Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 05-14

As Secretary to the Commission, I herby certify that on FEB - 6 2006 copies of this Z.C. Order No. 05-14A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1 *D C Register*

2 Walter Johnson
NPCDC
1330 New Hampshire Ave , NW
Suite 111
Washington, D C 20036

3 Dee Hunter, Chair
ANC 1B
P O Box 73710
Washington, DC 20056

4 Commissioner Lori Parker
ANC/SMD 1B07
2647 15th St NW
Washington, DC 20009

5 Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W
Washington, D C 20004

6 Councilmember Jim Graham

7 Office of Planning (Ellen McCarthy)

8 Ken Laden, DDOT

9 Zoning Administrator

10 Julie Lee
General Counsel
941 North Capitol Street, N E
Suite 9400
Washington, D C 20002

11. Office of the Attorney General

ATTESTED BY: Sharon S. Schellin

Sharon S. Schellin
Acting Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO 05-14
EXHIBIT NO 20

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 05-14A
Z.C. Case No. 05-14
(*Sua Sponte* Review of Board of Zoning Adjustment Case No. 17302)
September 15, 2005

This Order arises from the Zoning Commission's *sua sponte* review of the decision by the Board of Zoning Adjustment ("BZA") to grant the application of Non-Profit Community Development Corporation of D.C , Inc ("NPCDC") for a variance from the height limitations of 11 DCMR § 770 1. For the reasons discussed below, the Zoning Commission vacates as moot the BZA's Summary Order granting Application No 17302

STATEMENT OF FACTS

1 NPCDC applied to the BZA for a height variance to allow it to construct a new 7-story mixed-use building at the premises located at 2750 14th Street, N W (Square 2667, Lot 849) The application was assigned BZA Application No. 17302

2. On April 12, 2005, the BZA held a hearing on the variance application At the conclusion of the hearing, the BZA voted to approve the Application No. 17302, and issued a summary order that same day ("Summary Order") The Summary Order granted the applicant an area variance to construct a building that exceeds the maximum height permitted by 11 DCMR § 770 1. The Summary Order became effective on April 22, 2005, pursuant to 11 DCMR § 3125 9

3 At a special public meeting on April 29, 2005, the Zoning Commission initiated a *sua sponte* review of the BZA decision within ten (10) days of being advised of the issuance of the Summary Order, as authorized by 11 DCMR § 3128, and stayed the Summary Order

4 At its May 9, 2005 public meeting, the Zoning Commission offered NPCDC the choice of either (a) submitting a brief explaining why the Commission should not reverse or modify the BZA's decision to grant the variance or (b) submitting a PUD application seeking the same zoning relief granted through the BZA's Summary Order The Commission indicated that if NPCDC chose to submit a PUD application, it would suspend its review of the BZA's decision

5. On May 16, 2005, NPCDC submitted a PUD application in lieu of a brief

6 NCPDC's PUD application requested approval of a building that included a mix of market rate and affordable housing, a childcare center, and ground floor retail space The zoning

flexibility sought was relief from the 65-foot height limitation of the C-2-B zone district to construct 74.25-foot tall building

7 The Zoning Commission took final action to approve the PUD application, including the zoning flexibility sought, at a special public meeting held July 25, 2005

8 At its regularly scheduled public meeting held September 15, 2005, the Commission voted to vacate as moot the BZA Summary Order by a vote of **5-0-0** (Carol J Mitten, Kevin L Hildebrand, Anthony J. Hood, Gregory N Jeffries, and John G Parsons to vacate)

CONCLUSIONS OF LAW

The Zoning Commission in its *sua sponte* review of a BZA decision or order, may affirm, modify, reverse, or remand the case back to the BZA for reconsideration, rehearing, or other action pursuant to instructions from the Commission 11 DCMR § 3128 4

A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. *In re Dom L S*, 722 A.2d 343, 348 (D C 1993) When a subsequent decision supersedes an order granting zoning relief, it is appropriate to vacate the earlier order *Interdonato v District of Columbia Bd of Zoning Adjustment*, 429 A 2d 1000, 1002 (D.C 1981)

The Zoning Commission granted the same zoning flexibility through the PUD that the BZA granted to NPCDC through the Summary Order Therefore, the issues in the variance proceeding are no longer "live " The Commission therefore vacates as moot the BZA's decision to grant the variance

DECISION

Accordingly, it is hereby **ORDERED** that the BZA Summary Order issued in BZA Application No 17302 is **VACATED**

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D C Register*, that is, on FEB - 3 2006

CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING