

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

KYRUS L. FREEMAN
202-862-5978
kyrus.freeman@hklaw.com

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July 22, 2015

VIA HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N W , Suite 210-S
Washington, DC 20001

Re: **Request for Extension of Time to File Building Permit for Z.C. Order No. 10-26A (Consolidated Planned Unit Development and Related Map Amendment from GA/C-2-A to GA/C-2-B @ Square 3040, Lot 130)**

Dear Members of the Zoning Commission

On behalf of ZGZP 3333 LLC (the "Applicant"), this letter serves as a request for a two-year extension of the time period in which to file a building permit for property located at 3321-3335 Georgia Avenue, N W (Square 3040, Lot 130) (the "Subject Property"). The request is filed pursuant to section 2408.10 of the Zoning Regulations for good cause shown herein. A completed application form for the extension is submitted herewith, and a check in the amount of \$520.00 made payable to the D C Treasurer for the requisite filing fee pursuant to section 3040.5 of the Zoning Regulations is also enclosed.

I. INTRODUCTION

A. Factual Background

Pursuant to Z C Order No 10-26, having an effective date of September 2, 2011, the Zoning Commission approved applications for a consolidated planned unit development ("PUD") and related Zoning Map amendment from the GA/C-2-A District to the GA/C-2-B District for a mixed-use retail and residential project at the Subject Property. Pursuant to Z C Order No 10-26A, having an effective date of November 8, 2013, the Commission granted an extension to the original order, such that an application must be filed for a building permit no later than September 2, 2015, and construction must begin no later than September 2, 2016. Z C Order Nos 10-26 and 10-26A are attached hereto as Exhibits 1 and 2, respectively.

ZONING COMMISSION
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EXHIBIT NO. 2
ZONING COMMISSION
District of Columbia
CASE NO. 10-26C
EXHIBIT NO. 2

The approved PUD includes approximately 118,160 square feet of total gross floor area. Of that, approximately 82,801 square feet of gross floor area is devoted to residential uses, including 112 units (plus or minus 10%), approximately 7,190 square feet of gross floor area is devoted to retail uses, and approximately 23,031 square feet of gross floor area is devoted to loading and other circulation spaces. The approved PUD has a maximum density of 5.37 floor area ratio ("FAR") and a maximum building height of 90 feet (not including roof structures). The approved project includes 50 off-street parking spaces located in a below-grade garage.

On January 15, 2014, after a previous change in ownership of the Subject Property, the Applicant filed an application to modify the approved PUD. The ownership of the Subject Property changed again on August 28, 2014. However, as a result of continued delay with respect to the Subject Property's environmental contamination, as described herein, the Applicant now requests a time extension of Z.C. Order No. 10-26A, such that a building permit application for the building approved pursuant to Z.C. Order No. 10-26 must be filed no later than September 2, 2017, and construction must begin no later than September 2, 2018.

B. Jurisdiction of the Zoning Commission

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 2408.9 (three year requirement to begin construction), provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond,
- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD, and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in Section 2408.11.

The sole substantive criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control,
- (b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control, or

(c) The existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order

II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES

Other than the Applicant, the only party to this case was Advisory Neighborhood Commission ("ANC") 1A. As indicated on the Proof of Service attached hereto, the Applicant has served this request for an extension of time on ANC 1A.

III. THERE IS GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY

A. The Project Has Experienced Delay Beyond Applicant's Control

Section 2408 11(b) authorizes the grant of an extension of PUD validity for projects where a condition or factor beyond the applicant's reasonable control renders the applicant unable to comply with the time limits of the PUD order. In this case, there are several conditions beyond the Applicant's control that require the PUD extension requested herein.

The Applicant purchased the Subject Property on August 28, 2014, which was more than three years after the Commission approved the original PUD. Since acquiring the Subject Property, the Applicant has worked diligently to secure the approvals necessary to move forward with development. However, the Subject Property has a history of gasoline station use and resultant soil contamination due to a release of petroleum to the subsurface soils and groundwater. A number of steps have been taken to date to address the Subject Property's constraints, as described in the affidavit of Charles A. Gravely attached hereto as Exhibit 3, including the following:

- On June 7, 2013, the District Department of the Environment ("DDOE") issued a Comprehensive Site Assessment and Corrective Action Directive, designating Sunoco, the prior gas station operator, as the responsible party and requiring Sunoco to undertake certain environmental actions at the Subject Property. Sunoco hired Kleinfelder to undertake site assessment activities at the Subject Property.
- On August 8, 2014, Sunoco (through Kleinfelder) submitted a Comprehensive Site Assessment ("CSA") Work Plan to DDOE for the Subject Property. On December 30, 2013, and June 13, 2014, Sunoco submitted two subsequent CSA reports to DDOE, detailing the completion of monitoring wells and soil borings at the Subject Property.
- Sunoco continued environmental testing activities through January, 2015, and submitted an updated work plan to DDOE, dated February 7, 2015. DDOE approved the work plan on February 18, 2015.
- Between February 18, 2015, and April 10, 2015, permitting for conducting the additional site studies was delayed, such that Sunoco initiated the site activities in the approved work plan on May 18, 2015.

- On May 20, 2015, Sunoco successfully collected soil vapor samples from the Subject Property. However, during pre-clearing for the borings, Sunoco encountered abandoned underground storage tanks ("USTs") under the Subject Property and was unable to advance the remaining soil borings as anticipated. After discussions with drilling contractors in May and June of 2015, Kleinfelder indicated that the outstanding borings could not be completed until the beginning of July, 2015.

Once the current round of testing and analysis is completed, all data will be submitted to DDOE. DDOE will then determine the applicable remediation requirements for pre- and post-redevelopment use of the Subject Property. Once this process is complete, DDOE will issue a No Further Action letter, allowing the Applicant to move forward with development of the Subject Property. The Applicant anticipates that the process will be complete within two years such that the Applicant will be able to move forward with filing a building permit for the approved PUD no later than September 2, 2017. As a result of this lengthy process that is outside of the Applicant's reasonable control, the Applicant is unable to comply with the time limits set forth in the PUD order. Accordingly, this request for a time extension satisfies the sole criterion for good cause shown as set forth in section 2408 11(c) of the Zoning Regulations.

B. No Substantial Changes to Approved PUD

In addition to requiring the demonstration of "good cause," §2408 10 of the Zoning Regulations requires the following:

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD.

In this case, there has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the original PUD, and the Applicant remains committed to moving forward with developing a mixed-use, multiple dwelling building with ground floor retail, and fully complying with the conditions and obligations imposed as part of the original PUD approval.

C. No Hearing is Necessary

Section 2408 12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in § 2408 11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in section 2408 11. There is no dispute that

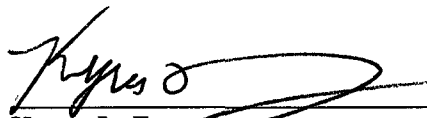
there are significant environmental impediments to proceeding with construction of the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

IV. CONCLUSION

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two-year extension of time to file a building permit for property located at 3321-3335 Georgia Avenue, N W, such that an application must be filed for a building permit no later than September 2, 2017, and construction must start no later than September 2, 2018. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Jessica R. Bloomfield

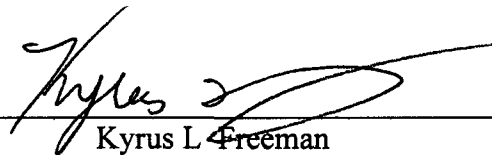
Attachments

cc Jennifer Steingasser, Office of Planning (Via Hand Delivery, w/attachments)
Steve Mordfin, Office of Planning (Via Hand Delivery, w/ attachments)
Advisory Neighborhood Commission 1A (Via U S Mail, w/attachments)
Bobby Holmes, Single Member District ANC 1A09 (Via U S Mail, w/ attachments)

PROOF OF SERVICE

I hereby certify that on July 22, 2015 a copy of the foregoing Applicant's Request for Extension of Time was served by first class mail on the following at the address stated below

Advisory Neighborhood Commission 1A
3400 11th Street, NW, #200
Washington, DC 20010


Kyrus L. Freeman

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-26

Z.C. Case No. 10-26

3321 Georgia LLC

**(Consolidated Planned Unit Development & Zoning Map Amendment from GA/C-2-A to
GA/C-2-B @ Square 3040, Lot 130)**

April 11, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 3, 2011, to consider applications from 3321 Georgia LLC (the "Applicant"), owner of Lot 130 in Square 3040, for the consolidated review and approval of a Planned Unit Development ("PUD") and a zoning map amendment to rezone the property from the GA/C-2-A District to the GA/C-2-B District. The Commission considered the applications 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 Commission hereby approves the applications

FINDINGS OF FACT

The Application, Parties, and Hearing

- 1 On October 14, 2010, the Applicant filed applications with the Commission for the consolidated review and approval of a PUD and a zoning map amendment to rezone Lot 130 in Square 3040 (the "Subject Property") from the GA/C-2-A District to the GA/C-2-B District The Subject Property's current zoning designation of GA/C-2-A means that it is in the C-2-A Zone District as well as the Georgia Avenue Commercial Overlay District
2. The Subject Property has a land area of approximately 22,002 square feet and is located at the southeast corner of Georgia Avenue, N W , and Morton Street, N.W. The property has approximately 134 59 feet of frontage on Morton Street, N W , and approximately 164 06 feet of frontage on Georgia Avenue, N W Square 3040 is bounded by Morton Street, N W. to the north, Square 3043 and Warder Avenue, N W. to the east, Lamont Street, N W to the south, and Georgia Avenue, N W to the west The Subject Property is within walking distance of the Georgia Avenue Metrorail Station, which is located to the north of the Subject Property The Subject Property is currently improved with an asphalt parking lot and a strip retail shopping center The Applicant proposes to raze the majority of the existing retail uses on the Subject Property; however, an existing post

441 4th Street, N W , Suite 200-S, Washington, D C 20001

Telephone (202) 727-6311

Facsimile (202) 727-6072

E-Mail dcozi@dc.gov

Web Site www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO 10-26
EXHIBIT NO 46

Exh. 1

office that includes approximately 5,138 square feet of gross floor area and is located along the southern portion of the Subject Property will remain

3. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The project will have a maximum floor area ratio ("FAR") of 5.37, which is less than the maximum permitted of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 82,801 square feet of residential uses, comprised of 112 units (plus or minus 10%), and approximately 7,190 square feet of new retail uses. A total of eight percent of the residential gross floor area devoted to residential use will be dedicated as affordable to households earning up to 80% of the area median income ("AMI"). The building will have a maximum building height of 90 feet, and will have 50 off-street parking spaces located in a below-grade garage.
4. At its public meeting held on November 29, 2010, the Commission voted to schedule a public hearing on the application.
5. On December 17, 2010, the Applicant submitted a Prehearing Statement. (Exhibit 15.) The Prehearing Statement included revised plans showing additional details regarding the project's design and materials (Exhibit 16), additional information regarding the project's proposed public benefits and amenities; additional information regarding the project's proposed loading entrance and truck turn movements, and the additional materials required pursuant to § 3013 of the Zoning Regulations.
6. On February 11, 2011, the Applicant submitted a Supplemental Prehearing Statement (Exhibits 27 and 28). This submission included an updated set of architectural plans and elevations for the public hearing (Exhibit 28), and a memorandum prepared by Gorove/Slade Associates, Inc., dated January 21, 2011, which was submitted to the District Department of Transportation ("DDOT") regarding truck turn movements and loading access.
7. After proper notice, the Commission held a public hearing on the application on March 3, 2011.
8. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 1A, the ANC within which the Subject Property is located.
9. Four principal witnesses testified on behalf of the Applicant at the public hearing, including Adrian Washington, on behalf of the Applicant, as an expert in urban real estate development, Mel Thompson, on behalf of Grimm + Parker Architects, as an expert in residential and retail design; Erwin N. Andres, on behalf of Gorove/Slade Associates, Inc., as an expert in transportation planning and analysis, and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted

- for the record, Mr Washington, Mr Thompson, Mr Andres, and Mr Sher were qualified by the Commission as experts in their respective fields.
- 10 The Office of Planning ("OP") testified in support of the project at the public hearing DDOT testified in conditional support of the project at the public hearing.
 - 11 At the hearing, the Applicant submitted a copy of the Applicant's PowerPoint presentation, which included revised sheets indicating that the Applicant agreed to paint the interior walls of the garage in the vicinity of the garage door a color to match the exterior brick (Exhibit 32.), and also agreed to provide a cool roof on the existing post office structure, as shown in the Applicant's post-hearing plans (Exhibit 39A), both of which were requested by OP The Applicant also submitted at the hearing a copy of the report prepared by the Applicant's expert in land use and zoning. (Exhibit 33)
 - 12 ANC 1A submitted a resolution in support of the application. (Exhibit 23.) ANC 1A's resolution indicated that at a public meeting on January 12, 2011, at which notice was properly given and a quorum was present, ANC 1A voted unanimously (9-0-0) to support the application. ANC 1A indicated they believe the project will have a positive impact on the development of the community, particularly given the Applicant's commitment and contribution to the revitalization of the Georgia Avenue corridor, by providing new neighborhood-serving retail, new housing options, and the creation of jobs and an increased tax base ANC 1A also noted that the Applicant's proposal to replace the existing surface parking and strip shopping center with a new building constructed to the property line constitutes a significant benefit, and that the project will also help to implement a number of the recommendations of the *Georgia Avenue-Petworth Metro Station & Corridor Plan* ANC 1A also stated that the accommodation of all service and loading activities within the building, and the head-in head-out truck movements, are also significant site planning and land utilization benefits ANC 1A indicated that they support the Applicant's Transportation Demand Management plan since it will help to eliminate the possibility of spill-over parking from the project ANC 1A also stated that they strongly support the Applicant's proposal to renovate the field house at the Park View Recreation Center to make the field house suitable for the children and the community served by the non-profit, Park View Kids Zone which provides an after-school program and other services Overall, ANC 1A indicated they believe the amenities proposed for the project are important for the community and exceed the degree of development incentives requested by the Applicant, especially since the project will not have any adverse effects on the neighborhood.
 13. At its public hearing held on March 3, 2011, the Commission took proposed action to approve the applications and the plans, but requested additional information that will be discussed later in this Order The Commission also issued a procedural order requiring the Applicant to file its final statement of public benefits being proffered with the PUD, a list of potential adverse effects of the PUD, and requiring the Applicant to provide a draft

condition to include in the PUD order that renders the proffered public benefit enforceable and adequately mitigates the identified potential adverse effects.

- 14 The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on March 3, 2011 under the terms of the District of Columbia Home Rule Act (Exhibit 35) NCPC, by action dated April 1, 2011, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 41)
- 15 The Commission took final action to approve the application on April 11, 2011

The PUD Project

16. The Subject Property is situated in Ward 1 and consists of Lot 130 in Square 3040 The Subject Property's current zoning designation of GA/C-2-A means that it is in the C-2-A Zone District as well as the Georgia Avenue Commercial Overlay District. The Subject Property has a land area of approximately 22,002 square feet and is located at the southeast corner of Georgia Avenue, N W , and Morton Street, N W.
- 17 The Applicant proposes to build a mixed-use development composed of retail and residential uses. The project will have a maximum FAR of 5.37, which is less than the maximum permitted of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 82,801 square feet of residential uses, comprised of 112 units (plus or minus 10%), and approximately 7,190 square feet of new retail uses. A total of eight percent of the residential gross floor area devoted to residential use will be dedicated as affordable to households earning up to 80% of the AMI The building will have a maximum building height of 90 feet, and will have 50 off-street parking spaces located in a below-grade garage

Development Under Existing Zoning

- 18 The Subject Property is currently zoned GA/C-2-A The Applicant is seeking to rezone the Subject Property to GA/C-2-B in connection with this Application The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside of the central core (11 DCMR § 720.2) The C-2-A Zone District includes the following development requirements
 - The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet with no limit on the number of stories, (11 DCMR § 770.1)

- The maximum density in the C-2-A Zone District is 2.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses, (11 DCMR § 771.2)
 - The maximum percentage of lot occupancy for a building or portion of building devoted to residential use is 60%; (11 DCMR § 772.1.)
 - A minimum rear yard of depth of 15 feet; (11 DCMR § 774.1.)
 - If provided, a side yard must be at least two inches wide per foot of building height, but not less than six feet; (11 DCMR § 775.5)
 - If provided for a building or portion of building devoted to residential uses, at any elevation in the court, the width of court must be a minimum of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet (11 DCMR § 776.3.) In the case of a closed court for a building or portion of a building devoted to residential uses, the minimum area must be at least twice the square of the width of court based upon the height of court, but not less than 350 square feet, (11 DCMR § 776.4)
 - For an apartment house or multiple dwelling with 50 or more units, one off-street parking space for each two dwelling units, and (11 DCMR § 2101.1.)
 - For an apartment house or multiple dwelling with 50 or more units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (11 DCMR § 2201.1)
19. The Subject Property is also located in the Georgia Avenue Commercial (“GA”) Overlay District, which applies to certain properties zoned C-2-A and/or C-3-A along both sides of Georgia Avenue (11 DCMR § 1327.1) The GA Overlay includes a number of design requirements in § 1328 of the Zoning Regulations, including the following:
- Buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way,
 - Buildings on corner lots must be constructed to all property lines abutting public streets;
 - In the GA/C-2-A Zone District, 70% lot occupancy is permitted for mixed use buildings that include residential use,

- On-grade parking structures with frontage on Georgia Avenue, N W , must provide not less than 65% of the ground level frontage as commercial space,
 - Each building on a lot that fronts on Georgia Avenue, N W , must devote not less than 50% of the surface area of the street wall at the ground level to entrances to commercial uses or to the building's main lobby, and to display windows having clear or clear/low emissivity glass. Decorative or architectural accents do not count toward the 50% requirement,
 - Security grilles over windows or doors shall have no less than 70% transparency;
 - Each commercial use with frontage on Georgia Avenue, N W , must have an individual public entrance directly accessible from the public sidewalk;
 - Buildings must be designed so as not to preclude an entrance every 40 feet on average for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby,
 - The ground floor level of each building or building addition must have a uniform minimum clear floor-to-ceiling height of 14 feet,
 - Buildings that have a minimum clear floor-to-ceiling height of 14 feet on the ground floor level are permitted an additional five feet of building height over that permitted as a matter-of-right in the underlying zone, and
 - Off-street surface parking is permitted in rear yards only
- 20 The GA Overlay also prohibits certain uses, such as drive-through and automobile-related uses (11 DCMR § 1329), includes special exception provisions for certain uses (11 DCMR § 1330), and includes PUD provisions. (11 DCMR § 1331)
- 21 The Commission finds that the proposed PUD meets the applicable requirements of the GA Overlay as set forth in the report and testimony of the Applicant's land use and zoning expert and the OP report
- 22 Section 1330.1(b) of the Zoning Regulations requires special exception approval by the Board of Zoning Adjustment for the construction of any new building on a lot consisting of 12,000 square feet or more. The Subject Property consists of 22,002 square feet. However, § 2405.7 of the Zoning Regulations gives the Commission authority to approve any special exception as a part of a PUD application, which the Commission approves as part of approving this application.

Development under Proposed GA/C-2-B Requirements

23. The Applicant proposes to rezone the Subject Property to GA/C-2-B in connection with this application. The C-2-B Zone District is designed to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed uses (11 DCMR § 720.6.) The C-2-B Zone Districts are compact and located on arterial streets, in uptown centers, and at rapid transit stops (11 DCMR § 720.7.) Buildings may be entirely residential or a mixture of residential and commercial uses in the C-2-B Zone District (11 DCMR § 720.8.)
24. The C-2-B Zone District includes the following development requirements.
- A maximum matter-of-right height of 65 feet with no limit on the number of stories (11 DCMR § 770.1), and a maximum height of 90 feet under the PUD requirements; (11 DCMR § 2405.1.)
 - A maximum matter-of-right density of 3.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses (11 DCMR § 771.2), and a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to nonresidential uses under the PUD requirements, (11 DCMR § 2405.2.)
 - A maximum lot occupancy of 80%, (11 DCMR § 772.1.)
 - A minimum rear yard depth of 15 feet (11 DCMR § 774.1) and, if provided, a side yard at least two inches wide per foot of building height, but not less than six feet; (11 DCMR § 775.5.)
 - If provided for a residential use, a minimum court width of four inches per foot of height, but not less than fifteen feet (11 DCMR § 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet, (11 DCMR § 776.4.)
 - For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 350 square feet of gross floor area and cellar floor area; (11 DCMR § 2101.1.)
 - For an apartment house or multiple dwelling with 50 or more units, one off-street parking space for each three dwelling units, (11 DCMR § 2101.1.)

- For a retail establishment with 5,000 to 20,000 square feet of gross floor area, one loading berth at 30 feet deep and one loading platform at 100 square feet (no service/delivery loading space is required), and (11 DCMR § 2201.1)
- For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (11 DCMR § 2201.1.)

Development Incentives and Flexibility

25 In addition to the additional height and FAR permitted pursuant to § 2405 of the Zoning Regulations, the Applicant requested the following areas of flexibility from the Zoning Regulations

- a. ***Flexibility From Rear Yard Requirements.*** Pursuant to § 774.1 of the Zoning Regulations, buildings in the C-2-B District are required to provide a rear yard with a minimum depth of 15 feet. However, given the configuration of the site, including the footprint of the existing post office which will be remaining on the Subject Property, the project cannot provide a rear yard. The Commission finds that although the project does not include a rear yard, a portion of the rear of the Subject Property abuts a public alley, so there will be open space between the rear of the proposed building and the property to the east of the Subject Property. The Commission further finds that, given the design of the building, the units will have adequate access to light and air from the north, south, west, and interior courtyard elevations. The Commission also notes that even though the project does not include a rear yard, the volume of open space provided above the post office and within the property line exceeds the volume of space that would be provided from a rear yard meeting the minimum depth requirement. Therefore, the Commission finds that flexibility from the rear yard requirement of § 774.1 of the Zoning Regulations is appropriate in this case.
- b. ***Flexibility From Roof Structure Requirements.*** The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because there will be multiple roof structures (§§ 411.3 and 770.6(a)); one of the structures cannot be set back from all exterior walls a distance equal its height above the roof (§§ 411.2 and 770.6(b)), and the enclosing walls of a roof structure are not of an equal height (§ 411.4). The Commission finds that each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. Moreover, the Commission finds that the location and number of roof structures is driven by the layout and design of the residential units within the building, as well as the location of the core features such as the elevator. In addition,

the Applicant is providing the greatest setbacks possible given the size of the roof and the internal configuration of the proposed building. The requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the Commission finds that the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected by granting this flexibility.

- c. ***Flexibility from Compact Parking Space Location Requirements.*** Section 2115.4 of the Zoning Regulations requires compact spaces to be placed in groups of at least five contiguous spaces with access from the same aisle. However, the Applicant proposes to provide a number of compact parking spaces in groupings of less than five. Therefore, flexibility is required from § 2115.4. The Commission finds that the parking layout has been designed to operate efficiently and to provide adequate access and circulation for the site. However, due to the location of structural columns in the proposed building, combined with the goal of meeting the parking requirements, the Applicant cannot locate all of the compact spaces in the same area. The Commission further finds that approval of this requested flexibility will not have any adverse impacts since the Applicant will be meeting the parking requirements, and the garage has been designed to operate efficiently.
- d. ***Flexibility From The Off-Street Loading Requirements.*** The Applicant requests relief from the off-street loading requirements. Pursuant to § 2201.1 of the Zoning Regulations, the Applicant is required to provide the following: one loading berth at 30 feet deep (retail), one loading berth at 55 feet deep (residential); one loading platform at 100 square feet (retail), one loading platform at 200 square feet (residential), and one service/delivery space at 20 feet deep (residential). However, due to the anticipated needs of the residents and retail uses, the Applicant is seeking flexibility to provide the following shared loading facilities for both the retail and residential uses: one loading berth at 20 feet deep; one loading berth at 30 feet deep; and one loading platform at 285 square feet. The Applicant is also requesting flexibility to provide no service/delivery space. The Commission finds that the Applicant's requested flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments and minimizing curb cuts on streets to the greatest extent possible, and to provide shared loading spaces in mixed-use buildings. In addition, the Commission finds that given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot tractor-trailer trucks, and that the loading areas are likely to be used by the residents primarily when they move in or out of the building. The Commission further finds that the retail users will typically use the loading facilities during times which cause the least amount of conflict with the loading needs of the residents. Therefore, the Commission finds that the proposed shared loading facilities will be

able to accommodate both the residential and retail uses, and thus approves the requested loading flexibility.

e ***Additional Areas of Flexibility.*** The Applicant also requests flexibility in the following areas

- 1 To be able to provide a range in the number of residential units of plus or minus 10% from the 112 depicted on the plans;
2. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building,
- 3 To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the minimum level required by the Zoning Regulations, and
- 4 To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit

Public Benefits and Amenities

26 The Commission finds that the following benefits and amenities will be created as a result of the PUD:

- ***Urban Design, Architecture, Landscaping and Open Space.*** The project implements a number of urban design and architectural best practices, and will assist in the further development of Georgia Avenue into a major mixed-use corridor with higher-density residential uses and high quality community oriented retail uses. Moreover, given the width of the Georgia Avenue right-of-way, taller buildings holding a uniform street wall will create a well-proportioned street section with a better sense of enclosure and place. This new street section in combination with the mix of uses and streetscape improvements employed here will support the ultimate revitalization of this portion Georgia Avenue into another great Washington mixed-use main street.
- ***Site Planning, and Efficient and Economical Land Utilization.*** The Applicant's proposal to replace the existing surface parking and strip shopping center with a new

building constructed to the site's north, east, and west property lines constitutes a significant benefit. The project will also help to implement a number of the recommendations of the *Georgia Avenue-Petworth Metro Station & Corridor Plan*, and will also bring more activity to Georgia Avenue. In addition, the accommodation of all service and loading activities within the building are also significant site planning and land utilization benefits.

- *Transportation Features* During operation of the building the Applicant will implement the following Transportation Demand Management measures.
 - 1 Providing links to goDCgo.com and CommuterConnections.com on its developer and property management websites,
 - 2 Providing a \$20 SmarTrip card to all initial building residents upon move-in,
 - 3 Providing a one-time, one-year car-share membership (which shall include the cost for any application fees) for the initial occupant(s) of each residential unit, capped at a total commitment of \$10,000, and
 - 4 Providing eight bike parking racks for retail visitors and 15 bike parking racks for use by residents in the parking garage.
- *First Source Employment Agreement* The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services. Execution and implementation of this agreement will help to expand employment opportunities for residents of the District in connection with construction of the project.
- *Housing* The proposed PUD will contain approximately 82,801 square feet of gross floor area dedicated to residential uses. The Applicant is therefore significantly under-building the amount of commercial use permitted on the site. Thus, the Applicant's proposal to provide additional housing is consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative, all of which provide that the single greatest benefit to the area, and the city as a whole, is the creation of new housing opportunities.
- *Environmental Benefits* The proposed development will help to ensure the environmental, economic, and social sustainability of the residents through the implementation of sustainable design features. The Applicant will therefore submit with its building permit application a Green Communities Criteria Checklist indicating that the project includes sustainable design features such that the building would be able to achieve a minimum of 37 points under the Green Communities certification program.

- *Uses of Special Value to the Neighborhood* As part of the PUD process, the Applicant worked with ANC 1A and other community groups to develop an appropriate off-site amenity that has special value to the neighborhood, and that would be a community investment that will last for the life of the PUD project. As a result of this process, the Applicant agreed to renovate the exterior and interior of the field house at the Park View Recreation Center to make the field house suitable for the children and the community served by the non-profit, Park View Kids Zone, which provides an after-school program. The work will include the following:

- 1 Replace building's roof,
- 2 Replace six of the existing windows,
- 3 Repair and paint the building's exterior,
- 4 Replace the door and sidelight on the eastern side of the building;
- 5 Repair existing ADA rails and ramps on the eastern side of the building,
6. Have an architect or other professional prepare renderings and an interior layout for the building, including updated kitchen, computer room, multipurpose room, and second-level reading room layouts,
- 7 Repair and paint the building's interior walls,
- 8 Repair or replace, as needed, damaged or deteriorating interior drywall,
- 9 Update damaged interior lighting with new fixtures;
10. Repair interior electrical and plumbing, as needed;
- 11 Install new floor coverings on the first and second interior levels of the building,
- 12 Repair the existing heating and cooling system, and
- 13 Restore the interior bathrooms

Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, effective March 8, 2007)

- 27 The District of Columbia Comprehensive Plan Future Land Use Map designates the Subject Property in the Mixed Use, Medium Density Residential and Moderate Density Commercial land use category. The Medium Density Residential designation is used to define neighborhoods or areas where mid-rise (four-to-seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply in some locations. The Moderate Density Commercial designation is used to define shopping and service areas that are somewhat more intense

in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Buildings are larger and/or taller than those in low-density commercial areas but generally do not exceed five stories in height. The corresponding Zone Districts are generally C-2-A, C-2-B, and C-3-A, although other Districts may apply.

- 28 The District of Columbia Comprehensive Plan Generalized Policy Map designates the Subject Property in a Main Street Mixed Use Corridor area. Main Street Mixed Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.
- 29 The Commission finds that the Applicant's proposal to rezone the property from the GA/C-2-A District to the GA/C-2-B District to construct a mixed-use development on the Subject Property is consistent with the Comprehensive Plan designation of the Subject Property. The Applicant proposes to construct 376 FAR of residential use on the Subject Property, which is consistent with the amount of residential density permitted in medium-density zones. Moreover, the proposed C-2-B zoning classification is specifically identified as a moderate-density commercial zone district. In addition, one of the primary purposes of the C-2-B District is to provide commercial and residential functions within a single building, which is also consistent with the stated principle of the mixed-use designation of the Subject Property. The Subject Property is also located along a transportation corridor and is in close proximity to a Metrorail station. Given the District's stated policy of channeling new residential and retail growth into areas near transit stations and along bus routes, the Commission finds that the proposed project and map amendment are consistent with the Comprehensive Plan's designation of the Subject Property. In addition, the Commission further finds that the proposed project and rezoning are consistent with the Generalized Policy Map's designation of the Subject Property since the project includes both residential and retail uses, which will help to further economic and housing opportunities and serve neighborhood needs.
- 30 The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating

successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:

- a. *Managing Growth and Change* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income (§ 23, § 217.4). The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods (§ 23, § 217.6). The proposed PUD is fully consistent with each of these goals. Redeveloping the Subject Property into a vibrant mixed-use development will further the revitalization of the neighborhood.
- b. *Creating Successful Neighborhoods* One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 23, § 218.8). The proposed PUD furthers this goal since, as part of the PUD process, the Applicant worked with ANC 1A and other groups to ensure that the development provides a positive impact to the immediate neighborhood.
- c. *Increasing Access to Education and Employment* The Increasing Access to Education and Employment element includes a number of policy goals focused on increasing economic activity in the District, including increasing access to jobs by District residents (§ 219.1), encouraging a broad spectrum of private and public growth (§ 219.2), supporting land development policies that create job opportunities for District residents with varied job skills (§ 219.6); and increasing the amount of shopping and services for many District neighborhoods (§ 219.9). The project is fully consistent with these goals since the proposed retail area will help to attract new jobs to the District, as well as to this specific neighborhood.
- d. *Connecting the City* The proposed development will help to implement a number of the guiding principles of this element. The project includes streetscape improvements to provide improved mobility and circulation through the project, as well as the overall neighborhood (§ 220.2). In addition, the access point on Morton Street for the required parking and loading facilities has been designed to appropriately balance the needs of pedestrians, bicyclists, transit users, autos and delivery trucks as well as the needs of residents and others to move around and through the city. Moreover, the proposed streetscape improvements along Georgia Avenue will also help to reinforce and improve one of the "great streets" of the city (§ 220.3).
- e. *Building Green and Healthy Communities* One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water

conservation, and reduce harmful effects on the natural environment (§ 2 3, § 221 3)
As discussed in more detail above, the building will include a number of sustainable design features.

- 31 The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the report and testimony of the Applicant's land use and zoning expert and the OP report

OP Report

32. By report dated November 19, 2010, OP stated that it supports the application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Exhibit 13)
- 33 By report dated February 18, 2011, OP recommended final approval of the application. (Exhibit 29) OP stated that Georgia Avenue is experiencing revitalization in the form of new commercial and residential projects, and that the project will complement a recently approved PUD in the area, and will provide additional residential density in support of improved commercial opportunities. OP also reported that the proposed PUD includes a number of public benefits and project amenities as described in this Order. OP found that the proposal is not inconsistent with the Comprehensive Plan Future Land Use and Generalized Policy maps, and that the project furthers many important policies included in the Comprehensive Plan, the Georgia Avenue – Petworth Metro Station Area and Corridor Plan, the Park Morton Redevelopment Initiative Plan, and the District's Great Streets Initiative
- 34 OP also noted that it received comments from FEMS and DHCD indicating that they support the application, and from MPD recommending that the Applicant do the following: (a) hire security for the building, (b) install cameras at all entrances and exits, (c) install cameras in elevators and parking areas, and (d) install adequate lighting on the exterior of the building. OP concluded its report by recommending that the application be approved, subject to the following conditions: (1) the interior walls of the garage in the vicinity of the garage door be painted a color to match the exterior brick, and (2) a cool roof is provided on the existing post office structure
- 35 As indicated at the public hearing and as shown on the plans included with the Applicant's PowerPoint presentation, the Applicant agreed to paint the interior walls of the garage in the vicinity of the garage door a color consistent with the exterior brick color (Exhibit 32), and as shown on the post-hearing submission plans, the Applicant also agreed to provide a cool roof on the existing post office structure (Exhibit 39A), both of which were requested by OP. The Applicant agreed at the public hearing that once the

building is constructed and occupied, the Applicant will hire security for the building. However, in its March 24 proposal of draft conditions for the PUD, the Applicant stated that instead of "hiring security" for the building, it would "contract with a security company, such as Datawatch Systems, Kastle Systems, or a similar company, to secure and monitor the building." The Commission finds this to be an acceptable substitution. In addition, the Applicant agreed at the public hearing that once the building is constructed and occupied, the Applicant will (a) install cameras at all entrances and exits; (b) install cameras in elevators and parking areas, and (c) install adequate lighting on the exterior of the building. Therefore, the Commission finds that the Applicant has addressed the comments outlined in OP's report.

DDOT Report

- 36 DDOT submitted a report, dated February 28, 2011, indicating that DDOT conditionally supports the project (Exhibit 30). DDOT indicated that it has concerns with the proposed parking, provided the parking spaces remain for the residents living in the proposed building. However, DDOT recommended that the Applicant be required to provide all loading and vehicle ingress and egress for the proposed building via an "existing alley" located along the eastern property line. DDOT noted that although the "existing alley" is private property, it functions as a public alley. DDOT therefore recommended that this private property be maintained for public alley purposes as a community amenity, and to alleviate the need for the Applicant to install an additional 24-foot curb cut on Morton Street. DDOT also indicated that the Applicant did not review whether an on-street loading location could be provided instead of having all loading accommodated within the proposed building. DDOT noted that the turn movements in and out of the Applicant's proposed curb cut on Morton Street are a concern for DDOT given the right of way width of Morton Street. DDOT further indicated that Applicant's proposal to provide 27 interior bicycle parking spaces may be insufficient, and thus recommended that the Applicant install up to 50 interior bicycle parking spaces as mitigation for the Applicant's requested reduction in the number of required parking spaces. DDOT also recommended that the Applicant install a 'NextBus' display in the lobby of the residential building as another means to mitigate the requested parking reduction. DDOT concluded its report by indicating that DDOT will not approve any grated utility vaults on Morton Street or Georgia Avenue adjacent to the Subject Property.
- 37 Based upon the testimony of the Applicant's witnesses, including its expert in transportation analysis and planning, the Commission finds there is no legal basis for DDOT requiring the Applicant to dedicate private property for public use, that the Applicant has the right to build on its property, and as described in this Order, the Applicant's proposal to replace the existing surface parking and strip shopping center

with a new building constructed to the property lines constitutes a significant benefit in terms of site planning, and efficient and economical land utilization. In addition, the Commission finds that, based upon the Traffic Impact Study and the Supplemental Transportation Analysis Memorandum included in the record of this case, the Applicant's proposal to provide ingress and egress for the project via a proposed 24-foot curb cut on Morton Street will have no adverse impacts, and that widening the existing 16-foot curb cut to 24 feet will in fact result in improved turn movements into and out of the proposed building. Moreover, similar to this Commission's findings in other cases, the Commission finds that the Applicant's proposal to construct the building to the eastern property line on Morton Street enables the building to be designed to accommodate vehicle turn movements within the project, which the Commission finds is a significant benefit. The Commission also notes that ANC 1A indicated in its resolution (Exhibit 23) that the ANC believes the accommodation of all service and loading activities within the building, and the head-in head-out truck movements, are significant site planning and land utilization benefits for the community. The Commission also notes that the plans included with this application indicate that the Applicant is not proposing to install a new curb cut, but is rather proposing to widen an existing 16 foot curb cut on Morton Street to 24 feet, and is also proposing to close two other curb cuts on the site. Thus, the Commission finds that the Applicant is decreasing the overall linear footage of curb cuts from approximately 56 feet to 24 feet, and as a result is adding two new metered parking spaces on Georgia Avenue, all of which the Commission finds constitute improvements for the immediate area. Finally, the Applicant is not seeking relief to reduce the amount of required parking, therefore, the Commission does not adopt DDOT's recommendation to require the Applicant to provide 50 interior bike spaces or to install a NextBus display in the building as mitigation measures.

Post-Hearing Submissions

38. On March 21, 2011, the Applicant submitted a post-hearing submission (Exhibits 39 and 39A.) The post-hearing submission included revised language regarding the scope of the proposed renovation work for the Park View Kids Zone, an updated set of Final Architectural Plans and Elevations that included an updated design for the roof structures, and a narrative indicating the difficulties associated with relocating the proposed roof structure adjacent to the proposed courtyard.
39. The Commission finds that the revised language regarding the work to be completed for the Park View Kids Zone clarifies the scope of the proffered amenity. The Commission further finds that the redesign of the roof structures achieved the simplification sought by the Commission, and that the Applicant's explanation for being unable to relocate the proposed roof structure adjacent to the proposed courtyard is reasonable.

40. On March 3 and March 24, 2011, the Applicant submitted post-hearing submissions responsive to the Commission's March 3, 2011 procedural order

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400 1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience " (11 DCMR § 2400 2)
- 2 Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for 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, and as part of this Order, the Commission is hereby approving the special exception required pursuant to § 1330 1(b) of the Zoning Regulations for the construction of any new building on a lot consisting of 12,000 square feet or more in the GA Overlay District
- 3 Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development
- 4 The PUD meets the minimum area requirements of § 2401 1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved
- 6 The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated

- 7 The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
- 8 Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Subject Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1021, D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC's recommendation. In this case, ANC 1A voted unanimously to support the project and recommended that the Commission approve the application (Exhibit 23.)
- 10 The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
- 11 The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code § 2-1401 *et seq.* (2007 Repl.))

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for the consolidated review and approval of a Planned Unit Development ("PUD") for Lot 130 in Square 3040 and a PUD-related zoning map amendment to rezone Lot 130 in Square 3040 from the GA/C-2-A District to the GA/C-2-B District subject to the following guidelines, conditions and standards: For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order, however, that party remains liable for any violation of these conditions that occurred while an Owner. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text. "During the operation of the building" means a period of time that begins when the building is first occupied, and ending when it is last occupied.

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the plans prepared by Grimm + Parker Architects, dated March 21, 2011, marked as Exhibit 39A in the record (the "Approved Plans") and as further modified by the guidelines, conditions, and standards herein.
- 2 The PUD shall have a maximum density of 5.37 FAR and a gross floor area of 118,160 square feet
- 3 The maximum height of the building shall be 90 feet
- 4 The project shall include 50 off-street parking spaces in the garage
- 5 The Applicant is granted flexibility from the rear yard (§ 774.1), roof structure number, setback, and enclosing wall requirements (§§ 411 and 770), loading requirements (§ 2201.1), and compact parking space location requirements (§ 2115.4), consistent with the Approved Plans and as discussed in the Development Incentives and Flexibility section of this Order
- 6 The plans included with the building permit application for the project shall indicate that (1) as shown on Sheet A-3.7 of the Exhibit 39A, the interior walls of the garage in the vicinity of the garage door will be a color similar to the exterior brick color; and (2) as shown on sheet L-2.0 of the Exhibit 30A, a cool roof is being provided on the existing post office structure
- 7 During operation of the building, the Applicant shall contract with a security company, such as Datawatch Systems, Kastle Systems, or a similar company, to secure and monitor the building.
- 8 The plans included with the building permit application shall indicate that the Applicant is installing cameras at all building entrances and exits, and is installing lighting on the exterior of the building
- 9 During operation of the building, the Applicant shall install cameras in the building's elevators and parking areas.
- 10 The Applicant shall also have flexibility with the design of the PUD in the following areas

- a To be able to provide a range in the number of residential units of plus or minus 10% from the 112 depicted on the plans;
- b To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;
- c To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the minimum level required by the Zoning Regulations, and
- d To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit

B. PUBLIC BENEFITS

- 1 The Applicant shall submit with its building permit application a Green Communities Criteria Checklist indicating that the project includes sustainable design features such that the building would be able to achieve a minimum of 37 points under the Green Communities program, although the Applicant is not required to seek Green Communities certification for the building.
- 2 Prior to the issuance of a building permit for the project, the Applicant shall submit to DCRA a fully executed First Source Employment Agreement with the Department of Employment Services
- 3 Prior to the issuance of a Certificate of Occupancy for the project, the Applicant shall submit to DCRA a letter certifying that the Applicant has completed the following at the Park View Kids Zone (a) replaced the building's roof, (b) replaced six of the existing windows, (c) repaired and painted the building's exterior; (d) replaced the door and sidelight on the eastern side of the building; (e) repaired the existing ADA rails and ramps on the eastern side of the building; (f) had an architect or other professional prepare renderings and an interior layout for the building, including updated kitchen, computer room, multipurpose room, and second level reading room layouts, and provide the rendering and interior layout to the Park View Kids Zone; (g) repaired and painted the building's interior walls; (h) repaired or replaced as needed damaged or deteriorating interior drywall, (i) updated damaged

interior lighting with new fixtures, (j) repaired interior electrical and plumbing as needed, (k) installed new floor coverings on the first and second interior levels of the building; (l) repaired the existing heating and cooling system, and (m) restored the interior bathrooms. The Applicant shall provide any additional information requested by DCRA to confirm that it has completed items (a) through (m).

4. **During operation of the building**, the Applicant shall implement the following Transportation Demand Management measures:
 - a. Providing links to goDCgo.com and CommuterConnections.com on its developer and property management websites,
 - b. Providing a \$20.00 SmarTrip card to all initial building residents upon move-in;
 - c. Providing a one-time, one-year car-share membership (which shall include the cost for any application fees) for the initial occupant(s) of each residential unit, capped at a total commitment of \$10,000; and
 - d. Providing eight bike parking racks for retail visitors and 15 bike parking racks for use by residents in the parking garage.

C. MISCELLANEOUS

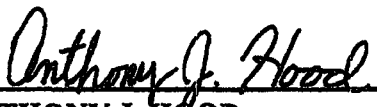
1. Prior to the issuance of the first building permit for the project, the Applicant shall record a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to the construction and use of the Subject Property in accordance with this Order or any amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.
2. 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 as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
3. 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment

based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On March 3, 2011, upon the motion of Commissioner Turnbull, as seconded by Commissioner Selfridge, the Zoning Commission **APPROVED** the application at the close of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Michael G. Turnbull, Peter G. May, and Greg M. Selfridge, to approve).

On April 11, 2011, upon the motion of Vice Chairman Schlater, as seconded by Commissioner Selfridge, the Zoning Commission **ADOPTED** the Order at its public meeting, by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Greg M. Selfridge, to approve; Michael G. Turnbull to approve by absentee ballot).

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 September 2, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., June 15, 2010

Plot for Building Permit at: SQUARE 3040 LOT 130

Scale: 1 inch = 30 feet Recorded in Book 189 Page 50

Receipt No. 08591

Furnished to: HOLLAND & KNIGHT/FREDA HOBAR

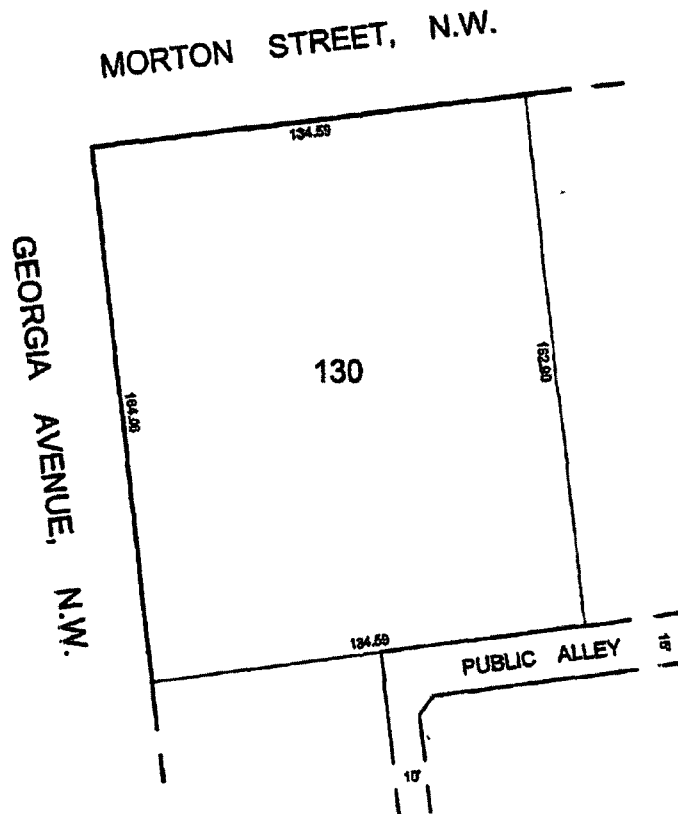
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that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

Date: _____

By: A.S. *[Signature]*

(Signature of owner or his authorized agent)

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



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 10-26

As Secretary to the Commission, I hereby certify that on **AUG 29 2011** copies of this Z.C. Order No. 10-26 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | | | |
|----|--|---|---|
| 1 | <i>D C Register</i> | 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N W
Washington, D.C 20004 |
| 2 | Kyrus Freeman, Esq.
Holland & Knight
2099 Pennsylvania Ave , N W Ste. 100
Washington, D.C 20006 | 6 | Councilmember Jim Graham |
| 3 | ANC 1A
1380 Monroe Street, N.W. #103
Washington, D C 20010 | 7 | DDOT (Martin Parker) |
| 4. | Commissioner Bobby Holmes
ANC/SMD 1A09
<u>1A09@anc.dc.gov</u> | 8 | Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S W.
Washington, D C 20024 |
| | | 9 | Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-26A**

Z.C. Case No. 10-26A

3321 Georgia, LLC

(Two-Year PUD Time Extension @ Square 3040)

July 25, 2013

Pursuant to notice, a special public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 25, 2013. At the meeting, the Commission approved a request on behalf of 3321 Georgia, LLC ("the Applicant") for a two-year extension of time period in which to file a building permit for the construction of a mixed-use development composed of retail and residential uses, which was approved in Z.C. Order No 10-26.

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 10-26, the Commission granted applications for consolidated approval of a Planned Unit Development ("PUD") and a related zoning map amendment to amend the Zoning Map from the GA/C-2-A Zone District to the GA/C-2-B Zone District for property located at Lot 130 in Square 3040 ("the Subject Property"). The Subject Property consists of approximately 22,002 square feet of land area and is located on the southeast corner of Georgia Avenue, N.W. and Morton Street, N.W.
2. The approved PUD includes construction of a mixed-use development composed of retail and residential uses. The project will have a maximum floor area ratio ("FAR") of 5.37, and will include approximately 82,801 square feet of residential uses, comprised of 112 units (plus or minus 10%), and approximately 7,190 square feet of new retail uses. A total of eight percent of the residential gross floor area devoted to residential use will be dedicated as affordable to households earning up to 80% of the area median income. The building will have a maximum building height of 90 feet and will have 50 off-street parking spaces located in a below-grade garage.
3. Z.C. Order No. 10-26 became final and effective upon publication in the *D.C. Register* on September 2, 2011. Z.C. Order No. 10-26 requires the Applicant to file a building permit application for the approved PUD no later than September 2, 2013, with construction to start no later than September 2, 2014.
4. By letter dated June 13, 2013, the Applicant filed an application and supporting materials requesting a two-year extension of Z.C. Order No. 10-26 such that a building permit application for the PUD must be filed no later than September 2, 2015, with construction to start no later than September 2, 2016. (Exhibit ["Ex."] 1).
5. The Office of Planning ("OP") submitted a report dated July 12, 2013 indicating that the Applicant meets the standards of § 2408.10 and 2408.11 of the Zoning Regulations. (Ex. 6.) OP thus recommended that the Commission approve the requested two-year PUD extension.

ZONING COMMISSION
District of Columbia

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ZONING COMMISSION
District of Columbia

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EXHIBIT NO. 7

Exh. 2

6. Advisory Neighborhood Commission 1A ("ANC") submitted a resolution indicating that at the regularly scheduled meeting on June 12, 2013, at which notice was properly given and a quorum was present, ANC 1A voted 9-0-1 to support the requested extension. (Ex. 5.)
7. As to the merits, the Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. (Ex.1.) The Applicant has taken many steps to move forward with the development which is the subject of this application, including the following:
 - a. Worked diligently to secure financing for the project and has met with numerous potential lenders and other financing sources, but due to the volatility in the industry has been unable to secure project financing or attract a joint venture partner;
 - b. Engaged Marcus & Millichap, a global real estate agency to market the property to potential third-party purchasers;
 - c. Worked with MAC Realty, a real estate advisory firm to evaluate the development plan and determine how to best attract interest from equity and debt capital sources;
 - d. Received a letter of interest from J.P. Morgan Chase expressing its commitment to purchase tax exempt bonds for the purpose of making a loan to finance the project;
 - e. Received a letter of interest from Wells Fargo expressing its interest in acquiring Federal Low Income Housing Tax Credits and providing financing for the project;
 - f. Submitted applications to D.C. Department of Housing and Community Development ("DCHD") seeking funding for the project in 2013 and 2012; and
 - g. Invested more than \$3 million dollars in the property since 2010.
8. Despite the Applicant's good faith efforts, the Applicant has been unable to obtain financing for the approved project, and as the Commission has recognized in approving recent extension requests, the real estate market has been subject to, and continues to suffer from, severe financing, construction, and leasing impediments.
9. The Commission finds that the approved development cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. The Commission further finds that this

request for extension satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Zoning Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns raised in the affected ANC's written recommendation. ANC 1A submitted a resolution indicating that at the regularly scheduled meeting on June 12, 2013, at which notice was properly given and a quorum was present, ANC 1A voted 9-0-1 to support the requested extension. (Ex. 5). The Commission carefully considered the ANC's recommendation in its deliberations, and has given ANC 1A's recommendation great weight in approving this application.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the

Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission carefully considered OP's recommendation in its deliberations, and has given OP's recommendation great weight in approving this application.

6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
7. Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the validity of Z.C. Order No. 10-26, such that an application must be filed for a building permit for the PUD no later than September 2, 2015, and construction must start no later than September 2, 2016.

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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

Z.C. ORDER NO. 10-26A
Z.C. CASE NO. 10-26A
PAGE 5

On July 26, 2013, upon the motion made by Michael Turnbull as seconded by Robert Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull) to adopt.

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 8, 2013.

**Zoning Commission Order No. 10-26 and 10-26A
Request for Extension of Time
(Consolidated Planned Unit Development and Related Map Amendment from GA/C-2-A to
GA/C-2-B @ Square 3040, Lot 130)**

Affidavit of Applicant in Support of Two-Year Extension of Time

I, Charles A Gravely, being duly sworn, depose and state as follows

- 1 I am Charles A Gravely, Vice President of ZGZP 3333 LLC, which is the owner of Lot 130 in Square 3040 (the "Property") The Property is subject to Zoning Commission (Z C) Order No 10-26, which granted consolidated PUD approval and a Zoning Map amendment from the GA/C-2-A District to the GA/C-2-B District for a mixed-use retail and residential project at the Property Pursuant to Z C Order No 10-26A, the Zoning Commission granted a two-year time extension to the original order, such that an application must be filed for a building permit no later than September 2, 2015, and construction must begin no later than September 2, 2016 The approved project has approximately 82,801 square feet of residential units, comprised of 112 units (plus or minus 10%), approximately 7,190 square feet of new retail uses, and 50 off-street parking spaces located in a below-grade garage The project has a maximum density of 5 37 floor area ratio ("FAR") and a maximum building height of approximately 90 feet
- 2 ZGZP 3333 LLC purchased the Property on August 28, 2014, and since then we have taken many steps to move forward with the project However, we are experiencing delay due to environmental contamination at the Property, which is beyond our reasonable control and prevents us from complying with the time limits set forth in Z C Order No 10-26A
3. The Property was previously used as a Sunoco gas station and has resultant soil contamination due to a release of petroleum to the subsurface soils and groundwater On June 7, 2013, the District Department of the Environment ("DDOE") issued a Comprehensive Site Assessment and Corrective Action Directive (Exhibit A), which designated Sunoco as the responsible party for undertaking environmental testing at the Property. Sunoco designated Kleinfelder as the environmental consultant to undertake site assessment activities at the Property

Exh. 3

4. On August 8, 2014, Sunoco (through Kleinfelder) submitted a Comprehensive Site Assessment (“CSA”) Work Plan to DDOE for the Property (Exhibit B)
5. On December 30, 2013, Sunoco submitted another CSA report to DDOE detailing the installation of monitoring wells and soil borings at the Property. On June 13, 2014, Sunoco submitted a CSA Addendum report to DDOE detailing the completion of additional soil borings. On August 12, 2014, DDOE requested the collection of additional soil and groundwater samples. See Kleinfelder Report dated February 6, 2015, p. 1 and Appendix A (Exhibit C)
6. Sunoco’s environmental testing continued through January, 2015, and Sunoco submitted an updated work plan to DDOE, dated February 7, 2015. DDOE approved the updated work plan on February 18, 2015. See email from Natalie Hendricks (DDOE) to Sean Rochford (Kleinfelder), dated February 18, 2015 (Exhibit D)
7. Between February 18, 2015 and April 10, 2015, permitting was delayed as a result of DDOE’s Water Quality Division review of the work plan and request for additional information and changes. See email from Sean Rochford (Kleinfelder) to Natalie Hendricks (DDOE), dated April 10, 2015 (Exhibit E)
8. Sunoco initiated the site activities set forth in its February 7, 2015 work plan on May 18, 2015. The work included installation of soil borings and temporary wells, and was expected to take approximately two weeks. See email from Sean Rochford to Natalie Hendricks, dated May 4, 2015 (Exhibit F). The Activity Notification Form and site plan depicting the soil boring and well locations is attached as Exhibit G
9. On May 20, 2015, Sunoco successfully collected soil vapor samples from the Property. However, during pre-clearing for the borings, Sunoco encountered the existence of abandoned underground storage tanks (“USTs”) under the Property and was unable to complete the soil borings as anticipated. See email from Sean Rochford to Natalie Hendricks, dated May 27, 2015 (Exhibit H). After discussions with drilling contractors, Kleinfelder indicated that the remaining borings cannot be completed until the beginning of July, 2015

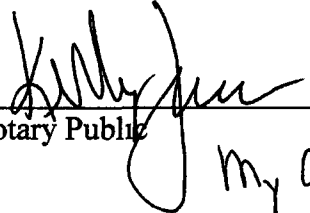
10. Once Sunoco completes this current round of testing, DDOE will review the results and will eventually determine the applicable remediation requirements for pre- and post-redevelopment of the Property. Once this process is complete, DDOE will issue a No Further Action letter, allowing us to move forward with development of the Property. As a result of this lengthy process, we are unable to begin redevelopment efforts and comply with the time limits set forth in Z.C Order No 10-26A.
- 11 Notwithstanding the extensive environmental testing and remediation that is necessary for the Property, we am committed to moving forward with development of the PUD. To date, we have invested substantial resources in the Property, including legal, architectural, engineering, and other consulting fees. There is no financial advantage to not redevelop the Property, and we have every incentive to develop the Property as soon as feasible.
- 12 We continue to monitor Sunoco's work at the Property and its coordination with DDOE to ensure that testing and remediation measures occur quickly. We anticipate that all required testing and remediation will be complete within two years. Accordingly, the requested two-year extension is necessary to provide sufficient time for us to continue pursuing these endeavors.

I solemnly affirm under the penalty of perjury that the contents of this Affidavit are true and correct to the best of my personal knowledge.

ZGZP 3333 LLC,
a District of Columbia limited liability company

By 
Name: Charles A. Gravely
Title: Vice President

Sworn and subscribed to me this 21st day of July, 2015


Notary Public

My Commission Expires 12/15/16