*Government of the District of Columbia*
Office of Zoning

**MEMORANDUM**

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

**FROM:** Jerrily R. Kress, FAIA
Director

**DATE:** April 28, 2005

**SUBJECT:** Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on May 6, 2005:

1. Z.C. Order No. 04-22 (Z.C. Case No. 04-22).

Office Of Documents And Administrative Issuances
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Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 04-22
EXHIBIT NO. 56

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ZONING COMMISSION
District of Columbia
CASE NO.04-22
EXHIBIT NO.56

**ZONING COMMISSION ORDER NO. 04-22**
**Z.C. Case No. 04-22**
**Consolidated Planned Unit Development and Related Zoning Map Amendment**
**Abdo Development, L.L.C.**
**March 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 related Zoning Map Amendment application for Lot 13 in Square 751 located at 220 H Street, N.E., 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, N.E., 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 (2) new residential buildings on the remainder of the Property. In total, the project will include approximately 500 new for-sale residential units (approximately 425-445 in the new buildings and approximately 45-55 in the existing building). The PUD project will 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 application for a public hearing. The Commission held a public hearing on the above-mentioned applications 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 residents of Square 776, the square immediately to the east of the Property, noting that their party status request was filed only two (2) days prior to the public hearing, and therefore not in conformance with the requirements of 11 DCMR §3022.3. Advisory Neighborhood Commission ("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, 2nd, and 3rd Streets, N.E. The Hopscotch Bridge and H Street border the Property to the south. At the point that the Hopscotch Bridge crosses 2nd Street, it is approximately 28 feet above 2nd Street. Directly across H Street from the Property is a vacant property that is commercially zoned. Directly across 2nd Street from the Property, and spanning the entire length of the block, is the Railway Express Building, which was converted into offices in the 1980s. 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 3rd 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 3rd and H Streets, and five (5) rowhouses located at the intersection of 3rd and I Streets. (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 would result in the creation of a unique and inviting residential building with the introduction of approximately fifty-five (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 will allow residents to enjoy the significant open space provided in the interior of the project and will also allow 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 (2) new residential structures oriented toward 2nd, I, and 3rd Streets. These new residential buildings were designed to complement and respect the original historic buildings of the former Capital Children's Museum. The two (2) new buildings each will be built to a height of 110 feet and will include approximately 425-445 residential units in total. The upper levels of the new building along 3rd Street will be set back, above the ninety (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. The new buildings will provide ground floor access to individual units along I, 2nd, and 3rd Streets. The main lobbies for these buildings will be accessed from the I Street entrance to the project via a set of arcades that will 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 2nd 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 will open onto a courtyard designed as an attractive and inviting entry for residents of the project and their guests. The 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 will be linked to the remainder of the site via a series of paths reminiscent of a college campus where vehicles are occasionally allowed access at very low speed. A pedestrian-only entrance will be located on 3rd 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 2nd Streets will have a strength to compete with the dominant Hopscotch Bridge and the commercial/industrial character of 2nd Street. Along 3rd 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 the 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 2nd, I, and 3rd 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 (2) pedestrian walks, one connecting eastward to 3rd Street and the other southward to H Street via a stairway and shuttle elevator. The elevator will allow easy access to garage-level bicycle storage. Along the H Street frontage, the Applicant noted that it would 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 sixty-four (64) feet measured from 3rd Street. The proposed project will have a lot occupancy of approximately sixty-five percent (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 (2) 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 would be built on a single record lot with multiple buildings. Pursuant to § 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 § 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 Comprehensive Plan of the National Capital. 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 N.E. Strategic Development Plan (the "H Street Plan"). (Exhibit 12, Pre-Hearing Statement at p. 18-22; Exhibit 26, OP Report, p. 3.)

17. The Applicant noted numerous aspects of the H Street Plan that are satisfied by the proposed project. The H Street 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 H Street Plan's goals for the revitalization of the H Street corridor and is consistent with the guidelines established in the H Street Plan. The Applicant concluded that approval of the PUD project will help achieve the goals and policies of the H Street 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 who 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 twenty-eight (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.

(a) Housing and Affordable Housing – The PUD project will create approximately 500 new for-sale residential units in the Near Northeast neighborhood, including 19,852 square feet of affordable housing available to potential purchasers having a household income not exceeding eighty percent (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. 26.)

(b) 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.)

(c) Urban Design and Architecture – The Applicant noted that the proposed project would create two (2) new buildings that will 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 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 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 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.)

(d) Site Planning – The Applicant noted that the proposed project was 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 and private garden areas as well as the renovated amenities building. Mr. Abdo testified that the PUD project has a lot occupancy of sixty-five percent (65%). (Exhibit 12, Pre-Hearing Statement at p. 15.)

(e) 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 parking supply on- and off-site 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 2nd Street, was appropriate and that no additional entrances to the parking garage were needed. (Exhibit 21.)

(f) 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:

(i) 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.

(ii) Affordable Parking Program – The Applicant shall establish an escrow fund and contribute $40,000 to such fund to be used to establish an affordable parking program to help purchasers of the affordable dwelling units purchase parking spaces in the project. The escrow agreement will provide that the withdrawal of the funds may be authorized only by the same entity that administers the sale of the affordable dwelling units. If that entity is unable or unwilling to authorize such withdrawals, the Applicant shall file a request to modify this Order.

(iii) NNCACD – The Applicant will contribute $20,000 to the Near Northeast Citizens Against Crime and Drugs ("NNCACD"), a 501(c)(3) organization, to help further their activities in the area surrounding the Property.

(g) 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.)

(h) Environmental Benefits – The Applicant noted that there will be numerous environmentally appropriate attributes of the project, including high-efficiency EnergyStar 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 Indoor Environmental Quality Criteria and will meet LEED Materials and Resources Criteria by maintaining seventy-five percent (75%) of the existing shell and utilizing recycled content for at least five percent (5%) of the total value of the materials in the project; 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.)

(i) Employment and Training Opportunities – The Applicant submitted into the record a draft First Source Employment Agreement with the Department of Employment Services and a draft Memorandum of Understanding with the Office of Local Business Development 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: (a) an enhanced roof plan; (b) plans and renderings depicting views from across 3rd Street of the Property's existing conditions, the proposed project, and a matter-of-right project; and (c) a discussion of the ability to include architectural embellishments on the roof of the project.

23. 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 sixty-five (65) foot height permitted as a matter-of-right along 3rd Street would have little or no impact on the townhouses across 3rd Street from the PUD project, due to the 90-foot width of 3rd Street and the fact that the human eye has a conventional cone of vision of approximately sixty degrees (60°). Based on these facts, the attached section and renderings illustrate that a person on the east side of 3rd Street looking west, without tilting his head, will be able to see the proposed structure only up to a height of approximately sixty (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.)

## 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 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 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 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 2nd 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. ANC 6C unanimously adopted a resolution in support of the project at a regularly scheduled and publicly noticed meeting on December 8, 2004. In its written resolution dated December 13, 2004, the ANC 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 conditions:

(a) 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;

(b) The Applicant will provide bicycle parking areas in the project;

(c) The Applicant will provide ZipCar or FlexCar parking spaces in the project;

(d) The Applicant will provide approximately thirty (30) parking spaces for guests of the residents;

(e) 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

(f) The Applicant will provide architectural lighting of the historic building along H Street, N.E.

(Exhibit 18).

28. ANC 6C, in a supplemental filing dated January 25, 2005, and in testimony at the public hearing, noted that at its January 12, 2005 public meeting, the ANC unanimously re-affirmed its support for the project and addressed two (2) 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, N.E. 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 applications 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 applications, presented written and oral testimony. The SPNA representatives noted their support for the proposed height and density of the project, but expressed concern about 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, N.E. and 900 2nd Street, N.E., noted its general support for the project in a written submission to the Commission, but indicated concerns regarding potential traffic congestion issues on 2nd Street, N.E. as a result of a single entrance to the garage of the project on 2nd Street. Potomac Development Corporation proposed that another entrance to the garage be created on 3rd Street, N.E. (Exhibit 24.)

35. The Local Initiatives Support Corporation ("LISC") supported the application through a written submission and testimony at the public hearing. The written submission noted that the redevelopment of the Property would 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 applications. In general, these residents supported the applications 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 applications 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 3rd Street, N.E. (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") pursuant to § 492 of the District Charter. By letter dated March 8, 2005, the Executive Director of NCPC noted that pursuant to the Executive Director's Delegated Action authority, the Executive Director found that the proposed PUD project and Zoning Map Amendment

application would not adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 51.)

## POST-HEARING SUBMISSION AND MOTION TO REOPEN THE RECORD

40. In a letter to the Commission dated March 2, 2005, the Applicant requested that the record in the case be reopened to allow for the submission of revised elevations of the project that depict the removal of curtain/fin walls, chimneys, and pergolas on the roof of the project that were previously presented to the Commission. (Exhibit 50.) The Applicant submitted the simplified roof plan in response to comments that were raised by the Commission regarding the originally proposed roof embellishments and their consistency with the 1910 Height Act.

41. In a letter dated March 10, 2005, the ANC 6C Single Member District Commissioner for the Property confirmed that ANC 6C had received the Applicant's modified roof plan and found the revised elevations to be acceptable. (Exhibit 53.)

42. In a letter dated March 11, 2005, SPNA indicated that the originally proposed rooftop embellishments to be an important component of the project's design that helped soften the roofline of the project and served to signal the residential nature of the structure. SPNA also stated that, based on its review of the 1910 Height Act, the originally proposed embellishments did not conflict with the requirements of the Height Act. SPNA urged approval of the PUD preferably with the embellishments, but accepted the project without them, and urged a quick resolution of the issue of the perceived conflict between the rooftop embellishments and the 1910 Height Act. (Exhibit 52.)

43. The Commission believes that the legality of the proposed fin walls, chimneys, and pergolas on the roof of the project were problematical at best and prefers to be assured that the roof structures that exceed the matter-of-right height permitted under the 1910 Height Act are eligible to be considered for a height waiver pursuant to D.C. Official Code § 6-601.05 (b) (2001). While the Commission appreciates SPNA's concerns, it nevertheless finds that proposed revisions to the project do not affect the overall superior features and enhanced architectural treatment of the PUD project. For these reasons, the Commission at a public meeting held March 14, 2005, approved the motion to reopen the record and accepted the revised elevations into the record, with the understanding that a modification application will be filed with the Commission, prior to the issuance of a building permit, that depicts a revised roof plan.

## FINAL ACTION

44. The Zoning Commission took final action to approve the application at a special meeting held March 24, 2005.

## CONCLUSIONS OF LAW

The PUD process is an appropriate means of controlling development of the Property 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 that 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 SPNA, the Commission finds that the Applicant's proposal to engage the services of an architectural historian to identify and document a historically significant time period for the two 19$^{th}$ century historic buildings on the Property is appropriate and consistent with the historic preservation amenity of this PUD project.

The Commission finds that the project is not inconsistent 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 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 PUD-related map amendment 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 density of approximately 5.72 FAR 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 will still be available to residents who live on, and people who walk along, 3rd Street, N.E. 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 3rd Street above ninety (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 will create an environment and feel along 3rd Street 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 applications for consolidated review of a Planned Unit Development and related Zoning Map amendment 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 related 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 density of approximately 5.72 FAR. 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 sixty-five percent (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 eighty percent (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 parking spaces for shared cars, such as those offered by ZipCar and FlexCar, in the PUD project.

6. The Applicant will establish an apprenticeship program for hiring persons from the community and keep ANC 6C informed on the workings of the program.

7. The Applicant will provide architectural lighting of the historic building along H Street, N.E.

8. The Applicant shall retain the services of an architectural historian to identify and document a 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.

9. 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 shall establish an escrow fund and contribute $40,000 to such fund to be used to establish an affordable parking program to help purchasers of the affordable dwelling units purchase parking spaces in the project. The escrow agreement will provide that the withdrawal of the funds may be authorized only by the same entity that administers the sale of the affordable dwelling units. If that entity is unable or unwilling to authorize such withdrawals, the Applicant shall file a request to modify this Order.
   - 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.

10. 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. The Applicant shall abide by the terms of the Memorandum of Understanding 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. After the completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the D.C. Local Business Opportunity Commission regarding compliance with this agreement.

11. 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. The Applicant shall abide by the terms of the agreement in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. After completion of construction of this project, the Applicant shall provide a written status report to the Zoning Commission and the DOES regarding compliance with this agreement.

12. 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, without reducing the quality of materials; 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.

13. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("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 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.

14. The consolidated 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 and construction of the project must start within three (3) years of the date of the effective date of this order pursuant to 11 DCMR §§2408.8 and 2408.9.

15. 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. 13, pursuant to 11 DCMR §3028.9.

16. 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.

On March 24, 2005, the Commission voted to approve the applications by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand, and John G. Parsons to approve; Carol J. Mitten, having not participated, not voting).

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

DISTRIC ` COLUMBIA GOVERNMENT
C .CE OF THE SURVEYOR

Washington, D.C., August 13, 2004

Plat for Building Permit of SQUARE 751 LOT 13

Scale: 1 inch = 50 feet Recorded in Book 176 Page 95

Receipt No. 13810

Furnished to: SHAW PITTMAN

Surveyor, D.C.

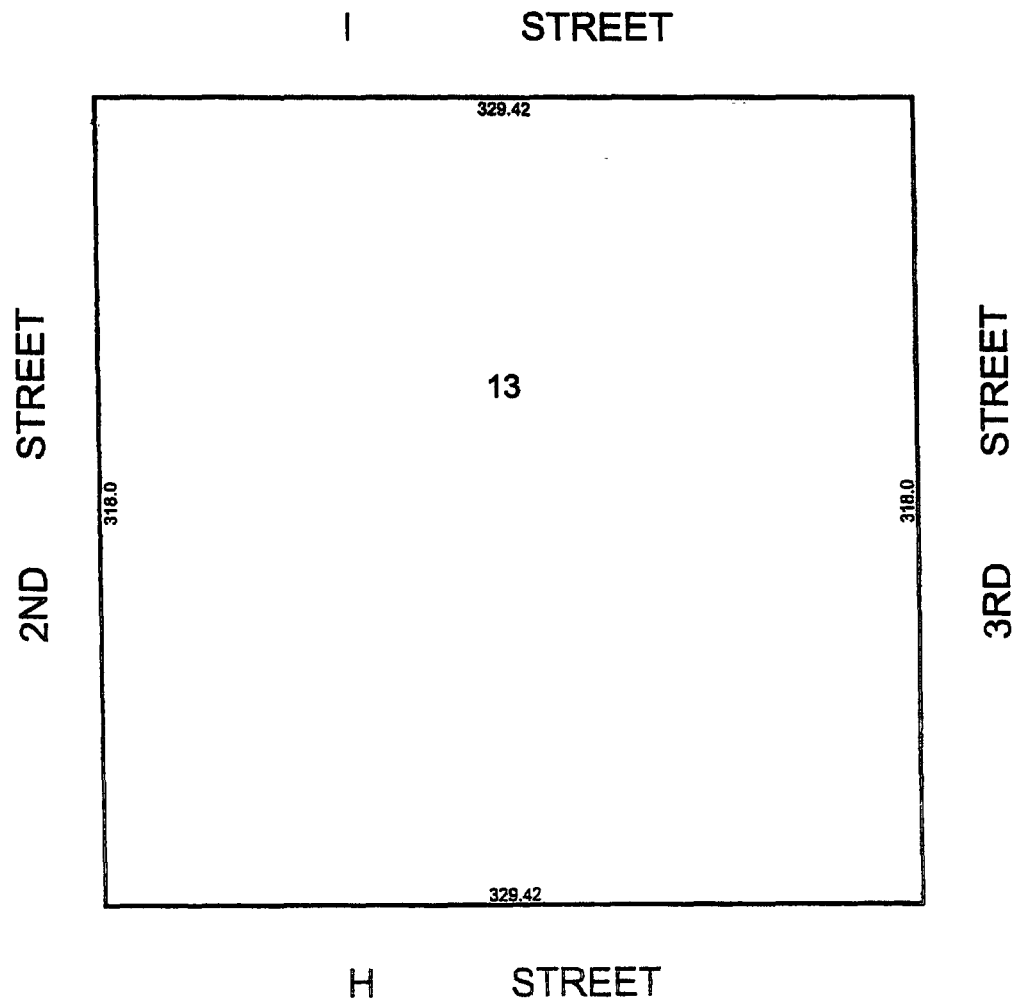
By: L.M.A.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.




SO-13810(2004)

Case No. 04-22