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Mary Carolyn Brown
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June 26, 2006

Bill Crews
Zoning Administrator for the
District of Columbia
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol St., N.E., 2nd Floor
Washington, D.C. 20001

Re: Watergate Hotel PUD Covenant
Zoning Commission Order No. 03-16

Dear Mr. Crews:

On behalf of The Watergate Residences, Inc., enclosed please find a copy of the recorded covenant for the PUD Modification for the Watergate. Should you have any questions or need any additional information, please do not hesitate to call me at (202) 862-5990.

Very truly yours,

Carolyn Brown

Carolyn Brown

Enclosure

cc: Sharon Schellin, Office of Zoning (w/ encl.)

ZONING COMMISSION
District of Columbia
CASE NO. 03-16
EXHIBIT NO. 175

ZONING COMMISSION
District of Columbia
CASE NO.03-16
EXHIBIT NO.175

LT1-5-2006072772-1

LT2-0-0-34

PUD COVENANT

THIS COVENANT, made this 28th day of March, 2006, by and between THE WATERGATE RESIDENCES INC., a Delaware corporation (hereinafter referred to as the "Declarant") and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property known as Lot 807 in Square 8 in the District of Columbia (the "Subject Site"); and

WHEREAS, the Declarant filed an application for the modification of an approved Planned Unit Development and the Declarant intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 03-16 effective August 6, 2004; and

WHEREAS, said Chapter 24 and Zoning Commission Order No. 03-16 effective August 6, 2004 further require that the Declarant enter into this Covenant with the District of Columbia assuring the Declarant's development and use of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission") in the Order and any and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, the Declarant and the District agree as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development under Order No. 03-16 effective August 6,

2004, in Zoning Case No. 03-16 (as the same may be amended and/or modified from time to time, the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. As required by the Order, the Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with the conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or the Zoning Commission may authorize, pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. The Declarant covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Declarant, its successors or assigns, should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order, the Zoning Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

3. Default. In the event that Declarant, its successors or assigns fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to section 2408.10, the benefits granted by the Order shall terminate pursuant to section 2400.7 of the Zoning Regulations.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific

covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer holds title to property constituting all or a portion of the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. The Declarant, its successors or assigns shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of the Declarant, its successors or assigns, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, as of the date first written above, Watergate Residences Inc., intending to be legally bound, has caused this Agreement to be executed by Jeffrey T. Neal, its President, and does hereby constitute and appoint Jeffrey T. Neal, as its true and lawful attorney-in-fact to acknowledge and deliver this Agreement as its free act and deed for the uses and purposes herein contained.

WITNESS:

Asheel Shah, Secretary

THE WATERGATE RESIDENCES Inc., a Delaware corporation

By: Jeffrey T. Neal, President

DISTRICT OF COLUMBIA, SS:

BEFORE ME, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Jeffrey T. Neal, personally well known (or satisfactorily proven by the oath of credible witnesses) to me to be the person whose name is subscribed to the foregoing and annexed PUD Covenant bearing date as of March 28th, 2006, who, being by me first duly sworn, did depose and state that (s)he is the President and the duly appointed attorney-in-fact for said The Watergate Residences Inc.., in the foregoing and annexed PUD Covenant, and that he, being duly authorized so to do, executed and delivered the foregoing and annexed PUD Covenant in the name and on behalf of said the Watergate Residences Inc. and acknowledged the same to be its free act and deed for the uses and purposes contained therein.

WITNESS my hand and official seal this 28th day of March, 2006.

Notary Public

[Notarial Seal]

My Commission Expires: 10/14/10

JACQUALENE BROOKE WRIGHT
District of Columbia
My Commission Expires
October 14, 2010

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA,
a Municipal Corporation

Tabatha Braxton

By: Patricia Elwood
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Patricia Elwood, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 25 day of May, 2005 and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 25 day of May, 2006.

Tabatha Braxton
Notary Public, D.C.

My commission expires: _____.

TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

APPROVED:

04.15.06

Office of Zoning ~~Division~~, Department of ADMINISTRATION
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Assistant Attorney General
Office of the Attorney General for the District of Columbia

EXHIBIT A

Zoning Commission Order No. 03-16
(attached hereto)

2587201_v1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION
Z.C. Order No. 03-16
Z.C. Case No. 03-16
(Modification to the Approved Planned Unit Development
for the Watergate Hotel)
June 14, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on March 1 and March 4, 2004, to consider an application from Monument Residential LLC, on behalf of BRE/Watergate LLC, for review and approval of a modification to a previously approved Planned Unit Development (the "Application"). The requested modification would allow the option to convert an existing 250-room hotel, currently operating as the Watergate Hotel, to an apartment house of 133 dwelling units. The Zoning Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Application.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On May 7, 2003, Monument Residential LLC ("Monument"), the contract purchaser, on behalf of BRE/Watergate LLC ("BRE"), the owner (together collectively referred to as the "Applicant"), filed an Application for review and approval of a modification to an approved Planned Unit Development ("PUD") for property located at 2650 Virginia Avenue, N.W. (the "Site"). The Site consists of Lot 807 in Square 8 and is currently zoned SP-2. The Application does not request any change in zoning for the Site. At its June 9, 2003, meeting, the Zoning Commission set this case for hearing.

2. Notice was originally given for a public hearing to be held on November 24, 2003. By letter dated November 3, 2003, the Applicant requested that the hearing be postponed until January 29, 2004. The Commission granted that request and proper notice was given again.

3. At the beginning of the hearing on January 29, 2004, Watergate East, Inc. ("East"), the owner of property abutting the Site and lessor to BRE of certain underground space, described and discussed further herein, requested that the Commission postpone the hearing. East, which is a residential cooperative, advised that its members had participated in a vote to determine East's position regarding the Application and the sale of certain property, that the outcome of the vote was disputed, and that litigation had been filed in the Chancery Court of Delaware to seek the Court's ruling on how the outcome of the vote should be construed. The representatives of East indicated that East could not take a position until the litigation was resolved. The Commission determined to postpone the hearing until March 1, 2004, to await the outcome of the Court's ruling on the matter.

4. The Zoning Commission thereafter held public hearings on March 1 and March 4, 2004.

5. The parties to the case were the Applicant; Advisory Neighborhood Commission ("ANC") 2A, the ANC within which the Site is located; Watergate West, Inc. ("West"), the owner of the adjoining apartment building to the west, which opposed the Application; the Committee of Concerned Owners of Watergate East ("COCO"), which was represented by William B. Wolf, Jr. and which supported the Application; and the Watergate East Committee Against Hotel Conversion to Co-op Apartments, ("Committee Against"), which was represented by Jack H. Olender and which opposed the Application.

6. East applied for party status, but when the hearing commenced on March 1, 2004, East was unable to declare whether it was in support of or opposed to the Application. The Chancellor of the Delaware Court ruled on February 25, 2004, that East was required to conduct a new vote of its members to determine its position regarding the Application. That vote had not occurred by the time of the hearing. Noting that both supporting and opposing positions were represented by COCO and the Committee Against, respectively – the committees of residents which had been admitted as parties -- the Commission denied East's request for party status.

7. The Commission also received requests for party status from Audrey and William B. Wolf, Jr., and Jill and Frederic W. Schwartz, Jr., both in support of the Application. Mr. and Mrs. Wolf are residents of East and Mr. and Mrs. Schwartz are residents of West. Both requested to be admitted as individual parties, separate from any of the entities that had applied for party status. The Commission found that neither couple demonstrated that their interests were likely to be more significantly, distinctively, or uniquely affected than those of other persons in the general public, especially as compared to other unit owners in the apartment buildings in the Watergate project. The Commission also noted that COCO, as a party in support, would essentially present the positions espoused by the two couples.

8. At its May 10, 2004, meeting, the Zoning Commission took proposed action by a vote of 3-1-1 to approve with conditions the Application and plans presented at the public hearings.

9. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated June 3, 2004, found that the proposed PUD would not adversely affect the identified federal interests and is not inconsistent with the Comprehensive Plan for the National Capital.

10. The Zoning Commission took final action to approve the Application on June 14, 2004.

The Site and the Area

11. The Site is situated in Ward 2 at 2650 Virginia Avenue, N.W. and consists of Lot 807 in Square 8. The Site is located southwest of the 2600 Virginia Avenue office building. The Property has no street frontage on Virginia Avenue but has access from Virginia Avenue by means of a driveway that runs between the 2600 office building and the Watergate West apartment building at 2700 Virginia Avenue. The Site faces the Rock Creek and Potomac Parkway but has no access from the Parkway. The site contains approximately 37,897 square feet of land area and is developed with a 250-room hotel consisting of three below-grade levels and fourteen stories above grade.

12. The Site is part of the Watergate complex, one of the first PUDs approved after the adoption of the PUD regulations in 1958. The Watergate complex is bounded by Virginia Avenue on the northeast, the Rock Creek and Potomac Parkway on the west, New Hampshire Avenue on the southeast, and F Street on the south. The overall Watergate complex includes three apartment buildings, two office buildings, a hotel, and interior retail spaces.

13. The Watergate complex is situated in the Foggy Bottom neighborhood, in the northwest quadrant of the city. The area is characterized by a mixture of land uses, predominantly in high-rise buildings, including apartment houses, a dormitory for the George Washington University, office buildings, two gasoline service stations, and the Kennedy Center.

14. The buildings that surround the Site are all part of the Watergate complex. To the northwest, east, and southeast are the three existing apartment buildings. To the northeast is one of the two office buildings. To the west and south are the Rock Creek Parkway and the Potomac River.

15. The remainder of the subject square includes only one small parcel, occupied by a gasoline service station at the corner of Virginia Avenue and Rock Creek Parkway. Immediately across Virginia Avenue to the northeast is a high-rise dormitory occupied by

students of the George Washington University ("GW") and another gasoline service station at the corner of Virginia Avenue and 27th Street. To the southwest, across F Street, is the Kennedy Center for the Performing Arts. To the southeast across New Hampshire Avenue, is the chancery of the Kingdom of Saudi Arabia. Behind the GW dormitory and the chancery are the ramps of the freeway connecting the Whitehurst Freeway and Interstate 66 ("I-66"). Further to the southwest across the freeway is Columbia Plaza, another high-rise mixed-use complex of apartments and offices.

16. The Generalized Land Use Map of the Comprehensive Plan designates the Site in the mixed-use high-density residential, medium-density commercial land use category.

17. The Site is not presently a designated historic landmark nor is it within a historic district. During the course of the proceedings on this case, The Committee to Preserve the Watergate Heritage, Inc., filed an application with the Historic Preservation Review Board to have the entire Watergate complex designated as a historic landmark. No action had been taken on that request by the time the Application was decided by the Zoning Commission.

Zoning and Zoning History

18. The Site is currently zoned SP-2. The SP-2 District permits an apartment house as a matter-of-right; offices and hotels now normally require approval of the Board of Zoning Adjustment as a special exception. The SP-2 District permits a maximum height of ninety (90) feet, with no limit on the number of stories, and a maximum density of 6.0 FAR, no more than 3.5 FAR of which may be used for other than residential purposes. Under the PUD guidelines for the SP-2 District, the maximum height of the project may be ninety (90) feet with a maximum density of 6.5 FAR, no more than 4.5 FAR of which may be devoted to other than residential purposes. Parking for apartments is required at a rate of one space for each four dwelling units.

19. There is no change in zoning requested for the Site.

20. The area southwest of Virginia Avenue is zoned SP-2. The area on the northeast side of Virginia Avenue is zoned R-5-E, with the area northeast of the freeway ramps zoned FB/R-3. The Kennedy Center and the Rock Creek Parkway are Federal property and are not zoned.

21. The original PUD for the Watergate complex was first approved in 1962. The original plan contained a mix of uses and an overall site plan featuring the curvilinear design that is emblematic of the Watergate. The project was divided into four Stages:

- Stage I was the apartment house now known as Watergate East at 2500 Virginia Avenue, containing 301 apartment units and also including approximately 50,000 square feet of retail and service commercial uses above and below ground;

- Stage II was the office building and the subject hotel, at 2600 and 2650 Virginia Avenue, respectively, to also include approximately 25,000 square feet of additional retail and service commercial uses;

- Stage III was the apartment house now known as Watergate West at 2700 Virginia Avenue, containing 143 apartment units; and

- Stage IV was to be an apartment house located along the New Hampshire Avenue and F Street side of the property and was to contain approximately 850 apartments.

22. The total development was to contain approximately 1,600 dwelling units including 1,300 apartments and 300 hotel rooms, 185,000 square feet of office space, 80,000 square feet of retail and service uses, and 1,250 parking spaces. The total density for the entire site was limited to 4.5 FAR, or approximately 1,887,000 square feet of gross floor area.

23. The BZA approved the construction of the project in a series of cases for further processing.

24. The PUD was amended by the Commission in 1968 to change the site plan and uses proposed for Building 1 (Stage IV), to allow up to 260,600 square feet of SP office uses with 325 dwelling units and 24,000 square feet of retail and service commercial uses (Case No. 68-58, order dated December 19, 1968).

25. The PUD was amended again in 1974 to allow general office use in Building 1 (Stage IV) at 600 New Hampshire Avenue (Order No. 100, Case No. 72-23, November 15, 1974) and in 1976 to allow general office use in the Stage II office building at 2600 Virginia Avenue (Order No. 125, Case No. 75-3, February 12, 1976).

26. The PUD was amended again in 1989 to allow for a 2,000-square-foot expansion of the health club in the Watergate Hotel on the B-3 level (Order No. 631, Case No. 89-6M, September 11, 1989). In that approval, the Commission summarized the totality of the project as then consisting of "over 500,000 square feet of office space, a 237-room hotel, 644 apartment units, underground parking, the health club, and a significant amount of retail space. There are 1,240 parking spaces located in a 3-level common garage which serves the entire complex."

The PUD Modification

27. The proposed modification to the PUD is to allow the option to convert the existing 250-room hotel, currently operating as the Watergate Hotel, to an apartment house of 133 dwelling units. The proposed new apartment building would be a cooperative, the same form of ownership as the three existing apartment buildings in the Watergate complex.

The building would continue to contain a restaurant and a health club. All other uses and buildings in the complex would remain as approved and existing.

28. There are currently ninety-five (95) parking spaces available to the existing hotel. The existing eighty-five (85) below-grade spaces would continue to be available to the apartment house. In addition, the Applicant proposes to increase the number of parking spaces for the apartment house to 146. Eleven (11) spaces would be added on the B-3 level in space that is now part of the health club. Thirty-seven (37) spaces would be added on the B-2 level in space now part of the hotel support area. Seven (7) spaces would be added on the B-1 level in space now part of the hotel bar and storage. Six (6) spaces would be added on the surface in carports.

29. The new restaurant would contain a maximum of 3,000 square feet, with approximately 120 seats. The restaurant would be located on the B-1 level of the building and would have no street frontage. The nature and type of service of the restaurant use will be determined in consultation with the residents of the Watergate complex. The restaurant is intended to serve the residents of the project. To the extent that there would be persons who drive to the site, valet parking will be provided for patrons of the restaurant.

30. The proposed modification would not change the exterior components of the existing building in any significant way. The changes necessary to affect the conversion will be mostly internal to the building, resulting in the removal of certain hotel related uses on lower levels and the conversion of the guest rooms on the upper levels to apartments. Exterior changes will include the replacement of existing windows, the removal of induction units in the façade at the balconies and replacement with consistent façade materials, the construction of carports on the surface adjacent to the pool at the rear, the conversion of an existing outdoor asphalt paved area to private terraces for the units on the B-1 level immediately adjacent to that space, and the construction of additional stairways for access from the top floor units to the roof deck.

31. The exterior changes to the building have been approved in concept by the Commission of Fine Arts.

32. The changes to the exterior of the building are minor, limited to the addition of carports adjacent to the pool and certain minor additions to the roof to provide for additional roof access. The area where the parking is to be added is already paved and used for parking. The carports are located below the level of the main floor (which for the subject building is one story above the surface at the rear) and the carports are thus not included in lot occupancy. The carports total approximately 1,026 square feet in gross floor area, which increases the overall density of the entire project by 0.0003 FAR and which increases the density in Stage II by 0.02 FAR.

33. There are already multiple enclosures on the roof for mechanical equipment and building service functions. The Applicant proposes to add stairs to the roof to provide access to

private roof decks from six units on the top floor of the building. Those stairs will be integrated into and alongside of the existing roof structures; there will be no increase in the total number of roof structures. There will also be stucco screen walls attached to the existing roof structures to provide some privacy for the individual roof terraces. All the stair enclosures and screen walls meet the setback requirements of the Zoning Regulations.

34. The height of the existing roof structures varies, with a maximum for the main elevator penthouse at eighteen feet, four inches above the roof. The height of the new stair enclosures is a maximum of eight feet and the maximum height of the screen walls is six feet, four inches. This would create roof structures having walls of unequal height. The new construction on the roof has been held to the lowest possible height, so as to minimize the mass and visual appearance of the new construction. Raising the height of the new penthouses and screen walls to the same height as the existing penthouses would increase the visibility of those structures.

Development Flexibility

35. Except for the roof structures described above, the proposed modification to the PUD will not result in the need for zoning flexibility. Because of the additional stair enclosures on the roof, the Applicant requires zoning relief from the requirements of § 411 of the Zoning Regulations relating to the number of rooftop enclosures and varying heights of the enclosures.

36. Whereas the proposed modification results in additional parking spaces, those zoning requirements will be satisfied without the need for zoning relief. An apartment house in an SP-2 District requires a minimum of one parking space for each four (4) dwelling units; the proposed 146 spaces for 133 units exceeds that requirement. The carports proposed by the Applicant do not require zoning relief. As accessory structures, they are permitted as a matter of right; although the proposed carports will result in an increase in density, the increase is within the range permitted.

Public Benefits and Project Amenities

37. The following superior benefits and amenities will be created as a result of the modification to the PUD:

a. Residential development, in an area of the city that needs additional long-term residents, provides significant benefit to the neighborhood and the District as a whole and satisfies the requirements of Chapter 24;

b. The exterior configuration of the existing building will be retained, and the project will continue to conform to the overall landscaping and design scheme of

the Watergate complex. The curvilinear nature of the design remains a distinctive feature, not often duplicated in Washington architecture;

c. The building will continue to include the health club and a restaurant on the lower levels. These are uses of special value to the existing residents of the Watergate complex; and

d. By letter dated March 4, 2004, as supplemented by material in the Applicant's post-hearing submission, in consultation with the Office of Planning, the Applicant agreed to provide 3,000 square feet of affordable housing in the District of Columbia, by contributing $250,000 to an affordable housing provider to renovate existing space not now occupied.

Office of Planning Report

38. By report dated January 19, 2004, and by testimony at the public hearing held on March 1, 2004, the Office of Planning ("OP") provided its comments to the Commission on the proposed PUD modification. In its written report, OP advised that it was not able to provide a recommendation to the Zoning Commission, because the Applicant was not able to provide assurance that it had obtained what OP considered to be necessary approvals from the owners within the Watergate complex. OP further stated that, if these approvals are provided, OP would have no objection to the proposed modification to the PUD. As will be discussed later, the Commission has concluded that the concurrence of the other owners is not required for it to consider and approve this modification. The Commission therefore construes OP's position to be in support of the Application.

39. OP noted that the Applicant had not demonstrated that that it met all of the specific requirements of the Zoning Regulations for a PUD in the SP-2 District, particularly including rooftop enclosures, residential recreation space, lot occupancy, and parking. In a supplemental submission made on February 18, 2004, and in the report and testimony of the Applicant's land planner, the Applicant addressed the specific compliance issues identified by OP; for example, the requirements relating to residential recreation space (§ 533.4), lot occupancy (§ 532), and parking (§ 2101.1). Except for the roof structures (addressed in Findings No. 33 – 35 of this Order), the proposed PUD modification meets the technical requirements of the Zoning Regulations.

40. OP noted that the proposed modification met the specific applicable criteria of Chapter 24 of the Zoning Regulations. OP found that the proposal would have limited, if any, negative impacts on the surrounding area or on the operation of the city as a whole. OP found that the PUD modification would not be inconsistent with the Generalized Land Use Map or with Comprehensive Plan land use or housing objectives. OP found that the proposed modification would not lessen any of the benefits afforded by the original PUD and would provide additional housing.

District Department of Transportation Report

41. In its report dated February 24, 2004, the District Department of Transportation ("DDOT") reviewed the impact of the proposed modification. DDOT concluded that the proposed conversion of the hotel to apartments will generate fewer automobile trips and will have a positive impact in terms of capacity and level of service in the area road network. DDOT also concluded that the proposed level of parking supply would be adequate to meet the parking demand of this project with little or no spillover into surrounding areas.

ANC 2A Report

42. By resolution dated January 27, 2004, Advisory Neighborhood Commission ("ANC") 2A voted to support the Application for the following reasons:

a. The conversion would mostly involve interior renovations to the building to change the hotel rooms and facilities to apartment units;

b. The building would continue to contain a health club available for use by all residents of the Watergate and a restaurant on the B-1 level of approximately 3,000 square feet, accommodating approximately 120 seats;

c. The conversion would involve no substantial change to the exterior appearance of the building, involving some small rooftop additions and six carports to be added to the surface at the rear;

d. The Commission of Fine Arts has granted conceptual approval to the exterior alterations;

e. The Applicant agreed that the new apartment building would be offered for sale as a cooperative, the same form of ownership as the units in the three existing apartment buildings in the project;

f. A majority of the East cooperative members voted to sell to Monument the space that the current owner now rents from East and to support the Application;

g. Watergate South, Inc. supports this application;

h. The ANC has long desired an increase in the number of permanent residents within the boundaries of the ANC, and the proposed PUD modification would eliminate 250 transient hotel units in favor of 133 apartment units, which would accommodate several hundred permanent residents;

i. The change from hotel to apartment house use would likely result in less traffic generated from the building;

j. The Comprehensive Plan Generalized Land Use Map includes the subject property in the mixed-use high-density residential, medium-density commercial category, and the proposed change to apartment house use would be not inconsistent with that designation; and

k. The property is zoned SP-2, which would permit an apartment houses as a matter-of-right but for the original approval of the PUD.

43. The Zoning Commission afforded the views of the ANC 2A the "great weight" to which they are entitled.

Parties, Persons, and Letters in Support

44. The COCO, represented by William B. Wolf, Jr., supported the Application.

45. The Foggy Bottom Association, through the testimony of Barbara Spillinger, supported the Application.

46. Numerous individual residents from the Watergate cooperatives and from elsewhere in the area testified and wrote letters in support of the Application.

47. Watergate South, Inc., the third of the Watergate cooperatives, by letter dated January 27, 2004, supported the Application.

48. Subsequent to the ruling of the Delaware Court, a second meeting was convened of the members of the East cooperative on April 12, 2004. At that meeting, a majority of the members of East voted to sell to Monument the below-grade space currently leased to the hotel and voted to support the Application.

49. The bases for the support of the Application were generally that:

a. The addition of permanent residents, in place of transient hotel guests, would be good for the project and good for the city;

b. The sale of the below-grade space in East to the Applicant would be beneficial economically to East;

c. The Applicant has agreed to set up the new apartment building as a cooperative, the same form of ownership as the existing apartment buildings; and

d. The project would continue to include a restaurant and the health club, two uses that are highly valued by Watergate residents.

Parties, Persons, and Letters in Opposition

50. West and the Committee Against, parties in opposition, consolidated their presentation for testimony at the hearing.

51. Numerous individual residents from the Watergate coops and from elsewhere in the area testified and wrote letters in opposition to the Application.

52. The bases for the opposition to the Application were generally that:

a. The project is a mixed-use project that has always had a hotel and the hotel use should be continued;

b. The hotel is an amenity to the project and to the residents;

c. The Comprehensive Plan calls for the retention of existing hotels;

d. The proposed apartment house would generate more traffic than the existing hotel;

e. The proposed apartment house would not be as economically advantageous to the District as suggested by the Applicant;

f. The Applicant had not guaranteed that the health club and the restaurant would be continued;

g. The Applicant had not demonstrated that the hotel was not economically viable and therefore there was no basis to change the use to an apartment house; and

h. The Applicant was not registered to do business in the District of Columbia.

Consistency with the Comprehensive Plan

53. Through its land planning expert, the Applicant argued that the project is not inconsistent with the Comprehensive Plan. The Applicant presented the following points:

a. The proposed development is consistent with the Generalized Land Use Map, which designates the PUD Site for high-density residential and medium-density commercial uses.

b. The Project is consistent with the Comprehensive Plan's major themes as follows:

1) Stabilizing and Improving the District's Neighborhoods: The conversion of a hotel into a multi-family residential building will provide an increased sense of community in the Foggy Bottom neighborhood. It will provide additional

housing opportunities in an area immediately outside of the Central Employment Area.

2) Reaffirming and Strengthening District's Role as an Economic Hub: The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The Project takes advantage of this asset by its proximity to the Foggy Bottom Metrorail Station.

c. According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. The subject property supports the housing goals of the Comprehensive Plan and furthers the total urban living system of the District through its proximity to the Foggy Bottom Metrorail Station and its provision of multi-family residential units and on-site retail and service uses.

d. A basic philosophy of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. The location of the project in proximity to the Foggy Bottom Metrorail Station furthers this goal, as does the mixed-use nature of the development. The project also supports the District's goal of adequate parking through its provision of 146 parking spaces for 133 residential units, a ratio that exceeds the minimum requirement for parking in an SP-2 District, where only thirty-seven spaces would be required for 146 units. The parking is provided in a three-level, below-ground garage.

e. The Transportation Element of the Comprehensive Plan also states that reverse commute options that will provide District residents with access to the regional job market should be provided. The proximity of the subject property to I-66 and the Theodore Roosevelt Memorial Bridge, in addition to the Foggy Bottom Metrorail Station, will provide District residents with easy access to suburban job markets.

f. The Urban Design Element states that it is the District's goal to "promote the protection, enhancement and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient." As the project involves a use conversion of an existing hotel, the building will maintain its consistency with the surrounding area in terms of materials, height, scale, and massing. The project's

massing and scale are already sensitive to the established patterns of development in the area.

g. The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail Stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. The Site furthers this goal due to the subject site's proximity to the Foggy Bottom Metrorail Station.

h. The Project fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 2, as follows:

1) The Ward 2 Economic Development Element seeks to enhance the image of the ward as a place to do business and to reside. The proposed development creates additional residential opportunities in the ward while increasing income and property tax revenues to the District.

2) The Ward 2 Housing Element encourages the provision of new housing to meet the needs of present and future District residents at locations consistent with the District land-use policies and objectives. The proposed development furthers this goal through the development of high-quality housing in a mixed-use area that is in close proximity to Metrorail.

3) The Ward 2 Housing Element further states that the District government shall improve neighborhood-level commercial services throughout the ward while protecting residential neighborhoods from disruptive uses. The proposed development creates both additional housing that will enhance the residential neighborhood and neighborhood-level retail and service uses that will support the residents.

4) Ward 2 is located at the center of the District and at the focal point of the Metrorail system, bus lines, and the city's freeway and arterial street system. Although its location provides great benefits to the residents and employees of Ward 2, it also creates some adverse impacts on quality of life. Parking within the ward is identified as a major problem due to evening visitors, student parking, and the lack of parking provisions for many residential dwellings. This element of the Comprehensive Plan encourages strict adherence to the current parking requirements of the zoning regulations. The proposed development will include 146 parking spaces for 133 residential units, providing adequate parking for the residents of the apartment building.

5) Primary objectives of the Ward 2 Residential Land Use Element include the conservation and enhancement of existing residential neighborhoods and the creation of new residential neighborhoods. Specifically, the Foggy Bottom and

West End residential neighborhoods are to be maintained and enhanced. The project supports the Residential Land Use Element of the Comprehensive Plan by creating the opportunity for a new residential use that will significantly enhance the character of the neighborhood.

54. West and the Committee Against argued that the proposed elimination of the hotel is contrary to sections of the Ward 2 Plan Element that encourage "continued improvement of existing hotels." The opposition further argued that the PUD is not in a housing priority area and that the loss of hotel jobs is contrary to the economic goals of the Plan.

55. OP testified that the project would not be inconsistent with the Generalized Land Use Map or with Comprehensive Plan land use or housing objectives.

56. The Zoning Commission finds that focusing on the particular sections of the Ward 2 Element of the Plan concerning existing hotels, without reference to other parts of the Plan, does not yield a complete picture of the goals, objectives, and policies of the Plan. While the "continued improvement of existing hotels" is a Ward 2 Plan objective, the Land Use Element of the Plan stresses the promotion of housing. The District Elements of the Comprehensive Plan are set forth in Title 10 of the D.C. Municipal Regulations, and include General Provisions, city-wide elements related to Economic Development, Housing, Environmental Protection, Transportation, Public Facilities, Urban Design, Preservation and Historic Features, Downtown, Human Services, and Land Use, as well as eight ward plans.

57. The General Provisions Element of the Plan instructs how to interpret the District elements:

a. "The primary dynamic of the District elements of the Plan is the overlapping of its elements' goals. This overlapping is intentional." (§112.1)

b. "District elements of the Plan should be studied and executed in concert with each other and should be interpreted broadly." (§111.(a))

c. "The interpretation and implementation of any element should necessarily rely upon, and be respectful of, the objectives and policies of other elements." (§112.1(b))

d. "An element may be tempered, even defined, by one (1) or more of the other elements. This may occur within one (1) element and between elements. Since the Land Use element integrates the policies and objectives of all other District elements, it should be given greater weight than the other elements." (§112.1(c))

e. "The interpretation of the District elements of the Plan should also be guided by the major themes set forth in §101.1, which establish the overall priorities of the District elements of the Plan." (§112.2)

58. Accordingly, the Commission finds that the Plan must be read as a whole, and reliance on a narrow, isolated portion of the Plan to assess compliance is inconsistent with the above-cited provisions.

59. The Commission finds that the broader reading of the entire Comprehensive Plan, both city-wide and Ward 2 Element provisions, places the stronger emphasis on housing. The Housing Element is replete with references to the production of new housing. The Generalized Land Use Map of the Land Use Element designates the site in the mixed-use high-density residential and medium-density commercial category. While a broad range of uses could fit within that designation, including commercial, hotel, and residential, the Commission finds that the density categories (high residential vs. medium commercial) suggest a preference for residential and that changing the hotel to an apartment house would not be inconsistent with this land use designation.

60. The Commission further finds that the overall thrust of the hotel provisions of the Ward 2 Element is to locate hotels at appropriate locations, particularly citing locations near the new Convention Center north of Mount Vernon Square. While §1333.1(a)(1) speaks to encouraging continued improvement of existing hotels, the Commission finds that, considered in the overall context of the Plan, that section cannot be read to prevent the conversion of an existing hotel to another favored use, such as residential.

61. The Commission therefore finds that the proposed PUD modification is not inconsistent with the Comprehensive Plan.

Economic Benefits of the Modification

62. The Applicant submitted a written study performed by Basile Baumann Prost & Associates, Inc. ("BBP"). James Prost presented testimony at the hearing, and BBP submitted additional material as part of the Applicant's post-hearing submission (in total, the "economic analysis") concerning the fiscal and economic benefits that would accrue to the District of Columbia if the Application was approved. The economic analysis compared the economic and fiscal benefits that are derived from the existing hotel operation to those benefits that would result from an apartment house on the site.

63. The economic analysis determined that the existing hotel has 228 on-site jobs and 122 indirect jobs generated by the economic activity that occurs on-site, for a total of 350 jobs. The hotel's employment generates an aggregate annual payroll of more than $10.8 million and the wages and salaries of employees generate $5.3 million in consumer expenditures within the District. The economic analysis further determined that the existing hotel generates $3.2 million annually in tax revenue.

64. The economic analysis estimated that the renovation of the building necessary to convert it to an apartment house would create 56 direct on-site jobs and 52 indirect jobs and would generate approximately $460,000 in tax revenue to the District.

65. The economic analysis further estimated that, once completed and fully occupied, the apartment house would create 41 direct on-site jobs and 412 indirect jobs as a result of expenditures by residents in the District, for a total of 453 jobs. The apartment house was estimated to generate $4.1 million in annual tax revenue, including about half of that total in income taxes paid by residents.

66. On an ongoing basis, after the one-time benefits during the construction period, the economic analysis concluded that converting the hotel into an apartment house would yield a net increase of 103 jobs overall, with most of the new jobs created as a product of residents' expenditures within the District. There would be an estimated increase of $26 million in consumer expenditures. Annual tax revenue to the District would increase by more than $900,000.

67. The economic analysis concluded that the conversion of the hotel to an apartment house will meet District economic development and housing objectives, and that the conversion will contribute substantively to the tax revenues and the economy of the District.

68. The conclusions of the economic analysis were consistent with those of the Rivlin Report and other economic studies that taxpaying residential development is highly beneficial to the District and offers a way to increase the overall fiscal stability and tax base of the District.

69. West and the Committee Against argued that the economic analysis overstated the benefits that would result from the apartment house conversion by using unrealistic assumptions about where residents would spend money, what percentage of the residents would pay income taxes to the District, the percentage of future hotel guests who would choose to stay in other hotels in the District, and the ability of present hotel employees to find new jobs in the District. The opponents presented no substantive evidence or expert testimony to contradict the findings of the economic analysis.

70. The Zoning Commission finds that the economic and fiscal benefit to the District from the conversion of the hotel to quality residential use stems from a variety of factors: the significant capital investment and hence construction period benefits; the transfer of the on-site hotel demand, and hence economic impact, to other, better-located hotels in the District; and, primarily from the new permanent households on site, who will live, spend, work, and pay taxes to the District.

71. The Zoning Commission finds that residents who occupy high value units have significant positive economic and fiscal impacts for the city. These residents have high incomes that generate significant local income tax and their units generate high property

taxes. These residents make significant local purchases that generate local sales taxes and in turn create demand for retail and other service, and retail and service jobs. These expenditures and jobs in turn create economic spin-offs or multiplier impacts that create an entire cycle of economic benefits. These residents, at the same time, generate relatively minimal new service costs to the District in terms of such high cost public services as education and human services.

72. The Zoning Commission concurs in the importance of bringing new high-income households into the District to grow the District's tax base. This means increasing the income, spending, and wealth of the existing population and enlarging that population. The Commission finds that virtually all economic and development reports on the District note that upper income households with no children contribute significantly and positively to the District's overall economic health.

73. The Zoning Commission finds that the economic analysis was conducted in accordance with standard methodology based upon and accepted and used by the Federal and District governments. The Commission credits the results of the economic analysis and finds no alternative substantive information in the record. The Commission further finds that the results of the analysis are so strongly positive for the city that, even if some of the background assumptions for the economic analysis were changed and the results were further discounted, the fiscal and economic benefits for the city would still be better than what the current use provides.

74. With respect to the potential loss of the existing hotel jobs, the Zoning Commission finds that even if the Commission disapproves this Application, there is no guarantee that the existing hotel will remain in operation. The Commission further finds that the hotel has lost its competitive position in the hotel market to newer, better-located hotels.

75. The Zoning Commission finds that denial of the Application will not cause the hotel's position to improve and will not guarantee the retention of existing jobs.

76. The Commission finds that the hotel market in the District of Columbia is comparatively strong and that there is a substantial likelihood that the existing hotel demand will shift to other hotels nearby and elsewhere in the District of Columbia, causing those hotels to seek additional employees to service that demand.

77. The Commission finds that the total number of direct and indirect jobs, including jobs located in the District and/or jobs held by District residents, generated by the proposed apartment house use, will be more than the number generated by the hotel, even though the type and location of those jobs will be different.

Ability of the Applicant to Carry-Out the Modification

78. The Committee Against argued that the Applicant was not registered to do business in the District of Columbia and that it was therefore unable to carry out the plan for which it sought approval. The Committee Against likewise argued that, because East had not approved the sale to Monument, the Applicant could not proceed with the development as proposed.

79. The Applicant responded that Monument did not have to be registered to do business in the District just to own real or personal property or to maintain bank accounts, that Monument intended to assign the contract to purchase the property to an affiliated LLC that would actually undertake the development, that such a procedure was typical of real estate development practices, and that the new entity would be registered in the District at such time that it undertakes any activities which would require it to be registered. Notwithstanding its legal position that Monument did not have to be registered in the District, as part of its post-hearing submission, the Applicant advised that Monument was registered with the District of Columbia and submitted a Certificate in Good Standing, dated March 30, 2004, for Monument from the Department of Consumer and Regulatory Affairs.

80. With respect to the ability to proceed if it does not own the below-grade space, the Applicant argued that it has the right under BRE's lease with East to use that space for an additional sixty-one years. The Applicant is prepared to go forward with the development if the space can only be leased for that period, believing that is economically feasible and prudent to do so. However, the vote of East on April 12, 2004, to agree to the sale and support the proposed modification, will allow the Applicant to conclude the purchase from East and eliminate any concern about the ability to go forward.

81. The Zoning Commission finds that the questions about the Applicant's ability to proceed with the project are outside the Commission's purview. Whether a corporation needs to be registered is not a land use matter. Other agencies of the District can determine whether registration is required and take action if a violation is found. In any event, this issue is moot because Monument appears to be in good standing in the District of Columbia.

82. With respect to the leased parking space, the Commission need not determine the rights and obligations under the lease between East and the Applicant. The Applicant has proffered that it will provide sufficient parking for the apartment building and such parking is a condition of approval of this Application. The Commission notes that East's agreement to sell the below-grade space to the Applicant appears to render this question moot in any event.

Compliance with PUD and Zoning Standards

83. West and the Committee Against argued that the hotel was originally considered as an amenity for the PUD and that eliminating the hotel would undercut the basis for approval of the original PUD. The opponents further argued that the original PUD envisioned a complementary, integrated mix of uses and that removing the hotel from that mix would undermine the integrity of the whole project. The opponents further argued that the Applicant had not proven that keeping the hotel would constitute an economic hardship for its owners.

84. The Applicant observed that, at the time the PUD was approved, the portion of the Zoning Regulations covering PUDs were different from the current Regulations, which were adopted in 1995. The Regulations in 1962 did not contain a balancing test between the development incentives or the degree of flexibility requested by an applicant and the benefits or amenities offered as part of an application. The concept of amenities was not added to the Regulations until 1979 and the balancing of amenities and benefits was not added to the Regulations until 1995. Consequently, the Applicant argued that a hotel could not have been offered as an amenity to satisfy the Regulations in 1962, because amenities were not part of the Regulations. While the mixed-use character of the PUD was integral to its approval, the loss of the hotel use will not change the project's mixed-use character. Because of the continued office building, retail, restaurant, and health club uses, the proposed modification will not result in a project that is purely residential.

85. In its original statement, in its pre-hearing statement, in testimony at the hearing, and its in post-hearing submission, the Applicant further set forth its arguments in support of the proposed modification and demonstrated how the project met the requirements of the Regulations.

86. The Applicant noted that the project as first approved had a much larger residential component than resulted from the project as modified and built. Allowing an increase of 133 apartments would bring the total number of units closer to but still well below the originally contemplated number of residential units.

87. OP reported that the project met the standards of the Regulations except for roof structures and parking for the proposed restaurant and that the proposed modification was acceptable in those two areas as well.

88. The Zoning Commission finds that a hotel was an important component of the project as originally conceived. But the Commission also finds that allowing the hotel to be converted to apartments would strengthen the residential component of the mix of uses. The Commission finds that PUDs are not static. They are dynamic elements, the composition of which is often adjusted to reflect changes in markets, economics, and project and community needs. In the Foggy Bottom community, with the decrease in the number of permanent apartment units and the increase in the number of hotel rooms at

other locations, the Commission finds that adjusting the mix to increase the number of apartments is an appropriate action in the current climate. The Regulations allow for modification of a PUD precisely because of the need for flexibility. The subject PUD has been modified previously in response to changed conditions.

89. The Zoning Commission finds that the hotel was not an amenity to the overall project, as amenities are now defined and considered in Chapter 24 of the Zoning Regulations. While the hotel may have been discussed in marketing and newspaper accounts as an amenity, that term was not incorporated into the Regulations until much later. Moreover, under current Zoning Regulations, the Watergate Hotel would have required special exception approval, whereas the proposed apartment house use can be commenced as a matter of right. It is counterintuitive to suggest that the preservation of a use that now requires a special except should be favored over the establishment of a use that is permitted by right.

90. The Zoning Commission further finds that the Applicant is not required to prove that keeping the hotel would cause a hardship. This application is not for a variance and the Applicant is not required to establish a practical difficulty or hardship. The Applicant is seeking a modification to an approved planned unit development. Chapter 24 requires that such modifications "meet the requirements for and be processed as a second stage application." 11 DCMR § 2409.9. Nowhere does Chapter 24 mandate an inquiry into an applicant's motivation for undertaking a particular development. Here, the Applicant has proposed an appropriate alternative use that is a "high quality development[] that provide[s] public benefits", 11 DCMR 4200.1. The Applicant has to meet its burden of complying with the standards of Chapter 24, and the Commission finds that the Applicant has met that burden.

91. The Zoning Commission further finds that this Applicant is not required to secure the consent of all property owners for modification of the PUD. The Zoning Regulations do not require the consent of owners and, in practice, the Commission has not required unanimous consent of the owners of property within a PUD before approving a modification. In fact, the Zoning Commission may rezone property over the objection of a property owner, so long as the owner is given an opportunity to be heard. Nothing in this order will result in a zoning change affecting the other owners' properties[2]. Nevertheless, the other owners have been afforded a full opportunity to make their views known, all of which have been discussed at length in this Order. Nothing more is required.

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[1] Approval of the original PUD did not require a covenant binding all owners and successors-in-interest to the conditions of approval. Thus, the project owners never recorded such a covenant in the land records. The Commission does not decide here whether it would require the consent of all co-owners if such a covenant were in place. However, the covenant that will be required as a condition of this Order will only required the signature of the owners of the site.

92. The Commission finds that the Applicant met its burden of proof under the current regulations. The relief that the Applicant seeks relative to the underlying SP-2 District is minor. The proposed apartment house use is normally permitted as a matter-of-right and therefore is a favored use. The existing hotel use is now normally a special exception, and therefore is less favored. The deviations requested by the Applicant are minor, related to the number and height of roof structures. The benefits and amenities proposed by the Applicant, as set forth in Finding No. 37, above, are more than adequate to balance the approval requested.

Traffic Impact

93. Through the report and testimony of its expert traffic consultant, Wells & Associates, the Applicant demonstrated that the proposed change in use would not have an adverse effect on traffic. The Applicant's traffic consultant concluded that the proposed apartment house would generate fewer vehicle trips during the morning and evening peak hours than the existing hotel. The proposed residential use would be served by the same access and circulation systems as the existing hotel. The proposed apartment building would have more than one parking space for each apartment unit, which exceeds the requirements of the Zoning Regulations of one space for every four units. The Applicant's traffic consultant concluded that the public street network will adequately accommodate the proposed residential use and that the trips generated by the proposed use would have an insignificant effect on the traffic volume already present on Virginia Avenue.

94. West and the Committee Against presented their own traffic expert, Joe Mehra. Mr. Mehra argued that the Applicant's traffic analysis was flawed, because it relied on projections of traffic for the Hotel and did not count the actual number of trips at the Hotel driveways. Mr. Mehra's observations of traffic indicated that the hotel actually generated less traffic than was estimated and that the proposed use would therefore generate relatively more traffic than the existing use.

95. DDOT concluded that the proposed conversion of the hotel to apartments will generate fewer automobile trips and will have a positive impact in terms of capacity and level of service in the area road network. DDOT also concluded that the proposed level of parking supply will be adequate to meet the parking demand of this project with little or no spillover into surrounding areas.

96. The Zoning Commission finds that the analysis performed by the Applicant's traffic expert, the conclusions of whom were confirmed by DDOT, is a credible and internally consistent analysis. The Commission is not persuaded by the testimony of the opponents' expert, who counted trip volumes at the existing hotel driveways. In so doing, Mr. Mehra did not count all of the trips that are generated by the existing hotel, excluding trips that end in parking garages, on street, or other than in the driveway areas. Further, Mr. Mehra used estimated values for the proposed apartment house and did not use actual numbers for the existing apartment buildings. The Commission further finds that Wells &

Associates' conclusion that the 133 proposed apartment units would generate fewer trips than the existing hotel is consistent with the building population of both uses. In total, the existing hotel is occupied by 377 guests and staff on an average day and the proposed apartments would be occupied by only 170 residents and staff on an average day.

97. Accordingly, the Commission finds that the impact on traffic would be lower with the proposed use than with the existing use. The Commission further finds that the number of trips generated would have no significant effect on traffic, given the existing traffic volumes present on Virginia Avenue.

The Health Club and the Restaurant

98. West, the Committee Against and other opponents argued that the conversion of the hotel would result in the loss or diminution of valuable community resources: the hotel itself, the restaurant, and the health club. Much of the opposition concern revolved around the Applicant's perceived failure to guarantee the future operation of the health club.

99. The Applicant's proposal identifies space on the B-1 level for a restaurant and on the B-3 level for the health club. The Applicant will construct the space for the restaurant, and in the case of the health club, will renovate, improve, and fit out the existing space. The future operation of those spaces will not be in the hands of the Applicant. The management, levels of service, and operation of those uses will be determined by the future owners of the new apartment house. The Applicant has provided a mechanism to include the residents of the current apartment houses in making the decisions about the future of those facilities, should the existing cooperatives want to be involved in those decisions.

100. The Zoning Commission finds that the Applicant has made appropriate arrangements to continue the two components of the existing hotel deemed most critical by most of those who testified, namely, the health club and the restaurant. The Commission will require by condition made a part of this Order that the Applicant provide the spaces for the two uses. Future control of the operation of the restaurant will be vested in the Watergate Council, which is comprised of the ownership interests of the apartment and office buildings. Future control of the operation of the health club will be vested in the membership of the club, which includes each of the cooperative share owners of the proposed apartment building and any other share owners of the three existing cooperatives who chose to join the club. As to the hotel, as set forth in Finding No. 87, changing the hotel to an apartment house is an appropriate reinforcement of the residential component of the Watergate complex. There are other existing hotels nearby in the Foggy Bottom/West End area that can accommodate demand for hotel rooms from Watergate residents.

Response to Issues and Concerns of ANC 2A

101. In its report, ANC 2A supported the Application based on the issues and concerns set forth in Finding No. 41. The Commission concurs with the findings and recommendations of the ANC. In particular, the Zoning Commission gives great credence to the ANC's desire to obtain more permanent residents. Replacing 250 transient hotel units with 133 apartment units will be another step to counter the loss of dwelling units, which has been an issue for the Foggy Bottom neighborhood for some time.

CONCLUSIONS OF LAW

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

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this Application as a modification to the approved PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. The Zoning Regulations do not require the consent of all owners within an approved PUD in order to modify that PUD.

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

4. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the change in use within the existing building will not cause any adverse effect on any nearby properties. Apartment use for this building is appropriate on this Site, which is located in a zone that otherwise permits multiple dwellings as a matter-of-right. Allowing the hotel to be converted to an apartment house will not upset the mix of uses in the overall PUD. The impact of the project on the surrounding area is not unacceptable. Accordingly, the Application should be approved.

5. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.

6. The Application does not seek significant development incentives or flexibility beyond what the Zoning Regulations ordinarily require. The amenities and benefits provided are a reasonable trade-off for the change in use, particularly given that the proposed development requests no development incentives from the existing underlying matter-of-right zoning other than minor zoning relief relating to the roof enclosures. The use, height, bulk, and design of the proposed development are appropriate for all sides and all contexts of the building.

7. Approval of the Application is appropriate, because the proposed development is consistent with the present character of the area.

8. Approval of this modification to the approved PUD is not inconsistent with the Comprehensive Plan, including the designation of the Site as mixed-use high-density residential and medium-density commercial.

9. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission has done so and concurs with the ANC's position that the Application should be approved.

10. The approval of the Application will promote the orderly use and development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

12. Ordinarily a covenant is not required as a condition to a PUD modification order. This is because a covenant usually has been recorded pursuant to the original PUD, which subjects the owners, or their successors, to abide by the conditions of all future amendments. However, no such covenant was required or recorded at the time of the original approval of this PUD. Chapter 24 mandates that all non-minor PUD modifications meet the requirements for and be processed as a second stage application, 11 DCMR § 2409.9. Subsection 2409.3 precludes the Zoning Administrator from approving a building permit authorized by a second stage order until a covenant is recorded in accordance with that subsection. Therefore, the Commission must require that such a covenant be recorded with respect to this modification. For the purposes of satisfying § 2409.3's requirements that the "owner or owners" sign the covenant, the Commission concludes that only the owner or owners of the site to which the modification applies must execute the instrument, since they are the only persons who will be bound by the covenant's declarations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for modification to an approved Planned Unit Development for property located at 2650 Virginia Avenue, N.W., in Square 8, Lot 807. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant may convert the existing building to an apartment house to be owned and operated as a cooperative.

2. The conversion shall be accomplished substantially in accordance with the plans and computations dated February 17, 2004, marked as Exhibit No. 55 in the record, as modified by the guidelines, conditions, and standards herein.

3. The apartment house shall contain a maximum of 133 units. The exterior and interior modifications to the existing building shall be those shown on the approved plans.

4. The Applicant shall designate approximately 3,000 square feet of space on the B-1 level for a restaurant, as shown on the plans. The nature of the operation of a restaurant in that space, including hours of operation, shall be determined by the cooperative association to be formed.

5. The Applicant shall include a health club on the B-3 level, as shown on the plans. The health club shall be outfitted initially with the equipment and in the manner shown in the Applicant's Post-hearing submission, marked as Exhibit No. 152 in the record. The operation of the health club in that space, including the hours of operation and the level of services offered, shall be determined by the cooperative association to be formed.

6. The apartment building shall contain at least 146 parking spaces, located as shown on the plans marked as Exhibit No. 55 in the record.

7. Prior to the issuance of a certificate of occupancy for the apartment building, the Applicant shall contribute $250,000 to Jubilee Housing to assist in providing 3,000 square feet of affordable housing at 1631 Euclid Street, N.W. In the event that Jubilee determines not to proceed with the renovation of that building, the Applicant may contribute the funds to Jubilee for another project or to another non-profit housing provider for the renovation of at least 3,000 square feet of affordable housing in the District of Columbia. If an alternate project receives the funds, the Applicant shall submit a written certification, including plans, to the Zoning Administrator, with a copy to the Zoning Commission, showing the area to be renovated and obligating the housing developer to reserve the units for affordable housing.

8. 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, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;

b. To combine units to reduce the total number of units but make larger units as a result;

c. To vary the number and location of underground parking spaces, not to decrease below a minimum of one parking space for each dwelling unit;

d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;

e. To make minor modifications to the exterior in response to the final review by the Commission of Fine Arts and review by the Historic Preservation Review Board, if the building is designated a historic landmark; and

f. To make minor refinements to exterior details and dimensions, including cornices, railings, and trim, or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.

9. The modification to 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.

10. 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 owners of the modification site and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owners or owners and all successors in title to construct on and use the property that is the subject of this modification, in accordance with this Order or amendment thereof by the Zoning Commission.

11. 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 is public meeting on May 10, 2004: 3-1-1 (Carol J. Mitten, John G. Parsons, and Kevin Hildebrand in favor; Anthony J. Hood opposed; Gregory Jeffries not voting, not having heard the case).

The Order was adopted by the Zoning Commission at its public meeting on June 14, 2004, by a vote of 3-1-1 (John G. Parsons, Carol J. Mitten, and Kevin Hildebrand in favor; Anthony J. Hood opposed; Gregory Jeffries not present, not voting).

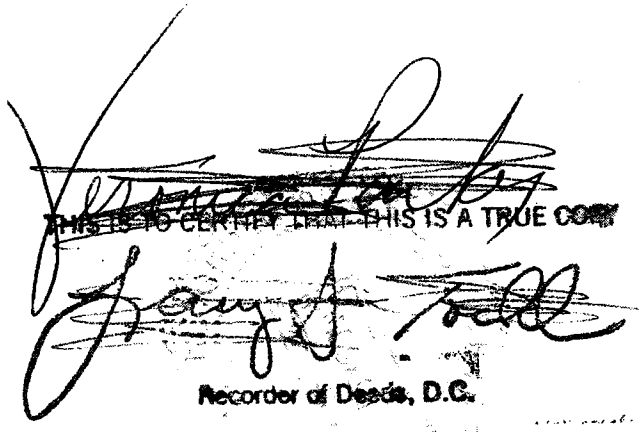
In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on AUG - 6 2004.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

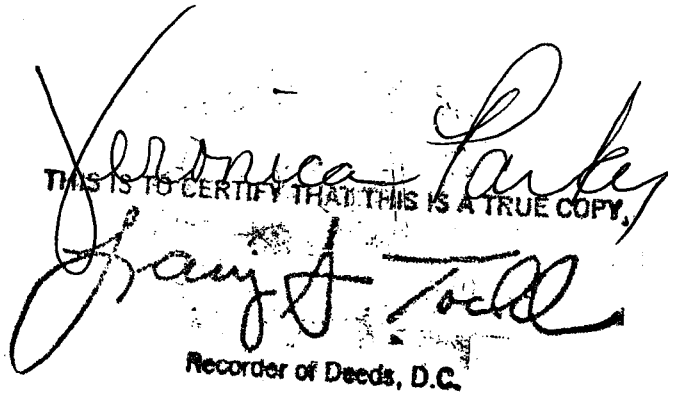
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