ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

ATTORNEYS AT LAW

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-8604
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EDWARD J. RICH
(202) 736-2728

March 28, 2005

Jerrily R. Kress, FAIA
Director
Office of Zoning
441 Fourth Street, N.W., Suite 210-S
Washington, DC 20001

Re: Zoning Commission Order No. 02-24A; Notice of Modification

Dear Ms. Kress:

Pursuant to Zoning Commission Order No. 02-24A, effective February 4, 2005 ("Order"), the applicant, JBG/Rockwood 1601 K, L.L.C., is required to record a Notice of Modification ("Notice") with the Recorder of Deeds and file a copy of such recorded Notice with the Office of Zoning that has been certified as having been recorded in the Land Records of the District of Columbia.

Enclosed please find a copy of the Notice as recorded in the Land Records of the District of Columbia.

Thank you for your assistance in this matter. Please let me know if you have any questions or concerns.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Edward J. Rich

Enclosure

ZONING COMMISSION
District of Columbia
CASE NO. 02-24A
EXHIBIT NO. 5

ZONING COMMISSION
District of Columbia
CASE NO.02-24A
EXHIBIT NO.5

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DISTRICT OF COLUMBIA, ss:

I attest and certify that I am Land Use Counsel for JBG/Rockwood 1601 K, L.L.C. ("Applicant"), the party to the attached Notice of Modification ("Notice") dated as of March 7, 2005 concerning a minor modification, effective February 4, 2005 (Zoning Commission Order No. 02-24A) by the Zoning Commission for the District of Columbia of an approved planned unit development for Square 184, Lot 74. I further certify that the original copy of the attached Notice was recorded in the Land Records of the District of Columbia on March 17, 2005 as Instrument No. 2005037849, and that the attached is a copy of the Notice as recorded in said Land Records.

Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi, L.L.P.
Counsel for Applicant

Subscribed and sworn to before me this 28 day of March, 2005.

Notary Public

CYNTHIA FAISON
NOTARY PUBLIC-DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES 07/14/07

My commission expires _____.

Receipt# 516960

LARRY TODD
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
515 D STREET NW
SUITE 202
WASHINGTON, DC
20001-
(202) 727-5374

EXEMPT

Doc# 2005037849 Pgs: 50
Doc Type: MODIFICATI

RECORDING	$	356.00
SURCHARGE	$	6.50
Total	$	362.50
Check Amt. Tendered	$	362.50
Change Due	$	0.00
Balance	$	0.00

Check Number		Amount
11730	$	362.50

Total Documents: 1
Total Fees: 2

Client Name GENERAL PUBLIC
03/17/2005 03:26:19 PM

Cashier: CASHIER4

NOTICE OF MODIFICATION
ZONING COMMISSION ORDER NOS. 906, 02-24 (906) AND 02-24A

THIS NOTICE OF MODIFICATION is entered into as of the 7th day of March, 2005, by JBG/Rockwood 1601 K, L.L.C., a Maryland limited liability company, successor-in-interest to JBG/6006 Limited Partnership and Bahman Teimourian, M.D. (hereinafter, the "Owner").

RECITALS

1. By Zoning Commission Order No. 906, effective November 24, 2000, the Zoning Commission approved the Applicant's application for a consolidated planned unit development (hereinafter, "PUD") and related map amendment from SP-2 to C-4 for the property located in Square 184, Lot 74 (previously lots 59 and 842), which property has a street address of 1000-1010 16th Street, N.W. (hereinafter, the "Subject Site"). The Zoning Commission Order approved the development of a commercial office building consisting of approximately 200,247 square feet of gross floor area, not to exceed 125.5 feet in height on the C-4 portion of the site or 90 feet in height on the SP-2 portion of the site, with setbacks from the 16th Street frontage of the building.

2. By Zoning Commission Order No. 02-24 (906), effective December 13, 2002, the Zoning Commission modified the PUD in order to allow the relocation of the front entrance and corresponding projection bay one bay in the direction of K Street, improvements to the proportions of the projection bay and façade components, refinements to the exterior skin detailing, and relocation of the parking garage entrance from 16th Street to K Street or, at the Applicant's discretion, to the rear of the building off the public alley.

3. By Zoning Commission Order No. 02-24A, effective February 4, 2005, the Zoning Commission approved a minor modification to the approved PUD in order to introduce rooftop landscaping to the ninety-foot (90') section of the roof to the building along the 16th Street frontage, provided that the trees to be introduced were to be limited to no more that five feet (5') in height, as measured from the horizontal surface of the three foot (3') tall planters in which they are to be planted.

4. The Owner desires to incorporate the conditions of the Zoning Commission Order No. 02-24A into the conditions guiding the development of the Subject Site by recording this Notice of Modification among the Land Records of the District of Columbia.

NOW, THEREFORE, this Notice of Modification is hereby recorded, as required by Zoning Commission Order No. 02-24A. True copies of Order Nos. 906, 02-24, and 02-24A, along with a certification of such orders by the Director of the Office of Zoning are attached hereto as Exhibit A. This Notice of Modification shall bind the Owner and its successors and assigns to develop and use the Subject Site in accordance with the conditions of Order Nos. 906, 02-24, and 02-24A, and any amendments thereto.

(Signatures on the following page)

IN WITNESS WHEREOF, on this 7th day of March, 2005, JBG/Rockwood 1601 K, L.L.C., a Maryland limited liability company, has caused this Notice of Modification to be executed by Porter G. Dawson, the managing member of JBG/1601 K Manager, L.L.C., a Delaware limited liability company, its manager, and does hereby appoint Porter G. Dawson to be its attorney-in-fact to acknowledge and deliver this Notice of Modification as the act and deed of JBG/Rockwood 1601 K, L.L.C.

JBG/ROCKWOOD 1601 K, L.L.C.,
a Maryland limited liability company

By: JBG/1601 K MANAGER, L.L.C.,
a Delaware limited liability company,
its Manager

By: Porter G Dawson
Its Managing Member

Montgomery County, Maryland
~~DISTRICT OF COLUMBIA~~) SS:

I, Gina Laureni, a Notary Public in and for ~~the District of Columbia,~~ Montgomery County, Maryland DO HEREBY CERTIFY that Porter G. Dawson, managing member of JBG/1601 K Manager, L.L.C., manager of JBG/Rockwood 1601 K, L.L.C., personally known to me (or satisfactorily proven to me) to be the person named as attorney-in-fact in the foregoing and annexed Notice of Modification, personally appeared before me in said ~~District of Columbia~~ Montgomery County, Maryland and as attorney-in-fact as aforesaid, and by virtue of the power vested in him, acknowledged the same to be the act and deed of JBG/Rockwood 1601 K, L.L.C.

Given under my hand and seal this 7th day of March, 2005.

Gina Laureni
Notary Public

My Commission expires: _____

GINA LAURENI
Notary Public
Montgomery County
MARYLAND
My Commission Expires January 05, 2009

EXHIBIT A

ZONING COMMISSION ORDERS 906, 02-24 (906), AND 02-24A; CERTIFICATION OF DIRECTOR OF OFFICE OF ZONING

Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

DISTRICT OF COLUMBIA, ss:

I attest and certify that I am the Director of the District of Columbia Office of Zoning, and that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of the following records that are in my custody and possession in my official capacity:

Thirty-one page Order No. 906 of the Zoning Commission of the District of Columbia, dated October 16, 2000 in Case No.98-14C.

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Signed and sworn to before me this 16th *day of* March, *2005.*

Betty J. Williams
NOTARY PUBLIC, D.C.

My Commission expires February 14, 2006

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 906
Case No. 98-14C
(Consolidated Planned Unit Development and Related Map Amendment for the Solar Building at 1000 16th Street, N.W.)
October 16, 2000

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 17, 1998, and further hearings on March 25, 1999, and June 8, 2000, to consider an application from JBG/6006 Limited Partnership for consolidated review and approval of a planned unit development (PUD) and related map amendment pursuant to Chapter 24 and Section 102, respectively, 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. For the reasons stated below, the Zoning Commission hereby approves this application, as modified.

PROCEDURAL MATTERS

A. The Application and its Modification.

1. On June 29, 1998, the applicant filed an application for the consolidated review and approval of a planned unit development and related map amendment from SP-2 to C-4 for the property located at 1000 and 1010 16th Street, N.W., Lots 59 and 842 in Square 184.

2. The subject site is "split-zoned," with the SP-2 District mapped along 16th Street, N.W., to a depth of forty-five feet at the southern portion of the site, and a depth of approximately 106 feet at the northern portion of the site. The remainder of the site along K Street is mapped in the C-4 District. As originally submitted, the application proposed that the boundary between the C-4 and SP-2 Districts would be twenty feet from and parallel to the 16th Street right-of-way.

3. In response to comments raised by the Commission at the first hearing, the architect restudied the treatment of the base of the building and refined this portion of the design to create a visual character more pleasing for pedestrians. By post-hearing submission dated December 23, 1998, the architect submitted revised drawings, which changed the exterior

R 51

material from metal panels to granite at the first two floors along both the K and 16th Street elevations. The change imparted a heavier character to the building's base to support the lighter colored limestone and metal panels above and to allow for additional articulation of details at the sidewalk level. Additionally, sconce-type light fixtures were included on each stone column to further enrich and define the pedestrian level. The materials at the upper floors also were changed from metal to limestone to complement the base of the building. Finally, the projecting bay on the K Street facade was reduced from three feet to one and one-half feet to better match the variety and diversity of street planes along K Street, while at the same time adding shadow and definition to the elevation. The Applicant obtained approval for the projecting bays from Department of Consumer and Regulatory Affairs.

4. During the Zoning Commission's public meeting on January 11, 1999, the applicant was asked to restudy certain aspects of the design of the project including the extent of the setback along 16th Street. The Applicant requested and was granted the opportunity to present the revised plans at a further hearing on March 25, 1999. At that hearing, the architect testified that the applicant's central focus in the redesign effort was to reduce further the visual impact of the building on 16th Street, both at the top and the bottom. As redesigned, the additional floors were minimally visible from strategically sensitive points along 16th Street and completely out of view from most points. Further, the garage entrance was modified to minimize its visual impact through a reduction in the original proposed door height of ten feet, four inches to eight feet, the replacement of the single garage entrance with two smaller openings, the use of finish materials in the inside of the garage which are similar in color to the exterior to minimize the contrast when the doors are open and the use of glass at the rear of the building to allow natural light to fill the garage ramp and entry area. Further, the garage driveway will be paved with unit pavers accented with granite blocks and the entry will be marked by wall scones.

5. In the first set of revised drawings that were presented at the further hearing on March 25, 1999, the radius of the curved element was softened and set back an additional five feet from 16th Street resulting in a minimum setback of twenty-five feet. The curved element was eliminated in the final drawings and the setback at that level was increased to thirty-five feet.

6. In the plans presented at the further hearing on March 25, 1999, the overall height of the building including the penthouse was reduced by seven feet, eight inches through (1) a three foot, two inch reduction in the height of the penthouse; and (2) a four foot, six inch reduction in the height of the roof. The four foot, six-inch reduction was achieved by a one foot, six-inch reduction per floor on the 9th, 10th and 11th floors.

7. The revised plans also included some changes to the landscaping including the addition of a specimen tree and a slight decrease in the amount of paved area thereby enhancing the green space to an amount which marginally exceeds that which presently exists.

PSN

8. The plans were further revised and presented at the further hearing on June 8, 2000. The key revisions to the project included the extension of the depth of the strip of SP zoning along 16th Street to thirty feet as opposed to the earlier proposed twenty foot strip. The remainder of the site, consisting of 15,431.00 square feet of land, would be located in the C-4 zone. Additionally, the upper stories of the building above ninety feet are set back from 16th Street a minimum of thirty-five feet on floors nine and ten as compared to twenty-five feet in the previous design. The 11th floor is set back an additional ten feet to provide a setback of forty-five feet. The project's extensive setbacks further reduce the mass of the addition along 16th Street as compared to the earlier plan.

9. The design of the project also was changed to a more traditional vocabulary. The curved element and the sky canopy have been eliminated and the massing more closely reflects a traditional "base-middle-top" composition that is found in several neighboring buildings along 16th Street. The proposed high-quality building materials and neutral colors are more compatible with the existing buildings along 16th Street.

10. By submission dated July 7, 2000, the Applicant provided the Commission with detailed drawings including a restudy of the 16th Street facade. The restudy includes the use of a more traditional fenestration pattern including punched windows, a significant decrease in the amount of glass on the 16th Street elevation and the introduction of more shading and shadowing in the facade.

B. The Hearings, the Parties, and the Actions of the Commission.

1. The first hearing on the application was held December 17, 1998.

2. At the outset of that hearing, the Zoning Commission addressed the issue of whether notice was properly given for the first hearing. A representative from the Office of Zoning stated that the thirty day notice required by D.C. Code § 5-415 had been met and that notice of the hearing was published in the D.C. Register on November 6, 1998, in accordance with the Zoning Regulations set forth at 11 DCMR 3014. However, due to financial constraints, the D.C. Office of Documents did not mail the D.C. Register timely and thus the forty day notice requirement was not met. No person or party objected to proceeding with the hearing. Pursuant to its authority under 11 DCMR 3000.9, the Commission waived its requirement for the forty-day notice because no party would be prejudiced by such waiver and the thirty day statutorily required notice was sufficient.

3. The Commission further determined that the parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 2B, the ANC within which the property is located, and Presidential Owners, Inc., the association of owners of the cooperative apartment building located at 1026 16th Street, N.W.

4. Fort the reasons discussed above, a further hearing was held March 25, 1999.

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5. At its May, 1999, meeting, the Zoning Commission took proposed action by a vote of three to two to approve the plans that were presented at the further hearing on March 25, 1999. The National Capital Planning Commission ("NCPC") also recommended approval of the PUD at its meeting on August 7, 1999.

6. Prior to the final action by the Zoning Commission, the composition of the Zoning Commission changed which resulted in a two to two tie on the vote for final action. The Applicant opted to make the previously discussed further revisions to the application, and plans in an effort to break the tie. The Applicant's request to reopen the record was filed on February 28, 2000. The revised plans were considered in a second further hearing that was held on June 8, 2000.

7. The Zoning Commission took proposed action approving the application, as modified, on September 11, 2000.

8. The proposed action of the Zoning Commission to approve the modified 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 action dated October 5, 2000, found the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

9. The Zoning Commission took final action to approve the modified application on October 16, 2000.

FINDINGS OF FACT

DESCRIPTION OF THE PROJECT

1. The property is presently improved with the eight-story commercial office building known as the Solar Building at 1000 16th Street, N.W., and a smaller six-story office building located at 1010 16th Street, N.W., commonly referred to as the Taca Building, in reference to its current tenant, Taca Airlines. The applicant proposes to demolish the six-story office building and redevelop, renovate and expand the Solar Building. The project contemplates the addition of three stories to the western portion of the building and the conversion of existing basement space to a below grade parking garage. In the final plans that were considered at the further hearing on June 8, 2000, the building included a gross floor area of 200,247 square feet.

2. The subject property is situated in Ward 2 at the intersection of 16th and K Streets, N.W., in the city's primary commercial office corridor. The rectangular site is approximately 144 feet along K Street and approximately 156 feet along 16th 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.

3. Large office buildings with a predominant height of 130 feet are located to the east and west of the site along K Street. Immediately adjacent to the site at 1625 K Street is the Commonwealth Building, a twelve-story structure constructed in 1941. Further west are the office buildings at 1627 K Street and 1629 K Street, N.W. (the Davis Building), constructed to a height of 130 feet. The Investment Building located one block to the east at 1511 K Street, N.W., is 130 feet in height. The area along 16th Street includes similar buildings, with a predominant height of ninety feet. The Capital Hilton Hotel, immediately across 16th Street from the Solar Building, is ninety feet in height at the property line, with a setback to the ultimate height of 130 feet.

4. 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 floor area ratio (FAR) of 10.0 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. In addition, 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 planned unit development regulations.

5. The SP District is designed to serve those areas adjacent to high-density commercial zones for the special purpose of buffering adjoining commercial and residential areas. The SP-2 District is a high-density zone that allows new residential development to be constructed at a higher density than new office development. Buildings in the SP-2 Zone may be constructed to a height of ninety feet, with no limit on the number of stories. The permitted FAR in the SP-2 District is 6.0 for an apartment house or other residential use, and 3.5 for other permitted uses, with a maximum FAR of 6.0. Under the PUD guidelines for the SP-2 District, the density may be increased to 6.5 FAR, with a maximum of 4.5 FAR devoted to commercial uses. An additional five percent of FAR is allowed pursuant to Section 2405.3 as described above. Presently, the SP Zone District permits with BZA approval office building additions for office use or conversion of buildings to office use.

6. Under the PUD guidelines, the C-4 portion of the subject property yields approximately 178,228.05 square feet of allowable commercial office space. The SP-2 portion of the site yields approximately 22,136.40 square feet of allowable commercial space. The total aggregate gross floor area permitted under the two zones is 200,306 square feet of commercial office space, or a blended FAR of 9.96 under the PUD guidelines.

RSN

7. The applicant's purpose in proposing the PUD is to upgrade, restore and create parking for an aging, obsolete commercial office building and return it to a position of prominence at one of the most highly visible intersections in the city. The renovated building will be at the cutting edge of technology, with significant advanced systems built within its core. Such technology, coupled with the creation of parking, the special design of the structure, its setbacks, and materials will revitalize and stimulate growth in the area, and create a "signature project at a signature intersection."

8. The Solar Building will be gutted down to its structural frame and the six-story building at 1010 16th Street, N.W., will be demolished to allow for the expansion of the Solar Building footprint. Three floors will be added to the top of the existing Solar Building, with appropriate setbacks at both 16th and K Streets, N.W. In deference to the special character of 16th Street, several distinct elements have been introduced to the design of that elevation. First, a projecting cornice line is placed at the top of the seventh floor level to follow the cornice lines of buildings along 16th Street. Second, the scale of the facade is broken down by creating deep recesses for the glass window openings, with a fenestration that follows the patterns established by other 16th Street buildings. Finally, a projecting bay above the entrance marks the front door of the remodeled structure on the primary facade. The 16th Street elevation is further emphasized by continuing the same theme onto the K Street elevation beyond the proposed SP-2 boundary to a depth of forty feet.

9. Under the current zoning, the 130 foot height may begin forty-five feet from the 16th Street property line. The maximum height of the building as proposed will be 125.5 feet, which is setback forty-five feet from the 16th Street frontage. The height of the building facing 16th Street is ninety feet. There is an intermediate height of 113 feet prior to reaching the maximum.

10. The proposed final redesign represents a workable solution to the Commission's concerns for this unique site. The 16th Street facade responds well to its context. The proposed materials will further enhance its compatibility. Similarly, the K Street facade is compatible with nearby buildings along this commercial corridor. The design provides a building that is lower than the full building height that is permitted in the C-4 zone and the maximum FAR allowable for the site as rezoned. The proposed redesign includes significant setbacks of the upper stories from 16th Street.

11. There will be extensive landscaping elements introduced to the PUD site. A lawn panel with flowering magnolia trees would line the 16th Street frontage, with a hedge surrounding the lawn. Three English oak trees, six inches in caliper, would also be planted in the landscaped area to supplement the existing trees. Additionally, evergreens would be located between the garage and the front entrance to the building to act as a visual barrier to vehicular traffic. Precast paved rows, with granite bands, would line the sidewalk on both 16th and K Street. Finally, the 16th Street entrance will be marked with a special landscape feature.

RSN

12. In further deference to the special character of 16th Street, signage restrictions will be instituted to limit the size, number and lighting of signs in a manner appropriate to the particular qualities of 16th Street.

13. There will be a minimum of forty-two self park spaces contained in a below grade garage. With managed parking, the garage can accommodate seventy-seven parking spaces. If the building can provide a second level of parking, the building would contain ninety-five fixed parking spaces and have the capacity for accommodating 160 cars through a managed parking scheme. Access to the parking would be via a curb cut and driveway from 16th Street at the northern edge of the property. The building has no parking at present.

14. There will be a loading berth on the northwest corner of the first floor of the building. Access to the loading berth will be via the public alley system in the Square. The building has no loading at present.

15. The following superior benefits and amenities will be created as a result of the PUD project:

A. Urban Design and Architecture. The proposed renovation and expansion of the Solar Building has been designed to complement the surrounding large-scale commercial buildings while at the same time respecting the special character of the 16th Street area. The dated appearance of the existing building, currently characterized as a square office box without parking, and its obsolete mechanical and programmatic systems, will be replaced with a modern, attractive, friendly design to restore the 16th and K Street corner to a position of prominence in the city. The rezoning of a portion of the site will also solve an extremely difficult and irregularly shaped zoning boundary line. Finally, the PUD will include extensive landscaping, not only on 16th Street but K Street, as well, at expenditures in excess of $100,000 more than what would typically be provided for a matter of right office building. The exceptional new design, extensive landscaping and reconfiguration of the zoning boundary line will provide high quality, superior design features to reinforce the visual identity of the Central Employment Area.

B. Housing. Under Subsection 2403.9(f) of the Zoning Regulations, the PUD guidelines specifically state that the production of housing is a public benefit that the PUD process is designed to encourage. In furtherance of this important goal, the proposed PUD project will work with the Marshall Heights Community Development Organization ("MHCDO"), an affordable housing provider, to construct low and moderate-income dwellings at the Banneker Ridge project located at Minnesota Avenue and Anacostia Road, S.E. The site is designated as a Housing Opportunity Area in the Comprehensive Plan. Because the housing

amenity for this PUD will be located off-site and in a Housing Opportunity Area, the amount of affordable housing provided must equal one-third the amount of additional gross floor area achieved at the PUD site than would otherwise be allowed as a matter of right under the proposed zone district.

As originally proposed, JBG would have achieved an additional 13,000 square feet of gross floor area devoted to office space. Based on the formulas set forth in Section 2404.6(a) of the Zoning Regulations, the applicant would have been required to provide approximately 6,500 square feet of housing anywhere in the District of Columbia or 4,290 square feet in ANC 2B or a Housing Opportunity Area. The applicant agreed to work with MHCDO to secure the production of five single-family houses at Banneker Ridge. The applicant agreed to offset $100,000 of the unanticipated additional development costs associated with these units.

Under the revised plans, the amount of SP zoning was increased from the earlier plans resulting in a larger housing requirement. The Applicant agreed to work with MHCDO to offset $280,000 of costs associated with the development of seven houses at a minimum of 1,500 square feet per house resulting in at least 10,500 square feet of housing. The construction of seven single-family houses in a Housing Opportunity Area meets the requirement in Section 2404.6 and represents the fulfillment of an important housing goal of the city.

C. Special Value to the Neighborhood. The applicant will make a $100,000 contribution to Ross Elementary School located at 1730 R Street, N.W., in Ward 2 (ANC 2B) to address specific needs of the school and thereby enhance the quality of the educational programs for its students. The contribution will assist in the acquisition of desperately needed audio-visual equipment, books and other resources for the teachers. This contribution targets an identified need of special value to the neighborhood and thus also constitutes an important amenity of the PUD project.

D. Revenue for the District. The provision of additional commercial office space and below grade parking will generate additional tax revenues for the District. Property taxes alone are expected to increase by approximately $470,000. Employment, sales and other revenue sources will further add to the District's income.

E. Local Business Opportunities. The applicant will execute 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 to be created as a result of the PUD 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.

F. First Source Employment Opportunities. Likewise, in furtherance of Mayor's Order No. 83-265 and D.C. Law 5-93, the applicant will execute 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. The applicant will use DOES as its first source for recruitment, referral and placement of new hires for employees whose jobs are created by the PUD.

16. The proposed PUD does not meet the normal matter-of-right requirements of the Zoning Regulations as follows:

A. The penthouse of the Solar Building is set back only one foot from the 11th floor roof edge along 16th Street. A setback equal to its height is required. The spirit of the setback requirement will be met, however, because the penthouse will be set back approximately forty-five feet from the principal face of the building along 16th Street. The penthouse, the location of which is dictated by the elevator core of the existing building, also does not meet the setback requirements along the alley elevation. Given the width of the alley, however, there is substantial setback of approximately twenty-eight feet from the adjoining property.

B. The applicant proposes flexibility from the restriction on non-accessory retail uses in the SP zones and the restrictions against direct access to the commercial establishment from outside of the building. Through restrictions on retail signage, however, the applicant will be able to maintain the special character of the 16th Street frontage. Only one thirty square foot retail sign will be permitted along the building's 16th Street frontage, which is less signage than permitted in the SP Zone and substantially less signage than currently exists.

C. The proposed loading berth does not meet the minimum requirements of the Zoning Regulations. Due to the physical constraints of the site, the proposed berth, although adequate in width, is twenty-five feet deep and does not meet the minimum required depth of thirty feet. Because there is no loading berth associated with the existing building, the new berth will, nevertheless, provide greatly improved service to the building.

REPORTS OF GOVERNMENT AGENCIES

17. By reports dated December 10, 1998, and June 6, 2000, and through testimony presented at the public hearings, the Office of Planning (OP) recommended approval of the proposed PUD. The OP concluded that the high-quality commercial office renovation

and expansion project is consistent with the proposed partial rezoning of the site and the Comprehensive Plan. The project is also consistent with the amendment to the Generalized Land Use Map. The upper stories are set back from 16th Street and a strip of SP-2 zoning is to be retained along the entire 16th Street frontage. The design is appropriate for the site's location within the 16th Street Special Treatment Area. The proposed renovation and expansion of the Solar Building has been sensitively designed to complement surrounding large-scale commercial buildings while, at the same time, respecting the special character of 16th Street. The PUD will also provide superior benefits and amenities, including the production of affordable housing; a contribution to Ross Elementary School to improve its library; exemplary architecture and public space improvements; and LBOC and First Source Employment Agreements.

18. By report dated June 6, 2000, and by testimony at the further hearing, the OP recommended approval of the revised plans. The OP commented favorably regarding the increase in the setbacks from 16th Street and the increase in the amount of SP Zoning along 16th Street. The OP commented "the recent design is a significant improvement over the design that OP had previously supported." The OP commented that the design complements surrounding large-scale commercial buildings while respecting the special character of 16th Street. The OP noted that the garage entrance is particularly well designed and compatible with the 16th Street facade. In testimony at the hearing, the representative of the OP stated that the 16th Street driveway access to the garage was preferable to access from the alley given the congestion in the alley.

19. By an additional report dated June 8, 2000, the OP expressed its support of the proposed housing linkage arrangement which will provide $280,000 to MHCDO for the construction of seven 1,500 square foot houses. The OP report supports the concept of and need for "gap funding" of affordable housing projects. The OP recommended that the Zoning Commission adopt a minimum financial contribution per unit that reflects the difference between housing affordability for a family of four with a median income of fifty percent of the Washington Area average and the cost of constructing housing for such a family. The difference results in $40,000 per unit which is reflected in the $280,000 commitment for seven houses.

20. By letter dated June 8, 2000, the Department of Housing and Community Development ("DHCD") recommended approval of the revised PUD because it will result in the production of seven affordable single-family houses. The DHCD noted that the arrangement will result in compliance with the housing linkage provision of the Zoning Regulations. The project will revitalize an extremely significant corner in the District of Columbia, greatly improve the built environment and increase tax revenues by approximately $470,000 annually. The design maintains a strong presence along K Street while respecting the historic character of 16th Street through appropriate setbacks and facade treatments. Earlier, by letter dated December 17, 1998, the DHCD previously had recommended approval of the original version of the PUD application.

21. By report submitted to the Office of Planning dated December 16, 1998, the Department of Public Works ("DPW") recommended approval of the PUD proposal. The thirty-two peak hour automobile trips traffic generated by the project will have limited impact on the capacity and level of services of the existing intersections in the area. The Traffic Operations and Safety Division of DPW found that there will be little or no impact on traffic operations resulting from the proposed curb cut on 16th Street. In a meeting with the traffic expert, DPW recommended against garage access from the K Street service lane.

22. By report submitted to the Office of Zoning dated March 18, 1999, DPW responded to the Commission's request for a further evaluation of the garage access issue. The report stated that DPW supports access from 16th Street. The DPW based its conclusions on an examination of vehicular and pedestrian traffic along 16th Street which indicated that the anticipated level of traffic generated by the parking garage should not significantly impact vehicles or pedestrians on 16th Street. The report did not recommend access from the K Street side of the building because K Street carries more vehicular and pedestrian traffic than 16th Street and would present the potential for pedestrian/vehicular conflicts. Further, access through the alley was not recommended because the alley is not adjacent to the building and two-way traffic in and out of the parking facility could negatively impact other uses of the alley.

POSITION OF ANC 2B

23. ANC 2B, by letter dated December 10, 1998, and testimony presented at the public hearing, opposed the project. The ANC objected to the project because the proposed design redefines the building as a K Street, C-4 commercial structure when the building is actually a 16th Street structure which should respect the symbolic importance of 16th Street in the L'Enfant Plan and its designation as a Special Treatment Area in the Comprehensive Plan. It also objected to the reduction of the SP zone on this site and the potential precedent it would create in other SP-zoned portions of the city. It stated that the change in zoning would constitute an incursion of the C-4 zone into the lower 16th Street area. The ANC also stated that the inclusion of a parking garage with a 16th Street entrance would intrude on the special character of the street, eliminate green space, and create a pedestrian hazard for pedestrians on the sidewalk.

24. ANC 2B, by letter dated April 28, 1999, advised that three of the five expressed concerns about the project had been resolved in continued discussions with the applicant. The areas of agreement were set forth in Attachment B to the ANC's letter. Nonetheless, the ANC indicated its continued opposition to the project despite the revisions to the plans submitted by the applicant and shown to the Commission at the further hearing on March 25, 1999, because of the extent of the rezoning to C-4 and the garage entrance on 16th Street.

25. ANC 2B by letter dated May 30, 2000, expressed its continued opposition to the PUD, as revised. The two main areas of opposition centered on the continued presence of a garage entrance on 16th Street and the failure to increase the width of the strip of SP zoning to 45-feet. ANC 2B acknowledged that the revised plans and the increase in the SP strip from twenty to thirty feet were an improvement over the earlier plans.

OTHER LETTERS AND TESTIMONY IN SUPPORT AND OPPOSITION

26. Lloyd D. Smith, President Emeritus of the MHCDO, testified in support of the application at the hearing on December 17, 1998. He stated that the proposed PUD is a worthwhile and substantial development, which includes the significant benefit of housing through the proposed contract construction agreement with MHCDO. Based on the earlier version of the plans, Mr. Smith testified that the applicant will facilitate the completion of five single-family houses at the Banneker Ridge project in Ward 7 by offsetting $100,000 in unanticipated development costs that could not otherwise be passed along to a qualified purchaser of affordable housing. This amount was increased in connection with the revised plans. At the request of the Commission, additional information dated December 23, 1998, was submitted to the record describing the terms of the contract construction agreement, the budget/control process, escrow accounts, inspections required for release of funds, fulfillment and termination of contractual obligations, and conceptual design plans for the project.

27. Charles Cotton of the Board of MHCDO testified at the hearing on June 8, 2000, that, with the revised agreement and the provision of additional funds, MHCDO will be able to produce seven single-family houses.

28. By letter dated December 16, 1998, Gloria C. Smith, Principal of Ross Elementary School, stated that the applicant's proposed contribution of $100,000 as part of the PUD amenities package would be used to upgrade the school library through renovations and the purchase of books, periodicals and other resource materials.

29. Letters of support were received into the record from the Capital Hilton Hotel, the Carlton Hotel, and IBG Partners, L.L.C., an owner of the World Center Building, all located at the intersection of 16th and K Streets, N.W.; 1016 16th Street Venture, the adjacent owner to the north; the Floyd E. Davis Company, owner of 1629 K Street, N.W.; Charles E. Smith Commercial Realty, manager of several Class A buildings in the vicinity of the Solar Building; and the Kaempfer Company, developer of the Investment Building at 15th and K Streets, NW.

30. Mr. Jim Nathanson of the Committee of 100 on the Federal City testified in opposition to the project at the December 17, 1998, hearing. He stated that the PUD proposal represents the worst in planning and ad hoc spot zoning in the District of Columbia. He stated that the proposed height and setbacks are inconsistent with the Comprehensive

Plan and detract from the historic vista along 16th Street. He further testified that the project is inconsistent with the recent amendments to the Comprehensive Plan, although he conceded that the amendments did not yet have the force of law.

31. The Cooperative Housing Coalition of Washington, D.C. submitted a letter dated December 17, 1998, in opposition to the project.

CONDITIONS AGREED TO BY THE APPLICANT

32. At the close of the further hearing on March 25, 1999, the Commission requested that the applicant meet with the parties in an effort to resolve areas of disagreement regarding the project. Such a meeting was held on April 1, 1999, attended by Benjamin Jacobs, Douglas Palladino, David Jacobs, Ashkan Sepassi, Allison Prince, and Whayne Quin on behalf of the Applicant, Jim Nathanson, Kyle Pitsor, Desmond Foynes, Gordon Tanner, Carol Mitten and Meredith DeHart, on behalf of the community and Lyle Blanchard on behalf of Councilmember Jack Evans. At the meeting, Ms. Mitten, as the representative of the Presidential Owners, Inc., presented five outstanding areas of concern. Consensus was reached with the applicant on the following issues with continued disagreement on the remaining two. Consensus was reached as follows:

A. The applicant agreed to limit uses on the SP-2 zoned portion of the site to the following: bank or financial institution, bar or cocktail lounge only as part of a restaurant, optician, jewelry store, restaurant (not including fast food), reproduction services (in basement only). In addition, the following amenities may be offered as part of a concierge service: dry-cleaning, shoeshine, flower stand, parcel delivery.

B. The applicant also agreed that any valet parking associated with the restaurant and the building will be handled through the garage entry. Further, the applicant agreed to refrain from the use of any public space along the entire 16th Street frontage for outdoor dining.

C. The applicant agreed to only one retail entry on 16th Street in addition to the building entrance. The applicant agreed to allow only one retail sign along the 16th Street frontage of the building. Further, the applicant agreed to limit the size of such sign to thirty square feet. In response to the community request for valet restaurant parking, the applicant clarified its agreement with the Commission that there will be no signage associated with the parking garage, either movable or permanent, except for signage required to direct patrons to the restaurant valet service.

D, The parties agreed that the materials along the 16th Street facade of the building are acceptable given the design of that elevation of the building.

E. The applicant agreed that the building will have managed parking. The parking will be used for tenants and guests of the building only. The garage will be closed to uncontrolled public access from 9:00 P.M. until 6:00 A.M. during which time access shall be limited by electronic control. The applicant agreed to include signage within the garage alerting drivers departing from the garage to stop before crossing the sidewalk and to refrain from making a left turn to proceed northward on 16th Street. The applicant agreed to trim the hedges adjacent to the garage driveway so as not to impede the sight line of drivers.

F. The applicant agreed to include language in the draft order identifying the unique nature of the property so as not to establish a basis for its use as precedent for other SP/C-4 split zone rezonings.

G. The parties continued to disagree on the extent of the site that is being rezoned to C-4 and the location of the garage entrance on 16th Street. Based on the continued disagreement over these issues, Ms. Mitten, on behalf of The Presidential and ANC-2B, remained opposed to the application.

33. The areas of agreement and disagreement did not change as a result of the further revisions to the plans that were considered by the Zoning Commission on June 8, 2000.

CONTESTED ISSUES

IMPACT ON 16TH STREET

34. Through a video presentation at the first hearing, the architect demonstrated that the addition to the existing solar building would have virtually no visual impact on the 16th Street vista from either the north or south. The combined effect of the changes to the plans since the original design was presented, as shown in the revised drawings and revised videotape presented on March 25, 1999, was that the addition would be almost imperceptible from 16th Street. The architect further showed a revised videotape at the June 8, 2000, hearing, demonstrating that, in the final design, the upper stories of the project will have no adverse visual impacts on 16th Street.

35. Steven E. Sher was recognized as an expert in urban planning in the District of Columbia and testified on behalf of the applicant at the hearing on December 17, 1998. He testified that the proposed PUD is compatible with the overall character of the surrounding 16th Street corridor, which is dominated by similar office and non-residential uses. The 16th Street frontage is characterized by a substantial setback of the upper stories and the retention of SP zoning along the site's entire 16th Street frontage. The proposed building scale, design and materials are compatible with nearby buildings and appropriate for 16th Street.

36. At the December 17, 1998, hearing, Carol Mitten, on behalf of the Presidential Owners, Inc., testified as a party in opposition to the PUD application because of its excessive height, the location of the parking garage and its driveway, the retail uses along 16th Street, and the additional traffic generated by the project.[1] She stated that the project would intrude upon the historic character of lower 16th Street, eliminate desirable green space through the introduction of a garage driveway, create a pedestrian traffic hazard at the sidewalk, and generally detract from the significant architectural and visual character of lower 16th Street. She further stated that the proposed rezoning of the SP-2 District to a depth of twenty feet was insufficient to maintain the special treatment area of 16th Street, and would set a negative precedent for other SP zoned property. She recommended that the rezoning request be denied, the height of the building be reduced and the garage access be relocated to the K Street service roadway.

37. In a submission dated March 10, 1999, and in testimony at the further hearing on March 25, 1999, Ms. Mitten stated that numerous office buildings in the downtown area have parking garage access via alleys that are less than twenty feet in width. She stated that the character of lower 16th Street should not be compromised to accommodate the proposed garage entrance. She also stated that the additional setback provided along 16th Street remains inadequate. Finally, she commented that the applicant's design lacks a strong traditional top element and detail at that height to reinforce the cornice line. She also urged the retention of as much green space as possible to preserve the character of lower 16th Street.

38. The Zoning Commission finds that proposed design, density, massing, scale, fenestration and materials of the overall composition properly enhance the historic qualities, vistas and special character of the lower 16th Street corridor. The issue of visual impacts on 16th Street has been adequately addressed by appropriate setbacks at the 9th, 10th and rooftop levels, including a final increase in setbacks as shown at the further hearing on June 8, 2000, and the reduction in the overall building height to 125.5 feet. The building above the ninety foot level is set back farther than the setback permitted for penthouses (with height of eighteen feet, six inches) and only ten feet further to the east than the existing zoning line at K Street. The applicant also has responded to the concern of the loss of SP zoning by increasing the proposed strip along 16th Street from twenty to thirty feet. The changes in the final set of drawings demonstrate the Applicant's extensive efforts to achieve consensus regarding the project. The final landscape plan includes no loss in green space even though the driveway is provided.

DRIVEWAY ACCESS ON 16TH STREET

39. Louis J. Slade, recognized by the Commission as an expert in traffic and transportation engineering, testified on behalf of the applicant in support of the application. Mr. Slade

[1] Ms. Mitten later joined the Zoning Commission and therefore recused herself from participation in the case as a Commission member.

testified that the garage driveway will be located along 16th Street at the northern edge of the property. He opined that this is the best alternative for the driveway location and that the proposed driveway will not interfere with the operation of the existing bus stop at the front of the Solar Building. He stated that access to a garage from the adjoining alleys would be substandard because the alleys from 17th Street and K Street at fifteen feet in width are too narrow to allow for two-way traffic. He testified that an alley must be twenty feet wide to accommodate two-way traffic. He further stated that even at this substandard width, the alley is already heavily traveled and would not be conducive to any additional vehicular trips. He also noted that access to the site is also inhibited by the median strip along the one-way service lane of K Street, which prohibits the smooth flow of traffic to the interior alley system and to any newly created curb cut along the site's K Street frontage.

40. With respect to pedestrian safety, Mr. Slade testified that there is no standard which prohibits a driveway if pedestrian and vehicular traffic flows reach certain levels. He stated that based on his studies, driveways crossing sidewalks do not create a pedestrian safety hazard. He testified further that even if such a potential hazard did exist, 16th Street is still the best location for the driveway because it generates only one-third of the pedestrian traffic of K Street.

41. In response to the Commission's request, Mr. Slade studied further the feasibility of access to the garage from the existing alley system to allow for the elimination of the proposed curb cut off of 16th Street. At the further hearing, Mr. Slade testified that the alley system would provide substandard access through two alleys of only fifteen feet in width. Neither alley abuts the building and one is at the opposite side of the square, allowing only a difficult and circuitous route to the rear of the Solar Building. He testified since the alleys do not permit two-way traffic flow given their width, congestion and blockage would result in queuing on to public streets. The 16th Street driveway, on the other hand, has been designed to provide on-site queuing within the building in order to prevent backing up onto public space.

42. In the applicant's Post-Hearing Submission dated February 19, 1999, Mr. Slade presented photographic documentation demonstrating that currently there is extensive congestion and blockage in the alley system. PEPCO service vehicles, in particular, create a highly congested alley system. Mr. Slade submitted a letter from PEPCO into the record indicating strong objection to the use of the alley system as sole access to the proposed parking garage.

43. Mr. Slade testified that although some office buildings gain access to their garages through alleys that are of substandard width, such buildings are generally at least ten to thirty years old and were designed in a manner that would be unacceptable by today's standards for Class A office buildings.

44. Desmond P. Foynes, recognized as an expert in the evaluation of real property by the Commission, testified on behalf of the Presidential Owners, Inc., in opposition to the application at all three hearings. He stated that the PUD would have the undesirable effect of eliminating green space along 16th Street and creating a pedestrian safety hazard due to the introduction of a garage driveway across the sidewalk. He further stated that the project would have negative traffic impacts by interfering with the operation of Metrobuses in front of the building and the generation of additional traffic that will exacerbate the over-saturated existing street grids

45. Dr. Everett Carter was recognized as an expert in transportation and testified on behalf of the Presidential Owners, Inc., in opposition to the application at the December 17, 1998, hearing. He indicated that northbound traffic on 16th Street would become more congested by vehicles attempting to turn left into the parking garage. He also testified that pedestrian safety would be better served by garage access from the K Street service roadway.

46. In response to questions raised by the Commission, Mr. Carter stated that it was his opinion that the traffic generated during the day by the Capitol Hilton Hotel, the Carlton Hotel and the University Club would be greater than what would be created by a general office building, such as the proposed PUD. He further stated that the amount of pedestrian traffic would be greater on K Street than on 16th Street.

47. At the further hearing on March 25, 1990, Dr. Carter testified that alley access to the parking garage would be workable with traffic management including the enforcement of the prohibition on illegal parking in the alley. Further, he questioned the addition of more traffic to the area given the existing levels of service at the intersection of 16th and K Streets.

48. The Commission finds that the garage ramp is most appropriately located along the 16th Street frontage of the building and therefore disagrees with the testimony of the project opponents. The opponents did not refute the testimony of the applicant's traffic expert indicating that the proposed location will affect fewer pedestrians than an access point on K Street, which generates three times as much foot traffic. The Commission also finds that, based on DPW's reports and the applicant's traffic expert, the existing alley system is unacceptable for a Class A building. The applicant's commitment to discourage tenants from making left turns across traffic into the garage and to exercise caution with respect to pedestrians through appropriate signage within the garage are adequate assurances against any potential pedestrian safety hazards. Further, the Commission credits the testimony of the applicant's traffic expert regarding the number of buses stopped along 16th Street at any one time and finds that cars turning into the Solar Building garage will not further exacerbate existing traffic congestion.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

49. Mr. Sher stated that the proposed PUD is consistent with the Comprehensive Plan and concluded that the application should be approved. He also testified that the project is consistent with the site's high-density commercial designation in the Land Use Element of the Comprehensive Plan. Further, he concluded that the project would be consistent with the then-proposed and later adopted amendment to the Land Use Map that changed the 16th Street frontage of the project to mixed-use, high-density residential/medium-high density commercial. Further, the project is located within the Central Employment Area of the city, which is the business and retail heart of the District and metropolitan area. He noted that in terms of square footage, office use is the largest commercial use within the CEA, and that the amount of space in the proposed PUD devoted to office use is consistent with the CEA. In further conformance with the Land Use Element, Mr. Sher stated that the project protects and enhances the special character of the 16th Street Special Treatment Area by virtue of its exceptional urban design and architectural features.

50. Mr. Sher also addressed the urban design elements of the Comprehensive Plan. He testified that the exceptional architectural features of the proposed PUD fulfill the objectives of the urban design element through its enhancement of the horizontal character of the buildings within the city and conformance with the Height Act of 1910. He noted that the 1910 Height Act relates building height to the width of the streets and that 16th and K Streets, at 160 and 147 feet in width, respectively, support the proposed height of the PUD.

51. Mr. Sher also testified that in his opinion the proposed PUD fulfills the historic preservation element of the Comprehensive Plan through its protection and enhancement of both 16th and K Streets, which have been designated special places within the District of Columbia. He noted that the particular features of the PUD at the ground floor, its entrances and outdoor activities that enliven the street scene, are the exact features that the Comprehensive Plan is designed to encourage. He stated that the proposed PUD creates an architecturally prominent building that accentuates the important vista of 16th Street in furtherance of the historic preservation element of the Plan.

52. Mr. Sher also discussed the housing linkage element of the proposed project as a fulfillment of the Housing Element of the Comprehensive Plan. He noted that the Zoning Regulations allow an applicant to contribute to the housing stock of the city through either new residential construction, rehabilitation of existing units or a financial contribution to an affordable housing provider. He stated that the amount of housing to be provided as a result of a proposed project is tied to the increase in square footage achieved through the PUD process. Based on the originally submitted plans, he stated that the matter of right office density at the subject site is 172,000 square feet of space, whereas the applicant proposes a total square footage of 185,000 square feet of space, resulting in a net gain of 13,000 square feet of office space. The gain increased to 28,215

when the amount of the SP zoning was increased in the final version of the plans. He further stated that the applicant proposes to work with the MHCDO, an off-site affordable housing provider, in fulfillment of the housing linkage requirements.

53. In his rebuttal testimony at the first hearing, Mr. Sher stated that the proposed PUD is consistent with the amendments to the Comprehensive Plan that were later adopted. He testified that the amendments specifically contemplate higher density offices and recommend that such development be reviewed through the PUD process to ensure appropriate design review. The proposed PUD complies with these provisions and involves a thirty foot wide strip of SP zoning and substantial setbacks in deference to 16th Street.

54. Ms. Mitten stated that the project is inconsistent with the Land Use and Historic Preservation Elements of the Comprehensive Plan because it would intrude upon the historic character of lower 16th Street, eliminate desirable green space through the introduction of a garage driveway, create a pedestrian traffic hazard at the sidewalk, and generally detract from the significant architectural and visual character of lower 16th Street. She also stated that the project was inconsistent with recently approved but not yet enacted amendments to the Comprehensive Plan, which redesignated the site in the medium-high density commercial land use category.

55. Mr. Foynes testified that the scale and height of rooflines along 16th Street will be compromised by the proposed PUD, and that the standards for lower 16th Street, as articulated in the L'Enfant Plan, the Comprehensive Plan, the Ward 2 Plan and the General Land Use Map, and amendments thereto, will be debased.

56. Mr. George Oberlander, recognized as an expert in urban planning by the Commission, testified on behalf of the Presidential Owners, Inc., in opposition to the application at the hearing on December 17, 1998. He stated that the relocation of the SP-2 boundary line is inappropriate and would circumvent the intent and purpose of zoning along 16th Street; that the increased height to 130 feet violates public policy contained in the Comprehensive Plan; that the proposed height and mass of the PUD would have an adverse shadow impact on the Sheraton Carlton Hotel, a National Register landmark; and that the project is inconsistent with recent amendments to the Comprehensive Plan redesignating the site in the medium-high density commercial land use category. In response to questions raised by the Commission, Mr. Oberlander stated that interpretation of what constituted "medium-high density" was a function of the Zoning Commission.

57. Based on the testimony of OP and the applicant's land use expert, the Zoning Commission finds that the PUD is not inconsistent with and further enhances the following policies and objectives of the Comprehensive Plan and the Ward 2 element of the Comprehensive Plan:

A. The site is located in the Central Employment Area under the Comprehensive Plan, which is characterized by high-density commercial structures. The Generalized Land Use Map of the Comprehensive Plan designates the property in the high-density commercial land use category with the 16th Street frontage in the mixed-use high-density residential/medium-high density commercial category. The site is also located along a portion of 16th Street which has been designated a Special Street and Special Treatment Area under the Comprehensive Plan.

B. Respecting and Improving the Physical Character of the District. The PUD process will ensure the development of an exceptional design that will significantly enhance the prominence of the 16th and K Street commercial area and improve the appearance of the vicinity as a whole. The renovation and addition will match the height and massing of surrounding buildings while at the same time introduce an innovative architectural treatment to the streetscape.

C. Housing. The applicant will provide for the construction of affordable housing by working with MHCDO to meet the needs of present and future District residents.

D. Urban Design and Historic Preservation. The proposed PUD will enhance the large-scale commercial quality of the 16th and K Street segment of the Central Employment Area through superior design elements that respect the special nature of the 16th Street Special Treatment Area. The proposed height and rooftop setbacks are appropriate in scale and will complement the cornice lines and heights of other buildings lining lower 16th Street and K Street. Further, the proposed height and setbacks do not detract from the 16th Street vista or the historic qualities of this street, which is a major element of the L'Enfant Plan.

58. The Commission also finds that the proposed PUD is consistent with the amendments to the Generalized Land Use Map, which redesignated only the 16th Street frontage of the site to the high-density residential/medium-high density commercial land use category, particularly in light of the rationale for the change stated by the Office of Planning. The change was intended to encourage the retention of existing housing and hotels and the proposed PUD does not displace any existing housing or hotels. The subject site has been an office building for forty years. Further, the setbacks from 16th Street and the thirty foot wide strip of SP zoning clearly demonstrate a sensitivity and deference to 16th Street.

COMPLIANCE WITH THE PUD STANDARDS

59. Mr. Sher also discussed the housing linkage element of the proposed project as a fulfillment of the objectives of the PUD regulations. He noted that the Zoning Regulations allow an applicant to contribute to the housing stock of the city through either new residential construction, rehabilitation of existing units or a financial contribution to an affordable housing provider. He stated that the amount of housing to

be provided as a result of a proposed project is tied to the increase in square footage achieved through the PUD process. Based on the originally submitted plans, he stated that the matter of right office density at the subject site is 172,000 square feet of space, whereas the applicant proposes a total square footage of 185,000 square feet of space, resulting in a net gain of 13,000 square feet of office space. The gain increased to 28,215 when the amount of the SP zoning was increased in the final version of the plans. He further stated that the applicant proposes to work with the MHCDO, an off-site affordable housing provider in fulfillment of the housing linkage requirements. He testified that, based on the formula established under the Zoning Regulations, the applicant must construct or rehabilitate housing in the amount of one-half of the net increase in square footage. The formula results in a requirement for 6,544 square feet of off-site housing. He testified that the applicant will be working with MHCDO to facilitate the construction of 7,500 square feet of new single-family dwellings at a cost of $100,000. These amounts were later increased to 10,500 square feet and $285,000 to reflect the increased requirement under the revised drawings.

60. Mr. Foynes stated that the proposed public benefits of the PUD were insufficient and greatly outweighed by the private benefits to owner, in contravention of the PUD regulations. Mr. Foynes argued that the PUD does not satisfy the housing linkage requirements because (1) it does not meet the minimum square footage requirement for housing linkage, (2) it does not provide adequate funds, and (3) it has not been approved by DHCD. Mr. Foynes suggested that the monetary commitment under the construction/ rehabilitation option should be the same as that under the construction option.

61. The Zoning Commission finds that the DHCD approved the linkage proposal by letter dated June 8, 2000.

62. The Commission finds that the proposed PUD is consistent with the requirements set forth in 11 DCMR Section 2400. Approval of the PUD will provide the significant public benefit of an exceptional urban design and landscaping that will complement the surrounding large-scale commercial buildings and enhance the special character of 16th Street.

63. The Commission finds that the project fulfills the housing objectives of the PUD process under subsections 2403.9(f) and 2404.6 of the Zoning Regulations. The Commission finds that the applicant's proposed contract construction agreement with MHCDO, which will allow for the construction of seven single-family affordable dwellings, is commensurate with the increase of approximately 28,215 square feet of gross floor area devoted to office use as a result of the PUD. In finding that the proposed arrangement is adequate, the Commission relies upon the conclusions of DHCD in its letter dated June 8, 2000, the testimony of the representatives of the MHCDO at the hearings on December 17, 1998, and June 8, 2000, the testimony of the Applicant's land use expert at the first hearing and the report of OP dated June 8, 2000. The Commission also finds that

the $100,000 contribution to Ross Elementary School in Ward 2 constitutes an important amenity that has special value to the neighborhood.

64. In approving the five percent increase in density provided in 11 DCMR 2405.3, the Commission finds that the increase is essential to the successful functioning of the project because it allows for an increase in the depth of the SP strip along 16th Street without impairing the economic viability of the project. Any further setback would impinge upon the existing core of the building that is being retained. Further, the project is consistent with the purpose and evaluation standards of the PUD regulations. The agreement to work with the MHCDO to produce affordable single-family houses and the project amenities are commensurate with the increase in density achieved by the PUD. Further, the project will meet the city's need for high-quality office space in the Central Employment Area and will enhance the special qualities of the 16th Street corridor through superior architectural design.

65. The Commission finds that the subject site is unique in a number of critical respects. It is located at the intersection of two of the widest streets in the District of Columbia, K Street, a principal commercial arterial in the Central Employment Area, and 16th Street. The site is improved with two economically and functionally obsolete office buildings, neither of which contain parking and both of which detract from the character and quality of the environment. Redevelopment of the site is further constrained by its limited size, only 20,111 square feet (less than half an acre) and an off-center elevator and mechanical core which precludes viable redevelopment of the C-4 portion of the site to its permitted height. The site is split-zoned with an unusually configured zoning boundary line that bears no relationship to the current improvements on the site. The depth of the zone boundary line for the southern part of the site is only forty-five feet back from the line of 16th Street. The size of the site and the location of the zone boundary line create floor plates in the C-4 and SP-2 portions, which are too small and irregularly shaped by themselves to be developable.

66. The applicant has proposed a design that addresses the dual identity of the site by including a ninety foot height along its 16th Street frontage. In addition, in order to respond to the site's 16th Street location and to respect its importance as a buffer between the C-4 and SP districts, the maximum building height on the C-4 zoned portion of the site is 125.5 feet, less than the maximum height permitted as a matter of right in the C-4 zone. Because of the unique features of the existing site and the applicant's willingness to forego the height that is permitted as of right in the C-4 zone portion of the site, a measure which further enhances the transitional nature of the design to create a more balanced buffer between the C-4 and SP-2 zones, this PUD and rezoning is highly unusual and not a precedent for the rezoning of other split-zoned property.

67. The Commission finds that the minor deviations requested with respect to penthouse setbacks, the size of the loading berth, and non-accessory retail uses and restrictions

against direct access from the street are necessary for the successful completion of the PUD project.

68. The Commission finds that the applicant has met its burden of proof. In order for the Commission to approve the PUD project, the applicant had to meet its burden of demonstrating the public benefits and other meritorious aspects of the proposal. Those benefits include the high level of architectural design, the provision of high quality office space in the Central Employment Area in close proximity to two Metrorail stations and bus routes, the enhancement of the historic and other special qualities of the 16th Street Special Treatment Area, landscaping, the provision of on-site parking, and increased revenues for the District.

IMPACT ON TRAFFIC

69. Mr. Slade evaluated the site in terms of potential traffic impacts created by the PUD, parking requirements, the location of the new garage entrance, and the design of the off-street loading facility. Mr. Slade testified that as a result of the redevelopment of the Solar Building, traffic to the site would increase by only thirty vehicles during the morning and evening peak hours, or an average of one vehicle every two minutes. He concluded that the additional traffic would have an insignificant impact on any of the intersections.

70. In response to a comparison between the safety virtues of circular drives versus garage ramps, the applicant's traffic expert testified that pedestrian safety would be better served by a garage ramp, which, unlike a circular drive, can accommodate several cars before blocking the sidewalk. With respect to potential traffic congestion created by cars turning across traffic into the garage, the applicant's expert stated that the double yellow line prohibited such turns under the D.C. Motor Vehicle regulations. Nevertheless, the applicant volunteered to place signs on its property restricting left turns out of the garage.

71. Dr. Carter stated that the traffic analysis prepared by the applicant's expert witness was inadequate because it ignored bus and pedestrian traffic which would contribute to the capacity analysis; did not acknowledge the proposed office development contemplated for the immediate vicinity; underestimated the number of trips generated; and did not conduct a proper demand analysis for parking and loading. He indicated that northbound traffic on 16th Street would become more congested by vehicles attempting to turn left into the parking garage. He also testified that pedestrian safety would be better served by garage access from the K Street service roadway. In response to questions raised by the Commission, Mr. Carter stated that it was his opinion that the traffic generated during the day by the Capitol Hilton Hotel, the Carlton Hotel and the University Club would be greater than what would be created by a general office building, such as the proposed PUD. He further stated that the amount of pedestrian traffic would be greater on K Street than on 16th Street.

73. The Commission also finds that, based on DPW's reports and the applicant's traffic expert, the proposed development will not have a significant adverse impact on the street system and other traffic conditions in the area. The existing alley system is unacceptable for a Class A building. The applicant's commitment to discourage tenants from making left turns across traffic into the garage and to exercise caution with respect to pedestrians through appropriate signage within the garage are adequate assurances against any potential pedestrian safety hazards. Further, the Commission credits the testimony of the applicant's traffic expert regarding the number of buses stopped along 16th Street at any one time and finds that cars turning into the Solar Building garage will not further exacerbate existing traffic congestion.

PARKING REQUIRED UNDER THE 1955 BZA APPROVAL

73. Ms. Mitten also questioned whether the PUD proposal was in compliance with the 1955 Board of Zoning Adjustment Order No. 4297, which authorized construction of the Solar Building and required a covenant on another site in the square to ensure the provision of off-site parking for the building in a garage on that site. She stated that, based on her research of the records, no such covenant was found.

74. In response to issues raised by the opposition regarding the 1955 BZA approval for the Solar Building, the applicant stated that it likewise could not find the required covenant but that this issue was rendered moot by the applicant's provision of on-site parking in conformance with the zoning requirements.

75. The Commission finds that the absence of parking is not relevant to the approval of the proposed PUD. Whatever the reason for the absence of the covenant on record, if the development of the PUD proceeds, there will be adequate on-site parking provided for the building.

"GREAT WEIGHT" FOR ANC 2B

76. The Commission makes the following findings in response to the issues raised by the ANC and other parties and persons in opposition:

A. The proposed design, density, massing, scale, fenestration and materials of the overall composition properly enhance the historic qualities, vistas and special character of the lower 16th Street corridor. The issue of visual impacts on 16th Street has been adequately addressed by appropriate setbacks at the 9th, 10th and rooftop levels, including a final increase in setbacks as shown at the further hearing on June 8, 2000, and the reduction in the overall building height to 125.5 feet. The building above the ninety foot level is set back farther than the setback permitted for penthouses (with height of eighteen feet, six inches) and only ten feet further to the east than the existing zoning line at K Street. The applicant also

has responded to the concern of the loss of SP zoning by increasing the proposed strip along 16th Street from twenty to thirty feet. The changes in the final set of drawings demonstrate the Applicant's extensive efforts to achieve consensus regarding the project.

B. The proposed reduction of the SP-2 zoned portion of the site will not compromise the policies and purposes of the SP District or the Special Treatment Area of 16th Street. The setbacks appropriately maintain the existing cornice lines and heights of the nearby 16th Street buildings.

C. The proposed garage entrance to the building from 16th Street is consistent with the numerous curb cuts and driveways that currently line lower 16th Street. As redesigned, the entrance has a residential appearance with a door height of only eight feet. Further, the proposed treatment of the interior of the garage and the use of glass to allow natural light into the garage entryway will address concerns about the appearance of the garage within the context of 16th Street. Limitations on use further minimize effects of the garage on the community and improve the existing condition.

D. The Commission finds that the garage ramp is most appropriately located along the 16th Street frontage of the building and therefore disagrees with the testimony of the project opponents. The opponents did not refute the testimony of the applicant's traffic expert indicating that the proposed location will affect fewer pedestrians than an access point on K Street, which generates three times as much foot traffic. The Commission also finds that, based on DPW's reports and the applicant's traffic expert, the existing alley system is unacceptable for a Class A building. The applicant's commitment to discourage tenants from making left turns across traffic into the garage and to exercise caution with respect to pedestrians through appropriate signage within the garage are adequate assurances against any potential pedestrian safety hazards. Further, the Commission credits the testimony of the applicant's traffic expert regarding the number of buses stopped along 16th Street at any one time and finds that cars turning into the Solar Building garage will not further exacerbate existing traffic congestion.

E. The Zoning Commission finds that the testimony of the applicant's expert architect and expert land use witnesses, and the testimony of the Office of Planning, which carries great weight, presented sound and credible evidence that the PUD will not a have a negative impact on the surrounding neighborhood from an architectural or urban planning perspective.

F. The Commission finds that the provision of forty-two self-park spaces complies with the requirements of the Zoning Regulations and will adequately serve the building. The provision of the building's loading dock will also meet the needs of the expanded area of the building and improve the loading conditions of the

existing building. The Commission finds that the requirement for a covenant for off-site parking is rendered moot by the applicant's proposal to provide a minimum of forty-two spaces in a below-grade garage.

G. The Commission finds that the proposed housing linkage arrangement satisfies the requirements of the Zoning Regulations and will result in the production of seven new single-family houses in a Housing Opportunity Area in Ward 7. The Commission adopts the reasoning and position of DHCD which finds compliance with Section 2404 of the Zoning Regulations. The Commission is not persuaded by the opposition testimony and correspondence suggesting that gap funding to facilitate the production of affordable housing is not permitted under the regulations and that the construction option must involve a monetary commitment equal to the amount that would be required under the contribution option. Through its agreement with MHCDO, the applicant will assume the risk that if the housing units are not constructed, the PUD will not receive a certificate of occupancy. The contribution option involves no such risk and accordingly, a greater financial commitment. Further, the Commission finds it unreasonable to suggest that under the construction option, an applicant must pay the full cost of construction. Under that interpretation, applicants would have a strong incentive to choose rehabilitation over new construction. Both should be encouraged.

H. The Zoning Commission finds the expert testimony of the applicant's traffic consultant and the report of the DPW to be persuasive with respect to 16th Street being the best location for garage access to the building.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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 or 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 height will not be obtrusive nor will it cause a significant adverse effect on any nearby properties and 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 and therefore should be approved. The impact of the project on the surrounding area is not unacceptable. As set forth in the findings of fact, the impact from traffic is favorable. The impact of the design on 16th Street has been mitigated by the materials used on the facade, the setbacks at the upper floors, the landscape treatment adjacent to the building and the revised treatment of the garage entrance. The impact on housing is favorable, because of the applicant's proposed housing linkage measures.

6. The proposed application can be approved with conditions which will 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 height and 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 16th 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 and map amendment application is appropriate because the proposed development is generally consistent with the present character of the area.

9. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan, including the designation of the site for high-density commercial use and the designation of the 16th Street frontage for mixed use high density residential/medium-high density commercial use.

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 (see FF 23 to 26) that the application be denied, but for the reasons set forth in finding of fact 76, does not find the ANC's recommendation persuasive. The Commission has addressed, through the conditions imposed in this order, the ANC's specific issues and concerns.

11. 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.

12. 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 consolidated review of a planned unit development and for a map amendment from SP-2 to C-4 for the property located at 1000-1010 16th Street, N.W., in Square 184, Lots 59 and 842. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The SP-2 District is retained for a depth of thirty feet along 16th Street with the remainder of the property included in the C-4 District.

2. The PUD shall be developed in accordance with the plans prepared by RTKL Associates, dated July 6, 2000, marked as Exhibit 118B in the record, as modified by the guidelines, conditions and standards herein.

3. The project shall be a commercial office development consisting of approximately 200,247 square feet of gross floor area. The PUD project shall not exceed 125.5 feet in height on the C-4 portion of the site or 90 feet in height on the SP-2 portion of the site, with setbacks as shown on the plans.

4. Landscaping shall be in accordance with the plans dated July 6, 2000, marked as Exhibit 118B in the record.

5. Retail signage on the 16th Street frontage of the building shall be limited to one sign not to exceed thirty square feet in area. A building identification sign also will be permitted. There shall be only one retail entrance along 16th Street in addition to the building entry.

6. The retail uses on the SP-2 zoned portion of the site will be restricted to the following: bank or financial institution, bar or cocktail lounge only as part of a restaurant, optician, jewelry store, restaurant (not including fast food), reproduction services (in basement only). In addition, the following amenities may be offered as part of a concierge service: drycleaning, shoeshine, flower stand and parcel delivery. For the purposes of this condition, a restaurant shall be a place of business where food, drinks or refreshments are prepared and sold primarily for consumption on the premises to customers seated at tables with wait service and without routine carryout service.

7. The garage entrance shall be located on 16th Street. A minimum of forty-two fixed parking spaces or seventy-six managed spaces shall be provided in the garage. The applicant will provide signage within the garage prohibiting northbound traffic on 16th Street from turning left out of the parking garage. There shall be no signage, permanent or movable, noting the garage except that a sign shall be permitted to direct restaurant patrons to the valet parking.

8. Any valet parking associated with the restaurant will be handled through the garage entry.

9. There shall be no use of public space along the entire 16th Street frontage for outdoor dining associated with any restaurant in the building.

10. Managed parking shall be provided in the building. The parking will be used for tenants and guests of the building only. The garage will be closed to uncontrolled public access from 9:00 P.M. until 6:00 A.M. during which time access will be limited by electronic control.

11. The applicant shall enter into a Contract Construction Agreement with MHCDO for the completion of seven single-family dwelling units at the Banneker Ridge project. No certificate of occupancy shall be issued for the PUD until the applicant and the MHCDO certify to the Zoning Administrator that the requisite housing outlined in the Contract Construction Agreement has been completed.

12. The applicant shall contribute $100,000 to the Ross Elementary School to assist in providing audio-visual equipment and other library resources. No certificate of occupancy shall be issued for the PUD until the applicant disperses these funds to the School.

13. The applicant 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 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 the project to be created as a result of the PUD project.

14. The applicant shall abide by the terms of the 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 applicant 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 forty-two spaces; and

C. To adjust the exact location of the retail entrance along 16th Street to accommodate tenant layout. The landscape plan may be adjusted to accommodate the entrance.

16. Given the unique nature of this property and the unique circumstances of this case, as described in the Findings of Fact, this case shall not serve as and may not be cited as a precedent for the rezoning to C-4 of any other property zoned SP-2 in the 16th Street corridor.

17. No building permit shall be issued for this planned unit development until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner 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 applicant and all successors in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.

18. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the applicant has filed a certified copy of the covenant with the records of the Zoning Commission.

19. 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.

20. 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 September 11, 2000: by a vote of 3-1 (Herbert M. Franklin, Kwasi Holman to **approve**, John G. Parsons to **approve** by proxy; Anthony J. Hood to **deny**, Carol J. Mitten not voting, having recused herself)

The order was adopted by the Zoning Commission at its public meeting on October 16 2000, by a vote of 3-1 (Kwasi Holman, Herbert M. Franklin, to **adopt** John G. parsons to **adopt** by proxy, having attended all the hearings, Anthony J. Hood to **deny**, Carol J. Mitten not voting having recused herself.

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 NOV 24 2000

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 02-24A
Zoning Commission Case No. 02-24A
(PUD Modification – 1601 K Street, N.W.)
October 25, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public meeting on October 25, 2004. At the meeting, the Zoning Commission approved with modifications an application from JBG/Rockwood 1601 K, L.L.C. (the "Applicant") for a minor modification to an approved planned unit development ("PUD") pursuant to Chapter 24 and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Code. 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. 906, dated October 16, 2000, the Zoning Commission approved the Applicant's application for a consolidated PUD and related map amendment from SP-2 to C-4 for the property located in Square 184, Lots 59 and 842. The Zoning Commission Order approved the development of a commercial office building consisting of approximately 200,247 square feet of gross floor area, not to exceed 125.5 feet in height on the C-4 portion of the site or 90 feet in height on the SP-2 portion of the site, with setbacks from the 16th Street frontage of the building. The Commission required that JBG provide a minimum of forty-two (42) fixed parking spaces or seventy-six (76) managed spaces in a parking garage to be entered from 16th Street.

As the PUD did not meet the normal matter-of-right requirements of the Zoning Regulations regarding roof-structure setbacks, the Zoning Commission granted a minor deviation from the roof structure setback requirements. The Zoning Commission granted additional minor deviations from the restrictions on non-accessory retail uses in the SP-2 portion of the site and the minimum requirements for loading berths.

Pursuant to 11 DCMR § 3028, the Commission's Order became final and effective upon publication in the District of Columbia Register on November 24, 2000.

RSP

By Zoning Commission Order No. 02-24(906), dated November 18, 2002, the Zoning Commission modified the PUD in order to allow the relocation, by one bay, of the front entrance and corresponding projection bay in the direction of K Street, improvements to the proportions of the projection bay and façade components, refinements to the exterior skin detailing, and relocation of the parking garage entrance from 16th Street to K Street or, at the Applicant's discretion, to the rear of the building off the public alley. The proposed modifications resulted in a further setback of the penthouse structure an additional four (4) feet along 16th Street, improved and increased green space, an increased distance between the front entrance of the PUD project and its residential neighbors, a reduction in area to contiguous paved areas along 16th Street, and improved visual balance of the 16th Street elevation.

Pursuant to 11 DCMR § 3028, the Commission's Order became final and effective upon publication in the District of Columbia Register on December 13, 2002.

By letter dated October 6, 2004, counsel for the Applicant filed a request to place a minor modification to Zoning Commission Order No. 02-24 on the Commission's Consent Calendar pursuant to § 3030 of the District of Columbia Zoning Regulations. The letter requested a minor modification to the approved PUD in order to introduce rooftop landscaping to the ninety-foot (90') section of the building's roof along the 16th Street frontage. The Applicant's request involved the installation of planters of varying heights for small scrubs and flowering trees with a maximum tree height of fifteen (15) feet, or, in the alternative, to a maximum height of ten (10) feet, measured from the base of the roof. The maximum height of the tree planters would be three feet (3'), so that the visible portion of the tallest tree would be twelve (12) or seven (7) feet, depending upon the alternative selected.

The Applicant stated in its request for a minor modification that it had duly served a full copy of its request on Advisory Neighborhood Commission 2B and Presidential Owners, Inc., the parties to the original proceeding. No comments were received from any of the parties.

On October 25, 2004, at its regularly scheduled meeting, the Zoning Commission reviewed the request as a Consent Calendar matter. The Zoning Commission granted approval of the minor modification to the approved PUD, except that, due to concern with the visibility of taller trees from street level, the maximum height of the introduced trees was limited to five (5) feet, measured from the top of the planters in which the trees would be located.

The Zoning Commission concurs with the Applicant that approving the application, as modified by the Commission, is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

The Zoning Commission further 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 and the Zoning Act.

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CONCLUSIONS OF LAW

Upon consideration of the record in Applicant's request for minor modification, the Zoning Commission concludes that the proposed modification is minor and consistent with the intent of the previously approved PUD, as modified by the Zoning Commission in its Order No. 02-24(906). Furthermore, the approval of the modification is not inconsistent with the Ward 2 Elements of the Comprehensive Plan and the Comprehensive Plan General Land Use Map's designation of the site, including the designation of the site for high-density commercial use and the designation of the 16th Street frontage for mixed-use, high density residential/medium-high density commercial use.

The approval of the 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 of the District of Columbia orders **APPROVAL** of this application for modification to the original PUD approved by the Zoning Commission Order No. 906, as modified in Zoning Commission Order No. 02-24(906), for the property located at Lot 74 (formerly lots 59 and 842) in Square 184, subject to the following guidelines, conditions, and standards:

> Trees to be introduced in the ninety-foot (90') section of the building's roof along the 16th Street frontage shall be limited to no more that five (5) feet in height, as measured from the horizontal surface of the three (3) foot tall planters in which they are to be planted.

Pursuant to the intent of 11 DCMR § 2409.3 this modification shall not become effective until a Notice of Modification of Zoning Commission Order No. 906 is filed in the land records of the District of Columbia. That Notice of Modification shall include true copies of Zoning Commission Order No. 906, Zoning Commission Order No. 02-24(906), and this modification order, which the Director of the Office of Zoning has certified. The recordation of the Notice of Certification shall bind the Applicant and any successors in title to construct on and use the PUD Site in accordance with this modification order and any amendments thereof. Because construction of the building has already begun, this minor PUD modification shall be fully vested upon the filing of the Notice.

After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of the Notice of Modification with the Office of Zoning.

RSP

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* ("Act") the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

Vote of the Zoning Commission taken at the public meeting on October 25, 2004: **4-0-1** (John Parsons, Kevin Hildebrand, Anthony Hood, and Gregory N. Jeffries to approve; Carol J. Mitten not voting, having recused herself).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become final and effective upon publication in the District of Columbia Register; that is, on FEB - 4 2005.

ANTHONY J. HOOD
Vice Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

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Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

DISTRICT OF COLUMBIA, ss:

I attest and certify that I am the Director of the District of Columbia Office of Zoning, and that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of the following records that are in my custody and possession in my official capacity:

Four page Order No. 02-24-A of the Zoning Commission of the District of Columbia, dated October 25, 2004 Case No. 02-24-A.

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Signed and sworn to before me this 16th *day of* March, *2005.*

Betty J. Williams
NOTARY PUBLIC, D.C.

My Commission expires February 14, 2006

Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

DISTRICT OF COLUMBIA, ss:

I attest and certify that I am the Director of the District of Columbia Office of Zoning, and that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of the following records that are in my custody and possession in my official capacity:

Nine page Order No. 906 of the Zoning Commission of the District of Columbia, dated November 18, 2002 Case No. 02-24.

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Signed and sworn to before me this 16th *day of* March, *2005.*

Betty J. Williams
NOTARY PUBLIC, D.C.

My Commission expires February 14, 2006

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 02-24 (906)
Case No. 02-24/98-14C – Order No. 906
(PUD Modification - 1000-1010 16th Street, N.W.)
November 18, 2002

This decision arises out of an application by JBG/6006 Limited Partnership for approval of modifications to Zoning Commission Order No. 906, which approved a planned unit development ("PUD") pursuant to chapter 24 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. At its public meeting on November 18, 2002, the Commission took action to grant the application subject to conditions.

Preliminary Matters

On May 30, 2002, the JBG/6006 Limited Partnership ("JBG" or "Applicant") filed an application for modifications to a PUD approved in Zoning Commission Order No. 906, a commercial office development at the premises known as 1000-1010 16th Street, N.W., Square 184, Lot 74 (the "Property"). The application was processed as a second-stage PUD application.

The Commission voted at its July 8, 2002, public meeting to hear the application as a contested case with a public hearing held in accordance with the provisions of 11 DCMR § 3022. Notice of the public hearing was published in the *D.C. Register* on August 2, 2002, 49 *D.C.Reg.* 7483, and was mailed to all property owners within 200 feet of the Property as well as to Advisory Neighborhood Commission ("ANC") 2B, in whose boundaries the Property is located. The parties in this case were the Applicant, ANC 2B, and Presidential Owners, Inc. ("Presidential"), the owners of a residential property adjoining the PUD site. The public hearing was held on October 7, 2002.

At the hearing, Porter Dawson, a partner at JBG, testified that the Applicant's proposed modifications of the approved PUD were intended to enhance and further refine the design of the building, which would increase the benefits to the surrounding neighborhood. C.R. George Dove, FAIA, APA, principal of WDG, also appeared on behalf of JBG to describe the proposed refinements. The Commission also heard testimony from the Office of Planning ("OP"), Presidential, and Nik Moradi, a business tenant in an abutting building who testified in opposition to the application due to concerns about the impact of construction on his business. By letter dated October 10, 2002, Mr. Moradi withdrew his objection and expressed his support for the application, in response to the Applicant's agreement to provide a covered walkway along the sidewalk on K Street and signage funds for his business. The Commission received a letter

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dated June 26, 2002, from the Capital Hilton expressing its strong support of the proposed modifications.

At a special public meeting held October 17, 2002, the Commission took proposed action by a vote of 4-0-1 to approve the application subject to conditions.

The proposed action was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated August 6, 2002, found that the proposal would not adversely affect the federal interest or be inconsistent with the Comprehensive Plan for the National Capital.

The Commission took final action to approve the application on November 18, 2002 by a vote of 4-0-1.

Government Reports

By report dated June 28, 2002, OP recommended approval of the application. The District Department of Transportation ("D-DOT") submitted a report dated September 9, 2002, expressing its support for the relocation of the garage entrance from 16th Street.

ANC Report

By letter dated August 27, 2002, ANC 2B indicated its support for the requested modifications.

Findings of Fact

1. The PUD site is located at 1000-1010 16th Street, N.W. (Square 184, Lot 74). The Property has a land area of 20,111 square feet and is improved with two buildings: the Solar Building, an eight-story commercial office building at 1000 16th Street; and the Taca Building, a six-story building at 1010 16th Street. The site currently has no parking or loading facilities.

2. By Order No. 906, dated October 16, 2000 (47 *D.C. Reg.* 9365), the Commission approved JBG's application for consolidated review and approval of a planned unit development and related map amendment modifying the SP-2 zone district for a depth of 30 feet along 16th Street, with the remainder of the Property included in the C-4 zone district. Pursuant to Order No. 906, the approved PUD expires on November 24, 2002, with construction to commence no later than November 24, 2003.

3. The PUD approved by Order No. 906 was a commercial office development with approximately 200,247 square feet of gross floor area and a height not to exceed 125.5 feet in the C-4 portion of the Property or 90 feet in the SP-2 portion. Important elements

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of the PUD included landscaping and setbacks along 16th Street, with a reduction in height of the penthouse structure from the Applicant's original design.

4. On June 26, 2001, JBG entered into an agreement with the Marshall Heights Community Development Organization and, at the same time, contributed $280,000 toward the cost of constructing seven (7) new single-family dwellings, as required under Decision paragraph 11 of Order No. 906.

5. Building permits have been issued for the PUD approved by Order No. 906.

6. The requested modifications to the approved PUD include the relocation of the front entrance and corresponding projection bay one bay in the direction of K Street, improvements to the proportions of the projection bay and façade components, refinements to the exterior skin detailing, and relocation of the parking garage entrance from 16th Street to K Street or, at JBG's discretion, to the rear of the building off the public alley. Relocation of the parking garage entrance, and resulting reorganization of the first floor of the PUD, would require other modifications to the conditions set forth in Order No. 906. According to the Applicant, the proposed modifications would result in a further setback of the penthouse structure by a distance of 10 to 14 feet along 16th Street, improved and increased green space, an increased distance between the front entrance of the PUD project and its residential neighbors, a reduction in area to contiguous paved areas along the public space at 16th Street, and improved visual balance of the 16th Street elevation.

7. Presidential, which opposed the original PUD, supported the Applicant's requested modifications. By letter dated July 8, 2002, Presidential recommended, and JBG agreed to, the following amendments to the conditions set forth in Order No. 906:

   (a) Condition 1. No change.

   (b) Condition 2. The modified PUD shall be developed in accordance with the plans prepared by WDG, dated May 22, 2002, and marked as Exhibit No. 1, and the revised G-1st drawing attached to Exhibit No. 5 in the record, as modified by the guidelines, conditions, and standards herein.

   (c) Condition 3. No change.

   (d) Condition 4. Landscaping shall be in accordance with the revised G-1st plan attached to Exhibit No. 5 in the record.

   (e) Condition 5. Retail signage along the 16th Street frontage of the building shall be limited to two signs, neither of which may exceed 30 feet in area. A building

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identification sign will also be permitted. There shall be no more than two retail entrances along 16th Street in addition to the building entry.

(f) Condition 6. No change.

(g) Condition 7. The garage entrance shall be located either on K Street or from the rear alley. A minimum of 42 fixed parking spaces or 76 managed spaces shall be provided in the garage. The Applicant will remove the existing curb cut on 16th Street. There shall be no signage along 16th Street, permanent or movable, noting the location of the garage entrance.

(h) Condition 8. The valet service may not be located along 16th Street.

(i) Condition 9. No change.

(j) Condition 10. The existing condition shall be replaced with the following: Managed parking shall be provided in the building.

(k) Conditions 11 through 15.B. No change.

(l) Condition 15.C. The Applicant shall have the flexibility with the design of the PUD to adjust the exact locations of the retail entrances along 16th Street to accommodate the tenant layout. The landscape plan may be adjusted to accommodate the retail entrances.

(m) Condition 16. Given the unique nature of this property and the unique circumstances of this case, as described in the Findings of Fact in Order No. 906, this case shall not serve as, and may not be cited as, a precedent for the rezoning to C-4 of any other property zoned SP-2 in the 16th Street corridor or for the introduction of retail uses and entrances thereto in the SP zone.

(n) Condition 17. No building permit for the PUD modification would be issued by the Department of Consumer and Regulatory Affairs ("DCRA") until the Applicant has recorded a Notice of Modification of Zoning Commission Order No. 906 in the Land Records of the District of Columbia. The Notice of Modification shall include true copies of Zoning Commission Order No. 906 and the modification order. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the PUD site in accordance with the modification order and any amendments thereof.

(o) Conditions 18 through 20. No change.

8. The OP recommended approval of the application, concluding that the proposed modifications were consistent with the original project and with recommendations made in OP's final report on the original PUD dated June 6, 2000.

9. By report dated September 9, 2002, D-DOT expressed its support for the relocation of the garage entrance from 16th Street. D-DOT recommended that the driveway to the parking garage be paved with concrete material with different scoring than the adjacent sidewalk.

10. ANC 2B expressed its support for the application, specifically the Applicant's plans to (a) relocate the parking garage entrance from 16th Street to K Street or the public alley; (b) set back the penthouse so that it has a less prominent appearance; (c) add additional green space on 16th Street; and (d) make design changes so the building is more in character with the 16th Street Corridor.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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 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. The requested modifications to the originally approved PUD will carry out the purpose of Chapter 24 of the Zoning Regulations to encourage construction of 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.

3. Approval of this application as a modification to the original PUD is provided for under the Zoning Regulations and is appropriate within this regulatory scheme for carrying PUDs to final completion.

4. The proposed modifications are not a fundamental change to the purpose, benefits, and amenities included in the original PUD but represent an improvement of the PUD approved in Order No. 906. The modifications are consistent with the design and intent of the original PUD.

5. Approval of the application will promote the orderly development of the PUD 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.

6. The proposed modifications enhance the original PUD project through the provision of additional green space and the additional penthouse setbacks along 16th Street; the enhancement of the proposed building, including its relation to 16th Street, and the corresponding special characteristics of the 16th Street Special Treatment Area; the alleviation of traffic concerns along 16th Street; and the responsiveness of the proposed modifications to the community's concerns.

7. The Commission credits the conclusions of OP and D-DOT, as well as the testimony of JBG and Presidential, that the requested PUD modifications will not have an adverse impact on the surrounding community or on the District of Columbia.

8. The Commission notes JBG's commitment to the completion of the PUD, as indicated by its obtainment of building permits in a timely manner and fulfillment of its obligations under Order No. 906 by entering into a construction agreement with the Marshall Heights Community Development Organization and contribution of $280,000 towards the completion of seven (7) single-family homes at the Banneker Ridge project.

9. The proposed PUD modifications are not inconsistent with the District Elements of the Comprehensive Plan for the National Capital. The PUD, as modified, is located within the Central Employment Area and will promote the District as the national center for business and financial activity. The PUD's refined design will maintain and enhance the physical integrity and character of both the 16th Street Special Treatment Area and the District of Columbia as the Nation's Capital.

10. The PUD modifications are also not inconsistent with the Ward 2 Element of the Comprehensive Plan and with the designations in the Generalized Land Use Map for high-density commercial use of the PUD site and for mixed-use, high-density residential/medium-high density commercial use of the 16th Street frontage.

11. The proposed modifications can be approved with conditions that will ensure that the development will not have an adverse affect on the surrounding area.

12. The Commission is required under D.C. Official Code § 1-309.10(d) (2001) to give great weight to the issues and concerns raised in the recommendations of the affected ANCs. The Commission notes that ANC 2B recommended approval of the proposed modifications.

13. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

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 modifications to the PUD approved by Zoning Commission Order No. 906 for the property located at 1000-1010 16th Street, N.W., Square 184, Lot 74 (formerly lots 59 and 842). The approval of these PUD modifications is subject to the guidelines, conditions, and standards set forth in Order No. 906, as amended and supplemented below:

1. Condition No. 2: The modified PUD shall be developed in accordance with the plans prepared by WDG, dated May 22, 2002, marked as Exhibit No. 1, and the revised G-1st drawing attached to Exhibit No. 5 in the record, as modified by the guidelines, conditions, and standards herein.

2. Condition No. 4: Landscaping shall be in accordance with the revised G-1st plan attached to Exhibit No. 5 in the record.

3. Condition No. 5: Retail signage along the 16th Street frontage of the building shall be limited to two signs, neither of which may exceed 30 square feet in area. A building identification sign shall also be permitted. There shall be no more than two retail entrances along 16th Street in addition to the building entry.

4. Condition No. 7: The parking garage entrance shall be located on K Street, or at the option of JBG, at the rear of the building accessed from the rear alley. A minimum of 42 fixed parking spaces or 76 managed spaces shall be provided in the garage. JBG will remove the existing curb cut on 16th Street. There shall be no signage along 16th Street, permanent or movable, noting the location of the garage entrance.

5. Condition No. 8: The valet service shall not be located along 16th Street.

6. Condition No. 10: Managed parking shall be provided in the building.

7. Condition No. 15: The applicant shall have the 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 42 spaces; and

c. To adjust the exact locations of the retail entrances along 16th Street to accommodate the tenant layout. The landscape plan may be adjusted to accommodate the retail entrances.

8. Condition 16: Given the unique nature of this property and the unique circumstances of this case, as described in the Findings of Fact in Order No. 906, this case shall not serve as, and may not be cited as, a precedent for the rezoning to C-4 of any other property zoned SP-2 in the 16th Street corridor or for the introduction of retail uses and entrances thereto in the SP zone.

9. No building permit for this PUD modification shall be issued by the DCRA until the Applicant has recorded a Notice and Acknowledgment of Modification of Zoning Commission Order No. 906 in the Land Records of the District of Columbia in a form satisfactory to the Office of the Corporation Counsel. The Notice and Acknowledgement shall be executed by the owners of the Property and include true copies of Zoning Commission Order No. 906 and this modification order. The Notice and Acknowledgment shall bind the owners of the PUD site (including the Applicant) and any successors in title or interest to construct on and use the PUD site in accordance with Zoning Commission Order 906, as modified by this and any future orders.

10. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the Applicant has filed a certified copy of the Notice and Acknowledgement with the records of the Zoning Commission.

11. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this order. Within such time, application shall be filed for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three (3) years of the effective date of this order.

12. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

Vote of the Zoning Commission was taken at a special meeting on October 17, 2002, to **approve** the application for proposed action by a vote of **4-0-1** (Anthony J. Hood, James Hannaham, Peter May, and John G. Parsons to approve; Carol J. Mitten not voting, having recused herself).

Vote of the Zoning Commission was taken at its public meeting on November 18, 2002, to **adopt** the application for final action by a vote of **4-0-1** (Anthony J. Hood, Peter May, James Hannaham, and John G. Parsons to approve; Carol J. Mitten not voting, having recused herself).

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 DEC 13 2002.

ANTHONY J. HOOD
Vice Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

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