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February 15, 2005

By Hand Delivery

Mr. Anthony Hood
Vice-Chairman, D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: Zoning Commission Case No. 04-22 – 220 H Street, NE (the "PUD Site")
Abdo Development, L.L.C. (the "Applicant")
Proposed Findings of Fact and Conclusions of Law

Dear Vice-Chairman Hood and Members of the Commission:

Enclosed please find the Applicant's proposed Findings of Fact and Conclusions of Law for the above-mentioned PUD and Zoning Map Amendment application. In addition, the Applicant notes the letter of the Near Northeast Citizens Against Crime and Drugs ("NNCACD") dated February 5, 2005, which was submitted to the Office of Zoning on February 10, 2005. The Applicant believes that NNCACD is a well-respected and trusted neighborhood organization that deserves support. Therefore, the Applicant will contribute $20,000 to NNCACD no later than the issuance of the building permit for the PUD project. The attached Findings of Fact and Conclusions of Law include this contribution as a condition of approval of the project.

It is our understanding that the record of this case is now complete. We look forward to the Commission's approval of the PUD and Zoning Map Amendment application.

Sincerely,

Allison Prince/FAT
Allison C. Prince

Paul A. Tummonds, Jr.
Paul A. Tummonds, Jr.

Enclosure
cc: See Attached Certificate of Service

Document #: 1461269 v.1

ZONING COMMISSION
District of Columbia
CASE NO. 04-22
EXHIBIT NO. 48

ZONING COMMISSION
District of Columbia
CASE NO.04-22
EXHIBIT NO.48

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 04-22
Case No. 04-22

(Consolidated Planned Unit Development and Zoning Map Amendment Applications of Abdo Development, L.L.C.)
February 24, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 27, 2005, to consider an application from Abdo Development, L.L.C. for the consolidated review and approval of a planned unit development and Zoning Map Amendment application for Lot 13 in Square 751 located at 220 H Street, NE, pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022.

FINDINGS OF FACT

1. The project site consists of the entirety of Square 751 (Lot 13) has an address of 220 H Street, NE and is located in the Near Northeast neighborhood of Ward 6 (the "Property"). The Property consists of approximately 104,756 square feet of land area. The Property is currently split-zoned with the western half of the site located in the C-3-B District and the eastern half of the site located in the C-3-A District. The Property was most recently the home of the Capital Children's Museum. (Exhibit 12, Pre-Hearing Statement of the Applicant ("Pre-Hearing Statement") at p. 1, viii)

2. On September 13, 2004, Abdo Development, L.L.C. (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 Applicant sought a Zoning Map amendment to the C-3-C District for the entire Property. The PUD project proposed to renovate and rehabilitate the portion of the Capital Children's Museum Building that is historically important for new residential use and develop two new residential buildings on the remainder of the Property. In total, the project will include approximately 500 new residential units (approximately 425-445 in the new buildings and approximately 45 - 55 in the existing building). The PUD project will also include approximately 19,852 square feet of affordable housing. (Exhibit 12, Pre-Hearing Statement at p. 1.)

3. At a Special Public Meeting on September 30, 2004, the Commission unanimously voted to set down the applications for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on January 27, 2005, which was conducted in accordance with the provisions of 11 DCMR §3022.

4. At the January 27, 2005 public hearing, the Commission granted party status to the Stanton Park Neighborhood Association. The Commission denied a party status request from Potomac Development Corporation. The Commission also denied a party status request from the residents of Square 776, the Square immediately to the east of the Property noting that their party status request was filed only two days prior to the public hearing, and therefore not in conformance with the requirements of 11 DCMR §3022.3. ANC 6C, the ANC in which the Property is located, is automatically a party to this application.

PUD APPLICATION AND PROJECT

5. The Property consists of approximately 104,756 square feet of land area and includes all of the land in the block that is bound by H, I, Second, and Third Streets, NE. The Hopscotch Bridge and H Street border the Property to the south. At the point that the Hopscotch Bridge crosses Second Street, it is approximately 28 feet above Second Street. Directly across H Street from the Property is a vacant property that is commercially zoned. Directly across Second Street from the Property, and spanning the entire length of the block, is the Railway Express Building, which was converted into offices in the 1980's. The Square to the north of the Property includes commercial office buildings that line the entire length of the block directly across I Street from the site. To the east, directly across Third Street from the existing vehicular entrance to the Capital Children's Museum, is a large commercially-zoned, vacant property (formerly a gas station) at the intersection of Third and H Street, and five rowhouses located at the intersection of Third and I Street. (Exhibit 12, Pre-Hearing Statement at p. 4.)

6. The Property is located in the institutional land use category as shown on the District of Columbia Generalized Land Use Map. The properties to the west, which includes the Station Place PUD site, are located in the Mixed-Use, High Density Commercial and Production and Technical Employment land use category. The properties to the north, south and east (the southern half of the block) of the Property are included in the Mixed-Use, Moderate-Density Commercial and Moderate-Density Residential land use categories. The properties further to the north and east are located in the Moderate-Density Residential land use category. (Exhibit 12, Pre-Hearing Statement at p. 5.)

7. The Applicant stated that the proposed project will result in the creation of a unique and inviting residential building with the introduction of approximately 55 residential units inside the main historic structure on H Street. The formal entry to the building will occur from a landscaped courtyard in the middle of the site. This entry point allows residents to enjoy the significant open space provided in the interior of the project and also allows for easy access to the parking garage, as well as the resident drop-off and pick-up area that will be accessed from I Street. (Exhibit 12, Pre-Hearing Statement at p. 5.)

8. The proposed PUD project also includes two new residential structures that are oriented toward Second, I, and Third Streets. These new residential buildings

have been designed to complement and respect the original historic buildings of the former Capital Children's Museum. The two new buildings each will be built to a height of 110 feet and will include approximately 425-445 residential units. The upper levels of the new building along Third Street have been set back, above the 90 foot height of the building, at a one-to-one ratio to mitigate any adverse impacts on neighboring properties. Like the units in the renovated structure, all of the residential units in the new buildings will be for-sale units. These new buildings also provide ground floor access to individual units along I, Second and Third Streets. The main lobbies for these buildings are accessed from the I Street entrance to the project via a set of arcades which create a visual connection to I Street. (Exhibit 12, Pre-Hearing Statement at p. 6, Exhibit 21.)

9. Access to the below-grade parking garage of approximately 500 parking spaces for the entire project will be from Second Street near the intersection of H Street below the Hopscotch Bridge. A vehicular entrance and exit will be located on I Street at approximately mid-block. This entrance opens onto a courtyard that has been designed as an attractive and inviting entry for residents of the project and their guests. This vehicular entrance will be used for resident and guest drop-off and pick-up only, as residents of the project can go directly from their parking space in the below-grade garage to their units. The drop-off area is linked to the remainder of the site via a series of paths that are reminiscent of a college campus where vehicles are occasionally allowed access at very low speed. A pedestrian-only entrance will be located on Third Street at the approximate location of the existing vehicular entrance to the Capital Children's Museum. (Exhibit 12, Pre-Hearing Statement at p. 7-8.)

10. The new buildings will be primarily masonry with metal windows and precast concrete and stone trim. The massing of the building, bays and rooftop tower elements will create a richness of expression appropriate to the historic building on the site. The elevations that face H and Second Streets will have a strength to compete with the dominant Hopscotch Bridge and the commercial/industrial character of 2nd Street. Along Third and I Streets the design provides softer edges through the use of the secondary massing of bays, balconies and setbacks, to moderate the size of the new buildings and give them the scale necessary to transition to the generally lower buildings north and east of the site. Elevational elements within these bays, ornamental brickwork, and window patterns will further establish an appropriate scale relationship to nearby buildings. (Exhibit 12, Pre-Hearing Statement at p. 6-7.)

11. The proposed project also provides for the renovation of a smaller original historic building currently located on the interior of the site. This two story structure will be renovated and rehabilitated and will become a central amenities building for the entire complex, providing the attendant's desk, meeting and common rooms, a business and home office center, and significant recreational space. Access to this amenities building will be from I Street. (Exhibit 12, Pre-Hearing Statement at p. 8.)

12. The proposed project will include extensive landscape and hardscape improvements on private and public property. Private gardens will surround the original main historic building, both within the courtyard area and along 3rd and H Streets. This

type of personalized landscape area will also occur at the base of the new buildings along their public and internal perimeters. Further, ground level units along Second, I and Third Streets will have direct access to the street and their personalized landscaped areas. A central courtyard will be a common amenity for all residents. This richly paved and landscaped area will receive abundant light from the south and east, and the open area between the new buildings will allow breezes and light to enter freely. In addition to the paths flanking the amenity building, there will be two pedestrian walks. One connecting eastward to 3rd Street and the other southward to H Street via a stairway and shuttle elevator. This same elevator will allow easy access to garage level, bicycle storage. Along the H Street frontage, the Applicant noted that it will work closely with the District Department of Transportation to implement the proposed H Street streetscape improvements adjacent to the site. (Exhibit 12, Pre-Hearing Statement at p. 8-9, Exhibit 21.)

13. The total gross floor area included in the proposed PUD is approximately 599,134 square feet for a total Floor Area Ratio ("FAR") of approximately 5.72. The new buildings will have a maximum height of approximately 110 feet measured from I Street and the existing Capital Children's Museum building has a height of approximately 64 feet measured from 3rd Street. The proposed project will have a lot occupancy of approximately 65%. (Exhibit 12, Pre-Hearing Statement at p. 9.)

14. The Applicant stated that it is necessary to rezone the Property to the C-3-C Zone District in order to allow the two new structures to obtain a height of 110 feet. Allowing this height on the Property permits the inviting interior open space of the project, and most importantly, allows for the preservation and rehabilitation of the existing historic buildings that occupy a significant portion of the site's land area. (Exhibit 12, Pre-Hearing Statement at p. 9.)

15. The Applicant also noted that the PUD project will be built on a single record lot with multiple buildings. Pursuant to Section 2517.2 of the Zoning Regulations (exceptions to Building Lot Control (Other Than Residence Districts)) multiple buildings are permitted on a single record lot as a matter-of-right, provided that each building satisfies applicable Zoning requirements (such as use, height, bulk, and open spaces around each building.) In order to locate the multiple structures on the Property as proposed in this PUD project, it is necessary to obtain relief from Section 2517.2 of the Zoning Regulations. (Exhibit 12, Pre-Hearing Statement at p. 9.)

16. The Applicant stated that the project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Preserving and Promoting Cultural and Natural Amenities;
- Respecting and improving the physical character of the District; and

- Preserving and ensuring community input.

The project is also consistent with many Major Elements of the Comprehensive Plan (including; the Housing and Urban Design Elements), and fulfills the goals and policies of the Ward 6 Plan and the H Street, NE Strategic Development Plan (the "Plan"). (Exhibit 12, Pre-Hearing Statement at p. 18-22; Exhibit 26, OP Report, p.3.)

17. In particular, the Applicant noted numerous aspects of the Plan that are satisfied by the proposed project. The Plan places great emphasis on the redevelopment of the Property at a higher density with architecture that appropriately marks the entrance to the H Street community, while also encouraging the sympathetic treatment of the existing, potentially historic, structure on the Property. The Applicant noted that the redevelopment of the Property is an integral component of the Plan's goals for the revitalization of the H Street corridor and is consistent with the guidelines established in the Plan. The Applicant concluded that approval of the PUD project will help achieve the goals and policies of the Plan by providing a signature residential project to mark the entrance to the H Street corridor and by creating a critical mass of future residents in the area that will patronize the restaurants, shops and services that will be offered along the revitalized H Street corridor. (Exhibit 12, Pre-Hearing Statement at p. 22-23.)

18. Testimony and evidence on behalf of the Applicant was provided by Jim Abdo; Phil Esocoff, of Esocoff & Associates Architects (who testified as an expert in the field of architecture); and Martin Wells, of Wells & Associates, (who testified as an expert in the field of traffic and parking engineering).

19. Mr. Abdo testified to the significant and broad support that this project has received from the community. Mr. Abdo noted that the Applicant participated in 28 meetings with neighborhood organizations and residents regarding the proposed project. Mr. Abdo also stressed that this project will not result in the displacement of any current residents. (Exhibit 34.)

20. As addressed in the applicant's pre-hearing statement and through the testimony of Mr. Abdo and Mr. Esocoff, the following public benefits and project amenities will be created as a result of this project.

- Housing and Affordable Housing – The PUD project will create approximately 500 new, for-sale, residential units in the Near Northeast neighborhood. In addition, the project will create 19,852 square feet of affordable housing that is available to potential purchasers having a household income not exceeding 80% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area. (Exhibit 12, Pre-Hearing Statement at p. 13, OP Supplemental Report Ex. __.)

- Historic Preservation of Private or Public Structures, Places, or Parks - Through the PUD and Zoning Map Amendment process, the Applicant will be able to renovate and rehabilitate the historically significant portions of the Capital Children's Museum building. (Exhibit 12, Pre-Hearing Statement at p. 13.)

- Urban Design and Architecture – The Applicant noted that the proposed project would create two new buildings that complement the renovated portions of the Capital Children's Museum building and recognize the site's status as the gateway to H Street. The project's re-focus on and proposed treatment of H Street (through the introduction of planting areas for trees and shrubs in private gardens, an ornamental fence, and physical connections to H Street) is also an important urban design element that is complicated due to the height difference of the Hopscotch Bridge and H Street as they move across the Property. Mr. Abdo and Mr. Esocoff noted the significant architectural modifications to the new buildings that were made in response to issues of perceived height and mass raised by the Zoning Commission and members of the surrounding community. The Applicant also provided shadow studies to show that the height and mass of the new buildings will not create any significant adverse impacts on neighboring residential properties. (Exhibit 12, Pre-Hearing Statement at p. 14, Exhibit A.)

- Site Planning – The Applicant noted that the proposed project has been designed to provide residents and their guests with open and inviting spaces for entertainment and relaxation. These spaces include the large landscaped open spaces on the interior of the site, the private garden areas, as well as the renovated amenities building. Mr. Abdo testified that the PUD project has a lot occupancy of only 65%. (Exhibit 12, Pre-Hearing Statement at p. 15.)

- Effective and Safe Vehicular and Pedestrian Access – A transportation impact study prepared by the Applicant's traffic engineer, Wells & Associates, concluded that the proposed project will have no significant impact on peak hour levels of service at nearby intersections. In addition, the study noted that the proposed on-and off-site parking supply would adequately meet the minimum zoning parking requirements and prevailing parking demands in this neighborhood. In response to a question from the Commission, Mr. Wells noted that the proposed entrance to the parking garage at the southwestern corner of the Property, on Second Street, was appropriate and that no additional entrances to the parking garage were needed. (Exhibit 21.)

- Uses of Special Value - Mr. Abdo also discussed the significant community amenities that are included in the project that provide uses of special value to the surrounding neighborhood. The community amenities include:

  H Street Main Street - $20,000 – The Applicant will contribute $20,000 to the H Street Main Street organization to help further its promotion of commercial activity along the H Street corridor through advertising, promotion, merchant receptions, technical assistance, and new business recruitment.

  Affordable Parking Program - $40,000 – The Applicant will contribute $40,000 for the establishment of an affordable parking program to help purchasers of the affordable dwelling units purchase parking spaces in the project. The affordable parking program will be administered by the same entity that administers the sale of the affordable dwelling units.

- Revenue for the District – The Applicant noted that the addition of approximately 500 new households will result in the generation of additional tax revenues for the District of Columbia. (Exhibit 12, p. 15-16.)

- Consistency with the Comprehensive Plan – The Applicant noted that the project fosters and furthers numerous elements of the Comprehensive Plan as well as numerous major themes of the Comprehensive Plan. (Exhibit 12, p. 18-22.)

- Environmental Benefits – The Applicant noted that there will be numerous environmentally appropriate attributes of the project. Such attributes include: high efficiency Energy Star rated HVAC units for the heating and cooling loads of the residential units located in the new buildings; renovation of the historic building that will meet LEED Materials and Resources Criteria by maintaining 75% of the existing shell and utilizing recycled content for at least 5% of the total value of the materials in the project and will meet LEED Indoor Environmental Quality Criteria; and the introduction of an underground bio-filtration system on the Property that will retain and filter stormwater run-off prior to release into the public stormwater system. (Exhibit 12, Pre-Hearing Statement at p. 11-12.)

- 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 12.)

21. In testimony at the Public Hearing, Mr. Esocoff noted the many attributes of the new residential buildings which are superior features of the project that benefit the neighborhood to a degree that is greater than a matter of right project. Mr. Esocoff noted the following architectural features of the proposed project that are not found in matter of right projects.

- Rooftop embellishments that define spaces for smaller gatherings, include custom ornamental metal finishes, provide the opportunity to shield from view required mechanical systems, and act as armatures for planting materials that in effect create green landscapes on the roof.

- The lower levels of the new buildings include custom brick patterning, pre-cast ornamental elements, custom color window frames, ornamental metalwork, two-story window expressions, a stone base with no thru-wall vents, and recessed windows to create better shadow lines.

- The façades of the new buildings include a multicolor and multi-texture masonry with tinted mortar, low emissivity glass, pebble glass to soften and "groom" the exterior, and a high level of finish on all exposures of the building.

(Exhibit 34.)

22. In response to issues raised by Commissioners during the January 27, 2005 public hearing, the record of the case was left open for the Applicant to provide the following materials and information:

- An enhanced roof plan;
- Plans and renderings depicting views from across Third Street, NE of the Property's existing conditions, the proposed project, and a matter of right project; and
- A discussion of the ability to include architectural embellishments on the roof of the project.

The Applicant submitted the required materials on February 8, 2005. The Applicant noted that the section and renderings demonstrate that any additional height above the 65 foot height permitted as a matter of right along Third Street has little or no impact on the townhouses across Third Street from the PUD project. This is due to the 90 foot width of Third Street and the fact that the human eye has a conventional cone of vision of approximately 60 degrees. Based on these facts, the attached section and renderings illustrate that a person on the east side of Third Street looking west, without tilting his head, will only be able to see the proposed structure up to a height of approximately 60 feet. The Applicant also noted that the Zoning Regulations expressly allow "spires, towers, domes, pinnacles or minarets servings as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks" to be erected to a height in excess of the maximum building height that is normally permitted in a commercial district. (See 11 DCMR §770.3). The 1910 Height Act mirrors this language in allowing architectural embellishments to exceed the maximum height that is allowed for a building. (Exhibit 46.)

23. In a letter to the Commission dated February 15, 2005, the Applicant noted the services and benefits that the Near Northeast Citizens Against Crime and Drugs ("NNCACD"), a 501 (c) (3) organization, provides in the area surrounding the Property. In order to help further their activities, the Applicant made a commitment to contribute $20,000 to NNCACD no later than the issuance of a building permit for the PUD project. (Exhibit __.)

GOVERNMENT REPORTS

24. The Office of Planning ("OP"), in its report dated January 18, 2005 and through its testimony at the public hearing recommended approval of the project. The OP Report noted that OP believes the project benefits and amenities are commensurate with the amount of development incentive requested, that the application meets the standards for a PUD, and that the project is not inconsistent with the Comprehensive Plan. (Exhibit 26, p.1.)

25. In testimony at the Public Hearing, representatives of OP noted that the significant amenities of the project include: the construction of an entirely residential project on a commercially zoned site; the significant affordable housing component of the project; the appropriate site planning and urban design aspects of the project; and the historic preservation component of the project. In response to questions from the Commission regarding the proposed height of the project along 3rd Street, the OP representatives stated that the overall height and density of the project was appropriate and consistent with the H Street, NE Strategic Development Plan.

26. The District Department of Transportation ("DDOT") submitted a report dated January 19, 2005, which supported the PUD project. The DDOT report noted the numerous access points to the project with pedestrian and vehicular movements separated by design, the location of the parking garage entrance and loading facilities located on Second Street and the visitor and resident vehicular drop-off and pick-up area off of I Street. DDOT concluded that the project will have a negligible impact on existing traffic volumes and will not create dangerous or objectionable traffic conditions. (Exhibit 27.)

ADVISORY NEIGHBORHOOD COMMISSION REPORTS

27. Advisory Neighborhood Commission ("ANC") 6C adopted a unanimous resolution in support of the project at a regularly scheduled and publicly noticed meeting on December 8, 2004. The ANC in its written resolution dated December 13, 2004, noted that the PUD project will bring needed residential development, including affordable housing units, to the H Street neighborhood. The ANC noted that it believes the project will serve as an important catalyst for future beneficial development of the H Street corridor. The ANC also found that the proposed number of parking spaces and height of the proposed buildings are appropriate and will not cause any adverse impact on neighboring properties or the surrounding neighborhood. The ANC's approval included the following six conditions:

- The Applicant will provide at least one parking space in the project for every residential unit and will endeavor to convey all residential units with a parking space;
- The Applicant will provide bicycle parking areas in the project;
- The Applicant will provide Zip Car or Flex Car parking spaces in the project;
- The Applicant will provide approximately 30 parking spaces for guests of the residents;
- The Applicant will establish an apprenticeship program for hiring persons from the community and keep the ANC informed on the workings of the program; and
- The Applicant will provide architectural lighting of the historic building along H Street, NE.

(Exhibit 18.)

28. ANC 6C, in a supplemental filing dated January 25, 2005, and in testimony at the public hearing, noted that at the ANC 6C's January 12, 2005 public meeting, the ANC unanimously re-affirmed its support for the project and addressed two additional issues: (1) affordable housing; and (2) affordable parking. Regarding the issue of affordable housing, the ANC urged the creation of a community advisory board to work with the developer and other agencies of the District of Columbia government to set up standards for the affordable housing component of the project. Regarding the issue of affordable parking, the ANC noted that the Applicant committed to a contribution of $40,000 for the establishment of an affordable parking program to help purchasers of the affordable dwelling units purchase parking spaces in the project. (Exhibit 30.)

PARTIES AND PERSONS IN SUPPORT

29. By written submission and testimony at the public hearing, Councilmember Sharon Ambrose testified in support of the application. Councilmember Ambrose noted that this project is extremely important to overall city efforts of improvement and redevelopment of the H Street, NE corridor. (Exhibit 32.)

30. H Street Main Street ("HSMS") by written submission and testimony at the public hearing, expressed its support for the application. HSMS noted that the proposed project was consistent with the H Street Strategic Development Plan and that the direct access from the Hopscotch Bridge to the project will promote pedestrian traffic to not only Union Station, but also to the merchants on H Street. (Exhibit 36.)

31. Representatives of the National Children's Museum (Formerly the Capital Children's Museum) testified in support of the application and submitted written testimony. This support was based on the Applicant's respect for the historic structures on the Property and commitment to the neighborhood, as well as the opportunity for new housing opportunities and the redevelopment of the H Street corridor that will occur due to this project. (Exhibits 38 and 39.)

32. In a letter dated January 14, 2005, the Capitol Hill Restoration Society noted its support for the application. (Exhibit 25.)

33. The Stanton Park Neighborhood Association ("SPNA"), a party in support of the application, presented written and oral testimony regarding the application. The SPNA representatives noted their support for the proposed height and density of the project. The SPNA representatives did state that they have issues with some aspects of the renovation of the historic structures. In particular, the SPNA representatives requested that an architectural historian be hired by the Applicant to help document the appropriate historical time periods of the historic structures and help with the design and treatment of these structures. (Exhibit 28.)

34. Potomac Development Corporation the owner of properties located at 220 I Street, NE and 900 Second Street, NE, in a written submission to the Commission, noted its general support for the project. However, Potomac Development Corporation

noted that it did have concerns regarding potential traffic congestion issues on Second Street, NE as a result of a single entrance to the garage of the project on Second Street. Potomac Development Corporation proposed that another entrance to the garage be created on Third Street, NE. (Exhibit 24.)

35. The Local Initiatives Support Corporation ("LISC") by written submission and testimony at the public hearing supported the application. The written submission noted that the redevelopment of the Property will be a catalyst for new investment along the H Street corridor and in the neighborhoods that surround that corridor. In testimony at the public hearing, the representative of LISC noted the significant affordable housing component of this project without any public subsidies or cost write-downs. (Exhibit 33.)

36. The Washington Regional Network for Livable Communities ("WRN") presented written and oral testimony in support of the project. This support was based on WRN's commitment to transit-oriented development and the project's success in creating an attractive urban design, pedestrian-scale and street orientation that results in a walkable neighborhood close to Metrorail and other transit services. (Exhibit 37.)

37. Numerous residents of the neighborhood testified in support of the application. In general, these residents supported the application due to the impact that the project will have on the revitalization of the H Street Corridor, the creation of new housing opportunities in the neighborhood, the Applicant's willingness to address neighborhood concerns, the preservation of the historic components of the former Capital Children's Museum buildings, and the significant affordable housing component of the project. (Exhibits 40 and 41.)

PARTIES AND PERSONS IN OPPOSITION

38. At the public hearing and in a written submission to the Commission, certain residents of Square 776 testified in opposition to the PUD project. These residents based their opposition to the application on the following factors: a potential adverse effect on the colonial style character of the Capitol Hill neighborhood; the overpopulation effect of adding 500 residential units to the Property; potential adverse effect on the availability of street parking in the neighborhood; and the visual impact that the proposed building will have on the westerly views of residents along Third Street, NE. (Exhibit 29.)

NCPC ACTION

39. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) on _____.

CONCLUSIONS OF LAW

The PUD process is an appropriate means of controlling development of the Proeprty 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.

Under the PUD process, the Zoning 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. In this application, the Commission finds that the requested flexibility from the requirements of §2517.2 regarding multiple structures on a single record lot can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage 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. The Commission agrees with the testimony of the project architect and the representative of the Applicant and 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. The Commission finds that the affordable housing provided in the project, the historic preservation component of the project, and the large amount of open and inviting space provided on the site are significant and substantial project amenities of this PUD application.

The Commission takes note of ANC 6C's resolution in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission agrees with ANC 6C's conclusion that the project will serve as an important catalyst for future beneficial development of the H Street corridor and that the proposed number of parking spaces and height of the proposed buildings are appropriate and will not cause any adverse impact on neighboring properties or the surrounding neighborhood. The Commission believes that the conditions of approval of this Order adequately address the issues raised by the ANC regarding the affordable housing component of this project as well as creating a mechanism to provide affordable parking spaces in the project.

In addition, the Commission notes the support that the project has received from numerous neighborhood residents, organizations, and the Ward 6 City Councilmember. In regards to the issues raised by the Stanton Park Neighborhood Association, the Board finds that the Applicant's proposal to engage the services of an architectural historian to identify and document an historically significant time period for the two 19th century historic buildings on the Property is entirely appropriate and consistent with the historic preservation amenity of this PUD project.

The Commission finds that the project is in fact entirely consistent with numerous themes and elements of the Comprehensive Plan. The Commission also finds that the proposed project is consistent with and fosters numerous aspects of the H Street, NE Strategic Development Plan. Specifically, the Commission believes that the proposed project will provide a signature residential project of appropriate height and density that will mark the entrance to the H Street corridor and will provide a critical mass of new residents that will revitalize the commercial corridor of H Street. 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 Commission notes that the Zoning Regulations treat a PUD-related Zoning Map Amendment differently from other types of rezoning. PUD-related Zoning Map Amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations (11 DCMR §§2408.8 and 2408.9), the Zoning Map Amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR §2400.7. A PUD-related Zoning Map Amendment is thus a temporary change to existing zoning, that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. The Commission might grant PUD related Zoning Map Amendments in circumstances where it might reject permanent rezoning. In this case, the Commission believes that the proposed rezoning of the Property to the C-3-C District is appropriate given the superior features of the PUD project and is only permitting a maximum FAR of approximately 5.72 in the C-3-C District on this Property.

In response to issues raised by residents of Square 776 regarding the proposed visual impact that the PUD project will have, the Commission notes that abundant light, air, and views still will be available to residents who live on, and people who walk along, Third Street, NE. In fact, those views are enhanced by the proposed separation of the new building from the existing museum building to be preserved. The Commission notes that such a separation would not be required in a matter of right project. The Commission concurs with the testimony of the project architect, and the information submitted into the record, that the setting back of the top two floors of the proposed building along Third Street above 90 feet at a one-to-one ratio effectively reduces the scale of the building and further mitigates the visual impact of the building on surrounding properties.

Moreover, the Commission believes that the visual impact of the proposed structure on the townhouses is most affected by the treatment of the lower levels of the new building. The Commission finds that the treatment of the lower level of the proposed structure, including individual entries on a rhythm and scale similar in frequency and detailing to that of individual row houses, balcony projections, front yards, two story windows, and significant landscaping creates an environment and feel along Third Street that is consistent with townhouses and townhouse neighborhoods throughout

the Near Northeast Neighborhood, Capitol Hill, and the District.

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 Zoning Map Amendment application from the C-3-A and C-3-B Zone Districts to the C-3-C Zone District for Lot 13 in Square 751. The approval of this PUD and Zoning Map Amendment 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 12, 21, 34 and 46 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 an all residential project that includes approximately 465 - 500 residential units with approximately 500 - 525 parking spaces The entire project will include approximately 599,134 square feet of gross floor area resulting in a FAR of approximately 5.72. At their highest point, the roofs of the new residential buildings will be 110 feet tall and the total lot occupancy of the project will be approximately 65%.

3. The project will include 19,852 square feet of gross floor area available for sale as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in the Office of Planning's summary of the Planned Unit Development Inclusionary Housing Commitment Standards in Zoning Commission Case No. 04-22. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.

4. The Applicant will hold monthly meetings with affected neighbors and neighborhood organizations during the construction of the project.

5. The Applicant will provide at least one parking space in the project for every residential unit, will endeavor to convey all residential units with a parking space and will provide bicycle parking areas in the project. The Applicant will also endeavor to provide Zip Car and Flex Car parking spaces in the PUD project. The Applicant will establish an apprenticeship program for hiring persons from the community and keep ANC 6C informed on the workings of the program. The Applicant will provide architectural lighting of the historic building along H Street, NE.

6. The Applicant shall retain the services of an architectural historian to

6. The Applicant shall retain the services of an architectural historian to identify and document an historically significant time period for the two 19th century historic buildings on the Property. The architectural historian's report shall be completed prior to the issuance of building permits for the historic buildings. The Applicant shall appropriately rehabilitate the exterior of the historic buildings using the architectural historian's report as a guide.

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

- H Street Main Street - The Applicant will contribute $20,000 to the H Street Main Street organization to help further its promotion of commercial activity along the H Street corridor through advertising, promotion, merchant receptions, technical assistance, and new business recruitment.
- Affordable Parking Program - The Applicant will contribute $40,000 for the establishment of an affordable parking program to help purchasers of the affordable dwelling units purchase parking spaces in the project. The affordable parking program will be administered by the same entity that administers the sale of the affordable dwelling units.
- Near Northeast Citizens Against Crime and Drugs - The Applicant will contribute $20,000 to the Near Northeast Citizens Against Crime and Drugs organization to help further its goals and programs.

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 12 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 12 of the record.

10. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;

- 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; and

- To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or

any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

11. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and 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. The applicant shall file 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 and construction of the project must start within three years of the date of the effective date of this order pursuant to 11 DCMR §§2408.8 and 2408.9.

13. The change of zoning from the C-3-A and C-3-B Zone Districts to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 11, pursuant to 11 DCMR §3028.9.

14. 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 will not be tolerated. Violators will 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.**

VOTE:

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

CAROL J. MITTEN	**JERRILY R. KRESS, FAIA**
Chairman	**Director**
Zoning Commission	**Office of Zoning**

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ShawPittman LLP

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2005 a copy of the foregoing letter and materials were served by hand on the following:

Advisory Neighborhood Commission
("ANC") 6C
c/o Anthony Rivera, ANC 6C05
817 4th Street, NE
Washington, D.C. 20002

The Stanton Park Neighborhood
Association ("SPNA")
c/o Drury Tallant
Co-Chair, SPNA Land Use Committee
732 3rd Street, NE
Washington, D.C. 20002

Paul A. Tummonds, Jr.

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