookend" buildings. As shown in the photo montage on page S-5 of the architectural drawings dated August 2001, such a solution would not minimize the visibility of the upper stories or penthouses. Rather, as shown on the rendering at page A-32 in the drawings dated October 2001, the design proposed for the PUD will eliminate the visibility of the roof structures from 17th Street, thereby enhancing the Washington skyline.

We appreciate the opportunity to provide the Commission with these additional comments and respectfully request approval of the project at your next meeting.

Respectfully submitted,



Wayne S. Quin



Carolyn Brown

Enclosure

cc: Cynthia Giordano, on behalf of David Brooks (w/ encl.)
ANC 2B (w/ encl.)
Office of Planning

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

**ZONING COMMISSION CASE NO. 01-07C
(Consolidated Planned Unit Development and
Public Space Utilization Act Application for 1700-1730 K Street, N.W.)
[Date of Final Action]**

**APPLICANTS' PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 11, 2001, to consider applications from Commerce Building Associates, a Joint Venture, and Riddell Building Joint Venture for consolidated review and approval of a planned unit development, and review of an application for the use of public airspace above an adjacent public alley. The Commission considered the applications pursuant to chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"), and the Public Space Utilization Act, D.C. Code § 10-1121 (2001 Ed.). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On April 17, 2001, the applicants filed applications for the consolidated review and approval of planned unit development ("PUD") and use of public airspace for the property located at and public space adjacent to 1700 and 1730 K Street, N.W., Lots 56 and 851 in Square 126. The subject site is located in the C-4 District.
2. After proper notice, the Zoning Commission held a hearing on the applications on October 11, 2001. The parties to the case were the applicants, Advisory Neighborhood Commission ("ANC") 2B, the ANC within which the property is located, and K.V. Sun Holdings, the owner of the Barr Building located adjacent to the subject property at 910 17th Street, N.W.
3. At its November 19, 2000, meeting the Zoning Commission took proposed action by a vote of _____ to approve with conditions the applications and plans that were presented at the October 11, 2001, hearing and as supplemented by the drawings submitted to the record on October 31, 2001.
4. 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-

Government and Governmental Reorganization Act. NCPC, by action dated _____, found that _____ with the Comprehensive Plan for the National Capital. By action dated August 2, 2001, NCPC likewise found that the proposed use of public airspace would not affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

5. The Zoning Commission took final action to approve the applications on _____.

The PUD Project

6. The subject site is presently improved with two 13-story commercial office buildings known as the Commerce Building at 1700 K Street, N.W., and the Riddell Building at 1730 K Street, N.W. The applicants propose to demolish both buildings and construct a new twelve-story commercial office building with retail uses on the first floor. The new building would include a gross floor area of 370,891 square feet on private property and 2,244 square feet over public property, for a total gross floor area of 373,135 square feet.
7. The two existing buildings were constructed prior to the enactment of the current zoning restrictions on density, and have a floor area ratio ("FAR") of 11.55. The new building will have a density of 11.08 FAR on private property.
8. The subject property is situated in Ward 2 at the intersection of Connecticut Avenue, K Street, and 17th Street, N.W., in the city's primary commercial office corridor. The irregular site is approximately 265 feet along K Street and approximately 120 feet along 17th Street, N.W. The site is located in the Connecticut and K Street area of the Central Employment Area under the Comprehensive Plan, which is characterized by high-density commercial structures.
9. Large office buildings with a predominant height of 130 feet are located to the east, west, north and south of the site. The two buildings adjacent to the site at 1750 and 1776 K Street consist of twelve stories at 130 feet in height. Across K Street to the north are the office buildings at 1000 Connecticut Avenue, N.W., and 1725 and 1775 K Street, N.W., all of which are constructed to a height of 130 feet. To the south of the site along 17th Street, N.W., the building height drops briefly to 110 feet at the Barr Building, 910 17th Street, N.W., but returns to a height of 130 feet at the Farragut Building at the corner of 17th and I Streets, N.W.
10. The C-4 District is designed for the downtown core that comprises the retail and office centers of the District of Columbia. The C-4 District permits a maximum height of 130 feet if the property abuts a street which is at least 110 feet wide, such as K Street. In

addition, the C-4 District permits a maximum density of 10.0 FAR if a building can be built to a height in excess of 110 feet. Under the PUD guidelines for the C-4 District, the density may be increased to 11.0 FAR. Also, a five percent increase beyond the maximum height or FAR permitted under the guidelines is allowed under section 2405.3 of the Zoning Regulations provided that the increase is essential to the successful functioning of the project and is consistent with the purpose and evaluation standards of the PUD regulations.

11. Under the PUD guidelines, the site yields approximately 368,335 square feet of allowable commercial office space. In order to allow for the successful functioning of the PUD, a five percent increase in the allowable density would yield approximately 386,752 square feet of commercial office space.
12. The new building reflects a design of superior architecture encouraged by the PUD regulations. The glass façade along K Street and the masonry treatment of the 17th Street elevation reflect the contrasting elements of commerce and public parkland at the highly visible corner of Connecticut Avenue and K Street, N.W. The 17th Street facade is composed of large, carefully proportioned windows framed by stone clad lintels and piers. The façade is a palette of lightly colored and subtly variegated granite, highly reflectively stainless steel clad mullions, and untinted low reflectivity glass. The masonry screen continues above the top floor of the building and acts as an architectural embellishment in the overall design scheme. The K Street façade is treated with a more animated composition of metal and glass to reflect the commercial vibrancy of the streetscape. The design consists of oversized floor to ceiling windows within articulated colonettes. The expansive street wall is broken at the center by a vertical recessed bay, which is punctuated at the ground level by the main lobby entrance to the building and glass and metal marquee. The height of the building is stepped back 5.5 feet at the twelfth floor along K Street.
13. The new building also includes special storefront treatment and landscaping elements along 17th and K Streets. The street level frontage along K Street is recessed five and one-half feet to create an open arcade effect that mirrors the setback at the roofline. The retail frontage is designed as boutique windows wrapped in broad "detached" frames of polished stainless steel. The recessed arcade along K Street expands the sidewalk width by forty percent. New dimension pavers will define the newly configured public space area beyond the building line. The number of trees will be increased from five to six at K Street, and from two to four at 17th Street. Sidewalk benches and decorative trash receptacles designed to match the new building will also be provided along both street frontages. Upon completion, the new building will restore this important corner to a position of prominence.

14. The existing buildings on the subject site do not provide parking. The proposed new building generates a parking requirement of 155 spaces. The applicants will exceed this requirement and provide a minimum of 225 spaces. The provision of 225 spaces will address not only the parking needs associated with the new building but will also help offset the demand associated with the surrounding buildings, many of which do not include parking.
15. There will be loading berths at the rear of the new building with access from the public alley system in the square. The existing buildings currently do not provide loading facilities.
16. The following superior benefits and amenities will be created as a result of the PUD project:
 - a. Urban Design and Architecture. The proposed new building has been designed to complement the surrounding large-scale commercial buildings while at the same time respect its special public frontage across from Farragut Square. The dated appearance of the existing buildings and their obsolete mechanical and programmatic systems, will be replaced with a modern, attractive design developed by world-renown architects. The innovative architectural treatment of the new building will enhance and restore the visual prominence of this corner in the downtown commercial corridor. The PUD will provide high quality, superior design features to reinforce the visual identity of the Central Employment Area.
 - b. Special Value to the Neighborhood. The applicants will make a \$70,000 contribution to the Golden Triangle Business Improvement District ("BID") to assist in the continued economic development of downtown Washington. The BID has earmarked the funds to assist in one or more ongoing projects with the National Park Service to provide trash receptacles, benches and landscaping for Farragut Square or Longfellow Park. This contribution targets an identified need of special value to the neighborhood and thus also constitutes an important amenity of the project.
 - c. Revenue for the District. The PUD will generate additional tax revenues for the District. Property taxes alone are projected to increase annual revenues by approximately \$1.5 million. Tax on parking revenues will generate an additional \$100,000.00 annually. Employment, sales and other revenue sources are also expected to add to the District's income.
 - d. Local Business Opportunities. The applicants have executed a Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent participation by small, local

and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security for the project. This memorandum contributes significantly to the District of Columbia goal of ensuring adequate opportunities for small and local businesses to participate in development projects throughout the city.

- e. First Source Employment Opportunities. The applicants have also executed a First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve the goal of utilizing District residents for at least fifty-one percent of the jobs created by the PUD project. The applicants will use DOES as its first source for recruitment, referral and placement of new hires for employees whose jobs are created by the PUD.

17. The PUD is consistent with the following elements of the Comprehensive Plan:

- a. Housing Element: The applicants will assist in the substantial rehabilitation of 16,763 square feet of low-income housing at the Trenton Park Apartment Complex, which will meet the needs of present and future residents of the District.
- b. Transportation Element: Development of the project at the present site, within close proximity to the Farragut North and Farragut West Metrorail Stations and numerous Metrobus routes, will promote and stimulate the use of existing mass transit service. Additionally, the creation of a minimum of 225 new parking spaces on a site that does not currently provide parking will also help to reduce parking shortages in the downtown area.
- c. Urban Design Element: The proposed PUD will enhance the large-scale commercial quality of the Connecticut and K Street segment of the Central Employment Area through superior design elements that respect the special character of this prominent commercial corridor. Further, the proposed project will provide a distinguished design that provides a rich and vibrant texture to this prominent corner and enhances the vibrancy of the K Street commercial corridor.
- d. Land Use Element: The proposed project provides a high density commercial office structure of superior design that will foster the continued growth of the District's economy and employment base and serve as a landmark to this focal point for commercial Downtown.
- e. Ward 2 Element: The PUD is consistent with the Ward 2 Plan goal of encouraging construction of additional office space in the Connecticut and K Street segment and other areas of the Central Employment Area.

- f. Generalized Land Use Maps: The PUD is consistent with the Generalized Land Use Maps, which depict the project site as located in a high density commercial Land use category.
18. The proposed PUD deviates from the normal matter-of-right requirements of the Zoning Regulations as follows:
 - a. The penthouse of the proposed PUD, which is constructed to its maximum height of 18.5 feet, will only be set back 9.33 feet at the rear elevation at the alley cul-de-sac. A setback equal to the height of the penthouse is required. It is necessary to locate the penthouse this distance from the rear building line in order to provide the most efficient interior elevator core and layout of space, while respecting the building height and sight lines along 17th and K Streets. By virtue of the public alley cul-de-sac at the rear of the site, however, there is a substantial set back of over 30 feet from the adjoining property, which meets the spirit and intent of the regulations. Moreover, the penthouse will provide ample setbacks of over thirty-five feet at K Street and over fifty feet at 17th Street in deference to the building's public street frontages. This is approximately twice the required setback distance.
 - b. The PUD also deviates from the rear yard provisions for buildings in the C-4 District. Under section 774.9(c) of the Zoning Regulations, a court may be provided in lieu of a rear yard for corner lots, such as the PUD site. In order to provide for enhanced features at the public frontages of the building, the applicants will not be able to provide a court in lieu of rear yard at the service elevation of the new structure. The spirit of the regulations is nevertheless met by the ample light and air provided by the configuration of the rear alley area and the alley cul-de-sac.

Use of Public Airspace

19. Pursuant to the Public Space Utilization Act, the applicants filed a request for the use of public airspace on April 17, 2001, with the Building and Land Regulation Administration ("BLRA") of the D.C. Department of Consumer and Regulatory Affairs. BLRA forwarded the application to the Zoning Commission on October 5, 2001, for a determination that the proposed use is permitted in such airspace and to establish regulations applicable to the use of such airspace "consistent with the [zoning] regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, offstreet parking and floor area ratios applicable to such structure, and easements of light, air and access...." D.C. Code § 10-1121.04(2) (2001 Ed.).

20. A small portion of the new building will project over the public alley at the rear of the site. Beginning at the third floor level, the floor plate will increase by a depth of 5.5 feet in a recessed area over the rear alley cul-de-sac. The expanded area will provide an additional 217.25 square feet of space on floors four through twelve. The floor plate will also increase slightly at the fourth floor and up over a small triangular piece of the alley, an area consisting of approximately 7.5 square feet, to fill out the corner of the building at the southwest portion of the site. The at-grade clearance will be approximately sixteen and one-half feet, which exceeds the minimum required clearance height of fifteen feet. The total area of airspace to be leased is 225 square feet over the two portions of the alley. The total gross floor area of the projections is 2,244 square feet, yielding a density of 9.97 FAR. The building in the area of the projections will achieve a height of 130 feet. Off-street parking for the projection will be provided at the same rate as for the office building.
21. The property surrounding the airspace is all located in the C-4 District. The portion of the building projecting into the airspace will be consistent with the C-4 District with respect to height, FAR and off-street parking. No easements of light, air and access are affected by the proposed use of airspace.
22. NCPC staff reviewed the application for use of public airspace at its Coordinating Committee meeting on July 11, 2001. The participating agencies at the committee meeting were NCPC, the D.C. Office of Planning, the D.C. Fire Department; the D.C. Department of Housing and Community Development, the D.C. Department of Public Works, the U.S. General Services Administration, the U.S. National Park Service, and the Washington Metropolitan Area Transit Authority. The committee forwarded the proposal to NCPC with the statement that the project had been coordinated with all participating agencies. On August 2, 2001, NCPC adopted its Executive Director's recommendation that the proposed lease of public airspace would not affect the identified federal interest nor be inconsistent with the federal elements of the Comprehensive Plan for the National Capital.
23. In its letter dated October 5, 2001, referring the application to the Zoning Commission, BLRA recommendation approval of the application. It stated that the application could be granted without adverse effects to the use, operation, and maintenance of, any street or alley. It further stated that the projections into airspace would not be used to deprive any real property not owned by the applicants of light, air and access.

Office of Planning Report

24. By report dated October 1, 2001, and through testimony presented at the public hearings, the Office of Planning ("OP") recommended approval of the application for use of public airspace and conditional approval of the PUD application. OP found that the proposed PUD is consistent with the Comprehensive Plan's Generalized Land Use Map designation of the area as one suitable for high-density commercial uses. OP further found that the proposal is consistent with the objectives and evaluations standards of a PUD. OP conditioned its approval on the submission of additional information from the applicants concerning the design of the retail frontage along K Street, the enforceability and appropriate level of contribution to an affordable housing providing under the housing linkage requirements of the PUD regulations, and a contribution to the National Park Service or another organization for improvements to Farragut Square or the public areas surrounding the PUD site.
25. On October 10, 2001, the applicant provided additional information to OP on a contribution of \$70,000.00 to the Golden Triangle BID for improvements to the public areas surrounding the PUD site. Through a supplemental letter dated October 22, 2001, the BID further clarified that the funds would be earmarked for one or more projects in Farragut Square or Longfellow Park, including possible trash receptacles, benches and landscaping.
26. OP was unable to make any determination on the proffered amenity of architecture and urban design. Nevertheless, OP stated that the design was clearly superior, that a high level of attention had been given to architectural details and the quality of the materials, and that the building would make an excellent contribution to the appearance of a prominent corner of the central business district.
27. OP recognized the contribution to the Golden Triangle BID and the agreements with the Local Business Opportunity Commission ("LBOC") and DOES as other amenities proffered by the applicants. At the request of OP and the Zoning Commission, the applicants provided additional information on their compliance history with LBOC and DOES agreements. The applicants indicated that this project was their first experience with such agreements, but that one of its principals, through another company, had participated in such agreements for three projects in the District. By letter dated October 23, 2001, the principal stated that the company was in good faith compliance with the requirements of the LBOC and DOES programs.

ANC Report

28. By letter dated September 24, 2001, Advisory Neighborhood Commission ("ANC") 2B supported the PUD project and rental of public airspace. ANC 2B conditioned its support

upon the Commission incorporating into its order a requirement that the applicants contact and work with ANC 2B during the construction phase to mitigate construction impacts on pedestrian and vehicular traffic in the area. The Commission affords the views of the ANC the "great weight" to which they are entitled.

CONTESTED ISSUES

Housing Linkage Requirements

29. Under the provisions of section 2404, the applicants are required to produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low- and moderate-income people commensurate with the increase in office density achieved under the PUD process. The Zoning Regulations provide three methods for an applicant to meet the housing linkage requirements of section 2404: (i) actual housing construction or rehabilitation by the applicant; (ii) housing construction or rehabilitation through a business arrangement; or (iii) a contribution to housing trust fund. The first two methods calculate the amount of housing required on a square footage basis, while the third alternative is a cash contribution based on the increased value of the property as a result of the PUD process.
30. Steven E. Sher, Director of Land Use and Zoning Services, Holland & Knight LLP, was received as an expert in urban planning and testified on the project's compliance with this provision. Based on his testimony, the Commission finds that the matter of right office density under the C-4 District at this site is 318,108 square feet of space. The PUD project will consist of 352,971 square feet of gross floor area devoted to office use on private property and 2,244 square feet of office space on public property, for a total increase of 37,107 square feet of gross floor area devoted to office use. Under the provisions of 11 DCMR 2404.6(a)(2), the applicants are required to produce a minimum of 12,369 square feet of space within ANC 2B or a Housing Opportunity Area. Based on Mr. Sher's testimony and other evidence of record, the Commission further finds that the applicants will assist in the substantial rehabilitation of 16,673 square feet of space at the Trenton Park Apartment Complex, which is located in Housing Opportunity Area 25 adjacent to the Wheeler Hills Estate.
31. The applicants will contribute \$320,000.00 to Jubilee Enterprise of Greater Washington ("Jubilee Enterprise") to assist in the substantial rehabilitation of the 16,673 square feet of space, which comprises 21 units at the Trenton Park Apartment Complex.
32. Christopher N. Whitney, Executive Director of Jubilee Enterprise, and Robert O. Boulter, founding president of Jubilee Enterprise and a Board member of the Trenton Park Neighborhood Corporation ("TPNC"), testified in support of the housing linkage contribution and described the financial arrangement for the affordable housing project.

TPNC, a tenant association, currently holds title to the property and is unable to finance the significant rehabilitation costs associated with the complex on its own. Consequently, TPNC entered into an agreement with Banc of America Community Development Corporation ("BACDC") whereby the two groups formed a limited partnership that will acquire the property in December. In forming the partnership, it was TPNC's goal to maintain a twenty percent equity interest in the property. In order to achieve this goal, Jubilee and TPNC determined that an additional \$320,000.00 was needed to supplement the existing capital reserves. As a consequence of the contribution, TPNC would be able to substantially rehabilitate twenty-one units, which comprise 16,673 square feet of space. Both Mr. Whitney and Mr. Boulter testified that no additional funding is needed for the substantial rehabilitation of these units.

33. By letter dated October 10, 2001, BACDC confirmed the financial arrangement with TPNC and reiterated that no additional funding is needed to complete the project or fulfill the twenty percent equity interest of TPNC.
34. By reports dated October 1 and dated October 11, 2001, and through testimony at the public hearing, OP questioned the adequacy of the housing linkage contribution to Jubilee Enterprise for the benefit of TPNC. Although OP recognized that the applicants were proceeding under the square footage calculations of section 2404.6(a)(2), it nevertheless claimed that this methodology must be converted to a dollar amount in order to calculate its adequacy. Otherwise, OP reasoned, the Commission would have to rely on the statements of the applicant and the housing provider as to whether the dollar contribution actually produced the required housing space.
35. OP sought and obtained the recommendation of the D.C. Department of Housing and Community Development ("DHCD") on the adequacy of the contribution. By report dated October 11, 2001, DHCD stated that it had reviewed the *pro forma* provided by BACDC and determined that the total rehabilitation cost for the property is \$10,066,090.00, excluding acquisition costs, or approximately \$41.06 per square foot. DHCD concluded that the applicant would need to contribute \$520,470.00 in order to construct the required housing amount. DHCD recommended that the applicants increase their contribution to this amount in order to be consistent with the housing linkage requirements under section 2404.6(a) of the PUD regulations. DHCD noted, however, that the housing project does meet the requirements of sections 2404.6(d) and (e) of the regulations regarding "substantial rehabilitation" and maintenance of the units as affordable dwellings for a minimum of twenty years.
36. The applicants, through their attorneys and expert witness in urban planning, refuted the methodology employed by OP and DHCD for calculating the housing linkage requirements. The applicants argued that by converting the square footage requirements to a dollar amount, OP and DHCD departed from the express language of the Zoning

Regulations and the legislative intent of the housing linkage program. The legislative history of the housing linkage requirements, they claimed, demonstrated that in establishing the different methods for complying with the housing requirements of the Comprehensive Plan, the goal was to encourage actual housing construction rather than a cash contribution to a housing trust fund. To that end, the housing trust fund option set a very high contribution level based on the assessed value of the increased density achieved so as to discourage cash contributions. The fear was that such funds could languish before being devoted to actual housing construction, according to the rationale set forth in Zoning Commission Order No. 795 that enacted the housing linkage text amendments, and comments received from the Downtown Cluster of Congregations on those amendments. Based on this legislative history, the applicants concluded that evaluation of the production of housing should be directed to the amount of housing actually being produced and not the cost to produce that housing.

37. The applicants further argued that the purpose of the housing linkage requirements was not to make unreasonable or excessive demands of the applicant, but rather to ensure that housing production was commensurate with any additional density achieved under the PUD process. The applicants referred to a letter dated March 8, 1996, from Chairman of the Council David Clark to the Zoning Commission on this matter, which emphasized that "the housing linkage concept is that if an applicant is going to get a little extra in the form of bonus office space in the District, the applicant ought to give a little extra in the form of more housing in the District." Therefore, the applicants concluded that the PUD process should not be used to exact a broad range of concessions beyond what is explicitly required under the regulations. The applicants further asserted that a thirty percent increase in square footage over the required amount—which translates to housing for an additional five families at Trenton Park – should be considered a significant amenity of the PUD and an important benefit to the city as a whole.
38. The Commission credits the testimony of Mr. Sher and finds that when an applicant constructs or rehabilitates housing under the linkage requirements, whether on its own or through a housing provider, the appropriate evaluation standard to consider is whether the applicant meets the minimum square footage requirement under the formula set forth in section 2404.6(a)(2), and not the cost to produce that square footage or the cost to comply with the contribution under section 2404.7. The applicants' provision of 16,673 square feet of rehabilitated dwelling units exceeds the square footage requirement by thirty-five percent.
39. The Zoning Commission further finds that the applicants' business arrangement with Jubilee Enterprise to assist in the substantial rehabilitation of 16,673 square feet of low-income housing units at Trenton Park Apartment Complex meets and exceeds the housing linkage requirements of the PUD regulations. The Commission finds that the Trenton Park Apartment Complex is located in Housing Priority Area 25 and that under

the formula set forth in section 2404.6(a)(2), the applicants are required to construct or rehabilitate 12,369 square feet of space. The applicants will exceed this requirement by 4,304 square feet, or thirty-five percent, which constitutes a significant amenity of the PUD and fulfills the goals of the Comprehensive Plan to provide affordable housing to residents of the District. The Commission finds that the analysis used by OP and DHCD to evaluate the proficiency of the housing contribution contradicts the express language and intent of section 2404.6(a). The Commission concurs, however, in the finding of DHCD that the project meets the requirements of sections 2404.6(d) and (e) of the regulations regarding "substantial rehabilitation" and maintenance of the units as affordable dwellings for a minimum of twenty years.

Projections Over Public Air Space

40. Under the Public Space Utilization Act, the Zoning Commission is to establish regulations for the airspace that are consistent with zoning regulations for the adjacent private property with respect to height, parking, FAR, light, air and access. Because the property surrounding the airspace is located in the C-4 District, the use of public airspace must be consistent with that zoning category. Based on the applicants expert in urban planning, the projection generates a total density of 9.97 FAR (2,244 s.f. of gross floor area in public space divided by 225 s.f. of land area in public space). Accordingly, the Commission finds that this density is consistent with the 10.0 FAR limitation of the C-4 District. Likewise, the height of the projection falls within the 130 foot restriction. He noted that parking would be provided at the same rate as for the office building and that minimum clearances of fifteen feet would be provided above the alley.
41. James Ingo Freed and Roy Barris of Pei Cobb Freed & Partners were recognized as experts in architecture. Their architectural plans and drawings, and other materials submitted to the record, show that the area of projection is located at the north side of an alley cul-de-sac, which measures approximately 39.5 feet wide by 27.0 feet deep. The new building will include a minor 5.5 projection into this cul-de-sac, and reduce the distance between the subject site and the adjacent Barr Building from 27.0 feet to 21.5 feet. The projection was designed to assist with the successful functioning of the building. The "pinched" center portion of the site was expanded by 5.5 feet to accommodate appropriate spatial configurations for floor plates, corridors, and tenant layouts consistent with current market demands. It also would allow for significant setbacks along the public frontage of K Street at the twelfth and ground floor levels to complement the building's prominent location at Connecticut Avenue and K Street, which would be enjoyed by the public at large. Pedestrians would experience a wider sidewalk, retail shoppers would be protected from the elements, and the apparent height of the building would be reduced.

42. K.V. Sun Holdings, owner of the Barr Building, objected to the projection into public airspace. According to its representative, David Brooks, the applicants did not demonstrate any exceptional circumstances that justified the projection or that the projection is necessary for the successful functioning of the building.
43. The Commission finds Mr. Brooks' argument unpersuasive. As noted above, the Zoning Commission's jurisdiction under the Public Space Utilization Act is limited to whether the use is consistent with adjacent C-4 District with respect to height, parking, FAR, light, air and access. The applicant has met that burden.
44. Mr. Brooks also claimed that the projection would impinge upon the light and air of the Barr Building. However, the sun angle diagrams prepared by Pei Cobb Freed show that the projection will have *no* impact on direct sunlight, and will actually *increase* the amount of primary reflected sunlight on the alley elevation of the Barr Building during the summer months. Only the Barr Building area adjacent to the 4th floor level of the PUD will experience a modest decrease in *reflected* light, and only during the spring and fall equinox. Moreover, the alley cul-de-sac area will still provide the greatest distance between the two structures. As shown on page A-6 of the architectural drawings dated September 2001, other portions of the two buildings are only separated by a distance of five to ten feet. Additionally, as pointed out in the applicants' submission, the 21.5 foot separation is more than what would be required for a side yard if one were provided for the Barr Building. According to the applicants' calculations, at a height of 110 feet, the Barr Building would require a side yard of 18.3 feet, based on a width of two inches for every foot of building height. Based on this evidence of record, the Commission finds that Mr. Brooks' concerns are unfounded and that the projection into airspace at the alley cul-de-sac will not impinge on the light and air of the Barr Building.

17th Street Façade

45. Finally, Mr. Brooks argued that the 17th Street façade would impair and mute the architectural features of the Barr Building, particularly with respect to the proposed decorative screen wall that projects above the twelfth floor level. He suggested that this element be stepped back, as is currently done on the buildings to either side of the Barr Building at 900 17th Street and 1700 K Street, N.W.
46. The testimony of the architects and submissions to the record, however, show that the 17th Street façade was carefully designed to complement its setting across from Farragut Square and its adjacency to the Gothic Revival Barr Building. The glass wall of K Street elevation has been carried over to the 17th Street façade with a masonry "screen" to respect the formal setting of the park. The shades and shadows of this elevation are designed to mimic the shades and shadows cast by the Gothic elements of the Barr Building. The architectural embellishment that extends above the twelfth floor serves to

reduce the visibility of the mechanical penthouse. Moreover, based on the photo montage on page S-5 of the architectural drawings dated August 2001, Mr. Brooks' suggestion to step back this façade would not minimize upper stories or penthouses of the "bookend" buildings on either side of the Barr Building. The design as proposed for the PUD, on the other hand, as shown on page A-16 of the August 2001 drawings and the rendering at page A-32 of the October 2001 submission, will eliminate the visibility of roof structures from 17th Street, thereby enhancing the Washington skyline.

47. The Commission credits the testimony of the applicants' experts in architecture and finds that the 17th Street façade is appropriately designed and does not impinge on the architectural character of the Barr Building. The Commission notes that the height of the 17th Street façade is consistent with the matter-of-right limitations of the C-4 District. The Commission finds that the penthouse setback of the new building will have less impact on the Barr Building than the existing penthouses of adjacent buildings. The Commission further finds that an additional setback at the twelfth floor level along 17th Street would disrupt the overall composition of the design. The Commission concludes that the design of the 17th Street façade and the building as a whole is one of exceptional architecture and urban design that will enhance and restore the visual prominence of the Connecticut Avenue and K Street corridors, and constitutes a significant amenity of the PUD project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
3. 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.

4. The proposed PUD meets the minimum area requirements of section 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height and bulk standards of the Zoning Regulations, the increased density will not cause a significant adverse effect on any nearby properties and will, in fact, reduce the current density on the site. The project is a continuation of an appropriate use at an appropriate location in the heart of the Central Employment Area and within immediate proximity to mass transit. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable. As set forth in the findings of fact, the 17th Street façade has been appropriately designed to respect the adjacent buildings, and the mirror setbacks at the retail frontage and at the twelfth floor along K Street provide the dual benefit of enhancing the public streetscape and reducing the apparent height of the building. Further, the hard and softscape elements at the public frontages improve and enhance the visual quality of the public space and urban environment. The impact on housing is favorable because of the applicants' proposed housing linkage measures.
6. The proposed application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The project benefits and amenities, particularly the quality of the design of the building, are a reasonable trade-off for the density provided in the application, particularly given the high density commercial nature of property in the immediate area. The subject development is both a K Street building and a 17th Street building, and the use, height, bulk and design are appropriate for both sides and both contexts of the building.
8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area.
9. Approval of this PUD is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code § 1-261(d) (1999) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.
11. The Zoning Commission of the District of Columbia must determine the use and Zoning Regulations applicable to the use of airspace, consistent with zoning applicable to abutting privately owned property, for individual applications as they are brought before this Commission. The standards for the Commission's approval are set forth in D.C. Code § 10-1121 (2001 Ed.) wherein Congress has provided that the Commission must establish such regulations "consistent with the regulations applicable to the abutting privately owned property including limitations and requirements respecting the height of

any structure to be erected in such airspace, off street parking and floor area ratios applicable to such structure, and easements of light, air and access...."

12. The Commission concludes that the phrase "structure to be erected in such airspace" includes the entirety of any structure of which a part is to be erected within airspace. The Commission has the authority to adopt regulations applicable to the airspace and the parcels assembled in conjunction therewith.
13. The proposed use of airspace pursuant to the regulations which generally apply to the C-4 District, together with regulations which apply to the specific site, is reasonable.
14. Approval of the application for use of public airspace would be consistent with the purposes of the Zoning Act (52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
15. The proposed application for use of public airspace can be approved with conditions which ensure that development would not have an adverse effect on the surrounding community.
16. The applications for a PUD and use of public airspace 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.
17. The applications for a PUD and use of public airspace are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for a PUD for the property located at 1700-1730 K Street, N.W., in Square 126, Lots 56 and 851; and **APPROVAL** of the application for the use of public airspace above the alley adjacent to Lots 56 and 851 in Square 126. This approval is subject to the following conditions:

1. The PUD shall be developed in accordance with the plans prepared by Pei Cobb Freed & Partners, dated August 2001, and as amended supplemented by drawings dated September and October 2001, marked as Exhibits ___ in the record, as modified by the guidelines, conditions and standards herein.
2. The project shall be a commercial office development consisting of approximately 370,981 square feet of gross floor area on private property and 2,244 square feet of gross floor area in the public airspace, for a total of 373,135 square feet of gross floor area.

The PUD project shall not exceed a density of 11.08 FAR on private property, nor exceed a density of 9.97 FAR in public space. The building shall not exceed a height of 130 feet, with setbacks as shown on the plans.

3. Landscaping and improvements to public space along the street elevations of the building shall be in accordance with the plans submitted to the record.
4. The applicants shall enter into a Contract Construction Agreement with Jubilee Enterprise of Greater Washington for the substantial rehabilitation of 16,673 square feet of dwelling units at the Trenton Park Apartment Complex. No certificate of occupancy shall be issued for the PUD until a certificate of occupancy has been issued for the requisite housing outlined in the Contract Construction Agreement.
5. The applicants shall contribute \$70,000.00 to the Golden Triangle BID to assist in the improvements to Farragut Square or Longfellow Park, prior to the issuance of the building permit for the PUD.
6. The applicants shall enter into a Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent participation by local, small and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security for the project to be created as a result of the PUD project.
7. The applicants 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 fifty-one percent of the jobs created by the PUD project.
8. The applicants shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. to vary the number and location of parking spaces, not to decrease below the minimum of 225 spaces.
 - c. to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction; and

- d. to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.
9. The applicants shall contact and work with ANC 2B during the construction phase to mitigate construction impacts on pedestrian and vehicular traffic in the area.
10. No building permit shall be issued for this planned unit development until the applicants have recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the applicants and all successor in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.
11. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the applicants have filed a copy of the covenant with the records of the Zoning Commission.
12. 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, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this order.
13. Pursuant to the Human Rights Act of 1977, D.C. Code § 1-2531 (1991), the applicants are required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the applicants fail to comply with any provision of the Human Rights Act.
14. The airspace shall be developed and used in compliance with the use, height, floor area ratio, offstreet parking and all other provisions of the limitations and requirements pertaining to the C-4 District.
15. The structure in the airspace and the connected structures on Lots 56 and 851 shall be deemed to constitute one building, and shall comply as such with the requirements of this order.
16. A maximum density of 10.0 may be used in the area of the alley.

- 17. All required parking and loading for the entire building shall be located on Lots 56 or 851.
- 18. No portion of the air rights structure shall be permitted within the first fifteen feet above the surface of the public alley.

Vote of the Zoning Commission taken at is public meeting on November 19, 2001: by a vote of _____ (Carol Mitten, Anthony J. Hood, James Hannaham, John G. Parsons and Peter May _____).

The order was adopted by the Zoning Commission at its public meeting on _____, by a vote of _____ (Carol Mitten, Anthony J. Hood, James Hannaham, John G. Parsons and Peter May _____).

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 _____.

CAROL MITTEN
Chairman, Zoning Commission

JERRILY R. KRESS, FAIA
Director, Office of Zoning