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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

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MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin
Secretary to the Zoning Commission

Date: May 8, 2007

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on May 18, 2007:

1. Z.C. Order No. 06-15 (Case No. 06-15);
2. Z.C. Order No. 05-17B/05-32B (Case Nos. 05-17 & 05-32); and
3. Z.C. Notice of Final Rulemaking & Order No. 02-19 (Case No. 02-19).

The Rulemakings are also provided on the attached diskette.

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 06-15
EXHIBIT NO. 63

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ZONING COMMISSION
District of Columbia
CASE NO.06-15
EXHIBIT NO.63

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-15
Z.C. Case No. 06-15
Consolidated Approval for a Planned Unit Development for the Property bounded by New York Avenue, Bladensburg Road, and Montana Avenue, N.E. – Abdo New York LLC
(Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153)
February 12, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 9, 2006 to consider an application from Abdo New York LLC for consolidated review and approval of a planned unit development and related zoning map amendment from C-M-1 to CR in Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153. The application was filed on behalf of and with the consent of the owners of the properties that are the subject of the application. The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153 (the "Property") and is bounded by New York Avenue, Montana Avenue, and Bladensburg Road, N.E. The Property contains approximately 697,874 square feet of land (approximately 16 acres) and is in the C-M-1 Zone District. The Property is currently used primarily by body repair shops, vehicle impound lots, gasoline stations, fast-food restaurants with drive-through accessory uses, and a strip club. (Ex. 24)

2. On March 22, 2006, Abdo New York LLC (the "Applicant") filed an application with the Zoning Commission for review and approval of a planned unit development ("PUD") and related zoning map amendment from C-M-1 to C-3-C. The PUD project is a mixed-use

project featuring eight new residential buildings and approximately 148,121 square feet of ground-floor retail. The original application requested a height of 130 feet for the buildings along New York Avenue, a floor area ratio ("FAR") of 5.3, and a range of 3,000 to 4,000 units. (Ex. 5, 6)

3. At a regularly scheduled public meeting on May 8, 2006, the Zoning Commission first considered the proposed PUD. During the discussion, the Commission asked the Applicant to reconsider the project's proposed zoning amendment to the C-3-C Zone District, the proposed 130-foot height of the buildings along New York Avenue, the proposed density of 5.3 FAR, and the range of units. (Tr. May 8, 2006 at 6-82.)

4. On May 23, 2006, the Applicant provided a supplemental submission to the Commission. Primarily, the Applicant indicated that it had reduced the height of the buildings to 110 feet and accordingly changed the map amendment request to the CR Zone District. The Applicant reiterated that the project was appropriate for consolidated review, particularly in light of the additional changes. (Ex. 13, 14)

5. At a special public meeting on June 1, 2006, the Zoning Commission again considered the application for setdown. Members of the Commission noted that the Applicant had made considerable progress from the original submission and had responded to each of the Office of Planning's concerns, as well as many of those of the Commission. The Commission recognized the reduction in height and change in requested zoning, but stressed its continued concerns about the proposed project density. The Commission set down the application for a public hearing as a first-stage PUD, by a vote of 5-0-0. A second vote to set it down as a consolidated PUD failed by a vote of 2-3-0, but the Commission indicated it would accept further submissions from the Applicant to support the Applicant's request for consolidated review. (Tr. June 1, 2006 at 4–50.)

6. On June 6 and June 9, the Applicant submitted letters to the Zoning Commission. The letters indicated that the project density had been reduced to a 5.0 FAR and reiterated the Applicant's assertion that consolidated review was both appropriate and critically needed for this project. (Ex. 16, 19) In recognition of the reduced density, at the June 12, 2006 regular Public Meeting, the Commission voted 5-0-0 to set down the application for public hearing as a consolidated PUD. (Tr. June 12, 2006 at 97-103.)

7. On August 1, 2006, the Applicant filed a prehearing statement with the Zoning Commission, including additional information requested by the Zoning Commission and the Office of Planning. In that statement, the Applicant proposed the construction of eight new buildings with approximately 3,400 to 3,600 residential units and 148,121 square feet of ground-floor retail (the "Project"). (Ex. 24, 26)

8. After proper notice, the Commission held a hearing on the application on November 9, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission

("ANC") 5B, the ANC within which the Property is located. At the hearing, the Applicant submitted into the record updated plans, elevations, and drawings of the Project. (Ex. 40) Testimony and evidence on behalf of the Applicant was provided by Jim Abdo and Eric Price, representatives of the Applicant; Maurice Walters, of Torti Gallas and Partners, who testified as an expert in the field of architecture; and Jami Milanovich, of Wells & Associates, who testified as an expert in the field of traffic and parking engineering. (Tr. Nov. 9, 2006 at 8 – 39, 44 – 150; Ex. 57.)

9. A number of individuals testified or wrote letters in support of the proposed PUD. Supporters included representatives of ANC 5B and a number of members of the D.C. Council, including the then-Councilmember for Ward 5, the Councilmember-elect from Ward 5, and the Mayor-elect, as well as representatives of the Arboretum Civic Association, the Friends of the National Arboretum, the Salvation Army, the Washington Humane Society, and the Metropolitan Police Department. (Ex. 17, 18, 20, 21, 37, 38, 41, 43-45, 50, 52; Tr. Nov. 9, 2006 at 39-44, 168-201.)

10. The Applicant further refined the plans, drawings, and elevations in response to the Commission's comments and concerns at the public hearing and submitted them with the Applicant's post-hearing submission dated December 21, 2006. (Ex. 58)

11. At its meeting held January 8, 2007, the Commission took proposed action by a vote of 5-0-0 to approve the application with conditions, with the record remaining open to receive additional information on whether the Applicant would offer relocation assistance to businesses currently located on the Property, an indication of whether space in the Project would be reserved for grocery store for a specified time, and further refinement of the design of a glass parapet on the New York Avenue frontage above the grocery store space.

12. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated January 26, 2007, found the proposed PUD would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.

13. The Commission took final action to approve the application in Case No. 06-15 on February 12, 2007 by vote of 5-0-0.

The PUD Project

14. The Property consists of approximately 697,874 square feet of land and is bounded by New York Avenue, Bladensburg Road, and Montana Avenue, N.E. The National Arboretum is east and south of the Property. To the southeast, across Bladensburg Road, is the low- and moderate-density Arboretum residential community. To the north, New York Avenue is currently defined by low-scale commercial development, including hotels, gasoline stations,

and fast-food restaurants.[1] Across New York Avenue to the north are two large commercial buildings, including the Harbor Light Center, a 136-bed community-based residential facility operated by the Salvation Army. To the southwest, across Montana Avenue, are the old Hecht's warehouse and the Mount Olivet Cemetery. The Ivy City residential neighborhood is further to the southwest. (Ex. 24)

15. The Property is located in the Production and Technical Employment land use category as shown on the District of Columbia Generalized Land Use Map. The residential community to the southeast is located in both the Moderate Density Residential and Low Density Residential land use categories. Mount Olivet Cemetery, to the southwest, is located in the Parks land use category; the Arboretum is also located in this land use category. The rest of the properties surrounding the Property are located in the Production and Technical Employment land use category on the Generalized Land Use Map. (Ex. 24)

16. The Existing Land Use Map demonstrates that much of the Property and surrounding land does not contain any sort of industrial use. (Ex. 24) The Applicant's representative testified as to the illegal activities that currently take place on and in the vicinity of the Property, including violent crime, arson, and drug trafficking, which are enabled and encouraged by the current land uses. (Tr. Nov. 9, 2006 at 26-28.)

17. The proposed amendments to the Comprehensive Plan, currently approved by the D.C. Council, designate the Property as an "area for land use change" and call for a Future Land Use Map designation of "mixed use medium density residential / moderate density commercial." The text of the proposed Comprehensive Plan states that the medium-density residential designation includes taller residential buildings surrounded by large areas of permanent open space. (Tr. Nov. 9, 2006 at 12.)

18. The proposed Project is a mixed-use development of residential and retail uses. The proposed PUD project consists of eight separate buildings,[2] and the Applicant has requested flexibility to construct between 3,400 and 3,600 residential units. The eight buildings will ring the triangular-shaped Property and will be oriented outward, activating the street life on all three streets and forming a visually porous perimeter for the site that will allow intermittent views of the green space at the center of the Project. Additionally, the "A," "B," and "C" buildings together will have approximately 148,121 square feet of ground-floor retail, including approximately 65,000 square feet of space designed for a full-service grocery store in the "A" building. (Ex. 24, 58)

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[1] The Board of Zoning Adjustment recently approved a pair of variances from the maximum height and loading requirements for a property directly to the east of the PUD Property, across Bladensburg Road, to permit the construction of a five-story Holiday Inn Express and five-story Fairfield Inn and Suites. See Application No. 17484, concerning land located at 1917 Bladensburg Road, N.E. (Square 4393, Lots 815 and 821).

[2] Note that, for purposes of the Zoning Regulations, five buildings will be constructed on the Subject Property. There are substantial ground-floor connections between the "B" and "C" buildings along New York Avenue, "D" and "E" buildings along Montana Avenue, and "G" and "H" buildings along Bladensburg Road.

19. As presented by the Applicant's architectural expert and set forth in the Applicant's pre- and post-hearing submissions, the overall site is designed in four architectural variations, giving the composition a sense of harmony and elegance, while creating an urban environment that is visually articulated and varied. (Ex. 24, 56, 58; Tr. Nov. 9, 2006 at 55-59.)

- The "A" Building: Prominently situated at an acute angle at the intersection of New York and Montana Avenues, the V-shaped "A" building will create a significant landmark for those traveling eastbound. The primary design feature will be an elegantly sweeping 70-foot-tall curved glass wall above the proposed grocery store, joining the legs of the building. A raised glass parapet embellishment, canted inwards towards its base, will create an appropriate cap and landmark feature atop the curved glass wall at the corner of New York and Montana Avenues. The New York Avenue leg will consist of an ochre-colored brick façade juxtaposed with a large glass panel that will further signify the grocery location as well as adding a vibrant, reflective "screen" to the active retail streetscape. A prismatic sculptural glass pavilion at the ground floor will contain the main pedestrian grocery entrance. The Montana Avenue façade of the "A" building will be similarly composed of an ochre-colored brick veneer; here, however, the brick face will be varied using five repeating glass bays, which will yield a gentler residential scale façade pattern.

- The "B" and "C" Buildings: The "B" and "C" buildings, east of the "A" building along New York Avenue, will be composed around a central ground floor pocket park, which will provide access to a larger upper level public terrace affording views of the central park. The two buildings will be asymmetrical, yet will employ compatible architectural scaling devices. They will be articulated horizontally with setbacks and varying façade compositions and materials to modulate the length of each building along New York Avenue. At the eastern end of the "C" building, a large canted bay window will wrap the corner and extend two floors vertically above the ninth floor terrace setback to present a gateway feature to those entering the city from the east. The facades will exhibit a variety of masonry compositions juxtaposed with glass window walls. The building base will be colored in a dark brick, unifying the overall composition and providing a subtle acknowledgement of the nearby Art Deco Hecht's warehouse building.

- The "D" and "E" Buildings: At the center of Montana Avenue, the "D" and "E" buildings will be arranged as a couplet around a central, shared lobby pavilion and motor court. These buildings will each be H-shaped and will present landscaped courts to the street that will give them a softer residential character. The buildings will be scaled vertically with a base, middle, and top, and the upper floors will be further articulated with French balconies and increased fenestration to visually lighten the buildings as they meet the sky. The facades will be composed predominantly of residentially scaled punched windows set in a buff brick wall articulated with tower features as well as corner wrap-around French balconies.

- The "F" Building: Prominently situated at an acute angle at the intersection of Bladensburg Road and Montana Avenue, the "F" building will anchor the corner with a gently curving, residentially scaled bay window. At the ground plane, a small one-way drive from Bladensburg Road to Montana Avenue will lead to an elegant porte-cochere drop-off. The primary façade planes of terra cotta-colored brick will be scaled and modulated with floor-to-ceiling glass bays that will rise above the parapet height to offer rooftop views of the Arboretum and beyond.

- The "G" and "H" Buildings: The "G" and "H" buildings, along Bladensburg Road, will be arranged in an identical couplet to the "D" and "E" buildings, but will utilize a warm, ochre-colored brick to provide them with a unique identity.

20. The Project will be phased, as detailed in Condition 23 of the Order. The Applicant indicated that the first phase, with its sizeable infrastructure and associated costs, will make it necessary for the developer to proceed expeditiously with the second and third phases. Market absorption will control the timing of the phases but, due to the significant carrying costs, the Applicant will remain motivated to produce units for which there is a demand. Further, the proposed Project includes a sizeable retail component that is designed to serve a market segment that is currently underserved, and development of the retail is a critical neighborhood amenity necessary for the success of the residential portion of the development. (Ex. 56)

21. The proposed PUD Project will include underground parking for its residents at a ratio of approximately 1 to 1. Additionally, the below-grade parking will provide at least 4 spaces for every 1,000 square feet of retail space. The parking will be accessed from a series of vehicular ramps off New York and Montana Avenues, as well as from the existing public alley off New York Avenue. Loading and service facilities will also be accessible through an entrance off Montana Avenue between the "A" and "D" buildings and the existing public alley on the east side of the "C" building; they will be concealed in a below-grade service concourse behind the retail space. (Ex. 24, 58; Tr. Nov. 9, 2006 at 46-48, 51.)

22. Streetscape improvements will transform this blighted area into an active, attractive urban neighborhood. Further, the Applicant will construct and maintain a well-lit private alley at the northeast corner of the Property in order to allow neighbors from the Arboretum community direct and safe access to the New York Avenue retail while avoiding the busy New York Avenue/Bladensburg Road intersection. Additionally, along New York Avenue, the buildings will be set back 55 feet from the curb to allow for an ample 21-foot-wide sidewalk and new service road, which will provide vehicular access and parallel parking for the retail uses.[3] This service road will create an additional buffer from New York Avenue and, moreover, will reduce the number of curb cuts along New York Avenue from 16 to two. Similarly, vehicular drop-offs will be created along Bladensburg Road and Montana Avenue to provide a

[3] This service road is consistent with the recommendations of the District Department of Transportation ("DDOT") in its April 2005 Draft New York Avenue Corridor Study for improvements to the roadway network in this area.

safe and secure area for residents and their guests to enter the community while minimizing the interference of standing taxicabs and automobiles with vehicular traffic. Overall, the PUD will reduce the number of curb cuts on all three streets surrounding the perimeter of the Property from 41 to 15. (Ex. 24, 58; Tr. Nov. 29, 2006 at 46-48.)

23. The Project will also feature approximately 148,121 square feet of ground-floor retail uses along New York Avenue that will be available for the residents of the community. Special efforts will be made to locate neighborhood-serving retail tenants, and the retail space should be considered as both a project amenity and a public benefit of the PUD. The centerpiece of this retail space will be a 65,000-square-foot space, in the "A" building at the intersection of New York and Montana Avenues, designed to hold a full-service, community-oriented grocery store. (Ex. 24, 58)

24. All eight buildings will measure 110 feet tall. The 16 acres on which the PUD Project will be located features a considerable slope of approximately 40 feet downward from south to north, which will create the appearance of differing heights among the buildings. Further, the 110-foot tall structures along New York Avenue—a well-traveled primary thoroughfare into the District that is 130 feet wide—will complement the width and scale of that street, and this PUD Project will provide those entering the District with a signature architectural statement. (Ex. 24, 58)

25. The total gross floor area included in the proposed PUD is approximately 3,477,427 square feet for a total density of approximately 4.98 FAR. The Project will have a lot occupancy of approximately 55 percent. The Project's density will be lower than what is permitted under the CR District PUD guidelines, which specify a maximum density of 8.0 FAR and a maximum building height of 110 feet. It is necessary to rezone the Property to the CR Zone District in order to allow for the residential uses and to allow the structures to obtain the requested height and density. (Ex. 24, 58)

26. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's traffic study and the testimony presented by the Applicant's traffic consultant. The project will provide a shuttle bus to the nearby Rhode Island Avenue Metrorail Station. The shuttle bus will provide continuous daily service to the Metro station for the Project's residents and customers. The proposed shuttle bus service from the project to the Rhode Island Metrorail Station will use the aforementioned residential drop-off areas to service the community. Over time, Metrobus route expansions and schedule adjustments are expected to further improve the site's access to Metrorail and provide direct connections to employment centers in the rest of the District. Further, as discussed below, the Applicant will commit to a comprehensive Transportation Management Program. (Ex. 24, 56, 58; Tr. Nov. 29, 2006 at 61 – 66.)

27. The Applicant's representative indicated that they had engaged the community and the city extensively in the development of the project through 57 meetings with

neighborhood representatives and numerous additional meetings with District officials. (Tr. Nov. 9, 2006 at 29-30.)

Zoning Map Amendment

28. The Property is in the C-M-1 Zone District. The maximum height allowed in the C-M-1 zone as a matter-of-right is 40 feet (no more than three stories), and the maximum density is 3.0. FAR The zones surrounding the Property permit a mix of development and include land in the C-M-1 zone immediately to the west and east, land in the C-M-2 District to the north, land in the C-3-A District to the north (zoned as such pursuant to Order No. 744, which approved the Salvation Army's Harbor Light Center), land in the R-5-A and R-1-B zones to the southeast, and land in the R-4 zone to the southwest. (Ex. 24)

29. The Applicant requested a PUD-related Zoning Map amendment for the Property to the CR Zone District to allow the residential use and to allow the structures to reach the requested height and density. The maximum building height permitted in the CR District under the PUD guidelines is 110 feet, and the maximum density permitted for residential uses is 8.0 FAR. The proposed CR zoning will allow for the creation of an entire residential community—without displacing any existing residents—that will strengthen the existing Arboretum and Ivy City communities and provide uses more consistent with the large amounts of open space to the south and east of the Property. Further, the rezoning is part of a PUD application, which allows the Zoning Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. (Ex. 24)

Development Incentives and Flexibility

30. The Applicant requested the following areas of flexibility from the Zoning Regulations. (Ex. 24, 58)

a. Building Lot Control. The PUD project will be built on a single record lot with multiple buildings. Pursuant to § 2517.2 of the Zoning Regulations, 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, it is necessary to obtain relief from § 2517.2. The Zoning Commission has the authority to grant this requested flexibility pursuant to §§ 2405.5 and 2405.6.

b. Roof Structures. The Applicant also requested flexibility from the Zoning Regulations' roof structure requirements. The Applicant did not propose to create a single roof structure for each building. Due to the size of these buildings, satisfying the requirement to have a single roof structure on each building would result in a

needlessly large roof structure. It would also constrain the creation of green roofs, pools, and recreational space on the building rooftops.

c. Residential Recreational Space. Finally, the Applicant requested relief from the private residential recreation space requirement. The Project will provide approximately 427,727 square feet, or 13.3 percent of the residential gross floor area, as residential recreation space through active and passive recreational spaces such as the Arbor Club, the rooftop pools, the open spaces along all three street frontages, the vest-pocket park and plaza along New York Avenue, the fountain park at Bladensburg Road and Montana Avenue, and the 3.9-acre central park and adjacent courtyards.

Public Benefits and Amenities

31. The following public benefits and project amenities will be created as a result of the Project.

a. Housing and Affordable Housing. The greatest benefit to the neighborhood and the District as a whole will be the creation of new housing opportunities consistent with the Zoning Regulations, Comprehensive Plan, and recommendations of the Mayor's Comprehensive Housing Strategy Task Force. This Project will create 3,400 to 3,600 residential units on 16 acres of land, with eight percent of the residential gross floor area reserved as affordable housing. The amount of high-quality housing created by this PUD will catalyze additional appropriate residential development in Ward 5 without displacing vital industrial uses or any residential uses. (Ex. 24; Tr. Nov. 29, 2006 at 77-78.)

b. Efficient and Safe Vehicular and Pedestrian Access. The Applicant will place all residential parking underground, and it will be accessed by entrances off New York Avenue, Bladensburg Road, and Montana Avenue. Additionally, the Applicant will construct a new service road at the north end of the Property, parallel to New York Avenue, which will reduce the number of curb cuts from 16 to two along New York Avenue and allow for access to retail uses and on-street parking. As a result of the proposed PUD, the number of curb cuts on the three streets surrounding the site will be reduced from 41 to 15. The Project will provide separate pedestrian entrances and exits for both residents and shoppers along New York Avenue, Bladensburg Road, and Montana Avenue, reflecting the effort to transform these streets into public pedestrian thoroughfares. The Applicant will also construct and maintain a well-lit private alley along the northeast edge of the Property, to provide pedestrians on Bladensburg Road direct and safe access to the retail areas. Finally, the Applicant will link the Property to the Metrorail system through a shuttle bus system. (Ex. 24; Tr. Nov. 29, 2006 at 38-39, 65-66.)

c. Urban Design, Architecture, and Open Spaces. The proposed project exhibits characteristics of exemplary urban design and architecture. Massing the new buildings along New York Avenue, Bladensburg Road, and Montana Avenue will create a more appropriate urban development pattern that will visually define the adjacent streets and public spaces, while creating significant open space both around the perimeter and within the center of the Property. The ground floor retail opportunities along New York Avenue will create an attractive streetscape for pedestrians as well as passing motorists. (Ex. 24, 56, 58; Tr. Nov. 29, 2006 at 45-61.)

d. Site Planning and Efficient and Economical Land Uses. The proposed project will place ground-level retail along a major boulevard, centered around both a vest-pocket park and public plaza, all for use and enjoyment by the customers, residents, and neighbors. It will also provide its residents and neighbors with open and inviting green spaces for entertainment and relaxation along Bladensburg Road and at the intersection of Montana Avenue with Bladensburg Road. Most significantly for the residents, the Project will feature a 3.9-acre central park and adjacent courtyards at the interior of the site. (Ex 24, 58; Tr. Nov. 29, 2006 at 51-55.)

e. Uses of Special Value—Revenue for the District. The Applicant's representative testified that the Project will generate far more revenue than both the existing uses and what a matter-of-right development could bring. The PUD will generate approximately $61 million in one-time revenue during the construction period and through the final unit sales of the project, including sales and income tax revenue related to the construction and recordation and transfer taxes. The continued presence of a vibrant residential and retail mixed-use community will generate approximately $43 million annually once the Project is fully developed, in the form of property, income, sales, and new recordation and transfer taxes from the resale of the individual units. (Ex. 24, Tr. Nov. 29, 2006 at 73-77.)

f. Uses of Special Value—Public Spaces. The PUD will include the following project amenities, which will also provide public benefits to the surrounding neighborhoods as well as the District as a whole. (Ex. 24, 56, 58; Tr. Nov. 29, 2006 at 51-55.)

i. The setback of the residential buildings along Bladensburg Road and Montana Avenue will create significant public green spaces that will enhance the pedestrian streetscape.

ii. The service road and streetscape along New York Avenue, as depicted in the approved plans, will provide an urban context appropriate for the proposed retail uses along a major arterial corridor. The service road, with two lanes of one-way traffic and a row dedicated to on-street parallel

parking, will insulate pedestrians from the busy New York Avenue corridor.

iii. A public vest-pocket park and pedestrian plaza near the middle of New York Avenue frontage, between the "B" and "C" buildings, as depicted in the approved plans.

iv. A park and sculptural element at the intersection of Bladensburg Road and Montana Avenue, created by the setback of the "F" building, as depicted in the approved plans.

g. Uses of Special Value—Contributions to Neighborhood Organizations. (Ex. 42; Tr. Nov. 29, 2006 at 67-73.)

i. Langdon Elementary School: contribution of construction work and materials to Langdon Elementary School to enable the replacement of historic windows, carpet in the laboratory room, and renovate the auditorium, valued at $210,000.

ii. Harbor Light Center: contribution of construction work and materials to the Salvation Army's Harbor Light Center to enable the completion of its fifth floor, valued at $270,000.

iii. Friends of the National Arboretum: contribution of construction work and materials to enable the construction of both a kitchen facility and a greenhouse for use by the Washington Youth Garden and contribution of a pickup truck for use by the Washington Youth Garden, valued at $200,000; and a monetary contribution of $35,000 to the Friends of the National Arboretum.

iv. Washington Humane Society: monetary contribution of $25,000 for the Spay/Neuter Clinic of the Washington Humane Society.

v. Arboretum Recreation Center: contribution of construction work and materials to the Arboretum Recreation Center to enable the expansion of the existing facility for multiple indoor activities, computer training, and senior activities, valued at $150,000.

h. Uses of Special Value—The Arbor Club. The Project also features an amenities building located near the center of the Property, between Buildings "B" and "C" and the central park. The amenities building will feature a health club, an indoor pool, a basketball court, and multi-purpose rooms for its residents, as well as a child-care facility. The Applicant notes that a limited number of memberships will be available to the general public on a first-in-time basis. (Ex. 24, 58; Tr. Nov. 29, 2006 at 48.)

i. Environmental Benefits. The Project will transform the existing site into a mixed-use residential and retail community featuring almost seven acres of revitalized open and green space, including 2.25 acres of true pervious surfaces and 1.56 acres of green roof area. (Ex. 24, 56, 58) The Project will be designed to meet sustainable strategies that will represent approximately 16 points under USGBC's LEED for New Construction, version 2.2. (Ex. 56) The Project will feature a comprehensive set of low-impact development features, including:

i. A total of 1.56 acres (68,100 square feet) of green roof, providing stormwater management benefits and reducing the urban heat island effect.

ii. A central park providing 3.9 acres of landscaping and an additional 0.65 acres of landscaping at the perimeter that will greatly reduce the heat island effect.

iii. Use of environmentally-sensitive cool roofing material with a solar reflective index of 78 or more on approximately 45 percent of the roof surfaces, to reduce the heat island effect.

iv. A total of 2.25 acres of pervious area, including 1.6 acres in the central park, to provide on-site stormwater management benefits and enhanced landscaping. The balance of the central park area, 2.3 acres (3.9 acres – 1.6 acres) will consist of landscaped green areas over a below-grade parking structure that will also help to slow down, absorb, and treat rainfall.

v. Installation of the Filterra Storm Water Bioretention Filtration System as a method to mitigate stormwater loads from New York Avenue, Bladensburg Road, and Montana Avenue, which will provide off-site stormwater management benefits

vi. Accommodation of parking underground, reducing the heat island effect.

vii. Mixed-use development, including a variety of retail establishments, a grocery store, a child-development center, and a gym on-site, which will allow the number of car trips generated by each household to be significantly reduced.

j. Employment and Training Opportunities. In order to further the District's policies relating to the creation of employment and training opportunities, the Applicant indicated that it will participate in a First Source Agreement with the District of Columbia Department of Employment Services. The Applicant also agreed to enter

into a Memorandum of Understanding with the Local Business Opportunity Commission to use local firms in the development and construction of the Project. (Ex. 24; Tr. Nov. 29, 2006 at 78-82.)

Compliance with PUD Standards

32. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8) Given the level of project amenities and public benefits, the Commission finds that the development incentives for the proposed 110-foot height and related rezoning are appropriate. The Commission also finds that the requested flexibility in building lot control, roof structures, and recreation space, as well as the requested approval for use of portions of the Property as interim accessory parking, are fully justified by the superior benefits and amenities offered by this Project.

33. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, site planning, job training and employment opportunities, transportation measures, and uses of special value to the neighborhood and to the District as a whole.

34. The Commission finds that the Applicant has offered to provide affordable housing in an amount equal to eight percent of the residential gross floor area. Under the gross floor area proposed, the affordable housing the Applicant will be required to provide will equal approximately 261,326 gross square feet.

Government Agency Reports

35. By report dated October 30, 2006 and by testimony at the public hearing, the Office of Planning ("OP") strongly supported the project and recommended approval of the application. The recommendation was based on OP's findings that the Project offered many potential benefits to the District, was crucial to the revitalization of the New York Avenue corridor, and would provide an amenity package appropriate for the amount of density being gained through the PUD process. OP found that the Project was consistent with and would further important Comprehensive Plan themes and elements as well as other District planning policies, including the draft Northeast Gateway Plan and the recently adopted inclusionary zoning regulations. OP also noted that the recently completed study of industrial land in the District identified the Property as one appropriate for land use change. OP further stated that the Applicant had provided responses to all of its issues raised prior to setdown and indicated that the Applicant's proposed distribution of the affordable housing units was reasonable. Finally, OP observed that the Project was a publicly popular application, and was supported by a number of organizations,

including ANC 5B, the Arboretum Civic Association, the Friends of the Arboretum, and the National Bonsai Foundation. (Ex. 36; Tr. Nov. 9, 2006 at 151-167.)

36. OP conditioned its recommendation for approval on the provision of certain items. (Ex. 36) Specifically, OP sought:

a. A report from DDOT noting no objection;

b. Clarification of the duration of the Applicant's commitment to provide affordable units;

c. Clarification of the value of the affordable housing subsidy; and

d. Confirmation of the proffered public benefits commitments.

37. By report dated November 8, 2006, DDOT concluded that it had no objections to the Project. DDOT indicated support for the proposed PUD and stated that the related traffic impacts could be accommodated with the implementation of a strong transportation demand management ("TDM") program and signal timing modifications as proposed by the Applicant. DDOT found the Project's proposed parking and loading to be adequate and noted the improvements to the public space, including the service road along New York Avenue. DDOT recommended that the Applicant provide at least 10 bicycle parking spaces for retail development and 150 bicycles spaces for the residential development. DDOT also recommended that the Applicant provide a minimum of 10 carsharing spaces. DDOT also noted that Montana Avenue should be widened in the vicinity of the Project and recommended that the Applicant coordinate with DDOT to determine if the existing overhead utilities on Montana Avenue and Bladensburg Road could be placed underground. Finally, DDOT urged the Applicant to commit to a strong TDM program. (Ex. 39; cf. Tr. Nov. 9, 2006 at 158-162.)

38. By testimony at the public hearing, the chairman of ANC 5B indicated that at a duly noticed meeting in April 2006, with a quorum present, ANC 5B voted unanimously to support the proposed application. At the hearing, the chairman of the ANC spoke positively about the Project's amenities, job creation, retail, and vision for the neighborhood. (Tr. Nov. 9, 2006 at 168-181.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided

that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405)

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The application meets the contiguity requirements of § 2401.3.

6. The PUD is within the applicable height and density standards of the Zoning Regulations. The proposed height and density will not cause significant adverse effects on any nearby properties and will create a concentration of residents to facilitate the transformation of this underutilized area. The mix of residential and retail uses is appropriate for the site, which is adjacent to the National Arboretum and Arboretum neighborhood and close to other residential neighborhoods. The impact of the Project on the surrounding area is not unacceptable. As demonstrated in the traffic study submitted by the Applicant, the Project will not cause adverse traffic impacts, and the Property is located in reasonable proximity to mass transit.

7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.

8. The benefits and amenities provided by the Project, particularly the provision of housing and affordable housing, sustainable design features, parking, neighborhood-serving retail, and substantial contributions to improve neighborhood organizations, are reasonable for the development proposed in this application.

9. The Applicant seeks a PUD-related zoning map amendment to the CR District and an increase in height as permitted under the PUD guidelines. The Applicant also seeks flexibility from the building control, roof structures, and residential recreation space requirements. Finally, the Applicant seeks approval to use portions of the Property as interim accessory parking for the retail uses, per § 2102.2 and subject to § 2116.5. The benefits and amenities provided by the Project, particularly the provision of affordable housing, the design of

the buildings, the sustainable design features, the contributions toward neighborhood organizations, and the transformation of an underutilized and largely blighted site into a vibrant mixed-use community, are all reasonable trade-offs for the requested development flexibility.

10. Approval of the PUD application is appropriate because the proposed development is consistent with the transitional character of the area, as set forth in the policies and goals of District planning documents, including the draft Northeast Gateway Plan and proposed Comprehensive Plan.

11. Approval of the PUD and related change in zoning is not inconsistent with the Comprehensive Plan, including the current designation of the Property as part of the production and technical employment category, because of other policies and goals regarding the production of housing, neighborhood retail, sensitive and low-impact development that outweigh the land use designation. Further, the rezoning is consistent with the proposed Comprehensive Plan that identifies the Property as an "area for land use change" and designates the Property as Mixed Use Medium Density Residential / Moderate Density Commercial.

12. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the 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 Land Use, Housing, and Urban Design elements, as well as the goals and policies of the Ward 5 element.

13. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 5B voted in favor of approving the application. The Commission agrees with the ANC that this Project should be approved.

14. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

15. 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) and as provided for in Condition 23 herein, 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 would otherwise reject permanent rezoning. In this case, the Commission believes that the proposed PUD-related map amendment of the Property to the CR District is appropriate given the superior features of the PUD project and District planning initiatives supporting the change in zoning, and is permitting a maximum density of 4.98 FAR in the CR District on this Property.

16. The application for a PUD and related map amendment is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL,** consistent with this Order, of the application for consolidated review and approval of a Planned Unit Development and related amendment to the Zoning Map of the District of Columbia. This approval shall apply to the following properties: Square 4268, Lots 2, 5, 6, 8, 10, 11, 12, 14, 800, 801, 804, 811, and 815 and Parcels 153/26, 153/83, 153/105, 153/113, 153/123, 153/150, 153/152, and 153/153. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners, included in the post-hearing submission dated December 21, 2006 and marked as Exhibit 58 in the record, as modified by the guidelines, conditions, and standards herein.

2. The PUD Site shall be rezoned from C-M-2 to CR and shall have relief from the building lot control, roof structure, residential recreation space, and off-street parking requirements of the Zoning Regulations consistent with the approved plans referenced in Condition No. 1.

3. The Project shall be a mixed-use development. The PUD shall be constructed to a maximum height of 110 feet and a density of 4.98 FAR.

4. Approximately 3,266,569 square feet of gross floor area shall be devoted to residential use. The Applicant shall have the flexibility to construct between 3,400 and 3,600 residential units in the Project.

5. Approximately 148,121 square feet of gross floor area shall be devoted to retail use. The retail space in Building A shall be designed for a full-service grocery store.

6. The Project will feature an amenities building as shown on the plans referenced above. A limited number of memberships to the facility will be available to the general public on a first-in-time basis.

7. The Project shall feature the creation of a service road along New York Avenue consistent with the approved plans.

8. The Project shall include a public pocket park and plaza along New York Avenue and a public park at the intersection of Montana Avenue and Bladensburg Road, as shown on the plans referenced above. In total, the Project shall feature approximately 105,397 square feet of public open space, including approximately 74,447 square feet of improved public space on private property.

9. Of the residential gross floor area for the Project, a minimum of approximately 261,326 gross square feet, which represents eight percent of the gross residential floor area, shall be devoted to affordable housing for residents with incomes that are no greater than 80 percent of the area median income. The required affordable housing shall be divided proportionately among all eight buildings and shall be phased accordingly.

10. The Project shall include parking as shown on the plans referenced above. The parking requirement may be satisfied with any combination of full and compact parking spaces. The Project shall make available up to 10 spaces for carsharing purposes. The Project shall also include at least 150 bicycle spaces for residential use and 10 bicycle spaces for retail use.

11. After the completion of the "A" building and prior to the construction of the "B," "C," or "D" buildings, the Applicant may utilize those portions of the PUD Site for an interim surface parking lot as accessory parking to the retail uses, as permitted by 11 DCMR § 2101.2 and subject to § 2116.5.

12. The Applicant shall implement the Transportation Management Plan ("TMP") detailed in the post-hearing submission marked as Exhibit 56 in the Record. The TMP shall include the following components:

    a. A shuttle bus providing continuous daily service to the nearby Rhode Island Avenue Metrorail Station;

    b. A transportation management coordinator responsible for implementing the TMP and assisting residents, tenants, and employees with the program; and

    c. Transit and telecommuting incentives, including both a commuting center and a business center, as well as information dissemination regarding public transportation options.

13. The Project shall provide off-street loading consistent with the approved plans. Deliveries will be prohibited during peak hours.

14. The Applicant shall work with DDOT regarding proposed improvements and modifications to the public space abutting the site, including the design and construction of the New York Avenue service road and proposed streetscape improvements for the entire site. Prior to the installation of the streetscape improvements to Montana Avenue and Bladensburg Road, the Applicant shall advise the DDOT Infrastructure Project Management Administration (DDOT-IPMA) of its schedule for reconstruction. If, after consultation with DDOT-IPMA and the appropriate utilities companies, the Applicant determines that it would be both appropriate and feasible to relocate certain existing above-ground utilities to underground locations within the property line, the Applicant shall permit those utilities to be relocated on its private property.

15. The Project shall include the low-impact development features specified in the post-hearing submission marked as Exhibit 56 of the Record, including the following features:

    a. Creation of approximately 2.25 acres of pervious surface area;

    b. Provision of approximately 68,100 square feet of green roof; and

    c. Installation of a Filterra Storm Water Bioretention Filtration System.

16. Prior to the issuance of a building permit for any building approved by this Order, the Applicant shall provide the following community amenities:

    a. Langdon Elementary School: contribution of construction work and materials to Langdon Elementary School to replace the historic windows, replace the carpet in the laboratory room, and renovate the auditorium, valued at $210,000.

    b. Harbor Light Center: contribution of construction work and materials to the Salvation Army's Harbor Light Center to complete its fifth floor, valued at $270,000.

    c. Friends of the National Arboretum: contribution of construction work and materials to construct both a kitchen facility and a greenhouse for use by the Washington Youth Garden and contribution of a pickup truck for use by the Washington Youth Garden, valued at $200,000; and a monetary contribution of $35,000 to the Friends of the National Arboretum.

    d. Washington Humane Society: monetary contribution of $25,000 for the Spay/Neuter Clinic of the Washington Humane Society.

e. Arboretum Recreation Center: contribution of construction work and materials to the Arboretum Recreation Center to expand the existing facility for multiple indoor activities, computer training, and senior activities, valued at $150,000.

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

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, shafts, and toilet rooms, provided that the variations do not increase the exterior envelope of the structures or alter the exterior appearance of the Project;

b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, provided there is no reduction in quality;

c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, brick coursing and patterns, sills, bases, cornices, railings and trim, fenestration configuration (in order to coordinate with the final internal layout), or any other changes that are required to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;

d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants and storefront design; and

e. To make alterations to the parking garage design, provided that the parking garage contains a minimum of approximately one parking space for each residential unit, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.

18. The Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Development. The Applicant shall abide by the terms of the Memorandum of Understanding consistent with the goal of 35 percent 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.

19. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant shall abide by the terms of the agreement consistent with the goal of utilizing the District of Columbia residents for at least 51 percent of the jobs created by the Project.

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

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

22. Prior to the issuance of a certificate of occupancy for any building approved by this Order, the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable units in such buildings to affordable housing for not fewer than 20 years.

23. The 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 for the "A" building in Phase I (defined below) as specified in 11 DCMR § 2409.1. Consistent with the phasing plan outlined below, the Applicant retains the right to construct the Project as eight separate elements.

    a. Phase I consists of three elements: the "A," "B," and "C" buildings. Construction shall begin on the first element of Phase I (the "A" building) within three years of the effective date of this Order.

    b. Phase II consists of two elements, the "G" and "H" buildings. Within two years after the issuance of a certificate of occupancy for the final element of Phase I, an application must be filed for a building permit for the first element of Phase II, and construction shall begin on the first element of Phase II within three years after the issuance of a certificate of occupancy for the final element of Phase I.

    c. Phase III consists of three elements, the "D," "E," and "F" buildings. Within two years after the issuance of a certificate of occupancy for the second element of Phase II, an application must be filed for building permit for the first element of Phase III, and construction shall begin on the first element of Phase III within three years after the issuance of a certificate of occupancy for the second element of Phase II.

    d. Notwithstanding the foregoing, if an application for a building permit for the first element of Phase III has not been filed within twelve (12) years of the effective

date of this Order, the PUD shall expire with respect to all elements for which a building permit has not been filed.

24. 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 shall be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On January 8, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten , Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007 by a vote of 5-0-0 (Gregory N. Jeffries, John G. Parsons, Carol J. Mitten , Anthony J. Hood, and Michael G. Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on MAY 18 2007.