(F)

Government of the District of Columbia
OFFICE OF ZONING

★ ★ ★

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Alberto P. Bastida, AICP
Secretary to the Zoning Commission

DATE: July 10, 2003

SUBJECT: Publication for the Office of Zoning

Please publish the following in the D.C. Register on July 18, 2003:

1. Z.C. Order No. 02-43 (Z.C. Case No. 02-43).

Received By

Date 7/10/03

Attachments

441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001
Tel: (202) 727-6311 • Fax: (202) 727-6072
E-Mail: zoning info@dcoz.dcgov.org • Web Site: http://dcoz.dcgov.org/

ZONING COMMISSION
District of Columbia
Case 02-43
Exhibit 25

ZONING COMMISSION
District of Columbia
CASE NO 02-43
EXHIBIT NO.25

Zoning Commission Order No. 02-43
Case No. 02-43/00-02
(PUD Map Amendment – MedStar Health)
February 24, 2003

Pursuant to notice, public hearing of the Zoning Commission for the District of Columbia was held on January 9, 2003, to consider the application of MedStar Health, Inc. ("MedStar" or the "Applicant"). The application requested final (second-stage) review and approval of a planned unit development ("PUD") and related map amendment to SP-1 and SP-2 for all of the area of Square 3129 that is zoned R-5-A, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations ("DCMR"), Title 11 Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission grants second-stage approval with conditions.

FINDINGS OF FACT

1. On November 4, 1999, MedStar filed an application requesting a map amendment rezoning all of the area within Square 3129 that is zoned R-5-A, a flexible multi-family residential classification, (the "Site" or "PUD Site") to SP-1 and SP-2, medium-density and medium-high-density districts, respectively. The Site is part of Lot 2 in Square 3129 and contains approximately 1,460,851 square feet or 33.53 acres of land area.

2. MedStar filed an application with the Zoning Commission requesting final (second-stage) approval of a PUD and a related map amendment for the PUD site from a Zone District classification of R-5-A to the Zone District classifications of SP-1 and SP-2. The application was assigned Zoning Commission Case No. 02-43 (the "Second-Stage Case") by the Office of Zoning.

3. The Zoning Commission previously granted preliminary (first-stage) approval of the PUD and related map amendment changing the Zoning Map designation of the PUD Site from a Zone District classification of R-5-A to the Zone District classifications of SP-1 and SP-2, subject to certain guidelines, conditions, and standards. Zoning Commission Order No. 969, dated October 17, 2002, reflects the Zoning Commission's decision on that application ("First-Stage Order").

4. Square 3129 contains numerous medical facilities, including the Washington Hospital Center, The National Rehabilitation Hospital, The Children's Hospital National Medical Center, and the Veterans Affairs Medical Center.

5. Lot 2, a portion of which is the subject of this application, is occupied by the Washington Hospital Center and The National Rehabilitation Hospital. The remaining portion of Lot 2 was rezoned by Zoning Commission Order No. 784 (September 11, 1995), in which the Commission approved a PUD and related map amendment to allow the construction and use of the Physicians' Office Building, certain adjunct hospital related facilities, and a parking structure. That PUD also approved a rezoning from R-5-A to SP-1 of approximately 238,928 square feet of land (5.48 acres), which was used predominantly for surface parking. All other areas of Lot 2 remained in the R-5-A district.

6. The Site is located in the northwest quadrant of the District of Columbia and is bounded by Irving Street to the north, Michigan Avenue to the south and west, and First Street to the east. Directly to the north and south of the Site are government facilities that are unzoned, including the United States Armed Forces' and Airmen's Home to the north, the Veterans Administration Hospital to the east, and the Macmillan Reservoir and (old) Sand Filtration site to the south. The reservoir property is operated by the U.S. Army Corps of Engineers. The old Sand Filtration site is owned by the Government of the District of Columbia. The Site slopes approximately fifteen (15) feet from the northwest to the southeast and is forty percent (40%) occupied by buildings and structures, thirty-one percent (31%) paved, and twenty-nine percent (29%) open space.

7. The R-5-A district permits matter-of-right single-family detached and semi-detached dwellings, and, with the approval of the Board of Zoning Adjustment, low-density development of general residential uses including row houses, flats, and apartments to a maximum density of 0.9 floor area ratio ("FAR"), a maximum lot occupancy of forty percent (40%), and a maximum height of three (3) stories/forty (40) feet.

8. The SP-1 district permits matter-of-right, medium/high-density development, including all kinds of residential uses and office development, both to be compatible with surrounding properties, to a maximum height of sixty-five (65) feet, a maximum density of 4.0 FAR for residential use and 2.5 FAR for other permitted uses, and a maximum lot occupancy of eighty percent (80%) for residential uses.

9. The SP-2 district permits matter-of-right, medium/high-density development, including all kinds of residential uses and office development, both to be compatible with surrounding properties, to a maximum height of ninety (90) feet, a maximum density of 6.0 FAR for residential use and 3.5 FAR for other permitted uses, and a maximum lot occupancy of eighty percent (80%) for residential uses.

10. The Applicant assembled and submitted a "Master Plan 2000" for its campus, including the Site, upon which it based its application for the map amendment. That document sets forth the history of the medical uses on the Site; the current zoning scheme; the development objectives of the Applicant for a fifteen- (15) year period; the methodology that was used to assemble the Master Plan 2000; a description of the streets, buildings, topography, political jurisdictions, and comprehensive plan land use designations, adjacent planning considerations, and adjacent zoning considerations; a public and bicycle transportation plan; an assessment of public transportation and bicycle routes; an explanation of existing conditions and a discussion of the programmatic and space needs of the hospital; development guidelines; a discussion of planning alternatives; floor plans; landscape plans; design illustrations, signage plans, circulation, and way-finding designs; and an implementation schedule for the proposed development.

11. The implementation sequences are described as Phase I (the Emergency and Intensive Care Unit addition); Phase II (Laboratory and Administrative addition); Phase III (the Radiology and Mechanical Equipment addition); Phase IV (the Cancer Institute Expansion); Phase V (the addition to the East Building); and Phase VI (the Southeast Complex). Master Plan 2000 suggests three (3) zoning alternatives, labeled "A," "B," and "C". Of these, the Applicant seeks approval, through the PUD process, of Zoning Strategy B which is described at Figure 6.6c of Master Plan 2000. The land area proposed for rezoning to the SP-1 district contains 623,866 square feet. The existing floor area amounts to 537,657 square feet. Rezoning this parcel to SP-1, which has a maximum density of 1.9 FAR, will result in a maximum building floor area of 1,185,345 square feet to a maximum permitted height of sixty-five (65) feet.

12. The land area proposed for the SP-2 district contains 836,985 square feet. The existing floor area on that parcel is 902,972 square feet. Thus, the maximum 3.4 FAR permitted in the SP-2 district under Zoning Strategy B would permit additional floor area of 1,942,792 square feet to a maximum height of ninety (90) feet. Thus, the approval of Zoning Strategy B will result in a maximum total building floor area of 2,845,749 square feet of building space to be used primarily for the medical services and related uses described in Master Plan 2000.

13. On January 25, 2001, MedStar formally adopted Master Plan 2000 as its development guide for the period 2001 to 2020.

14. During the first-stage process, the Applicant submitted a transportation impact analysis, which discusses peak hour traffic counts, roadway capacities under the existing zoning, trip generation rates under the existing zoning and roadway configuration, and trip generation capacities under the proposed rezoning. This study concluded that three (3) of the nine (9) intersections within the immediate vicinity of the Site operated at less than acceptable levels of service, and the existing parking supply is "somewhat inadequate." However, the report goes on to recommend improvements to those three (3) intersections and concludes that

the increased parking supply proposed in the Master Plan 2000 will increase the parking supply to an adequate level.

15. The Applicant testified that it was in discussions with the District Department of Transportation ("D-DOT") to formalize an Agreement to improve nearby roadway capacities and efficiencies. By this proposed agreement, MedStar would provide partial funding for certain roadway improvements that are deemed appropriate and necessary to resolve the intersection and parking supply deficiencies associated with the proposed development plan.

16. Christine Swearingen, MedStar's Senior Vice-President, testified that MedStar is the largest health care system in the Baltimore-Washington region. It consists of seven (7) hospitals, more than 3,000 licensed beds, 22,000 employees, and 4,000 affiliated positions. In Washington, D.C., MedStar operates the Washington Hospital Center, The National Rehabilitation Hospital, Georgetown University Hospital, the Visiting Nurses Association, and MedStar Manor at Lamond Riggs. The Washington Hospital Center was founded in 1958 at its current location as a result of the merger of the old Garfield Memorial Hospital; the Episcopal Eye, Ear, and Throat Hospital; and the Central Dispensary and Emergency Hospital. The Washington Hospital Center is now the District of Columbia's largest health care facility providing the largest number of inpatient/outpatient and emergency services for the residents of the District of Columbia, especially for residents who live east of Rock Creek Park.

17. Ms. Swearingen testified that the developments proposed under Master Plan 2000 were critical to alleviate crowded and cramped facilities, to renovate substandard facilities to modern standards, to replace obsolete facilities, and to improve access to facilities and service areas within the Washington Hospital Center campus. She stated that the density limitations of the existing residential zoning (0.9 FAR) accord the Washington Hospital Center no further latitude to expand facilities. The hospital campus is built to the capacity of the existing R-5-A zoning envelope. She testified further that it is extremely unlikely that the Site would ever be used for the residential purposes for which it is zoned.

18. Clarence Brewton, Jr., MedStar's Vice-President of Regulatory Compliance and Community Development, testified that MedStar held meetings with neighboring residents, its patients, its institutional neighbors, Advisory Neighborhood Commissions, civic and citizens associations, community leaders, elected officials, and oversight agencies to create and comment upon Master Plan 2000. MedStar also surveyed 21,000 households and incorporated those summary views into its Master Plan 2000.

19. Albert G. Dobbins, III, of A.G. Dobbins & Associates, a planning consultant who was recognized as an expert in planning and zoning by the Commission, testified that the proposed rezoning from R-5-A to SP-1 and SP-2 is not inconsistent with the comprehensive plan, supports the theme of the National Capital Planning

Commission's ("NCPC") Extending the Legacy Plan, is in harmony with the surrounding uses and zoning, and is consistent with the past and present uses of the Site and the zoning regulations.

20. Gerald Oudens, of Oudens & Knoop Architects, recognized by the Commission as a expert in planning and zoning, testified to the site development history, the planning methodology of Master Plan 2000, the existing conditions on the Site, functional issues, vehicular access issues, landscaping, the major space needs of the hospital, the gross floor area needs, the development plan objectives, the proposed development plan, and the proposed zoning and phased construction schedule. The specifics of his testimony are included in Master Plan 2000 and in slides submitted into the record by the Applicant on March 15, 2001. (Exhibit Number 20C)

21. Osborne George, of O.R. George & Associates, who was recognized by the Commission as an expert on traffic and parking, testified to MedStar's current site access needs and their impacts on the transportation and parking infrastructure with respect to the proposed development outlined in Master Plan 2000. He also discussed the roadway and parking usage under both the current and the proposed development and the improvements needed at critical intersections to reasonably accommodate MedStar's development plan. The recommended improvements included intersection improvements at Irving and First Streets, N.W., First Street and Michigan Avenue, N.W., and at Michigan Avenue east and west of the Children's Hospital Building. With these improvements, Mr. George concluded that the rezoning and development of the Washington Hospital Center campus site could be undertaken as proposed, without an adverse impact to area roadways.

22. The D.C. Office of Planning ("OP") submitted a report in support of the first-stage application conditioned upon the approval of a letter agreement regarding roadway improvements between MedStar and the D.C. Department of Public Works.

23. Representatives of The Children's Hospital National Medical Center, the Department of Veterans Affairs, Providence Hospital, Catholic University, the D.C. Chamber of Commerce, and the American Heart Association submitted letters to the record in support of the first-stage application.

24. Various citizens, including a Commissioner from Advisory Neighborhood Commission ("ANC") 5C, submitted statements to the record in support of the first-stage application.

25. By letter dated August 16, 2000, ANC 4D recommended that the first-stage application be approved. The letter did not address any particular issue or concern, but noted that the plan did not address the issue of offering some free parking for patients and visitors.

26. By letter dated December 1, 2000, ANC 5C expressed its support for the first-stage application. ANC 5C indicated that approval of the first-stage application "will have negligible adverse impact upon the surrounding residential community." ANC 5C based its conclusion upon traffic control measures already taken by the Applicant as well as the District government and the Applicant's commitment to work with ANC 5C to resolve any traffic or parking issues that might arise. Like ANC 4D, ANC 5C expressed the concern of some of its members, "about the affordability of public parking for visitors and patients of the hospital." ANC 5C therefore recommended that MedStar should either provide a certain amount of free parking or implement a system of discounted parking. These issues were discussed and decided by the Commission in its First-Stage Order No. 969.

27. Ms. Cleopatra Jones, President of the Bloomingdale Civic Association, appeared at the first-stage hearing to express that organization's support for the first-stage application.

28. Several area residents, including a Commissioner from ANC 4D, testified in support of the first-stage application.

29. There were no letters in opposition to the application submitted for the record, and no persons in opposition to the proposal testified at the first-stage public hearing.

30. Pursuant to Chapter 24 of the Zoning Regulations, the Zoning Commission has the authority to consider this application as the second-stage of a two-stage PUD proceeding.

31. On November 4, 2002, the Zoning Commission set this application down for public hearing having found that the conditions specified in the First-Stage Order for consideration of an application for second-stage approval of the PUD had been satisfied.

32. In a pre-hearing submission dated November 8, 2002 (the "Pre-hearing Submission"), MedStar submitted a Statement of Uses, a detailed site plan, landscape and grading plans, floor plans and elevations, vehicular and pedestrian circulation plans, and a statement of compliance with the Zoning Regulations and the First-Stage Order.

33. The Zoning Commission held a public hearing on the second-stage application on January 9, 2003.

34. The record in Zoning Commission Case No. 00-02, from which the First-Stage Order arose, was incorporated by reference into the Second-Stage Case.

35. There were no requests for party status made at the January 9, 2003, hearing or filed with the Zoning Commission.

36. At the hearing on January 9, 2003, MedStar submitted written testimony supplementing the application and the Pre-hearing Submission and provided evidence that it had satisfied each of the guidelines, conditions, and standards set forth in the First-Stage Order and the applicable Zoning Regulations, and required for second-stage approval of the application.

37. By report dated December 30, 2002, and by testimony at the public hearing on January 9, 2003, the Office of Planning determined that the Application was in compliance with the conditions set forth by the Commission in the First-Stage Order and recommended approval of the application provided that D-DOT did not object to the Applicant's plans to implement the transportation improvements and transportation management plan required by Condition 13 of the First-Stage Order.

38. D-DOT determined that it has no objection to the information provided by the Applicant concerning the implementation of the transportation improvements and the transportation management plan required by Condition 13 of the First-Stage Approval Order.

39. ANC 4D submitted a letter in support of the second-stage application.

40. ANC 5C did not appear at the January 9, 2003, public hearing and made no submission into the record of the second-stage application.

41. The Commission finds that the second-stage elements of the PUD project and the related map amendment are in conformance with the comprehensive plan, which designates the site for institutional uses.

42. The Commission finds that the approval of this second-stage application will result in the efficient, economic utilization of the land; will provide improved building design; will create the opportunity for an increase in health care facilities; and will adequately address the protection of the public health, safety, welfare, and convenience.

43. The Commission finds that the Applicant has met the requirements of 11 DCMR, Chapter 24, with respect to second-stage PUDs and has fulfilled the intent and purposes thereof.

44. At the conclusion of the public hearing held on January 9, 2003, the Zoning Commission took proposed action by a vote of 3-0-2 to approve with conditions the Applications and plans presented at the public hearing.

45. The proposed action of the Zoning Commission to approve the application as a second-stage PUD with conditions was referred to NCPC pursuant to the terms of the District of Columbia Home Rule Act. NCPC did not file a report.

46. The Zoning Commission took final action to approve the Applications with conditions at its public meeting on February 24, 2003.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. The development of this PUD carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of all well-planned institutional, commercial, and mixed-use developments that will offer a variety of building types with more attractive and efficient overall planning and design than might otherwise be achieved under matter-of-right development.

3. The development of this PUD is compatible with District-wide and neighborhood goals, plans, and programs and is sensitive to environmental protection and energy conservation.

4. The approval of this application is not inconsistent with the comprehensive plan for the National Capital Area, because it will stabilize the delivery of healthcare services, strengthen the distinguishing characteristics of the area, and increase employment opportunities.

5. The approval of this application is consistent with the purposes of the Zoning Act and the Zoning Regulations of the District of Columbia which include stabilizing land values and improving mixed-use areas.

6. The second-stage application can be approved with conditions, which ensures that the development will not have an adverse effect on the surrounding community or the District.

7. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

8. The approval of this second-stage application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.

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

10. The Zoning Commission has accorded the recommendations and opinions of ANC 4D the "great weight" to which they are entitled. The Commission is required under D.C. Code §1-309.10(d) (2001) to give great weight to the issues and concerns raised in the recommendations of the affected ANCs. ANC 4D did not indicate any issues or concerns, other than to indicate its position in favor of approval.

DECISION

In consideration of the findings of fact and conclusions of law contained in this order ("Order"), the Zoning Commission of the District of Columbia orders APPROVAL of this application as a second-stage PUD for a portion of Lot 2 in Square 3129 and an amendment to the zoning map from R-5-A to SP-1 and SP-2 as set forth in Zoning Strategy B of Master Plan 2000 (Figure 6.6c). The approval is subject to the guidelines, conditions, and standards that were identified and approved in the First Stage Order, which are as follows:

1. The PUD shall be consistent with the Washington Hospital Center, MedStar Health Master Plan 2000, as revised and dated August 2000, and submitted to the Zoning Commission record on April 6, 2001. The following conditions shall also apply to the PUD approval and shall supercede, or be in addition to, any elements of the Master Plan in contradiction to, or silent on these conditions:

    a. The zoning that shall accompany the PUD shall be that shown in Zoning Strategy B, Master Plan 2000.

    b. The total gross floor area shall be limited to approximately 4.5 million square feet (3.1 million square feet of additional gross floor area ("gfa") added to the current 1.4 million square feet).

    c. The density for the 623,866 square foot SP-1 portion of the PUD shall be limited to a cumulative 1.9 FAR, for a total of 1,185,345 FAR-countable square feet.

    d. The density for the 836,985 square foot SP-2 portion of the PUD shall be limited to a cumulative 3.4 FAR, for a total of 2,845,749 FAR-countable square feet.

    e. Although included in the above totals, approval of the square footage for the Southeast Complex-Phase VI building, as indicated in Figure 7.7e of the Master Plan 2000, is withheld pending consideration of FAR for this phase in a later Stage II application for the Phase VI area.

    f. Buildings within the SP-1/PUD shall not exceed sixty-five (65) feet in height.

g. Buildings within the SP-2/PUD shall not exceed ninety (90) feet in height.

h. Sight lines from the United States Armed Forces' Home, as illustrated in the Applicant's submission of March 5, 2001, Tab C, shall be maintained.

i. No more than 2,500,000 square feet of new below-grade, non-FAR-countable space shall be constructed without an approved PUD modification. Permitted uses shall include all uses described in Chapter 4, pages 5-8 and Chapter 7, pages 11-14 of the Master Plan as submitted for the record on April 6, 2001.

j. All uses set forth in Master Plan 2000, including physicians' office space, guest accommodations, and parking garages, shall be permitted as a matter-of-right under the zoning associated with the PUD.

k. The Applicant shall adhere to the following transportation-related conditions. These conditions reflect an agreement reached between the applicant and D-DOT. Although the conditions also include commitments by D-DOT to take certain actions, the Commission has no authority to require D-DOT's compliance. These commitments have been included to assist the public in understanding the process by which these roadway improvements will occur:

(i) MedStar shall implement the transportation management plan outlined in the Master Plan dated August 2000;

(ii) MedStar shall reimburse the District of Columbia Government for 100% of the traffic engineering and construction costs of Roadway Improvements 1 through 4, up to MedStar's Reimbursement Amount, as outlined in the table below:

	Roadway Improvements	**Reimbursement Amount**
1.	Irving Street and Hobart Place at-grade access.	$1.2 million
2.	Irving Street at-grade right turn in and right turn out access to Parking Pavilion I	$75,000
3.	Michigan Avenue at Hospital Center Drive (south) signalization and signage (including interconnection with adjacent signal).	$100,000
4.	Michigan Avenue and First Street signalization and geometric improvements.	$100,000

(iii) MedStar shall pay D-DOT the total Reimbursement Amount of $1,475,000 prior to the issuance of a building permit to construct any structure, that individually, or in combination with existing structures or with other structures not yet built but for which building permits have been applied, would cause the development on the PUD Site to be increased by 300,000 square feet of net building space (including underground or parking facilities) beyond what existed on the date of the final approval of this Order. MedStar shall notify D-DOT prior to filing each application for a building permit for a structure authorized by this final PUD approval, until such time as MedStar makes the full payment set forth above.

(iv) All design plans for Roadway Improvements 1 through 4 are to be reviewed and approved by D-DOT prior to construction;

(v) Roadway Improvements 1 through 4 shall be constructed before any new Certificate of Occupancy is issued to any structure that causes the total development on the PUD Site to be increased by 300,000 square feet of net building space (including underground parking or parking facilities), provided that Roadway Improvements 1 and 4 are constructed by D-DOT in a reasonable time after D-DOT has been notified of MedStar's intention to apply for a building permit;

(vi) MedStar shall, at its own expense, prepare and submit to D-DOT the design plans for Roadway Improvements 5 and 6 consistent with the following table:

Roadway Improvements	**Estimated Construction Cost**	**Due Date for Design Plans**
5. Irving Street and First Street intersection signalization and geometric improvements	$700,000	To be determined by D-DOT
6. North Capitol Street and Irving Street interchange improvements	$800,000	To be determined by D-DOT

(vii) D-DOT shall be responsible for all construction engineering and construction costs related to Roadway Improvements 5 and 6. D-DOT shall seek eighty percent (80%) federal aid funding for the construction engineering and construction costs of these two

projects which will be provided by the District local transportation trust fund, subject to appropriations;

(viii) All design plans related to Roadway Improvements 5 and 6 shall be submitted to D-DOT for review and approval prior to construction.

(ix) D-DOT shall incorporate the design plans for Roadway Improvements 5 and 6 into a contract for the reconstruction of North Capitol Street near Irving Street, N.W.;

(x) Roadway Improvements 5 and 6 shall be constructed before any new Certificate of Occupancy is issued to any structure that individually, or in combination with existing structures or with other structures not yet built but for which building permits have been applied, would cause the development on the PUD Site to be increased by 300,000 square feet of net building space (including underground or parking facilities) beyond what existed on the date of this Order, provided that Roadway Improvements 5 and 6 are constructed by D-DOT in a reasonable time after D-DOT has been notified of MedStar's intention to apply for a building permit;

(xi) There shall be at least five (5) entrances to the Site: three (3) of those entrances shall be via First Street, N.W.; one (1) shall be via Michigan Avenue, west of the Children's Hospital National Medical Center; and one (1) shall be via Kenyon Street/Hobart Street from the west;

(xii) The entrances from the north shall be designed to accommodate approximately sixty-five percent (65%) of the anticipated vehicular traffic to the PUD Site. Of the two (2) entrances from the north, one (1) entrance shall be for direct access to the existing Parking Pavilion I from the vicinity of Kenyon Street; the other primary entrance shall be from Irving Street at First Street; and

(xiii) The entrance from the west side shall incorporate an entry into the Emergency Services Department.

2. This second-stage PUD approval by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, the Applicant must file an application for a building permit as specified in 11 DCMR § 2408.8 to preserve the effectiveness of this Order unless the Zoning Commission otherwise acts to extend the validity of this Order. Construction shall start within three (3) years of the effective date of this Order to preserve the

effectiveness of this Order unless the Zoning Commission otherwise acts to extend the validity of this Order. In the event that the Applicant files an application for a building permit within the two- (2) year period stated in this paragraph, the PUD approved herein shall be valid for a period of ten (10) years from the effective date of this Order.

3. The Applicant shall execute a Memorandum of Understanding ("MOU") with the D.C. Office of Local Business Development prior to the issuance of the first building permit for the phased construction projects that are contemplated by the PUD. The MOU shall be updated prior to the issuance of each subsequent building permit. The Applicant shall abide by the terms of the executed MOU in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project. After the completion of construction of the PUD, the Applicant shall provide a written status report to the Zoning Commission and to the D.C. Local Business Opportunity Commission regarding compliance with the MOU.

4. The Applicant shall be required to execute a First Source Employment Agreement (the "Employment Agreement") with the Department of Employment Services ("DOES") prior to the issuance of the first building permit for the phased construction projects that are contemplated by the PUD. The Employment Agreement shall be updated prior to the issuance of each subsequent building permit. The Applicant shall abide by the terms of the executed Employment Agreement in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After the completion of construction of the PUD, the Applicant shall provide a written status report to the Zoning Commission and to the DOES regarding compliance with the Employment Agreement.

5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, 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., (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familiar 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. Nothing in this Order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Act.

6. The zoning designation approved herein shall not become effective until the covenant required at 11 DCMR § 2409.3 has been recorded.

Vote of the Zoning Commission taken at the conclusion of the public hearing on the second-stage application January 9, 2003: **3-0-2** to **GRANT** second-stage approval (Carol J. Mitten, Anthony J. Hood, and Peter J. May to approve; John G. Parsons and James H. Hannaham, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting held on February 24, 2003, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, James H. Hannaham, John G. Parsons, and Peter G. May to adopt). 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 _____.