ZC/02-23

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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May 29, 2002

VIA HAND DELIVERY

D.C. Zoning Commission
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

STEVEN E. SHER
DIRECTOR OF ZONING
AND LAND USE SERVICES
202-663-7278
Internet Address:
ssher@hklaw.com

ZONING COMMISSION
District of Columbia
Case 02-23
Exhibit 1

D.C. OFFICE OF ZONING
RECEIVED
2002 MAY 29 AM 10:13

Re: Zoning Commission Case No. 00-33C - Order No. 940
Consent Calendar Modification to the Planned Unit Development
for the former Woodward and Lothrop Department Store Building
Timing of Filing of Application for Building Permit in Square 377

Dear Members of the Commission:

Jemal's Cayre Woodies, LLC, the applicant in the above-referenced case, hereby requests that the Zoning Commission modify the approval of the planned unit development for the site of the Woodward and Lothrop Department Store building in Square 346, as set forth in Order No. 346. A copy of the Order is attached. Specifically, the applicant requests that the Commission modify Condition No. 8(b), which requires that an application for a building permit for the proposed apartment development on Square 377 be filed within one year after the effective date of the Order. The Order was effective on May 11, 2002; the application for the permit was actually filed on May 16, 2002. The Applicant therefore requests that the filing date be retroactively extended by five days.

The plans for the proposed building have been in preparation since the PUD was approved. The design evolved over time and is very complicated, involving the preservation in full of the historic low rise structures at the front of the site and the construction of a high-rise residential tower at the rear. Because of the difficulties in working with the site, the property has been before the Board of Zoning Adjustment twice, once when it was being considered as a hotel and once for the apartment house design. The project has also been reviewed and approved by the Historic Preservation Review Board. Because of all the complexities and reviews involved, the architects were unable to complete the plans in sufficient detail to file a permit application by the deadline. Since May 11, 2002, was a Saturday, the plans were filed on May 16, 2002, only three days after the plans would have been due on Monday, May 13, 2002.

ZONING COMMISSION
District of Columbia
CASE NO.02-23
EXHIBIT NO.1

The plans have been filed, assigned File No. 859AA, and will be processed by the District. Unless the Zoning Commission modifies the Order to extend the period to cover the date on which the plans were filed, the project will forever be in non-compliance with the Order. All of the other requirements of the Order have been met, including the proposed major residential development on Square 517.

The Applicant respectfully requests that this modification be approved as a consent calendar item, under §§2409.9 and 3030. This procedure is available, "in the interest of efficiency, to make without public hearing, minor modifications ... to previously approved final orders ..." (§3030.1) Further, minor modifications are specified in §3030.2 to be "modifications of little or no importance or consequence as determined in the sole discretion of the Zoning Commission." The subject request for a change in the filing date by five days clearly falls within the scope of this section.

As required by §3030.6, the applicant has served this request on ANC 2C, the only party to the case. The applicant argues that there is no purpose to be served by holding a hearing on this matter, as the only issue before the Commission is changing the date in Condition 8(b). In order to remove the technical and continuing violation, the applicant therefore requests that Condition 8(b) be revised to read as follows: "The applicant shall apply for building permits for the residential construction no later than May 16, 2002."

We are prepared to answer any questions the Commission may have or to provide any additional necessary information.

Sincerely,

Norman M. Glasgow, Jr.

Steven E. Sher
Director of Zoning and Land Use Services

Attachment

cc: Advisory Neighborhood Commission 2C
D.C. Office of Planning

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 940
CASE NO. 00-33C
(PUD and Related Map Amendment, Square 346, Lot 805 – Woodies)
April 16, 2001

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on February 8, 2001. At that hearing session, the Zoning Commission considered an application from Jemal's Cayre Woodies, LLC, for consolidated review and approval of its planned unit development ("PUD") application pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022, and the Zoning Commission took proposed action to approve the PUD application at its February 15, 2001 public meeting.

PRELIMINARY MATTERS

Pursuant to its authority set forth in § 3000.8 of the Zoning Regulations, the Commission approved the Applicant's request for a waiver from the posting notice requirements set forth in §§ 3015.4 and 3015.7 of the Commission's rules of procedure. Notice in the D.C. Register and a general circulation newspaper as well as notice of the hearing mailed to property owners within 200 feet of the subject property was provided in a timely fashion. In addition, the Applicant appeared before the potentially affected Advisory Neighborhood Commission ("ANC") on at least three occasions. The Commission found that the waiver did not prejudice the rights of any party and was not otherwise prohibited by law.

The application, as filed, included a request for an amendment to the Zoning Map to rezone the subject property from the DD/C-4 Zone to the C-4 Zone. At the public hearing, the Applicant withdrew the request for a map amendment.

FINDINGS OF FACT

1. On November 28, 2000, the Applicant filed an application for consolidated review and approval of a PUD to facilitate the rehabilitation of the former Woodward & Lothrop ("Woodies") department store building at 1025 F Street, N.W., Lot 805 in Square 346.

2. The subject property comprises all of Square 346 except one lot, consisting of approximately 50,280 square feet of land area bounded by F, G, 10th, and 11th Streets, N.W. The site is improved with the former flagship store of the Woodward & Lothrop chain, which formerly contained approximately 268,000 square feet of retail space and

more than 260,000 square feet of office space. The building is a designated landmark included on the District of Columbia's Inventory of Historic Sites and is located within the boundaries of the Downtown Historic District. After the department store closed in 1995, the building was purchased by the Washington Opera in 1996, and by the Applicant in 1998.

3. The site of the proposed PUD is zoned DD/C-4. The C-4 district is designed for the downtown core that comprises the retail and office centers for both the District of Columbia and the metropolitan area, and is intended to provide an adequate area for a variety of commercial, retail, and business uses. *See* 11 DCMR §§ 750.1 and 750.2. The purposes of the Downtown Development (DD) district include (a) to create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Comprehensive Plan; (b) to guide and regulate office development so as to further land use objectives for retail, hotel, residential, entertainment, and arts and cultural uses; and (c) to protect historic buildings and places while permitting sensitive and compatible new developments subject to the historic preservation review process of D.C. Law 2-144. 11 DCMR § 1700.3.

4. The PUD site is located in the high-density commercial land use category shown on the Generalized Land Use Map of the Comprehensive Plan. The immediately surrounding area is developed with office buildings, hotels, retail, and institutional uses.

5. The PUD application proposes to retain and redevelop the former Woodies building so to provide a combination of retail space for new department or anchor stores and new office space. Redevelopment of the building, including the proposed removal and reconstruction of its two top floors, would be undertaken subject to review by the Historic Preservation Review Board ("HPRB"). Amenities offered in support of the application include new residential developments on two nearby sites.

6. As proposed, the cellar, first, and second levels of the PUD building would be devoted to a combination of preferred retail, service, and arts-related uses listed in 11 DCMR §§ 1710 and 1711 (except for loading, lobby, and elevator access on the first floor). The total space devoted to preferred uses would be approximately 134,900 square feet, representing the equivalent floor area ratio ("FAR") of 2.68 of the PUD building. With the inclusion of the approximately 21,500 square feet of cellar space located in vaults and in the Metrorail mezzanine level, the area of proposed retail space would be 156,490 square feet, or the equivalent of 3.11 FAR.

7. The Applicant also proposes to construct new or reconfigured space to replace the existing 9th and 10th stories of the building, to be utilized for any purpose permitted in the C-4 zone, including general office use. The Applicant testified that the existing 9th and 10th stories are not considered contributing to the historic character of the building and would be replaced by sympathetic new construction, subject to HPRB review. Exterior rehabilitation work undertaken by the Applicant on the PUD building is also subject to HPRB review.

8. The Applicant requests relief from the matter-of-right standards and requirements that would otherwise apply to property located in the Downtown Development district. Pursuant to 11 DCMR § 1702.5, a department store may not be converted, in whole or in part, to another use without the approval of the Board of Zoning Adjustment, unless the entirety of the gross floor area is converted to any combination of preferred retail, service, and arts-related uses. The property is not subject to residential requirements otherwise applicable in the DD district because the site is restricted to a maximum development of 6.0 FAR. 11 DCMR §§ 1706.20, 1707.4. However, the FAR of the existing building is 8.84, and after the proposed construction of new 9th and 10th floors, its FAR would be 10.0.

9. The PUD application offers certain amenities within the same ANC, in this case ANC 2C. The Applicant proposed to construct housing and ground-level retail in Square 377, Lots 828, 829, 847, and 848, providing the equivalent amount of residential space as would be occupied by 1.75 FAR on the subject site (a minimum of 88,000 square feet). The proposed development on Square 377 would preserve significant portions of three contributing buildings to the Downtown Historic District, namely 910, 912, and 914 F Street (Lots 829, 847, and 848). According to the Applicant, the HPRB has found that the building on Lot 828 (916 F Street) is not a contributing building to the Downtown Historic District.

10. The PUD application also offers an amenity in the form of a development site for housing in Square 517, Lots 40, 41, 47, 48, 803-805, 808, 809, 811-817, 833, 854, 855, 857-863, and 868-870, as well as lot 856 if acquired from the District. Lot 856 is improved with the Old Engine Company No. 6 Firehouse, which is listed in the District of Columbia Inventory of Historic Sites. The Square 517 property is zoned DD/C-2-C and is included in Housing Priority Area B. The combined land area is approximately 29,481 square feet (27,396 square feet if Lot 856 is not acquired) and could provide at least 233,000 square feet of housing under applicable Zoning Regulations. The Applicant stated that, with certain zoning relief, the site could be developed to offer as much as 150,000 square feet of residential space in excess of the amount that would be otherwise be required for new construction on the property.

11. The proposed PUD exhibits several public benefits and project amenities enumerated in the categories set forth in 11 DCMR § 2403.9. In addition to the proposed housing developments on Squares 377 and 517, the proposed benefits and amenities include the following.

    a) Urban design, architecture, and historic preservation of private structures: The application includes significant historic preservation components at the PUD site.

    b) Transportation: The PUD site is located above the Metro Center Metrorail station, served by three subway lines, and a short walking distance from the Gallery Place/Chinatown station, served by two other subway lines, and is served by

numerous Metrobus routes. The Applicant testified that at least 1,350 parking spaces are located in 19 garages and lots within a two-block radius of the PUD site. As a historic landmark located in a historic district, the PUD site is not subject to otherwise applicable parking and loading requirements. *See* 11 DCMR §§ 2403.9 (c); 2100.5, 2200.5.

c) Employment and training opportunities: The Applicant stated its intent to enter into an agreement to participate in the Department of Employment Services (DOES) First Source Employment Program to encourage the hiring of District of Columbia residents. The Applicant also stated its intent to enter into a Memorandum of Understanding with the Local Business Opportunity Commission to use its resources to utilize minority business enterprises in the development of the PUD project. *See* 11 DCMR § 2403.9 (e).

d) Uses of special value: The PUD application offers a viable opportunity to return a landmark building in a central downtown location to active use as retail, service, arts-related, and office space. Amenities associated with the proposal include new mixed retail and residential development incorporating three smaller landmark buildings on Square 377, and property in Square 517 for development of residential space in Housing Priority Area B. *See* 11 DCMR § 2403.9 (i).

e) Comprehensive Plan: The proposed PUD site has been vacant and underutilized since the former department store closed in 1995. Its redevelopment with the proposed combination of preferred uses and office space, and the associated residential development on nearby sites, will advance the major themes and other policies and objectives of the Downtown Element of the Comprehensive Plan. *See* 10 DCMR § 900 and 11 DCMR § 2403.9 (j).

12. By memoranda dated February 7 and 15, 2001, and through testimony offered at the public hearing, the Office of Planning asserted that the proposed development would further the goals of the Comprehensive Plan. OP recommended approval of the application subject to conditions intended to ensure that all components of the proposed development would occur in a timely fashion. According to OP, the application "is consistent with the regulations, is acceptable in all categories, and more than acceptable in several," noting especially the proposal's historic and architectural preservation, the provision of housing opportunities and additional large-scale retail uses, and the addition to employment opportunities in Downtown. Transcript, February 8, 2001 at 55-58.

13. By letter dated December 7, 2000, ANC 2A expressed its unanimous support for the PUD application.

14. Three persons testified in support of the PUD, including Charles Docter of the Downtown Housing Now Committee and Terrance Lynch of the Downtown Cluster of Congregations. There was no testimony offered in opposition to the application.

15. The application was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Home Rule Act. The NCPC, by report dated April 12, 2001, found that the proposed PUD would not adversely affect the Federal interest in the National Capital or be inconsistent with the Comprehensive Plan.

CONCLUSIONS OF LAW

1. Section 5-413 of the D.C. Code establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia."

2. 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.

3. The development of this PUD project would carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. 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 that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, and yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

5. The Commission concludes that, under the particular circumstances of this case, the PUD application was appropriately processed as a one-stage application despite the absence of a detailed site plan review. The Commission notes that the application called for no major alterations to the exterior of the existing building or new construction except for the replacement of the two top floors. Further, all new development undertaken at the PUD site and on Square 377 (and potentially Square 517) is subject to design review and approval by the Historic Preservation Review Board, and the Applicant has adequately identified the size and uses for the proposed residential developments on Squares 377 and 517.

6. The subject site satisfies the applicable minimum area requirement for a planned unit development in a commercial zone. *See* 11 DCMR § 2401.1(c).

7. The Commission concludes that approval of the application is consistent with the purpose of the PUD process to encourage high-quality developments that provide public benefits. Approval of the PUD application would further the policies and objectives of the Comprehensive Plan, in part by returning a historic landmark building to productive use

in a high-density commercial location that is readily accessible by public transportation. The amenities offered in conjunction with the PUD request, especially the two proposed residential developments, would also further the policies and objectives of the Comprehensive Plan through historic preservation and by increasing opportunities for downtown housing. The PUD project and amenities are consistent with the designation of the subject property in the Land Use Element for high-density commercial use and with provisions of in the Downtown Element that encourage housing and retail along with office development in the Retail Core.

8. The impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities will not be unacceptable, but, subject to compliance with the development conditions stated in this Order, will instead be favorable and acceptable given the quality of the public benefits of the project. Development of the PUD will return an underutilized property to productive use, adding employment opportunities and other economic benefits in a central downtown location readily accessible by public transportation. The PUD project will also provide significant benefits and amenities, especially with respect to housing and historic preservation.

9. The Commission gives great weight to the issues and concerns of OP, which recommended conditional approval of the application based on its findings that the PUD would further the goals of the Comprehensive Plan and offered many significant benefits and amenities. The Commission also gives great weight to the issues and concerns of ANC 2C, which recommended approval of the application.

10. 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 Zoning Map.

DECISION

In consideration of the Findings of Fact and Conclusions of Law set forth in this Order, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of this Application for consolidated review of a planned unit development for Lot 805 in Square 346. The approval of this PUD is subject to the following conditions:

1. The PUD shall be developed as a mixed-use building with a maximum height not to exceed 130 feet. One roof structure shall be permitted, no greater than 18 feet, six inches in height above the roof and meeting all setback requirements provided by the Zoning Regulations.

2. The PUD shall have a maximum density not to exceed 10.0 FAR.

3. The permitted uses on the cellar level, vaults, and first two floors of the PUD building shall be limited to those preferred uses listed in §§ 1710 and 1711 of the Zoning

Regulations as more specifically referenced in Condition No. 5, below. The remainder of the building may be used for any use permitted in the DD/C-4 district.

4. The Applicant may make exterior alterations to the building and may remove and replace or otherwise reconfigure the 9th and 10th floors of the building, subject to design approval by the Historic Preservation Review Board and, if required, the Mayor's Agent pursuant to D.C. Law 2-144.

5. The Applicant shall receive a letter of core completion from the Department of Consumer and Regulatory Affairs for the basement (cellar), vaults, and first two floors (at a minimum), for the following uses:

   a) A department store with a floor area equal to or greater than 90,000 square feet of gross leasable area;

   b) One anchor retail use with a floor area equal to or greater than 60,000 square feet of gross leasable area, and any combination of "preferred" retail, service, and arts-related uses; or

   c) Two anchor retail uses, each with a minimum floor area of 25,000 square feet and totaling a combination of at least 60,000 square feet of gross leasable area, and any combination of "preferred" retail, service, and arts-related uses; or

   d) Any combination of (a), (b), and (c).

6. Once the letter of core completion specified in Condition No. 5 has been issued, the Applicant may:

   a) Obtain certificates of occupancy to utilize the balance of existing floor area in the building for any use permitted in the DD/C-4 district; and

   b) Obtain certificates of occupancy for additional floor area constructed on the PUD site for any use permitted in the DD/C-4 district to a maximum 10.0 FAR.

7. Any bonus density generated by bonus uses in the PUD building may be transferred in accordance with § 1709 of the Zoning Regulations, except that any transferable development rights (TDRs) generated at the building shall vest in a receiving site only after a certificate of occupancy has been issued for all bonus uses at the PUD building.

8. With regard to the associated development on Square 377:

   a) The Applicant shall provide at least 88,000 square feet of residential gross floor area.

b) The Applicant shall apply for building permits for the residential construction within one year of the effective date of this Order.

c) The Applicant shall provide a bond to assure construction of the residential space, in an amount not less than $18 million or any contract awarded for the residential construction, whichever amount is greater, within 30 days of the date that building permits are issued for the development, naming the Office of Planning (OP) and the Downtown Housing Now Committee as beneficiaries. The bond shall be structured so that, if the residential construction is not completed within three years of the date of issuance, the bond can be executed by OP and the property entered to complete residential construction at the direction of OP, to the extent permitted by law. Otherwise, the bond may be terminated when all applicable certificates of occupancy are issued for the residential development.

d) Certificates of occupancy for the residential development must be obtained within three years of the date that a certificate of occupancy is first issued for any office space in the PUD building not associated with a preferred retail, service, or arts-related use or any floor area addition.

9. With regard to the associated development on Square 517:

a) No office uses shall be permitted, except for accessory offices to other permitted residential, retail, and service uses.

b) Development shall be limited to residential uses with retail and service uses allowed on the ground floor and cellar level.

c) Within thirty (30) days of the effective date of this Order, the Applicant shall enter into a covenant for the duration of the PUD on Square 346 restricting development on the Square 517 property to:

i) at least 200,000 square feet of residential use;

ii) commercial development provided on the ground floor and cellar level only; and

iii) no principal office uses.

d) In order to utilize the combined-lot development incentives set forth in Chapter 17 of the Zoning Regulations, the Applicant must commence development on the Square 517 property within six (6) years of the effective date of this Order, unless the Commission authorizes an extension.

10. The first 100,560 square feet (*i.e.*, the equivalent of 2.0 FAR of the PUD building) of residential uses developed by the Applicant on the Square 377 and Square 517 properties

shall be made part of the PUD process and shall not be available for combined lot development pursuant to 11 DCMR § 1708. The 100,560 square feet of residential use included in the PUD process shall be as follows: (a) all of the residential FAR developed as part of the PUD process in Square 377; and (b) in Square 517, the amount in excess of the 4.5 minimum residential FAR requirement applicable in Housing Priority Area B necessary to total 100,560 square feet (approximately 12,000 square feet). Any residential square footage in excess of 100,560 square feet, up to the 8.5 FAR currently permitted, shall be available for combined lot development.

11. The Applicant shall enter into a Memorandum of Understanding with the District of Columbia Local Business Opportunity Commission with a goal of achieving, at a minimum, 35 percent participation by small, local, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for PUD project and the associated developments.

12. The Applicant shall comply with the terms of the First Source Employment Agreement with the Department of Employment Services with a goal of employing District of Columbia residents for at least 51 percent of the jobs created by the PUD project.

13. 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 until the Applicant has filed with the records of the Zoning Commission a certified copy of the covenant required pursuant to 11 DCMR § 2409.3.

Vote of the Commission taken at the regular monthly meeting on February 15, 2001 by a vote of 5-**0-0**: (Kwasi Holman, Herbert M. Franklin, Carol J. Mitten, John G. Parsons and Anthony J. Hood (by proxy) to **APPROVE**).

This order was adopted by the Zoning Commission at its regular monthly meeting on April 16, 2001 by a vote of 5-0-0: (John G. Parsons, Anthony J. Hood and Carol J. Mitten to adopt as amended; Herbert M. Franklin and Kwasi Holman to adopt by proxy).

In accordance with 11 DCMR § 3028, this Order is final and effective upon publication in the *D.C. Register*, that is on MAY 11 2001.

CAROL J. MITTEN
Chairperson
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

PURSUANT TO 11 DCMR § 2408.8, THE FINAL PLANNED UNIT DEVELOPMENT APPROVED BY THE ZONING COMMISSION SHALL BE VALID FOR A PERIOD OF TWO (2) YEARS, WITHIN WHICH TIME APPLICATION SHALL BE FILED FOR A BUILDING PERMIT, AS SPECIFIED IN 11 DCMR § 2409.1. PURSUANT TO 11 DCMR § 2408.9, CONSTRUCTION SHALL START WITHIN THREE (3) YEARS OF THE DATE OF FINAL APPROVAL.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE I OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.