Government of the District of Columbia
Office of Zoning

MEMORANDUM

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

FROM: Jerrily R Kress, FAIA
Director

DATE: May 17, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on May 27, 2005.

1 Z C. Order No. 04-19 (Case No. 04-19);
2 Z C Notice of Public Hearing (Case No 01-28TE);
3 Z C Notice of Public Hearing (Case No 02-06),
4 Z C. Notice of Public Hearing (Case No 04-35), and
5 Z C Notice of Proposed Rulemaking (Case No 04-31)

Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 04-19
EXHIBIT NO. 39

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ZONING COMMISSION
District of Columbia
CASE NO.04-19
EXHIBIT NO.39

ZONING COMMISSION ORDER NO. 04-19
Z.C. Case No. 04-19
Consolidated Planned Unit Development and Area Variances
District of Columbia Water and Sewer Authority
March 14, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on November 18, 2004, to consider applications from the District of Columbia Water and Sewer Authority ("WASA," or the "Applicant") for consolidated review and approval of a Planned Unit Development ("PUD") and an area variance regarding height of structures, pursuant to Chapters 1, 8, 24, and 31 of the D C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022, contested cases. For the reasons stated below, the Commission grants the applications.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On June 14, 2004, the Applicant filed the PUD application with the Zoning Commission for the District of Columbia for the consolidated review and approval of a PUD for the property consisting of a part of Parcel 253 with an address of 5000 Overlook Drive, S.W. (the "Site"). The application requests approval to construct Egg-Shaped Digesters and auxiliary structures on a site within the Blue Plains sewage treatment plant. The subject property is zoned C-M-3, and no change of zone classification is requested

2. On September 13, 2004, the Zoning Commission decided to schedule a public hearing to consider the application At the setdown meeting the Commission decided, based in part on the recommendation of the Office of Planning ("OP"), that height flexibility sought in the PUD application exceeded the degree of flexibility permitted under 11 DCMR §§ 2405 1 and 2405.3. The Commission, therefore, dismissed that part of the application, but indicated that it would consider, at the same time it heard the remainder of the PUD, an application for an area variance to authorize the requested heights of the structures The Commission also indicated that it was concerned with the lack of specificity as to the zoning flexibility required and that the only flexibility granted would be that specifically stated in the Applicant's Pre-Hearing statement

3 Based on the Commission's decision, the Applicant submitted its Pre-Hearing Submission on the PUD on October 28, 2004 and the variance application on October 29, 2004

4 The Applicant, the District of Columbia Water and Sewer Authority, is an independent agency of the District of Columbia government. The Authority began operations on October 1, 1996 and was created to finance, operate, and provide essential retail water distribution and wastewater conveyance and treatment services to approximately 570,000 people in the District of Columbia. WASA also provides wholesale wastewater conveyance and treatment services to approximately 1 6 million people in major suburban areas of this region

5 After proper notice, the Zoning Commission opened the public hearing on November 18, 2004 and completed the public hearing that evening. The Commission also took proposed action to approve the PUD application at the conclusion of the public hearing. The vote on the variance application was deferred until the date when final action on the PUD would be considered.

6. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 8D, within which the Site is located.

7 The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act NCPC, by action dated December 23, 2004, found the proposed PUD would not affect the identified federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

8. The Zoning Commission approved the variance application and took final action to approve the PUD application on January 13, 2005.

9. The Commission voted at its March 14, 2005 public meeting to re-open the record to accept: (1) recommendations made by the Commission of Fine Arts ("CFA") for design changes to the Egg-Shaped Digesters project; and (2) revised elevations showing a modified design conforming to the CFA's design recommendations. The Commission also voted to approve the design changes shown in the revised elevations at the March 14 meeting.

The Site and the Area

10 The Blue Plains Advanced Wastewater Treatment Plant ("Blue Plains" or the "Plant") is located in the southernmost part of the District of Columbia, situated generally between the Anacostia Freeway and the Potomac River. The Plant is located approximately two and one-half miles southeast of Reagan National Airport and just over five miles south of the U. S. Capitol This location is in Ward 8 and within the boundaries of Advisory Neighborhood Commission ("ANC") 8D and has a street address of 5000 Overlook Avenue, S.W

11. The proposed new Digesters Facility will be located to the east of the existing Solids Processing Building, in the south-central section of Blue Plains and approximately 900 feet west of the Anacostia Freeway (Interstate 295). The land area to be occupied by the proposed new facility is approximately 351,600 square feet or 8 07 acres.

12. The site is vacant, because the previous outdoor sludge composting facility on the site has been demolished. A metes and bounds drawing of the Site was submitted by the Applicant, showing the site as divided into proposed theoretical lots to be created.

13 The land uses surrounding Blue Plains are public uses, including D C Village, the U.S. Naval Research Laboratory, the Potomac Job Corps Center, the D. C. Police Academy and Fire Testing Facility and the Architect of the Capitol's tree nursery. The federal properties devoted to federal public uses are unzoned, e.g., the Naval Research Laboratory, Bolling Air Force Base, and Oxon Run Park. The Department of Labor's Potomac Job Corps Center and D.C. Village are zoned C-M-1

14. The residential neighborhoods to the east of the Anacostia Freeway are predominantly zoned R-2 (single-family, semi-detached homes) and R-5-A (townhouses and garden apartments). The nearest residential neighborhood is approximately one-half mile from Blue Plains. Small areas zoned C-1 and C-2-A provide locations for neighborhood shopping and offices on major streets.

The Project

15. The eight anaerobic digesters are proposed to meet WASA's treatment capacity needs. Egg-Shaped Digesters are tall and tapered containers for mixing, heating, and processing thickened sludge The egg shape is a most efficient shape for mixing and processing the thickened sludge Each digester is approximately 95 feet wide at its widest point and has a volume of 4 5 million gallons. Basement space will be used for piping, electrical and mechanical equipment, control rooms, storage, and other operations.

16. In addition to the eight Egg-Shaped Digesters, the project includes four Gas Storage Tanks (Silos) as well as the following smaller, auxiliary buildings and structures: a Digester Gas Building, a Digester Control Building, two electrical control buildings, two Gas Holders, and up to three enclosed Waste Gas Flares.

Zoning Flexibility Sought

17. The first aspect of zoning flexibility sought in the PUD application is a waiver of the requirement that a principal structure must be located on a single lot of record (11 DCMR § 3202.3). In addition, the application requests flexibility with respect to certain setback requirements, as detailed in the Applicant's Pre-Hearing Submission dated September 21, 2004. No other zoning flexibility is requested.

18. There are currently no record lots at Blue Plains, and the only public street frontage -- a requirement for the creation of a record lot -- is I-295, which is located approximately 900 feet from the PUD site Blue Plains consists of parcels of land that have not been subdivided for many years. All of the various structures at Blue Plains comprise a single facility, and the various components share parking facilities and private access roads To try to rationalize these arrangements for the purpose of creating single buildings on single lots that meet the requirements for street frontage and building setbacks, in particular, would be impractical and would serve no useful purpose

19. In the absence of record lots, the Applicant must (and will) subdivide the site into theoretical lots Each theoretical lot may contain no more than a one principal structure and each such structure must comply with the matter-of-right requirements of the Zoning Regulations, as would the case if the Applicant sought to construct multiple principal structures on a single record lot pursuant to 11 DCMR § 2517. Because the structures will have no street frontage, § 2517 3 requires:

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> (b) Open space in front of the entrance shall be provided that is equivalent to the required rear yard in the zone district in which the building is located; and
>
> (c) A rear yard shall be required.

20 As indicated in the Applicant's Pre-Hearing submission, two of the ten (10) front and rear setbacks required on the theoretical lots do not comply with the setback requirements

21 One of the proposed theoretical lots does not show a currently-proposed structure, but is indicated for future development of a co-generation facility or other structure. The Applicant will need to obtain a PUD modification in order to construct whatever specific structure is eventually proposed.

Public Benefits that Warrant the Zoning Flexibility Sought

22. The project is a major public interest initiative that will result in improvements to wastewater treatment that could not be achieved through matter-of-right development This project will add a "state-of-the-art" biosolids management technology, known as advanced anaerobic treatment, to the current advanced processing operations at Blue Plains, the largest advanced wastewater treatment plant in the world.

23 Public benefits that will result from advanced anaerobic treatment are numerous and substantial, and permit the project to be found to be particularly strong in the following public benefit categories as enumerated in 11 DCMR § 2403.9.

- *Uses of special value to the neighborhood or the District of Columbia as a whole (§ 2403 9 (i)) and environmental benefits (§ 2403 9 (h))* The construction of the project will achieve

  a Greater treatment capacity than conventional digesters while using the same amount of land,

  b Elimination of approximately one half of the volume of biosolids produced;

  c A 1.2 million-mile annual reduction in truck traffic, due to the lesser amount of sludge that will need to be trucked off-site, and an accompanying decrease in fuel consumption, fuel emissions, and road maintenance;

  d Reduced odor emissions at Blue Plains and at rural land application sites,

  e. Production of a recyclable end product and production of digester gas that can be used for power generation; and

  f. Operations and maintenance annual savings to WASA and its regional wholesale customer and local retail customers of approximately $16 million.

- *Architecture (§ 2403 9(a))* The Digesters Facility presents a unique architectural design challenge that has been met with a proposed design that is superior. Elevated connecting walkways and their supporting members are defining elements of the Egg-Shaped Digesters. The bow-shaped supporting members for the elevated walkways have been designed in an appealing 1930s industrial deco style reflective of the character of the older buildings at the Blue Plains site. An additional cladding finish not only enhances the appearance of the eggs, but the patterned surface this produces also tends to break down their monolithic appearance and somewhat reduce the egg's overall mass The architect has created an exterior design treatment of superior quality that will make the digesters pleasing and interesting for the public to observe. Accessory structures will fit well within the design character of other structures at Blue Plains.

- *Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan (§ 2403 9(j))*

a Public Facilities Element. The Comprehensive Plan includes an element devoted to Public Facilities (10 DCMR Chapter 6) The new Digesters Facility will improve biosolids treatment capacity at Blue Plains while saving space for

wastewater or stormwater treatment on-site and is directly in furtherance of this element of the Plan Section 600 3 states.

> Expansion of sewage treatment capacity and construction of related stormwater management projects are essential components of the public facilities program for the next two (2) decades High priority must be given to a solution to the District's solid waste and disposal needs. Regardless of which approach is selected, major Capital investments are anticipated

b. Environmental Element Section 404 (Solid Waste Management) of the Environmental Element includes the following policies in Sections 404.2(a), (c), and (d) that strongly support approval of the Digesters Facility and this PUD· 404.2 The policies established in support of the solid waste management objective are as follows

(a) Develop and implement a reliable program of solid waste and sludge management that is cost-effective, environmentally sound, and fully coordinated with all responsible jurisdictions and regulatory bodies;

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(c) Encourage the recovery and recycling of solid waste and sewage sludge materials, for both the public and private sectors, through appropriate regulatory, management, and marketing strategies, and

(d) Promote the development of cost-effective and environmentally sound techniques to extract energy from wastes, including sludge.

24. The project is acceptable in all other § 2403 9 categories

Consistency with the Comprehensive Plan

25. In addition to the elements of the Comprehensive Plan furthered by the PUD project discussed above, the proposal is also fully consistent with the Land Use Element in Chapter 11 of the Comprehensive Plan. That element includes the "Generalized Land Use Map," which indicates the adopted policies for future development throughout the city. The Blue Plains facility is designated as a "Local Public Facility." Clearly, the advanced wastewater treatment facilities proposed in this PUD are local public facilities and are part of the larger Blue Plains facility.

Potential for Adverse Effects

26. The PUD project will have entirely favorable effects on the surrounding area and on the Authority's services and facilities for the reasons discussed in the

preceding section The addition of the Digesters Facility at Blue Plains will in fact lessen the impacts of operations on the community. As to potential visual effects, the views of the proposed Egg-Shaped Digesters will be softened by the large distances from the relevant vantage points over the Potomac River, by the low elevation of the site, and by trees on the landward side that provide screening and large land areas devoted to public, generally institutional uses

27 With respect to the impact of the requested zoning flexibility, the Commission concurs with the Applicant and the Office of Planning that the purpose of setbacks is normally to protect the light, air, and privacy of abutting properties. In this case, there are no abutting properties to Blue Plains that are affected, and shadows cast by digesters upon each other are irrelevant to the functioning of the system

The Area Variance

28. WASA also requested an area variance from the height limit of 90 feet in the C-M-3 District

29. The Egg-Shaped Digesters have engineering requirements for proper internal functioning that dictate their size and shape The proposed digesters are 145 feet in height and will be sunk in the ground to a depth of 44 feet. This results in a height above finished grade of 101 feet. Other elements of the complex are somewhat higher, and several components and buildings in the Project are within the 90-foot height allowed in the C-M-3 District. The heights of the various components are shown in the chart below:

Structure	Height Above Finished Grade	Zoning Compliance
Egg Digesters	101	11' Variance
Elevated Walkways	101	11' Variance
Gas Domes	107	17' Variance
Access Towers	118	28' Variance
Silos	101	11' Variance
Other Structures/Buildings	60 or less	Within 90'

30. The Egg-Shaped Digesters Facility must be located at Blue Plains, where all of the wastewater is received for treatment

31. The digesters cannot function unless they are adjacent to the Solids Building, where the staging of solids occurs.

32. Because of the high water table at Blue Plains, especially on this site close to the Potomac River, the Digesters cannot feasibly be sunk farther into the ground without exorbitant expense

33 An equally serious constraint is that a major conduit – 50' wide x 15' deep – runs through the site and cannot feasibly be moved It is in the way of sinking the digesters farther

34. Pipes beneath the digesters must be connected to adjacent treatment facilities without an excessive difference in elevation.

Office of Planning Report

35. By report dated November 8, 2004 and by testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD and variance applications OP stated that the digester facility "is an important and needed public facility improvement This unique facility has a creatively designed egg shape intended to minimize its height and bulk with a visually striking effect." With respect to the variance standard, OP cited similar uniqueness and practical difficulties as those relied upon by the Applicant, referring to the high water table at the site, the engineering requirements related to the height of the digesters, location and elevation of underground pipes, and the uniqueness of Blue Plains as the central wastewater treatment plant

Advisory Neighborhood Commission 8D

36. The Commission received a letter dated November 16, 2004 from Advisory Neighborhood Commission 8D that did not indicate whether the position stated therein was adopted at a properly noticed meeting at which a quorum was present.

District Department of Transportation Report

37 On November 5, 2004, the District Department of Transportation ("DDOT") submitted a report addressing the transportation elements of the Proposal. In its report, DDOT indicated that it supported the Digester project, because it would reduce truck traffic as a consequence of reduced volume of biosolids requiring transport from the Blue Plains facility.

Commission of Fine Arts Recommendation

38. The Commission of Fine Arts ("CFA") reviewed the Project plans at its meeting of November 18, 2004, and again at its meeting of January 25, 2005

39 The CFA granted concept approval, subject to recommended design modifications.

CONCLUSIONS OF LAW

PUD

1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits that cannot be achieved under matter-of-right development 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 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, parking, loading, yards, and courts

3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations in that it will result in significant improvements to a critical governmental function not achievable under matter-of-right development.

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

5 The impact of the project on the surrounding area is acceptable and its impact on the operation of District services is beneficial

6. The Project's public benefits are a reasonable trade-off for the zoning flexibility requested on the site.

7. Approval of this PUD is not inconsistent with the Comprehensive Plan, including the designation of the site for use and development of "Local Government Facilities" in the Generalized Land Use Map of the Land Use Element

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

Height Variance

9 Section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(3) (2001), permits variances from

the strict application of the Zoning Regulations provided that the property owner[1] demonstrates that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property, (2) the applicant will encounter practical difficulty or undue hardship if the Zoning Regulations are strictly applied, and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v District of Columbia Bd of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)

10 Section 840 1 of the Zoning Regulations provides that the height of building or structures in a C-M-3 zone district shall not exceed 90 feet WASA seeks the following height variances:

Structure	Height Above Finished Grade	Zoning Compliance
Egg Digesters	101	11' Variance
Elevated Walkways	101	11' Variance
Gas Domes	107	17' Variance
Access Towers	118	28' Variance
Silos	101	11' Variance.

11. Since WASA is seeking an area variance, it need only make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v D C Board of Zoning Adjustment,* 287 A 2d 535, 541 (D.C. 1972). Therefore, in order to be granted any variance, the Applicant must show an exceptional condition or "uniqueness" of the property, practical difficulties in complying with the Zoning Regulations arising out of this uniqueness, and no detriment to the public good or impairment of the zone plan.

Exceptional Condition

12. With respect to the first prong of the variance test, the District of Columbia Court of Appeals has recognized that the inability to use property in conformity with the Zoning Regulations may stem from the existence of a structure on the land. *See Clerics of Saint Viator, Inc. v. District of Columbia Bd of Zoning Adjustment*, 320 A 2d 291, 294 (D.C. 1974), *Draude v District of Columbia Bd of Zoning Adjustment*, 582 A.2d 949, 955-56 (D.C. 1990) The Court of Appeals has also noted that

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[1] Although the municipal corporation that constitutes the District of Columbia government, as a whole, and that includes WASA as one of its agencies, retained legal title to Blue Plains after the creation of WASA, WASA was given the exclusive use of the facility D C Official Code § 34-2202 07 Therefore, WASA is appropriately viewed as the property owner for the purposes of the variance analysis

> [W]hen a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible "other extraordinary and exceptional situation or condition of a particular piece of property."

Monaco, 407 A 2d at 1099.

13 Thus, in *Draude, supra,* the Court of Appeals sustained the grant of a density variance to allow the expansion of an ambulatory care center that was adjacent to the owner's hospital. The court found that the need to maintain this proximity, together with the institutional need of the owner to expand its ambulatory center, constituted an exceptional condition. Similarly, the Board of Zoning Adjustment found the institutional need of Sibley Hospital to expand its oncology center to be an exceptional condition when granting density and rear yard variances *Application of the Lucy Webb Hayes Training School for Deaconesses and Missionaries d/b/a Sibley Memorial Hospital,* BZA No 16654, 48 DCR 4811 (2001)

14 WASA has clearly demonstrated an institutional (and public interest) need to improve its biosolids management Certainly there is no place other than the Blue Plains facility to locate the Digesters and there is no place at Blue Plains to construct the facility other than adjacent to the Blue Plains Solids Building where all of the staging of solids occurs. The high water table at Blue Plains and the presence of a major conduit running through the site limit the extent to which structures can be economically extended into the subsurface.

15. The Commission finds that WASA's institutional needs, the existing configuration of its facilities, and the dewatering problems associated with excavation on the site constitute exceptional circumstances with respect to its property.

Practical Difficulties

16. WASA has demonstrated that the engineering requirements of the digesters dictate the height of these facilities. Because of the unique subterranean water characteristics at the facility, the Digesters cannot be economically sunk farther into the ground. Even if farther excavation were feasible, the fact that the pipes beneath the digesters must be connected to adjacent treatment facilities without an excessive difference in elevation further limits the extent to which height could be reduced

17 The Commission thus finds that strict compliance with the 90-foot height limitation will pose practical difficulties for WASA.

The Requested Height Variances Will Not Detrimentally Affect the Public Good or the Zone Plan

18. The Digesters project will have only favorable affects on the public good by treating greater amounts of biosolids on the same amount of land, eliminating about half of the volume of biosolids produced, reducing odor emissions and truck traffic, producing a recyclable end product and gas used for power generation, and saving WASA customers approximately $16 million annually. The proposed use is industrial in nature and permitted as a matter of right in the C-M-3 industrial zone in which it is located While the height of the structures exceeds the matter-of-right height limit, its effect is minimized by their remote location and low elevation. The Commission accepts the Applicant's representation that there has been no opposition to the proposed height communicated to it even after meeting with the Advisory Neighborhood Commissioners in Ward 8, the U S Commission of Fine Arts, the National Capital Planning Commission, the Office of Planning, and the City of Alexandria, Virginia.

General Findings

19. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D C. Law 8-163, D.C. Official Code § 6-623 04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

20 Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C Law 13-135, D.C. Code § 1-309.10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission.

21 Unfortunately the letter provided by the affected ANC cannot be considered a report to which great weight can be given, because the ANC letter does not satisfy the requirements of 11 DCMR § 3012.5 Namely the letter does not state whether the ANC adopted its position at a meeting for which proper notice was given and at which a quorum was present. These prerequisites ensure that the Commission only gives great weight to positions lawfully adopted by an ANC in accordance with the notice and meeting requirements set forth in the ANC Act

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

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Applications for consolidated review of a Planned Unit Development to construct an Egg-Shaped Digesters Facility and auxiliary structures and for an area variance regarding height of certain structures in that facility on property located within the Blue Plains Advanced Wastewater Treatment Plant at 5000 Overlook Drive, S W (part of Parcel 253). This approval is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by Sorg and Associates, Architects, dated September 21, 2004, as supplemented by drawings dated October 28, 2004 and February 15, 2005, marked as Exhibits 13, 16, and 37, respectively, in the record, as modified by the guidelines, conditions, and standards herein.

2. The Applicant may not proceed with construction of any structure on the theoretical lot indicated for a future "co-generation building" without first obtaining Commission approval of a PUD Modification pursuant to 11 DCMR § 2409.9.

3. 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 provided that the variations do not materially change the exterior configuration of the structures;

   b. 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; and

   c. To make refinements to exterior materials, details and dimensions railings, roof, architectural embellishments and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals.

4. No zoning relief has been granted to the Applicant other than the height, setbacks, and minor design flexibility expressly stated in this Order

5 The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Office of Local Business Development in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project to be created as a result of the PUD project.

6 The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services (DOES)

7. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners 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 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 the Department of Consumer and Regulatory Affairs 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 (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit. Construction shall begin on the facility within three (3) years after the effective date of this Order.

10. 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.

On January 13, 2005, the Commission voted to approve the height variance application by a vote of 5-0-0 (Carol J. Mitten, Anthony J Hood, Gregory N. Jeffries, John G. Parsons, and Kevin L. Hildebrand to approve).

On January 13, 2005, the Commission voted to approve the PUD application by a vote of 5-0-0 (Carol J. Mitten, Kevin L. Hildebrand, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve)

On March 14, 2005, the Commission voted to re-open the record to consider recommendations made by the Commission of Fine Arts, and elevation drawings submitted by the Applicant showing a revised design, by a vote of 5-0-0 (Carol J. Mitten, Kevin L Hildebrand, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve) The Commission also voted to approve the revised design by a vote of 5-0-0 (Carol J. Mitten, Kevin L. Hildebrand, Anthony J Hood, Gregory N. Jeffries, and John G. Parsons to approve).

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 _____.