

# Arent Fox

December 2, 2009

BY HAND

Anthony Hood, Chair  
Zoning Commission for the District of Columbia  
441 Fourth Street NW, Suite 210 South  
Washington DC 20001

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**Reference Number**  
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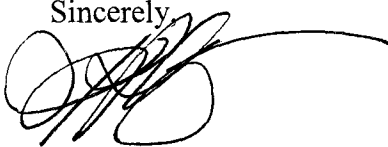
RECEIVED  
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Re: Zoning Commission Case No. 09-15  
Application for Consolidated PUD and Related Map Amendment, 1412 Chapin St. N.W.

Dear Chairman Hood and Members of the Commission:

On behalf of G.K.D. 1412 Chapin Street LLC, the Applicant in the above-referenced case, we are submitting herewith an original and twenty (20) copies of the Pre-Hearing Statement in Support of the proposed Consolidated Planned Unit Development and Map Amendment at 1412 Chapin Street N.W. Also included is a check in the amount of \$3,662.90 for the applicable hearing fee.

Sincerely,



Kinley R. Bray

Enclosures

Cc: Carlos Perdomo (w/enclosures, via U.S. and electronic mail)  
Buwa Binitie, Dantes Partners (w/ enclosures, via U.S. and electronic mail)  
Jordan Bishop, Dantes Partners (w/ enclosures, via U.S. and electronic mail)  
Paul Goldstein, OP (w/enclosures, via U.S. Mail)  
Advisory Neighborhood Commission 1B (w/enclosures, via U.S. Mail)  
Meghan Conklin, SMD Commissioner, 1B06 (w/enclosures, via U.S. Mail)  
Jeff Goins, PGN Architects (w/enclosures, via U.S. and electronic mail)  
Nicole White, Symmetra Design (w/ enclosures, via U.S. and electronic mail)  
Ellen McCarthy, Arent Fox (w/ enclosures, by hand)

**ZONING COMMISSION**  
**District of Columbia**  
**CASE NO. 09-15**  
**EXHIBIT NO. 15**

GENBUS/709341.1

**1412 CHAPIN STREET, N.W.**

**PUD AND ZONING MAP AMENDMENT  
PRE-HEARING SUBMISSION  
ZONING COMMISSION CASE No. 09-15**

**December 2, 2009**

ARENT FOX LLP  
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Kinley R. Bray, Esq.

**DEVELOPMENT TEAM**

|                     |                                                                                                                       |
|---------------------|-----------------------------------------------------------------------------------------------------------------------|
| APPLICANT:          | G.K.D. 1412 Chapin Street, LLC<br>c/o Keystone Plus Construction Corp.<br>1600 K Street, NW<br>Washington, D.C. 20006 |
| DEVELOPER:          | Dantes Partners, LLC<br>72 V Street, NW<br>Washington D.C. 20001                                                      |
| ARCHITECTS:         | PGN Architects, PLLC<br>210 7 <sup>th</sup> Street SE, Suite 201<br>Washington, D.C. 20003                            |
| TRAFFIC CONSULTANT: | Symmetra Design<br>1152 15 <sup>th</sup> Street, NW, Suite 935<br>Washington, D.C. 20005                              |
| LAND USE COUNSEL:   | Arent Fox LLP<br>1050 Connecticut Avenue, NW<br>Washington D.C. 20036                                                 |

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## **EXHIBITS**

### **DESCRIPTION**

### **EXHIBIT**

Architectural Drawings, Elevations, and Photographs  
Of the Subject Property

Separate Volume

Tabulations of Development Data

A

Environmental Checklists

B

Transportation Impact Study

C

List of Witnesses and Outlines of Witness Testimony

D

Proposed First Source Employment Agreement

E

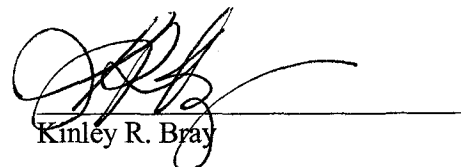
**CERTIFICATION OF COMPLIANCE WITH SECTION 3013**  
**OF THE ZONING REGULATIONS**

G.K.D. 1412 Chapin Street LLC hereby certifies that this Pre-Hearing Submission, together with the Consolidated Planned Unit Development and Zoning Map Amendment Application filed on September 25, 2009, complies with the provisions of Chapter 24 and Section 3013 of the Zoning Regulations, and that the application is complete. Additional details on the project, the proposed materials and signage will be provided to the Commission in a supplemental filing not less than 20 days prior to the public hearing, as permitted under this section.

| <b><u>Sub-section</u></b> |                                                                                                                                                                                                                                                                                      | <b><u>Page</u></b>           |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 3013.1(a)                 | Information Requested by Commission; Updated Materials Reflecting Changes Requested by the Commission                                                                                                                                                                                | Statement & Plans            |
| 3013.1(b)                 | List of Witnesses                                                                                                                                                                                                                                                                    | Exhibit D                    |
| 3013.1(c)                 | Summary of Testimony of Applicant's Witnesses<br><br>Representative of the Applicant, Buwa Binitie, Dantes Partners<br>Project Architect, Jeff Goins, PGN Architects<br>Traffic Engineer, Nicole White, Symmetra Design<br>Planning and Zoning Expert, Ellen McCarthy, Arent Fox LLP | Exhibit D                    |
| 3013.1(d)                 | Additional Information, Reports or Other Materials                                                                                                                                                                                                                                   | Statement/Plans Exhibits A-C |
| 3013.1(e)                 | Reduced Plans                                                                                                                                                                                                                                                                        | Separate Volume              |
| 3013.1(g)                 | Estimated Time Required for Presentation of Applicant's Case                                                                                                                                                                                                                         | One Hour                     |
| 3013.2                    | Two Sets of Full Size Plans                                                                                                                                                                                                                                                          | N/A                          |
| 3013.4                    | First Source Employment Agreement                                                                                                                                                                                                                                                    | Exhibit E                    |
| 3013.6(a)                 | List of Names and Addresses of All Property Owners within 200 Feet of the Subject Site                                                                                                                                                                                               | Previously submitted         |
| 3013.6(b)                 | List of Leaseholders                                                                                                                                                                                                                                                                 | N/A                          |

Respectfully submitted,

ARENT FOX LLP

  
Kinley R. Bray

## **I.** **INTRODUCTION**

### **A. Summary of Requested Action**

This document supports the application of G.K.D. 1412 Chapin Street, LLC and Dantes Partners, LLC to the Zoning Commission for the District of Columbia (“Commission”) for the consolidated review and one-step approval of a consolidated PUD and related Zoning Map amendment. The Subject Property is known of record as Lot 152 in Square 2661, and is located in the Columbia Heights neighborhood of Ward 1. The Subject Property comprises 9,000 square feet of land area and is currently vacant. The Applicant proposes to construct a new residential development with 100% of the units set aside for moderate-income, affordable housing. In total, the Project will contain up to 44 units of residential housing in approximately 48,258 square feet of gross floor area.

The Subject Property has been vacant since a fire destroyed an apartment building on the site in 1996. The parcel immediately south of the Subject Property is also vacant. Immediately to the east, the former Nehemiah Shopping Center site awaits development through an approved PUD (Zoning Commission Case No. 06-24) (the “Level 2 PUD”) which will eventually bring approximately 225 units of market rate and affordable housing and approximately 16,000 square feet of retail to that site, which fronts on 14<sup>th</sup> Street. The redevelopment of the Subject Property will transform this currently vacant corner and connect the residential developments along the western portion of Chapin Street to the 14<sup>th</sup> Street corridor. The Project will reinforce the existing character and scale of Chapin Street and provide a buffer between the high-density development of the PUD at 14<sup>th</sup> Street and Chapin and the lower-scale residential buildings on the western portion of the block.

**B. Community Outreach**

The Applicant has met with the Meridian Hill Neighborhood Association and Advisory Neighborhood Commission (“ANC”) 1B, as well as with the Single Member District Advisory Neighborhood Commissioner for this area, Ms. Meghan Conklin, to introduce the project and to gather feedback from residents of the surrounding community. Additionally, the Applicant has met with the Ward 1 Councilmember, Jim Graham, to discuss the details of the project and to seek his support. ANC 1B voted unanimously to support the requested PUD at their regularly-scheduled public meeting on October 1, 2009. The Applicant will continue to meet and work in collaboration with residents and community groups between now and the public hearing date.

**II.  
COMMENTS OF THE OFFICE OF PLANNING  
AND THE ZONING COMMISSION**

**A. OP Setdown Report**

The District of Columbia Office of Planning (“OP”) filed a report with the Zoning Commission addressing the PUD application on October 30, 2009, recommending that the application be set down for a public hearing. In its report, OP noted that the overall form is appropriate to the area, and that the project would have a positive impact on the neighborhood and the District. OP also found that the proposed zoning map amendment and development were not inconsistent with the Subject Property’s designations on the Future Land Use and Generalized Policy Land Use maps, and that the Project would further many of the policies of the Comprehensive Plan.

In its report, OP requested that the Applicant address additional issues. The Applicant’s response to these issues is as follows:

1. Clarification of Relief Requested

OP noted that the proposed development would not require relief from parking (pursuant to 11 DCMR § 2101) or loading (pursuant to 11 DCMR § 2201). The Applicant concurs; the proposed development meets the applicable parking requirement of one off-street space per three dwelling units, and no loading is required for apartment houses with less than 50 units.

The proposed development does, however, require special exception relief for multiple roof structures under 11 DCMR §§ 411.3 and 411.11, as the building requires two stair towers to provide adequate egress from the proposed rooftop terrace. Two stair towers are proposed to provide such egress. Pursuant to 11 DCMR § 411.3, all penthouses must be within a single enclosure. While separate enclosures are permitted for multiple elevator cores under 11 DCMR § 411.4, that section applies only to elevators.

Where “impracticable because of operating difficulties, the size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive...or unreasonable,” relief from the roof structure requirements contained within Section 411 of the Zoning Regulations is available as a special exception.<sup>1</sup> 11 DCMR § 411.11. The building code requires a second means of egress from a rooftop deck, thus two stair towers are required for this building. Strict compliance with 11 DCMR § 411.3 would require removal of the rooftop terrace--a significant building amenity--or adjacent stair towers, which would not meet building code requirements. Full compliance is therefore unduly restrictive and unreasonable for this project.

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<sup>1</sup> 11 DCMR § 2405.7 authorizes the Zoning Commission, in the course of reviewing an application for Planned Unit Development, to approve any use permitted by special exception and that would otherwise require the approval of the Board of Zoning Adjustment.

2. Articulation of West Façade.

The Office of Planning expressed concern regarding the lack of windows on the western façade of the proposed building. The Applicant has not proposed any windows along this façade, with the exception of those located within the proposed courtyard, to prevent the introduction of at-risk windows. OP requested that the Applicant provide greater articulation of the west wall to enliven its appearance.

The property located immediately west of the Subject Property, Lot 858, is improved with a 4-story apartment building that is currently vacant. Although the existing vacant building is set back from its eastern property boundary, the building is not historic. The site is likely to be redeveloped at some point in the future, potentially with an entirely new building. No side yard setback is required. Due to the significant slope of Chapin Street, redevelopment of Lot 858 as a matter-of-right, R-5-B project at a height of 50 feet would rise to nearly the same level as the fifth floor of the proposed development. Thus, any windows provided along the western façade would be closed in.

The Applicant has therefore designed the project so that all residential units are oriented to the north, south, or east, where windows will remain unobstructed. Along the east, the adjacent Level 2 PUD will be setback from the public alley separating the two projects by approximately 50-70 feet, providing adequate light and air into the proposed development. The project has been oriented to take advantage of this generous setback, and to avoid the potential for conflicts with redevelopment efforts on the west.

In response to OP's concerns regarding the impact of the large, uninterrupted wall on the Chapin streetscape, the Applicant is continuing to refine the design of the west façade. Included with the plans submitted with this Pre-Hearing Statement, on Page A 4.4, the Applicant has

shown the wall in contrasting brick and stone veneers. The Applicant has also reached out to the D.C. Commission on the Arts and Humanities to discuss the potential for a mural along this façade, and will continue to pursue the potential for public art in advance of the public hearing.

3. Projections into Public Space.

In its setdown report, OP asked for additional details regarding proposed projections into public space, particularly in relation to any impact those projections may have on the functioning of the adjacent public alleys. The Applicant has met with Captain Chris Rogerson of DC Fire and Emergency Medical Services (“FEMS”) and has reached out to the District of Columbia Department of Transportation (“DDOT”) to get a better understanding of the concerns relating to the projections into the alley and any potential interference with alley operation or the passage of emergency vehicles in that public space.

In response to the concerns expressed by FEMS and DDOT, the Applicant has redesigned the projections into the alley on the east. As shown on the east elevation on Sheet A4.2 filed with this Pre-Hearing Statement, the projection has been truncated on the north to eliminate potential conflicts with vehicles turning into the public alley from Chapin Street. The projection allows for 23.9 feet of clearance below where the alley meets Chapin Street, and 19.9 feet of clearance height at the rear of the building. This will allow for high-profile vehicles, including emergency equipment, to safely travel underneath the projection without incident. The Applicant will continue to work with DDOT to address any additional concerns the agency may have regarding this projection or the functioning of the alley.

4. Details of Affordable Housing Component

Although the proposed development would be devoted entirely to “affordable housing”—reserved for households earning 60% of the AMI, which is defined as “moderate-income” under

the Zoning Regulations<sup>2</sup>--OP's setdown report notes that "the application does not include a mix or location of the IZ units as opposed to the term affordable units." Indeed, the Applicant has proffered that the project would remain affordable for a minimum of 30 years, while acknowledging that the recently-effective Inclusionary Zoning requirements (11 DCMR, Chapter 26) will require 8% of the gross floor area of the building to be reserved as "IZ units" so long as the development exists. 11 DCMR § 2602.4.

As the regulations further require, however, the units used to satisfy Inclusionary Zoning requirements must be equal in proportion to the number of various unit types within the development that are sold or leased at market rates, interior and exterior finishes must be comparable to that of the market rate units, and IZ units shall not be overly concentrated on any floor of a project. 11 DCMR § 2605. The proposed development has not identified which units will remain IZ units after the term units may revert to market rate because the project has been designed so that there is no substantial difference between IZ units and term units. The Applicant submits that, in the PUD Covenant and at building permit, all IZ units will be identified on the plans, and that the development will satisfy the requirements of Chapter 26 of the Zoning Regulations. As the Applicant works with OP and refines the materials selections and details of the project prior to the public hearing, we will make every effort to identify the units which will remain affordable in perpetuity.

It should also be noted that the proposed financing of the project will be made up of private financing and federal Nine Percent Low Income Housing Tax Credits (LIHTC). At this time, no District of Columbia government subsidy is anticipated. Therefore, the affordability covenant will be tailored to the requirements of the Internal Revenue Service for LIHTCs.

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<sup>2</sup> 11 DCMR § 2601.1.

5. Environmental Benefits.

The Applicant has designed the project as a whole to achieve certification under the 2008 Enterprise Green Communities criteria. This framework was designed by Enterprise and a number of leading national environmental organizations to provide a clear, cost-effective system for all kinds of affordable housing. The criteria are aligned with the LEED (Leadership in Energy and Environmental Design) Green Building Rating System published by the U.S. Green Building Council. The form Green Communities Criteria Checklist is attached to this Pre-Hearing Statement at Exhibit B. In addition to meeting all Mandatory Criteria, new construction projects must achieve a minimum of 35 points from the Optional Criteria in order to meet the Green Communities requirements. Furthermore, all projects financed using Nine Percent LIHTCs in the District of Columbia are currently required to meet the minimum 2006 Enterprise Green Communities Criteria.

At this time, the Applicant anticipates that it will meet the following optional criteria under 2008 Enterprise Green Communities:

| <u>Criterion</u>                                              | <u>Points</u> |
|---------------------------------------------------------------|---------------|
| 2.5—Compact Development (at least 20 units per acre)          | 5             |
| 2.7—Transportation Choices (site within ½ mile of bus & rail) | 12            |
| 4.1c—Water-Conserving Appliances & Fixtures                   | 5             |
| 6-5a—Reducing Heat-Island Effect: Roofing                     | 5             |
| 6-5b—Reducing Heat-Island Effect: Paving                      | 5             |
| 7-16—Healthy Flooring Materials (non-carpet in all rooms)     | 5             |
| 7-17—Smoke-Free Building                                      | 2             |
| TOTAL                                                         | 39            |

The Applicant is still working with its consultants to finalize the Project Checklist that it will follow in developing the PUD, and will provide a final checklist in advance of the public hearing.

**B. Zoning Commission Setdown Meeting**

At its public meeting on November 9, 2009, the Zoning Commission voted unanimously to set down the PUD application for public hearing. As part of its preliminary discussion of the PUD, members of the Zoning Commission inquired about the massing of the building relative to the previously approved Level 2 PUD and other adjacent sites, the projections over the public alley, anticipated loading operations, the materials that will be used for the exterior finishes of the buildings, information on the green building initiatives, and the details involving the project financing, including whether the affordable housing component of the project could be recognized as public benefit if the project were to be subsidized by District of Columbia funds.

**1. Massing and Lot Occupancy.**

As discussed above, the Level 2 PUD, approved in Zoning Commission Case No. 06-24, is designed with a significant setback from its western property line above the second floor. As shown on the Site Plan (Sheet A1.6), the first two floors of the Level 2 PUD are built to the northern and eastern property line, but extend only 65 feet southward into the interior of Lot 219. The building is then setback 67 feet from the western property line for the remainder of the length of the Subject Property. Retail parking and an open court are provided on the ground floor level, and the massing of the Level 2 PUD is oriented toward 14<sup>th</sup> Street, providing significant space between the main volume of that building and the public alley separating the site from the Subject Property. The proposed PUD has been oriented toward this open space on the east. The bulk of the units will be located along the eastern façade of the building, and an interior courtyard will be located on the west.

A 20 foot wide public alley separates the Subject Property from Lot 824 to the south. The building on Lot 824 was recently demolished, and that site is now vacant. Although Lot 824 may someday be redeveloped, without a PUD (and the concomitant public benefits created by such an approval), under the existing R-5-B zoning, 100% lot occupancy would not be permitted. Even if Lot 824 were to be developed at 100% lot occupancy, the projects would be sufficiently separated from adjacent projects by the public alley, the significant western setback of the approved Level 2 PUD, and the existing eastern side yard on Lot 812.

The size and massing of the proposed PUD is consistent with many of the existing multifamily buildings on the south side of Chapin Street, and the buildings across Chapin Street from the Subject Property.

2. Projections Over Public Alley.

As discussed in Section II(A)(3) above and as shown on Sheets A4.1 and A4.2, the projections over the public alley have been redesigned to ensure that there will be no interference with trucks or emergency equipment in the alley.

3. Loading Operations.

Attached as Exhibit C is the Applicant's Transportation Impact Analysis. This analysis was developed with input from OP, DDOT, and the surrounding community. Also included in Exhibit C is a description of the loading operations for the proposed apartment building.

Pursuant to 11 DCMR § 2201, no loading facilities are required for apartment houses with less than 50 units. Nevertheless, the Applicant has included a 12.5' x 19' loading/delivery space adjacent to the elevator in its below-grade garage to facilitate deliveries and move-ins from vans and light trucks. Given the size of the proposed units, the Applicant does not envision the need for loading from large (multi-trailer) trucks; rather, most tenants will likely move using cargo vans, light trucks, or single-unit trucks.

Due to limited overhead clearance in the garage, move-in/move-out operations requiring a single unit truck (such as a U-Haul truck) will be conducted from Chapin Street, directly in front of the entrance to the main lobby. The property manager will coordinate in advance of tenant moving with DDOT to temporarily restrict parking at the curb in front of the building.<sup>3</sup> The property manager will be responsible for restoring curb parking as soon as the loading operation is completed. Residential deliveries and tenant moves will be scheduled Monday through Sunday between the hours of 8:00 a.m. and 7:00 p.m. This loading management plan may be updated and improved by the property manager once the project is complete and the manager is able to regularly observe and monitor typical loading operations for the specific tenants of the building.

4. Materials.

In response to concerns regarding the large, uninterrupted western façade, as described above in Section II(A)(2) of this Pre-Hearing Statement, the Applicant has chosen alternating colors of brick and stone veneer to provide some articulation along this façade. Additionally, the Applicant is investigating the potential use of this façade as a mural site.

At the setdown hearing in early November, several Commissioners expressed concern over the quality and combination of the proposed exterior finish materials. In response to these concerns, the Applicant has developed additional sheets detailing the proposed materials and has included examples of similar installations and combination of such finishes. As shown on Sheets A4.5 and A4.6, the building front will be clad in a combination of brown brick and alabaster stone veneers and composite aluminum paneling in grey and copper tones. This combination of materials complements both the older multi-family buildings to the west, many of which utilize

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<sup>3</sup> Additionally, the Applicant will request that DDOT install a “No Parking—entrance” sign directly in front of the entrance to the building.

limestone and brick, and the modern design and materials proposed in the Level 2 PUD on the east.

5. Green Building Initiatives.

As described in Section II(A)(5) above, the Applicant anticipates that the building will achieve a minimum of 35 points under the Enterprise Green Communities certification program.

6. Project Financing.

Commission members also asked for more information regarding the proposed financing of the project in order to determine whether the PUD meets the standards of 11 DCMR § 2403.8 with respect to public benefits and project amenities. Contrary to the discussion at the set down hearing, the project is not being financed with District of Columbia funds. The project will be privately financed, but will be eligible for federal Nine Percent Low Income Housing Tax Credits, which are administered through the District of Columbia Department of Housing and Community Development (“DHCD”), the state authority tasked under federal law to evaluate the project against the federal guidelines and the state’s allocation of available credits. Although qualification for LIHTCs often also qualifies a project for additional government grants and other incentives, LIHTCs require private equity financing. No District of Columbia dollars are anticipated as part of the financing package for this project.

### **III.**

#### **SUMMARY OF REQUESTED RELIEF**

A. Map Amendment

The Property is currently located within the R-5-B Zone District, and in the Medium Density Residential category on the Future Land Use Map. The site is designated as a neighborhood conservation area, where the guiding philosophy is to “conserve and enhance established neighborhoods.” The Applicant has requested a PUD-related map amendment to the

C-2-B Zone District. The Comprehensive Plan Land Use Maps are intended to provide generalized guides for development, and should be interpreted broadly. The C-2-B Zone District is consistent with the densities recommended by the Future Land Use Map, and will facilitate the redevelopment of this vacant site consistent with the previous building on the site and with the size and scale of existing and proposed development in both the R-5-B and the C-2-B Zone Districts.

At the Zoning Commission setdown hearing, the Commission expressed concern regarding the intrusion of the commercial, C-2-B Zone into an existing residential area. It is important to note that PUD-related map amendments do not threaten the integrity of the residential area because the Commission is charged with balancing the affect of the map amendment against the merits of the PUD. A PUD-related zoning map amendment is a conditional, 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.

Moreover, the Commission is empowered to impose greater limitations on the permitted height, density, and uses than what is otherwise permitted in the requested zone category because the amendment is tied to the PUD. The Commission may condition the map amendment in a manner that furthers the purposes of the PUD, yet protects the features and character of the surrounding neighborhood. In this particular instance, the Commission's approval of the PUD would facilitate revitalization of a long vacant site at the higher density recommended by the Comprehensive Plan and Future Land Use Map, while "conserving and enhancing" the established surrounding neighborhood.

The proposed map amendment is not inconsistent with the Comprehensive Plan. As set forth in the PUD Application filed September 25, 2009, the proposed C-2-B Zone District is

consistent with the Property's Medium Density Residential designation on the Future Land Use Map.

**B. Flexibility Under the PUD Guidelines**

An updated Tabulation of Development Data is included as Exhibit A.

1. Waiver of Minimum Area Requirements.

The PUD process was created to allow greater flexibility in planning and design than is possible under conventional zoning procedures. The PUD Regulations specifically allow the Zoning Commission to approve any zoning relief that would otherwise require the approval of the BZA. Moreover, 11 DCMR § 2401.2(b) allows the Zoning Commission to waive up to 50% of the minimum area requirement (in this case, a minimum of 15,000 square feet) provided that the development is of exceptional merit, in the best interests of the City or country, and at least 80% of the gross floor area of the development will be used exclusively for dwelling units and uses accessory thereto. The Subject Property is just 9,000 square feet, requiring a waiver of 40% of the minimum area required for a PUD.

The Project is of exceptional merit and in the best interests of the City, in that it all of the proposed dwelling units will be set aside for moderate-income housing, as that term is defined in the Zoning Regulations. The Applicant plans to target households earning 60% of the AMI. In 2008, that figure was \$102,700; thus, the proposed development will target households earning approximately \$61,000 or less per year—a sector that is grossly underserved in this particular neighborhood. Columbia Heights has a large proportion of low-income housing and a large proportion of high-end market rate units, but few units devoted to workforce housing, which is so desperately needed in the District. The Project will provide units and amenities nearly comparable to market-rate units in the area, and will result in significant community benefits as described further herein. Finally, the development meets the requirements of 11 DCMR §

2401.2(b) in that it is located outside of the Central Employment Area and 100% of the gross floor area of the building will be devoted to residential uses and uses accessory thereto, such as parking and common areas for residential recreation.

2. Relief from Lot Occupancy.

11 DCMR § 2405.4 allows the Commission to approve a lot occupancy that is greater than the maximum permitted in the underlying zone. Maximum lot occupancy for residential buildings in the C-2-B Zone District is 80%. Given the limited size of the Subject Property, without a waiver of the lot occupancy requirements to allow 100% lot occupancy on the ground floor, the Applicant cannot achieve the density recommended for the Property under the Comprehensive Plan. The large central courtyard proposed for the western side of the building will result in the average lot occupancy for a typical floor of 86.6%, just 6.6% more than what would be allowed as a matter of right; however, in order to accommodate that courtyard and maintain common facilities for residents of the building on the ground floor without losing a significant number of units in the building the ground-floor lot occupancy is proposed at 100%. The former Berkshire apartment building located on the Property was, according to assessment records, developed at nearly 100% lot occupancy. Under the C-2-B zoning which is being sought, the project could occupy 100% of the site on the ground floor, if there were commercial uses on that floor. Given the residential use immediately across Chapin Street and to the west, it would be inappropriate to develop the Property with ground-floor commercial uses, but clearly, 100% lot occupancy on the ground floor, which includes “non-residential” uses such as a lobby, front desk, laundry and community room, does not undermine the integrity of the zone plan.

3. Relief from Rear Yard Setback.

The Zoning Commission has the authority, pursuant to 11 DCMR § 2405.5, to approve a yard or court which does not satisfy the minimum requirements of the underlying zone, “depending on the exact circumstances of the particular project.” Again, given the limited site area, relief from the rear yard setback is necessary to provide efficient development of the building in accordance with the recommendation of the Comprehensive Plan that this site be developed as medium-density residential. Complying with the minimum rear yard setback, which is to be measured from the center line of the alley below a horizontal plane 20 feet above the finished grade at the rear of the building and from the property line above that 20-foot plane (11 DCMR §§ 774.7(a), (b)), would result in a loss of ten (10) units in the building and at least four (4) parking spaces below the number proposed. Such a loss of density would make the project economically infeasible.

4. Relief from Roof Structure Requirements.

The proposed development requires special exception relief for multiple roof structures under 11 DCMR §§ 411.3 and 411.11, as the building requires two stair towers to provide adequate egress from the proposed rooftop terrace. As shown on Sheet A2.5, two stair towers are proposed to provide such egress. Pursuant to 11 DCMR § 411.3, all penthouses must be within a single enclosure. While separate enclosures are permitted for multiple elevator cores under 11 DCMR § 411.4, that section applies only to elevators.

Where “impracticable because of operating difficulties, the size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive...or unreasonable,” relief from the roof structure requirements contained within Section 411 of the Zoning Regulations is available as a special exception. 11 DCMR § 411.11. The building code requires a second means of egress from a rooftop deck, thus two stair

towers are required for this building. Strict compliance with 11 DCMR § 411.3 would require removal of the rooftop terrace--a significant building amenity--or adjacent stair towers, which would not meet building code requirements. Full compliance is therefore unduly restrictive and unreasonable for this project.

#### **IV.** **PUBLIC BENEFITS AND PROJECT AMENITIES**

##### **A. PUD Requirements Under the D.C. Zoning Regulations**

The Project has been evaluated relative to the PUD standards of Chapter 24 of the Zoning Regulations and the PUD guidelines for the C-2-B Zone District. The Property contains 9,000 square feet of land area, which is within 50% of the minimum area required for a PUD and therefore eligible for waiver subject to 11 DCMR § 2402.2. The Project meets the requirements for waiver of minimum area under that section. In accordance with the PUD guidelines, the project will not exceed 65 feet in height and will have an overall FAR of 5.36.

##### **B. Public Benefits and Project Amenities**

The PUD guidelines define public benefits as “superior features of a proposed planned unit development that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely occur under the matter of right provisions.” 11 DCMR § 2403.6. A project amenity is further defined as “one type of public benefit, specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors.” 11 DCMR § 2403.7. In evaluating the merits of a PUD application, the Zoning Commission shall “judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the

degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” 11 DCMR § 2403.8.

The minor flexibility requested in the instant PUD application will achieve the goals of the PUD process by providing an exceptional development of high-quality affordable housing to the surrounding area, designed for moderate-income families, which are underserved in this market, providing public benefits to both the surrounding area and the District as a whole. The provision of affordable housing, particularly high-quality, workforce housing, is precisely the type of public benefit the PUD process was designed to encourage. In fact, the Housing Element of the Comprehensive Plan specifically cites the provision of affordable housing as a “public benefit” which should be considered as such for the purposes of zoning incentives, such as PUDs. The proposed PUD will provide the following superior public benefits and amenities for the District:

1. Affordable Housing

The most significant feature of the Project is the introduction of 44 units of high-quality workforce housing into the City’s affordable housing stock. One hundred percent (100%) of the development will be set aside for households earning approximately 60% of the AMI. In addition to furthering the general housing objectives and policies of the Zoning Regulations and the Comprehensive Plan, the Project will help satisfy the growing demand for housing in this rapidly-changing neighborhood.

The affordable housing provided by the Project is nearly 20 times the gross floor area of affordable housing that would be required under the IZ provisions of Chapter 26 of the Zoning Regulations if the project were being developed as a matter-of-right under the current R-5-B

zoning classification, and nearly 15 times the gross floor area of affordable housing that would be required under the requested C-2-B zoning if developed as a matter of right.

2. Environmental Benefits

11 DCMR § 2403.9(h) states that environmental benefits are considered to be public benefits and project amenities of a PUD. The Project will provide a number of environmental benefits that improve the sustainability of the site. The Project will be constructed in accordance with the 2008 Enterprise Green Criteria and will include a lushly landscaped roof garden, high-emissive roofing (reducing heat island effects), privately-metered electrical services, individually-controlled heating and air conditioning units, non-vinyl and non-carpet floor coverings for improved indoor air quality, and reduction in parking below the minimum required by zoning (if flexibility is approved by the Zoning Commission). The Project has been designed to utilize as much natural light as possible, reducing energy needs during daytime hours. Finally, as discussed below, the Applicant will provide residents with transit incentives and indoor bicycle racks to encourage alternatives to car ownership.

3. Transportation Management Measures

The Applicant proposes numerous Transportation Demand Management measures as suggested in informal meetings with the District Department of Transportation. For example, the Applicant proposes to provide each resident with a one-time, complimentary \$50.00 SmartTrip fare card for use on Metro, a one-time membership fee subsidy in DC SmartBike for each unit, and a one-time membership fee subsidy for participation in Zipcar for each residential unit upon initial move-in. Additionally, the Project will have 41 indoor bicycle parking spaces.

4. First Source Employment Opportunities

In furtherance of Mayor's Order No. 83-265 and D.C. Law 5-93, the Applicant will work with the Department of Employment Services ("DOES") to execute a First Source Employment

Agreement in order to achieve the goal of utilizing District residents for at least 51% of the jobs created by the PUD project. The Applicant will use DOES as its first source for recruitment, referral, and placement of new hires for employees whose jobs are created by the PUD. The proposed First Source Employment Agreement is attached as Exhibit E. It should also be noted that the development team, Dantes Partners and Keystone Plus Construction, are District of Columbia Certified Business Enterprises (“CBE”)(formerly referred to as “LSDBE”).

5. Local Business Opportunities

The Applicant will enter into a Memorandum of Understanding with the D.C. Department of Small and Local Development in order to achieve, at a minimum, the goal of 35% participation by small, local, and disadvantaged businesses in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the PUD. This memorandum contributes significantly to the District’s goal of ensuring adequate opportunities for small and local businesses to participate in development projects throughout the City. It should be noted that both partners in the development are certified business enterprises.

6. Partnership with Mentoring Works2, Inc. (“MW2”)

MW2 is a community-based non-profit 501(c)(3) organization dedicated to transforming the lives of at-risk, inner-city youth through a mentoring program that matches vetted, trained adults with youth in need and offers a safe location for tutoring, mentoring, and social engagement. Through weekly community dialogue with parents, youth, local police, and community leaders, MW2 assesses the needs of the Shaw/Columbia Heights neighborhood and creates specific youth mentoring programs to address these needs. The Applicant proposes to partner with MW2 to provide an opportunity for youth participating in MW2’s programs to follow the PUD process from design and development to completion of construction. This is

similar to MW2's partnership with the D.C. Department of Parks and recreation, wherein MW2 youth participants, staff, mentors, community members and volunteers teamed up to transform the Parkview Recreation Center into a safe and inviting arena for youth to congregate and get much needed support. Through that project, MW2 mentored youth in several conceptual areas, including: (1) the care and sustenance of the environment, (2) program planning, (3) collaborative teamwork, and (4) pride in personal investment in community improvement. Upon completion of the Project, the Applicant will continue to work with MW2 and to provide a location for MW2 volunteers to provide regular after-school homework help and tutoring in the community space within the PUD.

## **V.** **CONCLUSION**

For the foregoing reasons and the reasons set forth in the Applicant's September 25, 2009 application package, the Applicant submits that the consolidated PUD application meets the standards of Chapter 24 of the Zoning Regulations; is consistent with the purposes and intent of the Zoning Regulations and Map; will enhance the health, welfare, safety, and convenience of the citizens of the District of Columbia; satisfies the requirements for approval of a consolidated PUD; provides significant public benefits; and advances important goals and policies of the District of Columbia. Therefore, the consolidated PUD application should be approved and adopted by the Zoning Commission.

Accordingly, the Applicant respectfully requests that the Zoning Commission approve this application.

Respectfully submitted,

ARENT FOX LLP



Kinley R. Bray

Date: December 2, 2009