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November 6, 2003

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Hand Delivery

District of Columbia Zoning Commission
441 4th Street, N.W.
Suite 210S
Washington, D.C.

D.C. ZONING COMMISSION
2003 NOV -6 PM 3:18

Re: Zoning Commission Case No. 03-24
2126 Wyoming Avenue, N.W.

Dear Members of the Commission:

Enclosed please find a hard copy of the Applicant's Proposed Findings of Fact and Conclusions of Law requested by the Commission at its October 16th public hearing. An electronic copy of the Proposed Findings of Fact and Conclusions of Law is being sent directly to the Office of Zoning staff today.

We look forward to the Commission's consideration of this application at its November 12th public meeting. Please feel free to contact me with any questions.

Sincerely,

Dennis R. Hughes

cc: ANC 2D
Heidi Feldman

1146631_v9

ZONING COMMISSION
District of Columbia
Case 03-24
Exhibit 39

ZONING COMMISSION
District of Columbia
CASE NO.03-24
EXHIBIT NO.39

APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

ZONING COMMISSION CASE NO. 03-24
(Consolidated Planned Unit Development and Zoning Map Amendment for 2126 Wyoming Avenue, NW)
December __, 2003

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 16, 2003, to consider applications from The Kalorama D.C. Group, LLC, for consolidated review and approval of a planned unit development, and related zoning map amendment from the R-3 District to the R-5-D District. The Commission considered the applications pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties and Public Hearing

1. On July 14, 2003, The Kalorama D.C. Group, LLC (the "Applicant"), owner of Square 2528, Lot 911 (the "Subject Property"), filed applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment (collectively, the "Applications").

2. At its July 31, 2003 public meeting, the Zoning Commission (the "Commission") determined to set the Applications for public hearing.

3. The Zoning Commission held a public hearing for the Applications on October 16, 2003. At the end of the public hearing, the Applicant was requested to submit certain additional information regarding its proposed plans and materials, which materials were submitted to the Commission on October 30, 2003.

4. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2D, the ANC within which the Subject Property is located.

5. At its November 12, 2003, meeting, the Zoning Commission took proposed action by a vote of _____ to approve with conditions the Applications and plans presented at the public hearing and in the Applicant's post-hearing submission, filed with the Zoning Office on October 30, 2003 and included in the Official Record at Exhibit 37.

6. 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 _____, 2003, found that granting the Applications would not adversely affect the identified Federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

7. The Commission took final action by a vote of _____ to approve the Applications at its public meeting on December 8, 2003.

The Subject Property and the Area

8. The Subject Property is located at 2126 Wyoming Avenue, NW, Lot 911 in Square 2528, the city block bounded by California Street on the south, Connecticut Avenue on the east, 23rd Street on the west and Wyoming Avenue on the North.

9. The Subject Property is rectangle-shaped, with 100 feet of frontage along Wyoming Avenue and a depth of 165 feet. The Subject Property is bounded to the south by an alley which varies in width between 10 and 16 feet. The resulting total land area for the Subject Property is approximately 16,500 square feet, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the R-5-D District. The site is relatively flat with the existing grade raised approximately 7-8 feet above the curb elevation along Wyoming Avenue.

10. The Subject Property is improved with a three-story, 34.3-foot tall Flemish-revival mansion, which formerly housed the Field School.[1] The mansion building was constructed in 1907 as a single family residence and has been used as a school since the 1930s. A two-story carriage house is located at the rear of the site.

11. The Subject Property is located within the Sheridan-Kalorama neighborhood, a predominantly residential area bounded roughly by Connecticut Avenue to the east, Florida and Massachusetts Avenues to the south, and Rock Creek Park to the north and west. Sheridan-Kalorama is comprised of a wide variety and juxtaposition of housing types, from row house to suburban mansion to high rise apartment building. Extensive development of the Sheridan-Kalorama neighborhood began at the end of the nineteenth century and continued into the early twentieth century. The neighborhood contains the most extensive collection of revival-style architecture in the District, including the existing building on the Subject Property, with its Flemish-revival design. In 1989, the

[1] Building height calculated from finished grade at the middle of the front of the building to the ceiling of the top story.

Sheridan-Kalorama Historic District was added to the District's Inventory of Historic Sites, pursuant to the District of Columbia Historic Landmark and Historic District Protection Act (the "Preservation Law").

12. Due to the location of the Subject Property within the Sheridan-Kalorama Historic District, all proposed new construction and all proposed exterior alterations to the existing buildings on the Subject Property is subject to review and approval by the District of Columbia Historic Preservation Review Board ("HPRB") pursuant to the Preservation Law.

13. Over the course of the twentieth century, a number of residential buildings within the Sheridan-Kalorama neighborhood were transformed from residential use and utilized as private schools, foreign missions, and other institutional uses. A number of large apartment houses are also located in the immediate vicinity of the Subject Property, especially close to and along Connecticut Avenue, some of which date to the early twentieth century, while others are of newer construction.

14. Beginning at 23rd Street, NW, to the west of the Subject Property, the south side of Wyoming Avenue is improved with row buildings, containing a mix of single-family and multi-family residential, along with several foreign missions. From a point east of its intersection with Thornton Place, development along the south side of Wyoming Avenue transitions from this row building pattern to semi-detached dwellings, including the mansion building on the Subject Property, then to the non-contributing Jurys Normandy Inn building at 2118 Wyoming Avenue, and finally back to row buildings fronting onto Connecticut Avenue.

15. Along the north side of this stretch of Wyoming Avenue are located a number of larger detached mansions and other buildings. Several of these buildings now house chanceries and embassies. The north side of Wyoming Avenue, from Thornton Place to Connecticut Avenue, includes a variety of building styles and sizes, both modern and historic. There are apartment houses at both ends, with three foreign mission buildings occupied by the Algerian Embassy and with a number of detached buildings in between, several of which are currently vacant but which have been historically used for private school and foreign mission uses.

16. A similar mixture of uses is found on Kalorama Road, the next block north of Wyoming Avenue. By contrast, the building mix on California Street, immediately south of Wyoming Avenue, is predominantly occupied by large apartment houses, including the six-story Brighton (2123 California Street) and the nine-story apartment building at 2000 Connecticut Avenue (northwest corner of California and Connecticut).

17. The Generalized Land Use Map of the Comprehensive Plan designates the Subject Property as moderate density residential.

Existing and Proposed Zoning

18. The Subject Property is located in the R-3 District, which is designed essentially for row dwellings. Pursuant to §400 of the Zoning Regulations, the maximum permitted height in the R-3 District is 40 feet and three stories.[2] Minimum lot dimensions for the Subject Property, per §401 of the Regulations, are 2,000 square feet and 20 feet in width for row dwellings; 3,000 square feet and 30 feet in width for semi-detached dwellings; and 4,000 square feet and 40 feet in width for all other structures. Pursuant to §403.2, a maximum 40% lot occupancy is permitted.

19. The Applicant requests rezoning of the Subject Property to R-5-D. The Subject Property is located adjacent to R-5-D zoning to its east. R-5 Districts are general residence districts created to permit design flexibility by allowing all types of urban residential development. Pursuant to §400 of the Zoning Regulations, the maximum permitted height in the R-5-D District is 90 feet with no limit on the number of stories. There are no minimum lot dimension requirements in the R-5-D District according to §401.3. Pursuant to §402 of the Zoning Regulations, the maximum FAR is 3.5. According to §403.2 of the Regulations, 75 percent lot occupancy is permitted in the R-5-D District.

The PUD Project

20. The Applicant filed the Applications in July, 2003, after having first initiated discussions with community representatives 13 months earlier, in June, 2002. Throughout the application process, the Applicant has maintained open and ongoing dialogue with the ANC, with interested neighbors and with representatives of various interested community organizations.

21. The Applicant proposes the rezoning to R-5-D in combination with the PUD in order to permit the development of multi-family housing on the site, which is not permitted in the R-3 District.

22. The Applicant proposes to renovate and convert the historic former mansion into two townhouses, to renovate and convert the existing carriage house at the rear of the site into

[2] Building height calculated from finished grade at the middle of the front of the building to the ceiling of the top story.

two enclosed parking garages for two vehicles each, as well as for storage, and to construct a three-story, four-unit condominium apartment building (the "New Building") on the vacant east portion of the site (collectively, the "Project"). The Project will also include outdoor parking for four cars on a parking pad adjacent to the alley at the rear of the Subject Property, one for each of the four condominium units in the New Building.

23. Alteration to the mass of the existing mansion building will be minor. The total additional density for the existing building will be approximately 670 square feet of gross floor area.

24. The design of the New Building is intended to provide a suitable and complementary addition to the surrounding historic buildings and to act as a buffer to the non-contributing Jurys Normandy Inn building at 2118 Wyoming Avenue. The contemporary design of the New Building takes a number of cues from nearby buildings and features. It is similar in scale to many of the historic townhouse structures on the street and incorporates both horizontal and projecting elements which reference adjacent historic buildings. These elements include an entry door recess, masonry details which reinforce existing horizontal lines, projecting bays, punched multi-light windows, and recessed balconies. The top level is designed to incorporate large amounts of glass to reduce the apparent scale of the new building and to create a transition from the larger mass of the \ hotel to the east to the lower existing eave lines on the historic mansion to the west. The building mass is also designed to allow an appropriate amount of courtyard space between the New Building and the mansion.

25. The Applicant and its Architect have worked closely with the historic preservation community to develop a design that is compatible with the character of the historic district. The Project's design has received support from the Sheridan-Kalorama Historical Association ("SKHA"). The HPRB approved the design concept and massing for the Project on September 25, 2003, as compatible with the historic character of the Sheridan-Kalorama Historic District. As directed by the HPRB, the New Building has been designed to read separately from the mansion building, and also to isolate the new construction from the abutting Jurys hotel.

26. The materials proposed for the New Building are of high quality and are consistent with the historic fabric of the neighborhood. The exterior materials include neutral color brick masonry walls with stone lintels, trim and sills, projecting bays clad in coursed limestone, and divided light metal windows. The projecting balconies include stone flooring and steel or wrought iron railings.

27. A primary goal of the landscaping for the Project is to create an urban courtyard garden surrounding the mansion and the New Building. Currently, a large amount of the existing open space is covered by paving, most of which will be removed as part of the Project.

The driveway along the west property line will be retained approximately 20 feet beyond the existing port cochere, which will maintain the historic relationship of this structure to the mansion and to the street. The landscape design incorporates much of the existing plant material. Much of the courtyard planting will be foundation bushes and perennials, with ornamental trees in strategic locations.

28. Notwithstanding the rezoning to R-5-D, the proposed density of the Project is 1.31 FAR, approximately one-third of that which is permitted in the R-5-D District. The proposed building height is consistent with the permitted maximum R-3 height. The proposed number of units and the proposed FAR are less than the theoretical density that would be permitted under the R-3 zoning as a matter of right. The rezoning of the Subject Property to the adjacent R-5-D designation is requested in order to allow the construction of a single four-unit multiple dwelling building on the site, rather than separate townhouses on the vacant portion of the lot. This development configuration was achieved after extensive discussions with both the community and the Office of Planning's zoning and historic preservation divisions. In terms of intensity of use, the proposed six-unit residential Project will be far less intense than the prior school use which brought as many as 288 students, faculty and staff to the Subject Property, and through the neighborhood, on a daily basis.

Public Benefits and Project Amenities

29. The following superior benefits and amenities will be created as a result of the Project:

a. *Housing.* The Project will replace an institutional use with up to six new residential units of appropriate size and scale in this residential neighborhood, for a total of approximately 21,615 square feet of residential space on the Subject Property.

b. *Urban Design and Architecture.* The Applicant has presented an exceptional architectural design and site plan for the Project at this location. The Project entails the sensitive rehabilitation of the existing mansion building and carriage house for residential uses, to include accessory parking. The Project also involves the sympathetic architectural massing, transitioning and detailing of the new infill construction on the adjacent vacant portion of the site, resulting in an improved streetscape through the masking of the blank side wall of the six-story (+roof structure) neighboring Jurys Normandy Inn and the unarticulated rear elevation of the nine-story apartment house immediately south of the Subject Property.

c. *Site Planning and Efficient Land Utilization.* The Project represents an appropriate renovation and reintroduction of residential use for the existing mansion building on the site, and a wise use of undeveloped space in an otherwise fully-developed streetscape, which space is at the junction of two zoning districts - one high density (R-5-D) and the other of a lower density (R-3). The three-story, four-unit New Building represents rational, prudent site planning and efficient and economical land utilization of an appropriate scale and density on the site.

d. *Open Space and Landscaping.* The extensive paving currently occupying a large portion of the site will be replaced by a generous amount of new plantings. A primary goal of the landscaping for the Project is to create an urban courtyard garden surrounding the mansion and the New Building. The overall Project design also makes unique and efficient use of the open space created between the mansion and the New Building, providing the requisite side yard space for the New Building while at the same time allowing the New Building to be designed with the greatest available amount of fenestration and other building openings, consistent with the Building Code and the historic preservation approvals.

e. *Historic Preservation.* The Project incorporates significant historic preservation benefits. The Project entails rehabilitation of two significant contributing buildings to the Sheridan-Kalorama Historic District. As set forth above, the Project involves only a minor change in the massing of the historic mansion building. The driveway along the west property line will be retained approximately 20 feet beyond the existing port cochere in order to maintain the historic relationship of the mansion with the street. In addition to preserving the historic fabric of the mansion building and the carriage house in keeping with the Preservation Law, the Applicant will also restore and preserve the original residential use for which the Subject Property was originally designed.

f. *Uses of Special Value to the Neighborhood or the District as a Whole.* The conversion of the Site from an institutional use to a residential use is of special value to the neighborhood. The Applicant early solicited the input of the community as to the preferred use for the site. As a result, the Applicant has determined to proceed with the small scale residential project outlined in the PUD. The community representatives preferred the single building development to either a matter of right townhouse-style development, or continuation of an institutional use on the Site. . The Project will insure the future residential use of the Subject Property rather than continuation of a more intense school or similar institutional use.

g. *Other Public Benefits and Project Amenities.* As an additional benefit/amenity to the community, the Applicant has committed to establish a fund of $90,000 to be used to help finance certain public space projects and civic or educational programs within the boundaries of ANC 2D. The Applicant has consulted extensively with various groups and individuals within the ANC regarding appropriate public benefit projects. The ANC and the community desire to have a process which allows for maximum public input in this small ANC area concerning which projects will be funded. The Applicant and the ANC have devised a process to allow for maximum public input into the funding decisionmaking. Public space projects shall be those intended to enhance the landscape or streetscape or particular features thereof, or otherwise improve or provide opportunities for enjoyment of the public space to be enhanced. Such public space projects shall not include any building or part thereof, or any public space, which is located between the sidewalk and the property line of a private property. Appropriate civic or educational programs shall be those that provide a civic or educational benefit to the citizens of ANC 2D, and which are undertaken by an educational, cultural or similar institution, and held within the boundaries of ANC 2D. The Applicant proposes to create a panel of three individuals to administer the funds, including at least one ANC representative and a representative of the Applicant. The third member of the panel will be a resident of ANC 2D with no affiliation to any applicant for funding. The panel will select a worthy project or projects based upon nominations submitted to them by the ANC. The funds will be made available as of the date of issuance of the building permit for the Project, and the funds will be totally expended by December 31, 2004. If by October 31, 2004, the ANC either does not make a recommendation(s), or if such recommendation(s), in the sole opinion of the panel, do(es) not meet the standards and criteria of §§ 2403.9 and 2403.13 of the Zoning Regulations, the panel will donate the entirety of the remaining funds to the District of Columbia Housing Production Trust Fund.

27. The Project is consistent with many of the Comprehensive Plan's major themes. The Project is consistent with the Generalized Land Use Map, which designates the Subject Property for moderate density residential uses. The conversion of a former school into a multi-family residential development will stabilize the residential use in this neighborhood. It will provide additional housing opportunities at an appropriate size, scale and location, while preserving and rehabilitating two "contributing" buildings in the Sheridan-Kalorama Historic District.

28. The Project is also consistent with many of the Comprehensive Plan's major elements, as follows:

a. *Economic Development Element.* According to the Economic Development element, the District places a high priority on stimulating and facilitating a variety of commercial, retail and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use element and ward plans, with sensitivity to the surrounding area. 10 DCMR § 204.2(m). The proposed development will provide high-quality residential development in an area that is within short walking distance of both the Dupont Circle and Woodley Park Metrorail stations. The proposed development also serves to attract and retain residents which will further increase the tax base and create revenue for the District of Columbia.

b. *Housing Element.* 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. 10 DCMR §300.4. 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 Metrorail and its provision of attractive in-town urban residential units.

c. *Transportation Element.* 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. 10 DCMR §500.2. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. 10 DCMR §502.1(a). The location of the Project in close proximity to the Dupont Circle and Woodley Park/Zoo/Adams Morgan Metrorail stations furthers this goal. The Project also supports the District's goal of adequate parking through its provision of 8 on-site parking spaces for up to six residential units The parking is provided in the existing carriage house and on a parking pad to the rear of the site, both of which are accessed from the public alley

d. *Urban Design Element.* The Project will be developed consistent with the surrounding historic residential neighborhood in terms of materials, height, scale and massing. 10 DCMR § 708.2. The Project's massing and scale are sensitive to the established patterns of development in the area. 10 DCMR §710.2(e).

e. *Land Use Element.* 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. 10 DCMR § 1100.2(b). The Site furthers this goal due to its proximity to the Dupont Circle and Woodley Park/Zoo/Adams Morgan Metrorail stations.

29. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 2, as follows:

a. *Ward 2 Economic Development.* The proposed development creates additional residential opportunities in the ward while increasing income and property tax revenues, thereby enhancing the image of the ward as a place to do business and reside.

b. *Ward 2 Housing Element.* The proposed development creates additional housing that will enhance the residential neighborhood and neighborhood-level retail and service uses that will support the residents, consistent with the Ward 2 housing goals.

c. *Ward 2 Transportation Element.* The proposed development's provision of at least one parking space for each residential unit will help alleviate parking problems within the ward due to the lack of adequate street parking for residents.

d. *Ward 2 Urban Design Element.* The proposed development has been designed to enhance the physical character of the area and complement the materials, height, scale and massing of the surrounding neighborhood.

e. *Ward 2 Residential Land Use Element.* The Project supports the Residential Land Use element by establishing a new residential use that will significantly enhance the character of the existing historic residential neighborhood.

Office of Planning Report

30. By report dated, October 6, 2003, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Applications. The OP determined that the Applications are not inconsistent with the Comprehensive Plan, will maintain housing within the neighborhood and will bring needed housing to the District. The proposed rezoning will promote a sound land use pattern in the area and enable the rehabilitation of a contributing building to the Sheridan-Kalorama Historic District.

31. The OP noted that the Subject Property is identified on the Comprehensive Plan Generalized Land Use Map for moderate density residential use, which is typically accompanied by R-3, R-4, and R-5-B zoning. The OP further noted that the minimum lot area required for a PUD in the R-5-B District is one-half acre (21,780 square feet). As the Subject Property consists of 16,500 square feet, it would be eligible for a PUD in the

R-5-D District, which is defined as medium high density rather than moderate density. Density permitted for PUDs in the moderate density designation ranges from 0.6 FAR in the R-3 District to 3.0 FAR in the R-5-B District. The FAR proposed for the Project (1.31 FAR) is well within the range of permitted density for the moderate density land use category of the Comprehensive Plan.

32. The OP acknowledged that it had been contacted by interested residents of the Sheridan-Kalorama neighborhood, who indicated their strong preference for residential use of the Subject Property, rather than for diplomatic or other institutional use.

33. In its October 6, 2003 report, the OP recommended that the Commission approve the Applications with the condition that the Applicant work with ANC 2D to determine the specific dispersal of the $90,000 benefit funds.

34. The Commission concurs with the report of the OP. As further stated below, the Commission finds the Applicant and the ANC are working together to determine the specific dispersal of the benefit funds.

ANC 2D

35. By letters dated July 20, 2003 and October 14, 2003, and through testimony at the Public Hearing from Single Member District 2D-02 Representative and ANC Vice Chair and Treasurer Mary Eva Candon, ANC 2D indicated its support for the Applications.

36. In its July 20, 2003 letter, the ANC indicated that the Project had been considered at the ANC's regularly-scheduled monthly public meeting held June 9, 2003, wherein a quorum was present. At that meeting, the ANC reviewed the height, scale and massing of the New Building and found that the Project represents a wise use of the vacant building and lot, and that the impact of the Project on city services and facilities would be acceptable. The ANC further determined that the specific benefits and amenities of the Project are superior and will benefit the surrounding neighborhood and the general public to a significantly greater extent than would likely result from development or re-use of the site for matter of right use. For all these reasons, these reasons, the ANC determined that the Project will add to the attractiveness, convenience, and comfort of the Project occupants and the immediate neighbors, and the ANC recommended that the Commission approve the Applications.

37. By its letter dated October 6, 2003, the ANC expressed its particular support and preference for the public benefit package offered by the Applicant, namely the establishment of a fund of $90,000 to be disbursed to a community project or projects identified by the ANC after adequate community input and discussion.

38. In her testimony to the Commission, Ms. Candon pointed out that the ANC suggested to the Applicant that the public benefit fund include a process that would allow all of the neighborhood groups to be involved in determining how the funds will be spent. She testified that, through amendments made just prior to the hearing, the proposal has been further refined so that it is not open-ended. She testified that the ANC had already begun the process to identify appropriate requests, and gave several examples of the possible recipients of the funds, all of which would be used for public benefit within ANC 2D. In a post-hearing submission, the ANC indicated that it had voted to give preliminary approval to a set of guidelines for the submission of eligible projects for ANC 2D consideration.

39. The Zoning Commission affords the views of ANC 2D the "great weight" to which they are entitled.

Development Flexibility

40. Subsection 2405.7 of the Zoning Regulations provides, "notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment. Further, §2405.8 of the Zoning Regulations provides, "Approval of the Board shall not be required for any such use approved by the Commission under §2405.7, and the Commission shall not be required to apply the special exception standards normally applied by the Board." Accordingly, the Applicant requests the Commission's approval of certain project features pursuant to 11 DCMR §2405.7, namely:

a. Approval of multiple buildings on a single record lot, pursuant to §2516.1 of the Regulations; and

b. Approval to provide a penthouse structure not satisfying the setback requirements from the east side of the New Building (§§ 400.7 and 411.11).

41. The Zoning Commission finds that rezoning the Subject Property is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641-.01 of the D.C. Code as follows:

a. The proposed zone is not inconsistent with the Comprehensive Plan;

b. The proposed zone will not produce objectionable traffic conditions;

c. The proposed rezoning will not lead to the overcrowding of land.

CONCLUSIONS OF LAW AND OPINION

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 a 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 Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

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

4. The Project meets the minimum area requirements of §2401.1 of the Zoning Regulations.

5. The Project is within the applicable height, bulk and density standards of the Zoning Regulations. The Project involves the creative utilization of space and superior architectural design in providing much needed additional urban residential use. Accordingly, the Project should be approved. The impact of the Project on the surrounding area is not unacceptable. As set forth in the findings of fact, the proposed development has been appropriately designed to respect the historic building in terms of height and mass and is complementary to adjacent buildings.

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

7. The Project's benefits and amenities are reasonable for the development proposed on the site. The Project responds to both the historic building and the surrounding residential use.

8. The establishment of the public benefit fund, as proposed by the Applicant in this instance, is appropriate in light of the particular facts of the case. Advisory Neighborhood Commission 2D has specifically requested that they be given authority to review all possible options and to propose to the Applicant appropriate recipients of the benefit funding. The ANC and the Applicant have created a mechanism to make this process succeed and the ANC has already begun to implement the process. Advisory Neighborhood Commission 2D is unique in that it is the smallest ANC in the District, with two members. Publicly available information indicates that there is one other ANC in the District with four members, and that the average size of ANCs in the District is between seven and eight members. The property within ANC 2D is predominantly low density residential, R-1 and R-3 in character and scale, with some R-5 zoning and a minute amount of commercial property at the corner of Connecticut and Florida Avenues. There have been no PUDs to date in this small neighborhood. With a small defined geographic size, a small population, and a desire by the ANC to have the offsite benefit be located within the boundaries of ANC 2D, the Applicant and the ANC have worked closely to devise a plan to empower the ANC and the community to chose a public benefit which is most suitable and most widely supported in this small area. Further, this small Project proposes no increase in height or density over that which is permitted as a matter of right in the R-3 District. The map amendment to R-5-D is necessary in order to allow a four-unit multiple dwelling on the site, and the PUD mechanism is necessary to insure that, notwithstanding the R-5-D zoning, the height and bulk of the Project will be consistent and compatible with the surrounding area.

9 Evaluating the Project according to the standards set forth in 11 DCMR §2403, the Zoning Commission concludes that the Applications qualify for approval. Judging, balancing and reconciling the relative value of amenities and benefits in the Applications against the minimal nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefit herein, in conjunction with the amenities discussed above, are appropriate in this case.

10. Approval of this Project is appropriate because the proposed development is consistent with the present character of the area.

11. Approval of this Project and change of zoning is not inconsistent with the Comprehensive Plan.

12. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

13. The Applications for a PUD and map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

14. The Applications for a PUD and map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development and for a Zoning Map amendment from R-3 to R-5-D for the property located at 2126 Wyoming Avenue, NW, in Square 2528, Lot 911. This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Wnuk Spurlock Architects, and submitted to the Commission with the Applicant's October 10, 2003 post-hearing submission, located at Exhibit 37 of the Official Record, as modified by the guidelines, conditions and standards herein.

2. The Project shall be a multifamily residential development consisting of approximately 21,615 square feet of gross floor area.

3. Building materials for the Project shall be provided consistent with the samples provided to the Commission as part of the Applicant's October 30, 2003 post-hearing submission, at Exhibit 37 in the Official Record.

4. Landscaping for the Project shall provided consistent with the Landscape Plan provided as Drawing A-10(c) of the revised drawings submitted as part of the Applicant's October 30, 2003 post-hearing submission, at Exhibit 37 in the Official Record.

5. The public benefit detailed in Exhibit 26 of the Official Record shall be funded upon recordation of the PUD Covenant and issuance of the building permit for the Project. Evidence of the funding to the nonprofit corporation shall be submitted to the record in this case within 10 days of issuance of the building permit. Said funds shall be totally expended by December 31, 2004. If by October 31, 2004, ANC 2D either does not make a recommendation(s) to the nonprofit corporation formed in accordance with the language provided at Exhibit 26 in the Official Record, or if such recommendation(s), in the sole opinion of said nonprofit corporation do(es) not meet the standards and criteria of §§ 2403.9 and 2403.13 of the Zoning Regulations, the nonprofit corporation shall donate the entirety of the remaining funds to the District of Columbia Housing Production Trust Fund by December 31, 2004. A report of the projects funded shall be submitted to the record in this case no later than January 30, 2005.

6. The Applicant shall have flexibility with the design of the Project in the following areas:

a. To vary the location and design of all interior components, provided no change to the exterior configuration of the Project, and no more than two units in the mansion and no more than four units in the New Building;

b. To combine the two proposed units in the mansion into a single unit, based upon market demand;

c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on commercial availability at time of construction;

d. To make minor refinements to exterior details and dimensions to comply with District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;

e. To vary the final design, exterior features, details and material of the Project to comply with the requirements of the final HPRB approval; and

f. To vary the final selection of the landscaping materials to provide equivalent plant material dependent upon market availability.

7. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successor in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.

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

9. 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. Pursuant to the Human Rights Act of 1977, D.C. Code Ann. § 2-1402.67 (2001), the applicants are required to comply fully with the provisions of the Act, and this order is conditioned up full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the applicants fail to comply with any provision of the Human Rights Act.

On November 12, 2003, the Zoning Commission approved the Applications by a vote of _____ (Carol J. Mitten, Anthony J. Hood, Peter G. May, John Parsons to approve)

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

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

CAROL J. MITTEN
Chairman,
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning