Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

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

FROM: Sharon S. Schellin
Acting Secretary to the Zoning Commission

DATE: November 9, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on November 18, 2005:

1. Z.C. Corrected Notice of Proposed Rulemaking (Case No. 04-27);
2. Z.C. Notice of Public Hearing (Case No. 05-24);
3. Z.C. Order No. 949-B (Case No. 00-36CP);
4. Z.C. Order No. 955B (Case No. 01-09A);
5. Z.C. Order No. 03-22 (Case No. 03-22);
6. Z.C. Order No. 03-27 (Case No. 03-27);
7. Z.C. Order No. 03-30 (Case No. 03-30); and
8. Z.C. Order No. 04-02 (Case No. 04-02).

Office of Documents and Administrative Issuances
2005 NOV -9 PM 4:07

Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 03-27
EXHIBIT NO. 55

ZONING COMMISSION
District of Columbia
CASE NO.03-27
EXHIBIT NO.55

ZONING COMMISSION ORDER NO. 03-27
Z.C. Case No. 03-27
(Consolidated Planned Unit Development for 4600 Brandywine Associates, LLC)
December 13, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 14, 2004 to consider an application from 4600 Brandywine Associates, LLC for the consolidated review and approval of a planned unit development application for Lots 817 and 820 in Square 1732, located at the intersection of Wisconsin Avenue and Brandywine Street, N.W., pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. The property that is the subject of this application is located at the intersection of Wisconsin Avenue, N.W. and Brandywine Street, N.W., Lots 817 and 820, Square 1732 (the "Property"). The Property has an address of 4600 – 4614 Wisconsin Avenue, N.W., contains 12,661 square feet of land area and is located in the C-2-A Zone District. The Property is currently improved with buildings that include a billiards parlor, a dry cleaners, a tailor shop and a small office. (Exhibit 26, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. viii.))

2. On July 22, 2003, 4600 Brandywine Associates, LLC (the "Applicant") filed an application with the Zoning Commission ("Commission") for review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia. The proposed PUD project included 43 residential units and approximately 4,500 square feet of ground floor retail along Wisconsin Avenue. The building would have a total height of 65 feet, a floor area ratio ("FAR") of 5.0 and a lot occupancy of approximately 92 percent. The requested Zoning Map amendment sought to rezone the Property to the C-2-B Zone District. (PUD and Zoning Map Amendment Application of the Applicant ("Initial Application") pp. 4-5.)

3. At its March 8, 2004 public meeting, the Commission noted concerns with the Applicant's proposed PUD project and Zoning Map amendment request and voted 2-2-1 regarding the issue of whether to set down the application for a public hearing.

4. Thereafter, the Applicant modified the proposed PUD project and withdrew the Zoning Map amendment request. On May 10, 2004, the Commission set down the revised PUD project for a public hearing.

5. The Zoning Commission held a public hearing on the above-mentioned application on October 14, 2004, which was conducted in accordance with the provisions of 11 DCMR § 3022.

6. Advisory Neighborhood Commission ("ANC") 3E, the ANC in which the Property is located, was automatically a party to this application. At the October 14, 2004 public hearing, the Commission granted party status to ANC 3F, the ANC adjacent to the Property.

PUD Application and Project

7. The Property is located in the Tenleytown neighborhood of Ward 3. It consists of approximately 12,661 square feet of land area at the northwest corner of Wisconsin Avenue and Brandywine Streets, N.W. The Property is located approximately one block (1,000 feet) from the entrance to the Tenleytown Metrorail Station. The Property includes 121 feet of frontage along Wisconsin Avenue and 113 feet of frontage on Brandywine Street. The Property includes a five-foot change in grade from the southern edge of the site to the northern edge of the site along Wisconsin Avenue. (Exhibit 26, Statement p. 1.)

8. The general area surrounding the Property includes a variety of commercial buildings along Wisconsin Avenue. These include the 65-foot-tall office and retail building (which includes Hudson Trail Outfitters on the ground level) located immediately across Brandywine Street from the Property. Across Wisconsin Avenue to the southeast is a strip shopping center that includes a take-out pizza store, a CVS Pharmacy and other retail establishments. Various television and radio antenna towers, a small retail store and Fort Reno Park are located across Wisconsin Avenue to the northeast of the Property. Immediately adjacent to the Property on the west side of Wisconsin Avenue is a commercial building that includes restaurants and retail on the ground level and office uses above. The Martens Volvo site and the Tenley Hill mixed-use PUD/rezoning project are located on Wisconsin Avenue to the north of the Property. The former Sears/Hechinger building, which is being renovated as a mixed-use building, is just one block to the south at the intersection of River Road and Wisconsin Avenue. (Exhibit 26, Statement p. 3.)

9. The Applicant seeks to construct a mixed-use, primarily residential project on the Property. The project will consist of 42 one- and two-bedroom condominium units (including one "affordable" unit) that will be accessed from Brandywine Street. Consistent with the PUD guidelines in the C-2-A District, the building will be approximately 65 feet in height and will have a roof line that is at approximately the same height as the roof line of the office and retail building located immediately south of the Property on Wisconsin Avenue. The project will include a total of 37,983 square feet of

gross floor area, will have a total density of 3.0 FAR and will occupy 60 percent of the Property. The residential portion of the project will include approximately 36,333 square feet of gross floor area. The non-residential portion of the project will include approximately 1,650 square feet of retail space along Wisconsin Avenue focused at the corner of Wisconsin Avenue and Brandywine Streets that will be marketed towards neighborhood oriented retailers, rather than destination oriented retail. (Exhibit 26, Statement pp. 3-5; Exhibit 38.)

10. The project will also include two parking levels below grade, including 44 parking spaces that will be accessed from Brandywine Street. One parking space will be available for each condominium unit and two spaces will be reserved for retail uses and visitor use after business hours. The project will also include a service delivery lay-by space along Brandywine Street. (Exhibit 26, Statement pp. 3-5, Exhibit 38; Testimony of Chris Morrison, Transcript of October 14, 2004 Zoning Commission Public Hearing ("Tr.") p. 19.)

11. The project has a two-story base and has been broken into three distinct elements to sensitively contribute to the existing context of the neighborhood and provide a better transition to the pedestrian scale of the retail frontage. Extensive hardscape and landscape elements, such as decorative paving, terracing and planting, at the ground floor will contribute to a vibrant streetscape for Wisconsin Avenue and Brandywine Street. The building's rich palette of materials, including brick, precast concrete, glass and metal, will also elevate the level of finish in the neighborhood streetscape. (Exhibit 20, Statement pp. 5-6, Exhibit 38; Testimony of Ralph Cunningham and Chris Morrison, Tr. pp. 21-22, 25-27.)

12. The C-2-A District requires that 20 percent of the residential gross floor area be devoted to residential recreation space. The proposed project will provide 4,600 square feet of residential recreation space in a landscaped courtyard in the rear yard of the Property that will be available to all residents of the project. Therefore, the project will provide residential recreation space of 12.66 percent of the residential gross floor area included in the project. In addition, some of the residential units will have balconies, consisting of 2,704 square feet, and the upper units will have access to roof terraces that will include 1,750 square feet. While these areas do not satisfy the strict requirements of the Zoning Regulations for residential recreation space required in a matter-of-right building, they are areas of passive recreation that are available for residents of the project and their guests and serve the intended purpose of providing residential recreation space. (Exhibit 20, Statement pp. 4-5; Testimony of Chris Morrison, Tr. p. 25.)

13. The project includes a 1,000-square-foot community room in the B1 level of the building. However, it is likely that such a community room will not be used or desired by the owners of the units, given the adjacent outdoor and indoor recreational amenities available at and adjacent to the Property. The Applicant requested that the Zoning Commission provide flexibility from the strict requirements of the C-2-A District residential recreation space requirements and give the Applicant the ability to decide the

most appropriate use of the 1,000 square feet of space in the B1 level. (Exhibit 20, Statement p. 5; Tr. p. 27.)

14. The Applicant also requested a waiver from the minimum lot size requirement for a PUD in the C-2-A District, which requires a minimum lot area of 15,000 square feet. The Property consists of 12,661 square feet. The Applicant noted that the Zoning Commission has the authority to grant a waiver of up to 50 percent of the minimum area requirement, if after the public hearing the Commission determines that the project is of exceptional merit and is in the best interest of the city or country. The Applicant testified that the proposed development as a whole, the building and all the project benefits and community amenities, satisfied the exceptional merit standard. (Exhibit 20, Statement pp. viii, ix; Tr. pp. 9-10.)

15. The proposed project also requires flexibility from the strict application of the Zoning Regulations regarding the roof structure and the required set-back from all edges of the roof of the building. The location of a required exit stair on the roof prevents the roof structure from being set back from all edges of the roof of the building, but the roof structure would be set back from all edges of the primary faces of the building. (Testimony of C. Morrison, Tr. p. 25.)

16. The proposed project received recognition from the Washington Smart Growth Alliance ("SGA") Smart Growth Recognition Program as a Smart Growth Project Proposal. The SGA concluded that the proposed project's location of residential units along a major transportation corridor and in close proximity to the Metro station were important factors in receiving such a designation. (Exhibit 26, Statement pp. 7-8 and Ex. E to the Statement.)

17. Testimony and evidence on behalf of the Applicant was provided by Scott Fuller and by Ralph Cunningham and Chris Morrison of Cunningham + Quill Architects, who testified as experts in the field of architecture. Scott Fuller addressed the significant dialogue and correspondence that the Applicant engaged in with the neighboring property owners, the Coalition to Stop Tenleytown Overdevelopment and ANC 3E. Mr. Fuller noted that as a result of that process, the project received the support of ANC 3E and CSTO. Mr. Fuller noted the following revisions to the project that were made in response to community and ANC concerns: the reduction in size of the building; the withdrawal of the Zoning Map amendment application; modifications to the design and appearance of the building; further landscape and hardscape improvements along Wisconsin Avenue; a restriction on the ability of project residents to obtain Residential Permit Parking passes from the District Government; a delivery lay-by parking space; a green roof; and a construction management agreement. (Testimony of S. Fuller, Tr. pp. 12-14.)

18. As addressed in the Applicant's pre-hearing statement and through the testimony of Mr. Fuller, the following public benefits and project amenities will be created as a result of this project:

- Housing – The PUD project consists of 42 residential units, including one affordable unit. The amount of affordable housing provided in this application is equivalent to approximately 18 percent of the increased gross square footage obtained through the PUD process. The Applicant requested flexibility to locate the affordable unit either on the first and terrace level of the project, or an on upper level of the project, depending on demand and market conditions. (Exhibit 26, p. 10; Tr. p. 28, Testimony of S. Fuller, Tr. p. 31.)

- Urban Design and Architecture – The Applicant noted that the proposed project would create a signature building on the Property that would be consistent with the height and mass of adjacent buildings, and would provide a richness of materials and detailing – brick, glass and metal – that are not found in matter-of-right projects in this area. In addition, the building massing will be highly articulated, stepped and sculpted. (Exhibit 26, pp. 10-11; Testimony of C. Morrison, Tr. pp. 25-27.)

- Site Planning – The Applicant noted that the project was carefully designed and sited on the Property to reflect the Washington, D.C. diagonal street pattern, and the proposed height of the project was within the PUD guidelines for the C-2-A District and commensurate with adjacent buildings along Wisconsin Avenue. In addition, the vehicular entrance to the parking garage was located off of Brandywine Street so as to avoid any potential adverse traffic impacts along Wisconsin Avenue, and a service delivery lay-by parking space was also included along Brandywine Street. (Exhibit 26, p. 11; Exhibit 38.)

- Effective and Safe Vehicular and Pedestrian Access – A transportation analysis prepared by the Applicant's traffic engineer concluded that the proposed project will have only a minimal impact on the overall transportation infrastructure in the area near the Property and that the project provides adequate off-street parking and loading facilities. (Exhibit 26, p. 12 and Exhibit F to the Statement.)

- Uses of Special Value - The community amenities included in the project will provide uses of special value to the surrounding neighborhood. The community amenities include:

  Janney Elementary School – The Applicant will make a payment of at least $75,000 to the Janney Elementary School PTA for the replacement of the wooden play equipment on the lower playground, for the provision of additional play equipment for the older students and for necessary stormwater management and soil erosion measures.

  Tenleytown Branch of the D.C. Public Library – The Applicant will make a payment of $25,000 to the Friends of the Tenley Library for a state-of-the-art audio visual room in the renovated Tenley Library.

Wilson Senior High School – The Applicant will make a payment of $20,000 to the Wilson Senior High School PTA for necessary repairs to the school buildings, including repainting of the cupola.

Friends of Ft. Bayard Park – The Applicant will make a $15,000 contribution to the Friends of Ft. Bayard Park to help fund the renovation/rehabilitation of Ft. Bayard Park, as approved by the National Park Service.

D.C. Fire Department - Tenleytown Area – The Applicant will contribute $47,427 for the purchase of a hazardous materials POD for use by the DC Fire and Emergency Medical Services Department. (Exhibit 26, p. 13; Testimony of S. Fuller, Tr. p. 15.)

- Environmental Benefits – The project will include a "green roof" system with engineered soil and plant material that will help reduce the load on the project's storm water management system. (Testimony of S. Fuller, Tr. pp. 14-15, Testimony of C. Morrison, Tr. p. 23.)

- Employment and Training Opportunities – The Applicant submitted into the record a Draft First Source Employment Agreement with the Department of Employment Services (DOES), and a draft Memorandum of Understanding with the Office of Local Business Development (OLBD) that the Applicant will enter into upon approval of the application. (Exhibit 26, p. 12, Exhibit 31.)

- Development and Construction Management Agreement – Mr. Fuller noted that the Applicant had engaged in discussion with neighboring property owners regarding conditions that would dictate construction activity on the Property. Mr. Fuller submitted a draft Construction Management into the record and noted that the Applicant was willing to have the terms of such an agreement included as conditions of the Commission's approval of this Application. (Testimony of S. Fuller, Tr. p. 15, Exhibit 37.)

19. The project is consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan of the National Capital. The project is consistent with the following major themes of the Comprehensive Plan: stabilizing the District's neighborhoods; respecting and improving the physical character of the District; and preserving and ensuring community input. (Exhibit 26, Statement pp. 15-17.) The project is also consistent with many Major Elements of the Comprehensive Plan, including the Housing Element, the Urban Design Element, Land Use Element and the Ward 3 Goals and Policies. (Exhibit 26, Statement pp. 17-22.)

20. The Generalized Land Use Map includes the Property in the mixed-use, moderate-density commercial/medium-density residential land use category. The Property is also located in the Tenleytown Metrorail Station Housing Opportunity Area. (Exhibit 26, p. 1; OP Report at pp. 7-8.)

21. In response to issues raised by Commissioners and the representative of ANC 3F during the October 14, 2004 public hearing, the record of the case was left open for the Applicant to provide the following materials and information: a design alternative for the proposed retail entrance on Wisconsin Avenue; a revised roof and terrace plan consistent with the rendered elevation submitted at the October 14, 2004 public hearing; and a revised landscape plan that included tree species that the District Department of Transportation has deemed appropriate for planting in public space along Wisconsin Avenue. The Applicant submitted the required materials on October 21, 2004. (Exhibit 50.)

Government Reports

22. The Office of Planning ("OP"), in its report dated October 4, 2004 and through its testimony at the public hearing, recommended approval of the project. The OP report concluded that the PUD project will result in the provision of 42 new dwelling units within a mixed-use building through the redevelopment of a site currently used for commercial purposes only, in close proximity to a Metrorail station. The OP representative noted that the application is consistent with the provisions of the Comprehensive Plan by providing housing units in a Housing Opportunity Area, and that the PUD project will provide for a predominantly residential building within Tenleytown and will avert the development of the site as a medium-density office space, in conformance with the Ward 3 Element of the Comprehensive Plan. (Exhibit 34, p. 14, Testimony of S. Mordfin, Tr. pp. 64-65.)

23. The Office of Planning recommended approval of the request to reduce the amount of residential recreation space required since 81 percent of the units will have private residential recreation space and a 4,600-square-foot terrace will be provided, and due to the site's location approximately one block from Fort Reno Park. (Exhibit 34, p. 14, Testimony of S. Mordfin, Tr. pp. 63-64.)

24. The Office of Planning also noted that it supported the lot area waiver request, because the project will be more than 80 percent residential and because the project will be of exceptional merit and in the best interest of city. The Office of Planning also concluded that the proposed amenities package is commensurate with the relief requested by the Applicant. (Exhibit 34, p. 14, Testimony of S. Mordfin, Tr. pp. 63-64.)

25. The District Department of Transportation ("DDOT") submitted a report dated November 8, 2004 that supported the PUD project. The DDOT report concluded that, from a transportation standpoint, the project will not have an adverse impact on the area road network and that, although a portion of the loading lay-by area encroaches on public space, it does not restrict pedestrian usage of the sidewalk. (Exhibit 52.)

Advisory Neighborhood Commission Reports

26. ANC 3E unanimously adopted a resolution in support of the project at a special public meeting on September 28, 2004. The ANC, in its written resolution and testimony before the Zoning Commission, noted the following modifications to the Applicant's proposal that resulted in the ANC's support: an off-street lay-by parking space on Brandywine Street that will be used for deliveries and moves by residents in and out of the building; a requirement that owners of units in the building may not apply for or be eligible for Residential Parking Permits; an enhanced streetscape at the corner of Brandywine Street and Wisconsin Avenue; one unit of affordable housing located within the building; and plans for a "green" roof. The ANC representative noted that, as a result of these modifications, the ANC determined that development of the building was in the best interest of the community and the District as a whole and that the development would be a positive addition to the Wisconsin Avenue corridor. The ANC representative also stated that the ANC believes this project is a project of exceptional merit. (Exhibit 36; Testimony of Chapman Todd, Tr., pp. 71, 76.)

27. ANC 3F, by written submission and testimony at the October 14, 2004 public hearing, noted its opposition to the application. ANC 3F stated that its opposition resulted from the project's lack of exceptional merit and failure to meet the standards of the Zoning Regulations or Comprehensive Plan. Specifically, ANC 3F requested an enlivened Wisconsin Avenue façade, restoration of the commercial use to the entire Wisconsin Avenue frontage, the inclusion of three affordable housing units, redesign of the Wisconsin Avenue streetscape and landscaping of the project, the inclusion of a rain garden in the project, the provision of spaces in the parking garage for a car-sharing program and a bicycle parking shed. (Exhibits 34 and 45; Testimony of Cathy Wiss, Tr., pp. 77-86.)

28. On October 28, 2004, ANC 3F submitted comments to the Applicant's post-hearing submission. ANC 3F noted that it still objected to the following aspects of the project: the proposed streetscape on Wisconsin Avenue; the amount of commercial space provided in the project; the location of the affordable unit on Wisconsin Avenue; the width of the proposed tree boxes on Wisconsin Avenue; and the species of trees to be included in the project. (Exhibit 51.)

Parties and Persons in Support

29. The Coalition to Stop Tenleytown Overdevelopment ("CSTO"), a neighborhood organization, indicated its support for the project by written submission and testimony at the October 14, 2004 public hearing. The CSTO representative noted that this support was based on the following aspects of the application: retention of the C-2-A Zone District; inclusion of a green roof in the project; prohibition on Residential Parking Permits for project residents; enhanced building design; an off-street lay-by to accommodate deliveries and move-ins; the location of one affordable housing unit on the Wisconsin Avenue side of the building; and an agreement that amenities are to be

coordinated with the ANC in which the project is located. The representative of CSTO also recognized that the Applicant was responsive to neighborhood concerns and was willing to address those concerns and that the Zoning Commission consider the impact on loss of light sunlight to adjacent properties in this and future cases. (Exhibit 42; Testimony of Carolyn Sherman, Tr., pp. 88-91.)

30. Mr. Bruce Lowery, the owner of the property located at 4117 Brandywine Street, N.W., originally applied for party status in opposition to the application. At the October 14, 2004 public hearing, Mr. Lowery withdrew his request for party status in opposition to the application and noted his support for the project. In his written statement, Mr. Lowery noted that his previous concerns regarding loss of sunlight, loading on Brandywine Street and construction related impacts had all been addressed. Mr. Lowery stated that the project is appropriate for the site and will benefit the surrounding Tenleytown neighborhood. Mr. Lowery also testified that he believed the project was a project of exceptional merit. (Exhibits 32, 40 and 41; Testimony of B. Lowery, Tr., p. 95.)

31. Mr. Glen Williamson, a neighboring property owner and Janney Elementary School parent, testified at the public hearing in support of the project. Mr. Williamson noted the contribution to Janney Elementary School that is part of the project's community amenities package as being an important amenity for the School's community. (Exhibit 46; Testimony of G. Williamson, Tr., pp. 93-95.)

32. The adjacent property owner, 4618 Wisconsin Avenue Associates, filed a request for party status in opposition to the application on October 1, 2004. On October 14, 2004, 4618 Wisconsin Avenue Associates filed a letter withdrawing the request for party status in opposition to the application and filed a letter in support of the application. (Exhibits 33, 43 and 49.)

Parties and Persons in Opposition

33. One person, Barbara Simons, provided testimony in opposition to the project at the public hearing. Ms. Simons noted that she agreed with the concerns raised by ANC 3F. Ms. Simons testified that she did not believe the project would have an appropriate presence on Wisconsin Avenue and that the project did not satisfy the exceptional merit standard. (Testimony of B. Simons, Tr., pp. 99-100.)

NCPC Action

34. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission ("NCPC") on November 9, 2004, pursuant to § 492 of the District Charter. On December 2, 2004, NCPC found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. The development of this PUD project carries 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. The Commission finds that this PUD project provides a significant public benefits and community amenities package. The Commission believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide.

3. The Applicant requested that the Zoning Commission waive the 15,000-square-foot minimum area requirement for this PUD application pursuant to §§ 2401.2(a) and (b) of the Zoning Regulations. The proposed PUD site consists of approximately 12,661 square feet of land area at the northwest corner of Wisconsin Avenue and Brandywine Streets, N.W. This lot area is 84 percent of the minimum area requirement; therefore, the Applicant is seeking a waiver of 2,339 square feet (16 percent). In considering this waiver, the Commission finds that the test is whether the development as a whole (the building and all of the PUD amenities and benefits together) are of exceptional merit and in the best interest of the city or country. In making this determination, the Zoning Commission looks not only at what the PUD provides over a matter-of-right building, but also how much additional density and height are gained through the PUD process, as well as how large a waiver of land area is requested.

4. In this case, pursuant to 11 DCMR §§ 2401.2 (a) and (b), the Commission finds that the granting of this waiver is appropriate as this is a project of exceptional merit and is in the best interest of the city. The project's design, including the landscaping improvements and green roof, and amenities and public benefits package are very strong, and yield a project that is much more desirable than a matter-of-right project. In compliance with § 2401.2(b)(1), the proposed project will have approximately 96 percent of the gross floor area of the development devoted to dwelling units and accessory uses to those dwelling units.

5. In light of the Commission's finding that the proffered design, public benefits and project amenities are all particularly strong, and that the project is supported by the Office of

Planning and ANC 3E (the ANC in which the property is located), the Commission determines that the Applicant has met its burden to demonstrate that the proposed PUD is of exceptional merit and is in the best interest of the city.

6. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, yards, or courts. The Commission finds that the requested flexibility from the residential recreation space and roof structure set-back requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

7. The Commission takes note of ANC 3E's resolution in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. In addition, the Commission notes the support that the project has received from CSTO and members of the community.

8. In regards to the issues raised by ANC 3F, the adjacent ANC, at the hearing and in their post-hearing submission dated October 28, 2004 (Exhibit 51), the Commission finds that: the proposed project's Wisconsin Avenue façade and the amount of retail space provided in the project will enliven the area and is appropriate for a mixed-use building; the retail tenant entrance has been relocated to provide an appropriate presence for retail use on Wisconsin Avenue; the species of trees proposed in the Applicant's landscape plan is appropriate; due to the reduction in size of the project, the inclusion of one affordable unit in the project is commensurate with the incentives and flexibility granted for this PUD application; the proposed streetscape design and landscaping is appropriate for this property and is pedestrian-friendly; the proposed "green roof" included in the design of the project will provide environmental benefits to the surrounding community; and the amount of parking spaces provided and inclusion of bicycle parking spaces in this project will benefit the surrounding neighborhood and community.

9. The Commission finds that the project is consistent with numerous themes and elements of the Comprehensive Plan. The Commission concludes that approval of the application will promote 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. The development of this PUD is compatible with citywide goals, plans and programs and the development patterns in the area. The proposed PUD will allow for appropriate residential and commercial development of underutilized property along a major thoroughfare in close proximity to a Metrorail station in a Housing Opportunity Area. The production of multi-family housing and affordable housing on the Property is consistent with the District's goals of increasing housing opportunities in the District. Further, the Commission concludes that this mixed-use, predominantly residential, development will contribute to the vitality and help strengthen the Tenleytown neighborhood.

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 for Lots 817 and 820 in Square 1732. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 26, 38 and 50 of the record, as modified by the guidelines, conditions and standards of this Order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of a mixed-use, primarily residential, project that includes 42 residential units[1] occupying approximately 36,333 square feet of gross floor area and ground-floor retail along Wisconsin Avenue, consisting of approximately 1,650 square feet of gross floor area. The PUD project will have a density of approximately 3.0 FAR; a building height of 65 feet; a lot occupancy of 60 percent; and will include approximately 49 parking spaces.

3. The Applicant will provide one affordable housing unit in the proposed PUD. The Applicant is provided the flexibility to locate this affordable housing unit as noted in the plans marked as Exhibits 26, 38 and 50 of the record.

4. The Applicant will enter into a Development and Construction Management Agreement with neighboring property owners that is in substantial conformance with the Development and Construction Management Agreement that was submitted into the record as Exhibit 37.

5. The Applicant will have the flexibility to use the 1,000-square-foot space on the B1 level as a community room for residents of the project or as storage space for the ground-floor retail uses, depending on future market conditions.

6. The Applicant shall provide the following community amenities no later than the date of the issuance of the building permit for the PUD project.

   Janney Elementary School - The Applicant shall make a payment of at least $75,000 to the Janney Elementary School PTA for the replacement of the wooden play equipment on the lower playground, for the provision of additional play equipment for the older students and for necessary stormwater management and soil erosion measures.

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[1] The Applicant is granted the flexibility to modify the number of residential units in the project by up to 10 percent in response to future market conditions. In the event that the number of residential units is modified, the number of parking spaces shall be modified proportionately to maintain the ratio of one parking space per dwelling unit.

Tenleytown Branch of the D.C. Public Library - The Applicant shall make a payment of $25,000 to the Friends of the Tenley Library for a state-of-the-art audio visual room in the renovated Tenley Library.

Wilson Senior High School – The Applicant shall make a payment of $20,000 to the Wilson Senior High School PTA for necessary repairs to the school buildings, including repainting of the cupola.

Friends of Ft. Bayard Park – The Applicant shall make a contribution of $15,000 to the Friends of Ft. Bayard Park to help fund the renovation/rehabilitation of Ft. Bayard Park, as approved by the National Park Service.

D.C. Fire Department - Tenleytown Area – The Applicant shall make a contribution of $47,427 to the D.C. Fire and Emergency Medical Services Department for the purchase of a hazardous materials POD.

7. The Applicant shall include language in all documents related to the purchase and sale of the residential units that owners of the units in the building are prohibited from applying for Residential Permit Parking stickers from the District of Columbia.

8. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as part of Exhibit 31 of the record.

9. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as part of Exhibit 31 of the record.

10. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission.

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

12. The consolidated 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 §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.

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

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

On November 8, 2004, the Zoning Commission approved this application by a vote of 5-0-0 (John G. Parsons, Kevin L. Hildebrand, Anthony J. Hood, Carol J. Mitten and Gregory N. Jeffries to approve).

On December 13, 2004, the Zoning Commission adopted this Order by a vote of 5-0-0 (Anthony J. Hood, John G. Parsons, Carol J. Mitten, Gregory N. Jeffries and Kevin L. Hildebrand to adopt).

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