

# Memorandum

Government of the District of Columbia

TO: THE FILE

Department,  
Agency, Office: Zoning Secretariat

FROM: Edward L. Curry *for LJP*  
Executive Director

Date: February 22, 1991

SUBJECT: Distribution of Z.C. Order No. 684

Attached is a list of persons/parties which copy of Z.C. Order No. 684 were mailed to on February 21, 1991.

Those that went certified, certified slips are attached for record.

Filememo/LJP

ZONING COMMISSION  
District of Columbia  
CASE No. 89-375  
EXHIBIT NO. 86  
EXHIBIT

P-600 328 250

P-600 328 249

P-600 328 248

RECEIPT FOR CERTIFIED MAIL  
NO INSURANCE COVERAGE PROVIDED -  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

RECEIPT FOR CERTIFIED MAIL  
NO INSURANCE COVERAGE PROVIDED -  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

RECEIPT FOR CERTIFIED MAIL  
NO INSURANCE COVERAGE PROVIDED -  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

U.S.G.P.O. 153-506  
PS Form 3800, June 1985

Sent to **AKC-2C**  
Street and No.

P.O., State and ZIP Code

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date  
**89-34C**

U.S.G.P.O. 153-506  
PS Form 3800, June 1985

Sent to **E. Williams**  
Street and No.

P.O., State and ZIP Code

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date  
**89-34C**

U.S.G.P.O. 153-506  
PS Form 3800, June 1985

Sent to **Mr. E. Peabody**  
Street and No.

P.O., State and ZIP Code

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date  
**89-34C**

P-600 328 247

P-600 328 246

RECEIPT FOR CERTIFIED MAIL  
NO INSURANCE COVERAGE PROVIDED -  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

RECEIPT FOR CERTIFIED MAIL  
NO INSURANCE COVERAGE PROVIDED -  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

U.S.G.P.O. 153-506  
PS Form 3800, June 1985

Sent to **J. Kirkwood - White**  
Street and No.

P.O., State and ZIP Code

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date  
**89-34C**

U.S.G.P.O. 153-506  
PS Form 3800, June 1985

Sent to **N.M. Glasgow**  
Street and No.

P.O., State and ZIP Code

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date  
**89-34C**

Government of the District of Columbia  
ZONING COMMISSION



Zoning Commission Order No. 684  
Case No. 89-34C

1. Copy in the file
2. Copy in the D.C. Register
3. Serve copies on the parties by certified mail
4. Memo to file certifying service
5. Copies to Zoning Commission Members
6. Copy to National Capital Planning Commission
7. Joseph Bottner
8. Copies to:  
Madeliene Robinson, OP  
Nate Gross, OP  
Nat Levy, OP  
David Colby, OP
9. Chief  
Historic Preservation  
614 H Street, N.W., Room 305  
Washington, D.C. 20001
10. Robert L. Klugal  
Dept. of Finance and Revenue  
300 Indiana Ave., N.W., Room 1145  
Washington, D.C. 20001
11. George Toll  
Dept. of Finance and Revenue  
300 Indiana Ave., N.W., Room 2152  
Washington, D.C. 20001
12. Dept. of Public Works  
Office of Policy Planning  
2000 14th Street, N.W., 6th Floor  
Washington, D.C. 20004
13. Reginald C. Lyons - BZA

buckslip/BOOTH6

# Memorandum

● Government of the District of Columbia

*parties*

TO: The file

Department,  
Agency, Office: Zoning Secretariat/OP

FROM: Edward L. Curry *ELC*  
Executive Director

Date: November 9, 1990

SUBJECT: Supplemental report of the Office of Planning

On November 9, 1990, the Zoning Secretariat arranged for courier delivery of the referenced report to the following:

Norman M. Glasgow, Sr.  
1666 K Street, N.W., Suite 1100  
Washington, D.C. 20006

Advisory Neighborhood Commission 2C  
Garrison Elementary School  
1200 S Street, N.W., Suite 204  
Washington, D.C. 20009

Earnest Williams  
401 K Street, N.W., #407N  
Washington, D.C. 20001

Malcolm E. Peabody  
2811 Dunbarton Street, N.W.  
Washington, D.C. 20007

J. Kirkwood White, Esquire  
2100 Pennsylvania Avenue, N.W., Suite 300  
Washington, D.C. 20037

file89-34C/EB66

ZONING COMMISSION  
CASE No. 89-34C  
EXHIBIT No. 70

Zoning Commission Order No.

684

Case No. 89-34c

1. Copy in the file
2. Copy in the D.C. Register
3. Serve copies on the parties by certified mail
4. Memo to file certifying service
5. Copies to Zoning Commission Members
6. Copy to National Capital Planning Commission
7. Joseph Bottner
8. Copies to:
  - ~~Fred L. Greene, Director, OP~~
  - ~~James Gilleylen, OP~~
  - Madeliene Robinson, OP
  - Nate Gross, OP
  - Nat Levy, OP
  - David Colby, OP
9. Chief  
Historic Preservation  
614 H Street, N.W., Room 305  
Washington, D.C. 20001
10. Robert L. Klugal  
Dept. of Finance and Revenue  
300 Indiana Ave., N.W., Room 1145  
Washington, D.C. 20001
11. George Toll  
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300 Indiana Ave., N.W., Room 2152  
Washington, D.C. 20001
12. Dept. of Public Works  
Office of Policy Planning  
2000 14th Street, N.W., 6th Floor  
Washington, D.C. 20004
13. Reginald C. Lyons - BZA

buckslip/BOOTH6

File

Government of the District of Columbia  
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 684  
CASE NO. 89-34C  
(PUD & Map Amendment @ 1331 L Street)  
February 11, 1991

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on November 5, 1990. At that hearing session, the Zoning Commission considered the application of Square 247 Associates Limited Partnership. The application requested approval of a Planned Unit Development (PUD) and related amendment to the Zoning Map of the District of Columbia, pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on November 27, 1989, requested consolidated review and approval of a PUD and related change of zoning from HR/SP-2 to C-4 for lots 71, 72, 86, 88, 89, 864 and 866 in Square 247 located at 1331 L Street, N.W.
2. The PUD site measures 18,456.17 square feet, is bounded by 13th, 14th and L Streets, and Massachusetts Avenue, N.W., and is presently improved with and used as a surface parking lot.
3. The application proposes the construction of a ten-story mixed-use commercial building with general office and some ground-floor retail uses.
4. The SP-2 District permits matter-of-right medium/high density development including all kinds of residential uses, with limited offices for non-profit organizations, trade associations and professionals permitted as a special exception requiring approval of the Board of Zoning Adjustment (BZA), to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.
5. The C-4 District is the downtown core comprising the retail and office centers for both the District of

Columbia and the metropolitan area, and allows office, retail, housing and mixed uses to a maximum height of 110 feet or 130 feet, a maximum lot occupancy of one hundred percent, and a maximum FAR of 8.5 or 10.0, with the maximum height and FAR dependant upon the width of adjoining streets.

6. The HR (hotel/residential incentive overlay) permits development incentives for residential and hotel uses, only, to a maximum FAR of 8.5 and a maximum height, as permitted by the "Act to Regulate the Height of Buildings, June 1, 1910, as amended". The District is mapped in combination with other Districts.
7. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD. The Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for height, FAR, lot occupancy, parking, and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
8. The District of Columbia Generalized Land Use Map Element of the Comprehensive Plan for the National Capital identifies the PUD site as being included in the high density residential and high density commercial land use categories.
9. The PUD site is located in an square that is directly southeast of Thomas Circle and comprises seven adjoining lots fronting on L Street. The lots create a rectangular shaped property that is approximately 113 feet wide and 164 feet deep. The property is flat and it abuts a 15-foot wide public alley to the north. A series of alleyways that together produce an odd configuration are located in the square. The site is accessible through the alley system from Massachusetts Avenue, 14th Street and L Street.
10. The site is located in the Downtown Central Business District (CBD). It is also situated in the northwestern section of the central city, in the Franklin Square subarea. Office development is the primary land use in the area. Subordinate uses close to the site are ground floor retail, hotel and residential development.
11. A tremendous amount of new development has occurred to the east, west and south of the site within the last several years. Ten and 12-story office buildings typify the pattern of new development. Older office buildings, some of which are developed at moderate or low density,

are interwoven among the new structures.

12. Massachusetts Avenue is an important demarcation point in Downtown. It is located immediately north of the site and is the northern boundary of the CBD. Massachusetts Avenue has historically served as a transition between the dense commercial development of Downtown to the south and the mixed use/residential development to the north.
13. Franklin Park, located one block south of the site, provides an important amenity for the area. It is an historic site and a well planned open space in the built environment. The McPherson Square Metrorail Station, located at 14th and I Streets, N.W., is the closest metrorail station to the site.
14. Square 247 contains three different zoning characteristics; therefore, a variety of land uses and building types exist in the square. Specifically, the section of the square that fronts on 14th Street, or the western portion of the square is zoned C-4. This area contains an 11-story Holiday Inn hotel, high-rise office buildings and underused commercial space. To the north, fronting on Massachusetts Avenue, the square is zoned SP-2. High-rise residential development is located in this area. To the south and east, the square is zoned HP/SP-2. The land uses in this portion of the square are commercial and vacant land. The interior of the square which contains three nonconforming commercial buildings is also zoned HR/SP-2.
15. The applicant proposes to construct a ten-story commercial building, including office and retail uses. The proposal will have a maximum height of 110 feet, a maximum FAR of 9.25, a maximum lot occupancy of ninety-eight (98) percent, with gross floor area of 170,720 square feet (156,648 square feet for office use and 11,072 square feet for retail use), and two-levels of underground parking to accommodate 94 cars.
16. The representative of the applicant was contacted early in the planning stages of this project by Mr. Malcolm Peabody, the developer of the PUD at 5th and I Streets, N.W., who was working with the Office of Planning, to establish a funding linkage for the Massachusetts Court PUD. Because the projects had similar time frames, were of a similar size, and appeared to be compatible, the applicant determined to work with Mr. Peabody to ensure the provision of housing in the Downtown. The applicant was encouraged by the community to enter into the project

to ensure the development of 209 housing units in the Downtown, of which 84 units were for low and moderate income families.

17. In association with the PUD project at 1331 L Street, the applicant proposes the following amenities and public benefits:
- a. Housing: Funds in the amount of \$3,062,000 to enable the construction of 209 housing units as part of the Peabody PUD at 5th and I Streets, N.W. The applicant will provide the \$3,062,000 amount to the East End Limited Partnership, the developer of the Peabody PUD site, upon the closing of the HUD insured construction loan.
  - b. Design: A superbly designed mixed-use building in the Franklin Square area of Downtown, consistent with the Comprehensive Plan, the Land Use Element and the Downtown Plan.
  - c. Landscape Amenities: A streetscape program that meets and exceeds the Streetscape guidelines.
  - d. Traffic Circulation: An additional 2.5 feet of space by easement to enable the public alley to the east of the site to operate with an effective width of 20 feet.
  - e. MBOC: A Memorandum of Understanding with the Minority Business Opportunity Commission (MBOC), committing the applicant to use its best efforts to utilize certified minority business enterprises for a minimum of 35 percent of contracted development costs.
  - f. DOES: An Employment Agreement with the D.C. Department of Employment Services (DOES), committing the applicant to use DOES as its first source for recruitment, referral and placement of employees, and to use its best efforts to utilize D. C. residents for at least 51 percent of the jobs created by the project.
  - g. Real Estate Taxes: Increased real estate tax revenues.
18. Malcolm Peabody testified about the difficulties in financing his residential project in the Downtown. Although originally approved in January 1988, the project

has not gone forward due to the inability, despite intensive efforts, to obtain the financing necessary to close on the construction loan. Mr. Peabody noted the letter from the Department of Housing and Community Development, dated September 6, 1990, that commitments of subsidies to the project would expire on January 31, 1991, unless construction of the project began. Mr. Peabody indicated the need for an expedited decision in the subject case so that his project could go forward.

19. The applicant proposes to use the following building materials for the PUD project at 1331 L Street:

- |    |                              |   |
|----|------------------------------|---|
| a. | Predominant masonry material | Light gray and limestone color architectural precast concrete         |
|    | accent                       | Grey and black flamed and polished granite                            |
| b. | Window mullions              | Factory Painted Aluminum  |
| c. | Office windows               | Clear glass and glass with grey tint                                  |
| d. | Retail windows mullions      | Muntz Bronze Clad Aluminum Window Frames                              |
| e. | Retail windows               | Clear Tempered Glass  |
| f. | Retail awnings (optional)    | Black and Grey with Muntz Bronze Accents                              |
| g. | Sidewalk pavers              | D.C. standard precast concrete with grey granite, flamed and polished |

20. The applicant's architect requested flexibility in the following areas to ensure that minor refinements and improvements made during the process of design development and construction documents will be consistent with the intent of the proposed design:

- a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, provided that the variations do not change the exterior configuration of the building;

- b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses;
  - c. Varying the location and type of exterior lighting fixtures;
  - d. Varying the species of plant materials;
  - e. Varying landscape and paving details to accommodate utilities, requirements and minor refinements incorporating comments of the streetscape committee;
  - f. Allowing the flexibility permitted, pursuant to the provisions of 11 DCMR, Chapter 24.
21. The applicant indicated that the PUD and rezoning from HR/SP-2 to C-4 are appropriate from a professional planning standpoint and are not inconsistent with the Comprehensive Plan. The site is located on the Generalized Land Use Map within an area designated for mixed use: high density commercial and high density residential. In Z.C. Order No. 637, for the PUD at 1301 L Street and 1312 Massachusetts Avenue, the Commission found that high-density residential development area along Massachusetts Avenue, and high-density commercial development for the rest of Square 247 was consistent with that designation. In particular, in Z.C. Order 637, the Commission found that parcel's rezoning to C-4 to be "appropriate because of the existing pattern of C-4 development in the immediate area, and within Square 247." That order makes clear that Massachusetts Avenue is a residential street and that the 1300 block of L Street is a commercial street. All of the surrounding area to the south, east and west is high density commercial. The requested change of zoning would be consistent with other uses in the major portion of the square, and most importantly, would not be inconsistent with the Comprehensive Plan.
22. The applicant further indicated that the project is consistent with the standards and goals of Section 2400 of the Zoning Regulations. The 1331 L Street site is not appropriate for residential use. The site lacks any residential amenities and is located on a commercial street. No changes in the commercial character of the

area are expected; L Street will remain commercial.

23. The applicant's residential expert testified that the size of site restricts residential development. The site is too small for two separate structures, too deep for marketable units, and that experience in the Mixed Use (CR) zone indicates that layered commercial/residential does not work from an economic or consumer standpoint. He conclude that the Peabody site is logical for residential use and that the Peabody PUD is perhjaps the only opportunity for low and moderate income units to be developed within the Downtown.
24. The District of Columbia Office of Planning (OP), by memorandum dated May 16, 1990 and by testimony presented at the public hearing, recommended that the application be approved. OP indicated and stated the following:
- a. That ..... "Development of the site would contribute to the continued commercial revitalization of the Franklin Square subarea. The pattern of development close to the site (south of Massachusetts Avenue) is high-rise office development with ground floor retail. Planned projects, those recently developed and buildings under construction are all indicators of the land use pattern that has emerged in the area. We, therefore, support the applicant's building plans to provide commercial development on the site and provide housing in the form of a subsidy off-site. We believe that the project would be an asset to the city generally, and that it would enhance the Downtown area specifically";
  - b. That the construction of the Peabody residential PUD was important to achieving the goals of the Downtown Element of the Comprehensive Plan and ensuring a "living downtown"; and
  - c. That either C-3-C or C-4 could be mapped as the underlying zone for the subject site. The advantages of C-4 area that the rezoning of the site could be accomplished by extending an existing C-4 zone district, whereas C-3-C would create a new District in the area. According to the OP report, the primary advantage of C-3-C is that it would provide a slight transition function between the proposed DD/R-5-D zoning to the north and the C-4 zoning to the south. This would not be inappropriate in such an important transition area

extending along Massachusetts Avenue.

25. The District of Columbia Department of Public Works (DPW), by memorandum dated May 15, 1990, reported that DPW had no major objections to the proposed PUD and indicated the following:
- a. That the site is conveniently located with respect to public transportation facilities and services;
  - b. That the proposal will have a negligible traffic impact on the surrounding street system;
  - c. That the loading facility is adequate to accommodate the project;
  - d. That the applicant provide a 2'-6" easement at the east property line of the PUD site in order to effect a 20 foot alley width;
  - e. That the applicant resurface tjhat portion of the alley adjacent to the PUD; and
  - f. That the water service and sewer capacity are adequate.
- DPW concluded that the applicant should coordinate with the agency to resolve any outstanding concerns.
26. The District of Columbia Fire Department (DCFD), by report dated June 8, 1990, noted no objection to the proposal.
27. The District of Columbia Department of Recreation (DCDR), by report dated April 27, 1990, offered no substantive comments, since the development will have no measurable impact on recreation facilities and will not involve reservation of open space.
28. The District of Columbia Metropolitan Police Department (MPD), by report dated May 25, 1990, noted no objection to the proposal.
29. The District of Columbia Department of Housing and Community Development (DHCD), by reports dated May 23, 1990 and September 6, 1990, noted its repeated support for the Peabody PUD and its linkage with the PUD at 1331 L Street.
30. The District of Columbia Department of Finance and

Revenue (DFR), by report dated June 13, 1990, noted that the proposed development would produce an estimated \$1.5 million in tax revenues annually.

31. The District of Columbia Public Schools (DCPS), by report dated June 18, 1990, expressed no opposition to the proposed PUD.
32. Advisory Neighborhood Commission 2C, by letter dated May 3, 1990, recommended that the application be approved.
33. The Down East Corporation, party in the proceedings, by its representative, Malcolm Peabody, testified at the public hearing in support of the application in order to facilitate the PUD housing project at 5th and I Streets, N.W.
34. Letters in support of the application were received from Councilmembers John Ray dated October 31, 1990 and John Wilson dated November 5, 1990; the owners of 1335 and 1339 Green Court, N.W. dated May 8 and April 30, 1990, respectively; the Packaging Machinery Institute dated November 2, 1990; and the Coalition for a Living Downtown and the Downtown Clusters of Congregations dated November 2, 1990.
35. A concern raised by a person in support was to rezone 1331 L Street to C-3-C, in lieu of C-4.
36. Single Member District Commissioner 2C-11 testified at the public hearing in support of the application. No other parties or persons appeared at the public hearing in support of or in opposition to the application.
37. The Zoning Commission concurs with the recommendations and positions of OP, ANC-2C, DPW, DCFD, DCDR, MPD, DHCD, DFR, and DCPS. The Commission finds that:
  - a. The proposed 110 foot height and 9.25 FAR of the project are appropriate for this site and consistent with past Zoning Commission decisions for adjacent developments;
  - b. The proposed C-4 zoning is appropriate for this site and consistent with past Zoning Commission decisions for adjacent developments;
  - c. The applicant's efforts are commendable in working with the Peabody PUD, the community and the Office of Planning in developing this project to ensure

the development of 209 residential units (of which 84 units are for low and moderate income families) in the downtown; and

- d. In response to issues raised by the ANC, that the amenities provided by the applicant are sufficient to justify the approval of the additional density.
38. The Commission concurs with the applicant that the commercial project is appropriate for the site and is not inconsistent with the Comprehensive Plan.
39. The Commission finds that the applicant has met the requirements of 11 DCMR Chapter 24 and has satisfied the intent and purposes thereof.
40. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated February 8, 1991, indicated that the proposed PUD and related map amendment would not adversely affect the Federal Establishment or other Federal interests in the National Capital.
41. On February 11, 1991, at its regular monthly meeting, the Zoning Commission considered a letter dated January 31, 1991 from counsel to the applicant requesting the Commission to waive its rules of practice and procedure to reconsider an amendment to Condition No. 15 of this order. The applicant requested the Commission to extend the validity of the PUD for a period of time beyond that provided for by 11 DCMR 2406. The Commission also considered letters in support of the applicant's request from ANC-2C, and the representative of Down East Corporation, each of which are parties in support in the proceedings.
42. The Commission discussed the urgency associated with the financing constraints for the proposed 209 housing units at the Peabody PUD site. The Commission also discussed the applicant's claimed risk of providing more than \$3 million as an up-front amenity without some long-term vesting guarantees that the 1331 L Street PUD site could be developed as proposed.
43. The Commission finds that 11 DCMR 2406 as amended by rulemaking action on February 11, 1991, does not provide for the extension of the validity of the PUD, in the

manner requested by the applicant. However, substantially the same relief is available.

44. The Commission further finds the following to apply:
- a. That, in addition to, the general economic downturn that has adversely affected the local real estate economy, the proposed PUD housing project at 5th Street and Massachusetts Avenue, N.W. (Peabody site) has encountered some serious financing difficulties;
  - b. That a long-standing city policy to develop housing in the downtown area remains a policy and goals priority;
  - c. That any reasonable effort to facilitate the Peabody development is consistent with the city's policy and goals priority; and
  - d. That the applicant in the instant application may be at considerable risk to transfer more than \$3 million, as an amenity, to help facilitate financing the Peabody PUD project, without some long-term vesting guarantees.
45. The Commission therefore believes that, in its decision, it has adequately and appropriately addressed the above-mentioned concerns.

#### CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use 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.
3. The development of this PUD is compatible with city-wide goals, plans and programs and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with the

Comprehensive Plan for the National Capital.

5. The approval of this application is consistent with the purposes of the Zoning Act and the 1938 Act of Congress, the statutory bases for the authority vested in the Zoning Commission.
6. The application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
7. The approval of this application will promote orderly development 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.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2C the "great weight" to which it is entitled.
9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 this application for a consolidated Planned Unit Development and Map Amendment for 71, 72, 86, 88, 89, 864, and 866 in Square 247, subject to the following guidelines, conditions, and standards:

1. The Planned Unit Development (PUD) shall be developed in accordance with the plans prepared by Keyes Condon Florance, marked as Exhibit No. 22 of the record, as modified by the guidelines, conditions and standards of the order.
2. The project shall be an office/retail building with a maximum floor area ratio (FAR) of 9.25.
3. The height of the building shall be 110 feet, excluding the roof structure.
4. The total lot occupancy of the project shall not exceed 98.7 percent of the site.
5. The applicant shall provide a minimum of 94 parking

6. The project shall include the amenities package proposed as part of this application and described in detail in the findings and record of this case, as follows:
  - a. Housing: Funds in the amount of \$3,062,000 to enable the construction of 209 housing units as part of the Peabody PUD at 5th and I Streets, N.W., within ANC 2C (Square 516). The applicant shall provide the \$3,062,000 amount to the East End Limited Partnership, the developer of the Peabody PUD site, upon the closing of the HUD insured construction loan.
  - b. Design: A superbly designed mixed-use building in the Franklin Square area of Downtown, consistent with the Comprehensive Plan, the Land Use Element and the Downtown Plan.
  - c. Landscape Amenities: The applicant shall provide a streetscape program that meets and exceeds the Streetscape guidelines.
  - d. Traffic Circulation: An easement of 2.5 feet in width along the entire length of applicant's east property line to provide effective width of 20 feet.
  - e. MBOC: A Memorandum of Understanding with the Minority Business Opportunity Commission (MBOC), committing the applicant to use its best efforts to utilize certified minority business enterprises for a minimum of 35 percent of contracted development costs.
  - f. DOES: An employment Agreement with the D.C. Department of Employment Services (DOES), committing the applicant to use DOES as its first source for recruitment, referral and placement of employees, and to use its best efforts to utilize D.C. residents for at least 51 percent of the jobs created by the project.
  - g. Real Estate Taxes: Increased real estate tax revenues.
7. The facade design treatment and materials of the proposed building shall be consistent with the plans marked as part of Exhibit No. 22, dated March 22, 1990 in the

record of the case, consistent with the areas of flexibility requested by the applicant noted in Condition No. 9. The building materials shall be as follows:

- |    |                              |   |
|----|------------------------------|---|
| a. | Predominant masonry material | Light grey and limestone color architectural precast concrete         |
|    | accent                       | Grey and black flamed and polished granite                            |
| b. | Window mullions              | Factory Painted Aluminum  |
| c. | Office windows               | Clear glass and glass with grey tint                                  |
| d. | Retail window mullions       | Muntz Bronze Clad Aluminum Window Frames                              |
| e. | Retail windows               | Clear Tempered Glass  |
| f. | Retail awnings (optional)    | Black and Grey with Muntz Bronze Accents                              |
| g. | Side walk pavers             | D.C. standard precast concrete with grey granite, flamed and polished |
8. The final selection of exterior and interior materials shall be within the color ranges as proposed based on availability at time of construction. However, no building permit shall be issued until the applicant submits exterior material samples for final approval by the Zoning Commission, which may determine to grant without having a further public hearing.
9. The applicant is granted flexibility in the final detailing of the building with respect to the following matters:
- a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses;

- c. Varying the location and type of exterior lighting fixtures;
  - d. Varying the species of plant materials;
  - e. Varying landscape and paving details to accommodate utilities' requirements and minor refinements incorporating comments of the streetscape committee;
  - f. Varying the design of the tower, provided that the alternative tower design does not exceed the height of the original tower design.
  - g. Allowing the flexibility permitted pursuant to the provisions of 11 DCMR, Chapter 24.
10. Antennas within the screen walls of the mechanical penthouse areas may be permitted in accordance with the Zoning Regulations.
11. The applicant shall be entitled to receive a building permit when an opinion letter is presented to the Zoning Administrator with a copy to the Zoning Commission that the following have been performed:
  - a. The closing of the construction loan on the Peabody project has occurred;
  - b. The funds in cash and letters of credit discussed herein were posted by the applicant, in accordance with the agreement between the parties; and
  - c. That the completion bond and/or the letters of credit required by HUD to assure the construction of the project is in place.
12. The change of zoning from HR/SP-2 to C-4 for the PUD site shall be effective upon recordation of a PUD covenant, pursuant to 11 DCMR 2407.
13. No building permit shall be issued for this PUD until the applicant has recorded a covenant in the Land Records of the District of Columbia, between the owner and the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use this property in accordance with this order, or amendments thereof, of the Zoning Commission.
14. The Zoning Secretariat shall not release the record of this

on and use this property in accordance with this order, or amendments thereof, of the Zoning Commission.

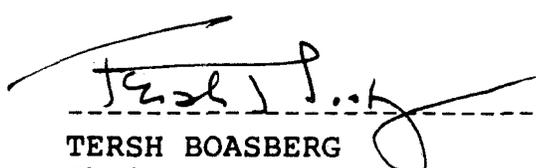
14. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of the DCRA until the applicant has filed a certified copy of said covenant in the record of the Zoning Commission.
15. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in subsection 11 DCMR 2407.1. Construction shall start within five years of the effective date of this order, pursuant to Z.C. Emergency Order No. 687.
16. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

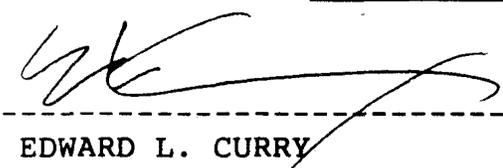
Vote of the Zoning Commission taken at the public meeting on November 19, 1990: 5-0 (Maybelle Taylor Bennett, John G. Parsons, William L. Ensign, and Tersh Boasberg, to approve the PUD and C-4 with conditions and Lloyd D. Smith, to approve by absentee vote).

The Commission approved, as amended, the conditions, guidelines and standards, at the public meeting on December 17, 1990.

This order was adopted by the Zoning Commission at its public meeting on February 11, 1991 by a vote of 5-0 (John G. Parsons, Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith, and Tersh Boasberg, to adopt as amended).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on \_\_\_\_\_.

  
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TERSHER BOASBERG  
Chairperson  
Zoning Commission

  
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EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 684-A  
Case No. 94-1M/89-34C  
(PUD Modification @ 1331 L Street, N.W.)  
November 14, 1994

Pursuant to a notice, a public hearing of the Zoning Commission for the District of Columbia was held on June 27, 1994. At that hearing session, the Zoning Commission considered an application from Square 247 Associates Limited Partnership for modification to a previously approved planned unit development (PUD). The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. On February 11, 1991 and by Z.C. Order No. 684, the Zoning Commission for the District of Columbia granted approval for an application from Square 247 Associates for a mixed-use PUD and related change of zoning from HR/SP-2 to C-4 for Lot 96 (formerly Lots 71, 72, 86, 88, 89, 864 and 866) in Square 247.
2. The PUD site is located at 1331 L Street, N.W. It measures 18,456.17 square feet, and is bounded by 13th, 14th and L Streets, and Massachusetts Avenue, N.W. It is presently improved with and used as a surface parking lot.
3. The approved PUD project consisted of a commercial building with general office and some ground floor retail uses. The PUD had a lot occupancy of 98.7 percent, a floor area ratio (FAR) of 9.25, a height of 110 feet and a minimum of 94 parking spaces. Additionally, the approval was subject to 16 guidelines, conditions and standards.
4. This modification application, which was filed on February 14, 1994, proposed to modify Condition Nos. 6a and 11 of Z.C. Order No. 684 and add a new Condition No. 12. The application also requested that the original Condition Nos. 12 through 16 would be renumbered as Condition Nos. 13 through 17. The record in the prior proceeding was made a part of the record in the modification application.
5. Condition No. 6(a) of the current PUD order (Z.C. Order No. 684) provides for the following:

ZONING COMMISSION  
District of Columbia

ZONING COMMISSION  
District of Columbia  
Case 94-1M/89-34C  
CASE NO. 94-1  
EXHIBIT NO. 50

"Housing: Funds in the amount of \$3,062,000 to enable the construction of 209 housing units as part of the Peabody PUD at 5th and I Streets, N.W., within Advisory Neighborhood Commission (ANC) 2C (Square 516). The applicant shall provide the \$3,062,000 amount to the East End Limited Partnership, the developer of the Peabody PUD site, upon the closing of the HUD insured construction loan."

6. Condition No. 11 of the PUD approval requires the following:

"The applicant shall be entitled to receive a building permit when an opinion letter is presented to the Zoning Administrator with a copy to the Zoning Commission that the following have been performed:

- (a) The closing of the construction loan on the Peabody project has occurred;
- (b) The funds in cash and letters of credit discussed herein were posted by the applicant, in accordance with the agreement between the parties;
- (c) That the completion bond and/or the letters of credit required by HUD to assure the construction of the project is in place."

7. The instant application requests modification of Condition Nos. 6A and 11, as cited above.

8. The instant application proposes that Condition No. 6(a) be revised to read as follows:

"Housing: Funds in the amount of \$3,000,000 to enable the construction of housing and other facilities for 200 men and women as part of the Salvation Army PUD at 1850 New York Avenue, N.E. (Zoning Commission Order No. 744).

9. The instant application proposes that Condition No. 11 be revised to read as follows:

"The applicant shall be entitled to receive a building permit when an opinion letter is presented to the Zoning Administrator, with a copy to the Zoning Commission, that the funds discussed herein had been disbursed to the Salvation Army."

10. The application further proposes that a new condition be added as Condition No. 12, to read as follows:

"The applicant agrees to work with ANC 2F through its specifically designated subcommittee to identify and develop mutually

agreeable sites for the expenditure of \$500,000 for housing within ANC 2F. Applicant will seek approval of ANC 2F for properties to be acquired. Applicant shall certify to the Zoning Administrator that these funds have been expended prior to the issuance of the building permit for the PUD project."

11. The substance of the other conditions in Z.C. Order No. 684 will remain unchanged, although some would be renumbered to reflect the changes made by this order. No change to the use, height or bulk of the building as approved by the Zoning Commission was requested. The building would contain no residential uses.
12. The only change requested as part of this modification is a substitution of the off-site residential amenity associated with the PUD (the 5th and I Streets PUD being replaced by the Salvation Army PUD and housing within ANC 2F).
13. At the public hearing and through statements submitted to the record of the case, the applicant and his development team testified that the Peabody project cannot and will not proceed and can therefore no longer meet the residential requirement under Z.C. Order No. 684. The evidence indicated that the land on which the Peabody project was to be developed is owned by the District of Columbia and was to be leased to the developer under a current housing development program. Evidence of termination of the project by the District of Columbia was submitted as an exhibit and was contained in a memorandum dated March 14, 1994, in which the Director of the Department of Housing and Community Development advised the Zoning Commission that the District had terminated its relationship with the developer.
14. In light of the termination by the District of Columbia of its agreement with the Peabody project developer, and because the Zoning Commission's approval of the subject PUD was specifically conditioned upon the construction of the Peabody project on the 5th and I Streets site to be leased from the District of Columbia, the Zoning Commission must amend Condition 6(a) and 11 in order for the subject PUD to proceed to construction.
15. The applicant was required by the conditions of the original PUD approval to provide funding for the specific project at 5th and I Streets, N.W. The applicant posted the \$3,062,000 required under the order in the Spring of 1991. However, the developer never closed on a construction loan and the completion bond which would have been required by HUD was never secured.

16. Evidence was introduced that the applicant determined that the \$3,062,000 contribution to the project was not a sufficient contribution of equity to a project with an estimated cost of \$18 to \$20 million to enable that project to proceed. The equity to be provided was approximately 15 to 17 percent of the total project cost.
17. The applicant testified that its representatives reviewed potential and proposed developments in and near the Downtown area to locate another residential project to which a subsidy could be directed. Applicant's review indicated that there is no alternative residential project now in existence which has advanced to the point that its feasibility could be confirmed and for which a commitment to advance funds would have some likelihood of actually producing housing.
18. Applicant testified that even if a residential project in or near Downtown could be located, the level of the financial commitment which can be provided is not likely to be sufficient to make the project feasible. Testimony noted that financing an apartment project in the 1990s requires a substantially greater degree of capital than was previously the case. Applicant testified that the Peabody project at 5th and I Streets could no longer proceed even with the applicant's contribution having been posted and other government assistance committed in the form of write-downs and other subsidies. The size of the applicant's contribution is a level of capital assistance which is too small to underwrite an apartment development of any significant size in or near the Downtown area.
19. A representative of the Salvation Army testified about its project at 1850 New York Avenue, N.E., which was approved as a PUD by the Z.C. Order No. 744, dated September 13, 1993. The representative stated that the Salvation Army PUD is comprised of three buildings, a 45,000 square foot community-based residential service center, a 10,000 square foot warehouse and a 3,000 square foot auditorium/chapel. Evidence was that the residential component of the project will provide 190 beds in a dormitory arrangement and 20 single-room occupancy efficiency-type units.
20. The representative also testified that the cost of construction of the Salvation Army project is estimated at approximately \$7.1 million. He added that the Salvation Army has in hand approximately \$3.6 million to construct that project. He testified that the \$3,000,000 contribution from the applicant in this case would enable the Salvation Army to proceed with construction of the PUD at 1850 New York Avenue, N.E.

21. The representative of the Salvation Army added that the construction of the project on New York Avenue will provide substantial benefits to the District of Columbia. According to his testimony, the project not only provides housing but also contains a social service component to provide for persons who are recovering from drug and alcohol dependency. Moreover, he noted that the Salvation Army receives no funds from the District government for the operation of the program and that the Salvation Army estimates that it will spend \$18,000 annually to house and service one person in one bed for one year. He added that these services are therefore worth \$3.7 million to the District of Columbia during the first full year of operation. He mentioned that the D.C. Department of Human Services budgets \$87,000 a year to deliver one bed of rehabilitation and treatment for chemically dependent people in the District, or the equivalent of more than \$18 million per year for the services otherwise being provided by the Salvation Army.
  
22. The applicant's further testimony presented at the public hearing and through exhibits submitted into the record of the case, stated the following:
  - a. The subject site is zoned C-4. There is existing C-4 zoning to the west of the subject site at the corner of 14th and L Streets, to the south of the subject site along the south side of L Street between 13th and 14th Streets and to the east of the subject site at the corner of 13th and L Streets.
  
  - b. The 110-foot height for the project is in many cases less than the existing and approved height of other buildings in the area. Buildings at 1300 L Street, 1330 L Street, One Franklin Square and 1101 14th Street are 130 feet in height and the building at 1301 L Street, not yet constructed, has been approved with a height of 130 feet.
  
  - c. The approved 9.25 FAR is also consistent with the existing and approved density in the area. The buildings at 1300 L Street, 1330 L Street, and 1101 14th Street are existing buildings with an FAR of 10.0. The building to be constructed at 1301 L Street was approved as part of a PUD with a maximum FAR of 9.74.
  
  - d. The PUD, as it is proposed to be modified, meets the requirements of Chapter 24 of the D.C. Municipal Regulations. The project is a well-planned office building with a small amount of service retail. The project has an attractive design, as previously found by the Commission. The design is sensitive to environmental

protection and energy conservation. The public health, safety and welfare is adequately protected by the PUD and the PUD is in harmony with the intent and purposes of the Zoning Regulations.

- e. The subject project includes a combination of both on-site and off-site amenities and benefits which will result from approval and construction of the project and which are superior to what could be developed as a matter of right on the site. They are as follows:
  - i. A well-designed commercial building in the Franklin Square area.
  - ii. Landscaping and streetscape improvements that exceed the normal streetscape guidelines.
  - iii. Traffic circulation improvements by way of an additional 2.5 feet of space to permit the public alley east of the site to have an effective operating width of 20 feet.
  - iv. Best efforts to utilize certified minority business enterprises for a minimum of 35 percent of contracted development costs.
  - v. Best efforts to utilize D.C. residents for at least 51 percent of the jobs to be created by way of a First Source Employment Program through the Department of Employment Services.
  - vi. Increased real estate tax revenues as a result of additional construction on the site.
  - vii. Off-site housing in the vicinity of the site by way of the commitment to spend \$500,000 for housing within the boundaries of ANC 2F in cooperation with the ANC.
  - viii. Off-site housing elsewhere by way of the commitment of \$3,000,000 to enable the construction of 190 dormitory-type units and 20 efficiency type units as part of the Salvation Army PUD at 1850 New York Avenue, N.E.
- f. The Comprehensive Plan Generalized Land Use Map designates the square in which the subject property is located in the mixed-use high density commercial and high density residential categories. The Zoning Commission has previously determined that the mix of uses in the

square is to be distributed with residential uses along the Massachusetts Avenue frontage and commercial uses along the 14th and L Street frontages.

- g. The subject property continues to be appropriate for commercial uses in accordance with the Comprehensive Plan.
  - h. The subject property is included within the Franklin Square sub-area of Downtown, as set forth in the Downtown element of the Comprehensive Plan. The Franklin Square sub-area is determined to be the new prestige office area within Downtown.
  - i. The application responds positively to the mixed use designation in the Comprehensive Plan by providing off-site housing both nearby and away from the subject site.
  - j. The support of the Salvation Army project responds positively to and is not inconsistent with policies in both the Housing element and the Human Services element of the Comprehensive Plan.
23. In response to questions raised by the Zoning Commission regarding the compliance of applicant's modification proposal with Blagden Alley Association v. The District of Columbia Zoning Commission, 590 A.2d 139 (1991), an attorney from the Office of the Corporation Counsel indicated that Blagden Alley allows off-site amenities, but that the Court of Appeals will remand such a case to the Zoning Commission in the event that the record of the case is insufficient to provide the clear factual and legal basis for such offsite amenities for PUD approval. In addition, the attorney noted that the Zoning Commission was advised in Blagden Alley to establish PUD regulations for offsite amenities. However, the attorney noted concurrence with applicant's position that the absence of such regulations did not prohibit the Zoning Commission from proceeding so long as its final decision complied with the Blagden Alley evidentiary and record requirements and contained a clear, principled legal basis for its decision.
24. The Office of Planning (OP), by memorandum dated June 10, 1994, and by testimony at the public hearing, recommended that the application be approved. Although OP reported that the proposal would not result in housing Downtown, because the linkage opportunity that existed previously is no longer available, the project would respond to the District's goal of providing adequate and affordable

housing for all District residents, benefiting both the New York Avenue corridor and the city in general. OP also noted that the project also furthers one of the goals of the Comprehensive Plan to provide housing for low and moderate income persons within the District of Columbia.

25. Evidence was introduced that the Director of the Department of Housing and Community Development, by memorandum dated March 14, 1994, recommended that the Zoning Commission move expeditiously to consider and approve the proposed modification to the PUD, to allow both the immediate area and the city at large to benefit. The memorandum noted that the District government viewed the assignment of funds to the Salvation Army project at 1850 New York Avenue, N.E., as an appropriate use of funds for the following reasons:
- a. The funds represent a higher portion of project costs than could ever be likely for a Downtown project and, accordingly, there is a much greater likelihood, given current lending and financing criteria, that the Salvation Army PUD will proceed.
  - b. There is little likelihood that the \$3,062,000 can be used to achieve housing in or near Downtown at anytime in the foreseeable future.
  - c. The District is focusing on the New York Avenue corridor, an area in need of positive change, and the beginning of construction of a new project in this area will be an important signal that an improvement is on the way.
  - d. The Salvation Army project will provide housing for a segment of the population whose needs are currently not being met.
  - e. The District government will realize substantial cost savings, because housing for more than 200 people will be provided by the private sector, without draining scarce government resources, at a savings estimated to be \$1,825,000 annually, with a capitalized value of \$22,800,000.
  - f. The applicant will also invest \$500,000 in housing in ANC 2F, the area within which the site is located. The memorandum concluded that this type of program may qualify the District for certain Federal grants.

26. Evidence was introduced from the Department of Human Services, by memorandum dated June 27, 1994, which supported the Salvation Army project and the proposed contribution of \$3,000,000, which will be given to the Salvation Army as a result of the modification to the PUD. The Department noted that the program is extremely important to the Department and the city, and any action which could be taken to help construction commence sooner rather than later would be of great help in meeting the housing and social service needs of the District of Columbia.
27. Advisory Neighborhood Commission 2F, by letter dated January 7, 1994, and by testimony at the public hearing, supported the request to modify the PUD. The ANC noted that it had carefully considered the existing Zoning Regulations and Map. The commitment of \$3,000,000 to the Salvation Army project responds directly and immediately to the city's overall needs to provide affordable housing and shelter to a class of residents not currently being accommo-dated elsewhere. The ANC noted that the Peabody site was not within the boundaries of ANC 2F nor south of Massachusetts Avenue. The ANC supported the proposal on the basis that the contribution to the Salvation Army appears to be the most expeditious and best way to provide a substantial off-site housing amenity for the 1331 L Street project. The ANC also accepted as reasonable, the applicant's proposal to invest \$500,000 for housing in ANC 2F in coordination with the ANC in accordance with the specific language included as part of the PUD modification. The ANC and applicant agreed to a condition for the PUD modification concerning the timing and method of the housing expenditure and the form for certifying to the District that the funds had been spent for residential housing.
28. A letter from the District of Columbia Councilmember representing Ward 2, within which the subject property is located, dated April 6, 1994, was introduced which supported approval of the application.
29. A letter from the District of Columbia Councilmember representing Ward 5, dated May 16, 1994, in which the Salvation Army site is located was introduced as evidence and supported the Salvation Army project as an appropriate recipient of the \$3,000,000 for the production of housing. The letter mentioned that the timing of the proposal and the linkage of the PUD projects is appropriate given the severe financial

constraints on the District and the need to provide housing services to all segments of the population. The Councilmember noted that the proposal will result in substantial savings to the District through the private sector providing the service and that the provision of housing is one of the important issues and elements of the Comprehensive Plan.

30. The Thomas House Retirement Community administration, operator of the Thomas House located at 1330 Massachusetts Avenue, N.W., by letter dated June 7, 1994 and introduced into evidence, did not object to the proposed modification to the PUD. In its letter, the Thomas House administration encouraged the Zoning Commission to tie the applicant's receipt of the building permit for the project at 1331 L Street to the closing of the construction loan for the housing on the Salvation Army property.
31. Two residents of the neighborhood testified in support of the application concerning the contribution which will be made to housing within the ANC and the affordable housing to be provided at the Salvation Army site at 1850 New York Avenue, N.E.
32. The application was opposed by the Thomas House Residents' Council, which was admitted by the Commission as a party in opposition to the case. The Residents' Council represents the occupants of the Thomas House building located at 1330 Massachusetts Avenue, N.W., in the same square as the subject application. By written statement dated June 27, 1994 which was introduced into evidence and by its testimony at the hearing, the Residents' Council opposed the proposed modification for the following reasons:
  - a. The 110-foot office building will cast a large shadow over the Thomas House building and the chief outdoor recreational area which is to the rear of the building. (correcting another letter from the Residents' Council which erroneously alleged that the building was to be 120 feet in height.
  - b. The residents desire more residential development in the area, to help make the streets safer, and they support additional shopping and other residential-serving amenities.
  - c. The amenities which are included as part of the PUD should benefit those affected by the project rather

than being located in some other area in the city. They preferred that the \$3 million be spent on Square 247 or at least in the Massachusetts Avenue area to help create a larger residential community in the area.

- d. The proposed transfer of the residential requirements to another quadrant of the city provides no benefits to the neighborhood, is a clear violation of the Downtown Development (DD) District regulations and undermines the housing requirements of the DD District.

33. Two additional persons, one on behalf of the Committee of 100 on the Federal City, appeared at the hearing in opposition to the application. Their testimony in opposition raised the following additional points:

- a. Approval of the modification would constitute an action inconsistent with the Comprehensive Plan, which the Zoning Commission is prohibited from taking. Since the Generalized Land Use Map calls for the site to be mixed use and no housing is provided on site, the residential corridor along Massachusetts Avenue is not protected.
- b. Because the Zoning Commission has not yet passed PUD regulations concerning offsite amenities as suggested in the Blagden Alley case, the modification is inappropriate under Blagden Alley.
- c. The proposed modification does not meet the standards set forth in Section 2400.7 of the Zoning Regulations concerning conflicts with the development plans and policies of the District of Columbia, enhancement of the neighborhood and superior working environment and amenities for present or future occupants of planned unit developments.
- d. The proposed modification violates the provisions of the Downtown Development District (DD) for residential housing requirements, off-site or transferable.
- e. The modification should provide that 50 percent of the normal housing requirement for the site be sent to sites somewhere outside of the DD District and the other 50 percent should be provided south of Massachusetts Avenue.

f. The applicant should have found another location in or near the Downtown area for development of housing for low or moderate income families consistent with the original purpose of approving the contribution of funds to the project at 5th and I Streets, N.W.

34. On August 1, 1994 at its regular monthly meeting, the Zoning Commission considered all post-hearing, submissions, the OP summary abstract, and a letter from ANC 2F with recommendations on the implementation and timing of the proposal. The Commission also reviewed and evaluated the various testimony and statements made by the applicant and those in opposition to the application. The Commission expressed concern about the appropriateness of substituting the Salvation Army PUD for the Peabody PUD for the receipt of funds. Additionally the Commission was concerned about whether the receipt of cash in lieu of housing units in the downtown would send a wrong signal to developers with respect to the need for downtown housing and may thus defeat the purpose of getting housing in the downtown.

35. Based upon the oral and written factual evidence introduced by the parties and persons in opposition, the Commission makes the following factual findings:

- a. The subject office building is separated from the Thomas House by a 30-foot public alley and two intervening properties. The shadow studies prepared as part of the original proceeding, which are part of the record and which were displayed at the hearing on the modification, demonstrate that the 110-foot office building will not cast objectionable shadows on the Thomas House building or its outdoor recreational area;
- b. The approved PUD contained no residential units on the site. The proposed modification therefore does not change the number of residents which might be on the street in the vicinity of Thomas House or which would support neighborhood shopping;
- c. The office building project has no significant adverse impact on the neighborhood, in terms of height, bulk, traffic or other conditions. The PUD as proposed to be modified includes amenities and features which would benefit the site, the immediate neighborhood and the city at large;

- d. The Downtown Development District did not and does not apply to this site. Under the PUD, the site is zoned C-4. Prior to the approval of the PUD, the site was zoned HR/SP-2. The Zoning Commission was aware of the pendency of the DD regulations when it set this case for hearing and voted upon the application. The Commission took proposed action to approve this case on the same day it took final action to adopt the DD District. The Commission's approval of the PUD was not conditioned on the DD District minimum on-site housing requirement for new development;
- e. The application is not inconsistent with the Comprehensive Plan. Although the position of the parties in opposition on this matter is arguable, the Commission credits the testimony and analysis of the applicant's planning expert and the Office of Planning that the Comprehensive Plan does not require residential uses on each lot and that the part of this square along L Street is more desirable and appropriate for commercial uses than residential uses. The residential corridor along Massachusetts Avenue is protected by the zoning categories applied in the square. The shadow studies demonstrate that this particular building will not cause difficulties to residential uses on Massachusetts Avenue;
- f. The Commission believes that the decision of the D.C. Court of Appeals in Blagden Alley, 590 A.2d 139 (D.C. App. 1991), specifically confirms its authority to approve an off-site amenity under the existing regulations. The legal standards are presented in our interpretation of the current PUD regulations and the Comprehensive Plan requirements. The Commission further finds that the evidentiary record of this case demonstrates clearly the standards and facts upon which its approval is based. In weighing the evidence, the Commission finds that the site is not an appropriate residential site, that no on-site housing was originally required for this site, that the application includes a mix of on-site and off-site amenities, that both the project area and the city at large will benefit and that the off-site provision of housing in both ANC 2F and elsewhere in the District is an appropriate response to the mixed-use designation on the Generalized Land Use Map. More-over, our findings lead us to the

conclusion that the off-site amenities are consistent with our interpretation of the Zoning and PUD Regulations and the Comprehensive Plan.;

- g. The proposed modification meets the standards of Subsection 2400.7 of the Zoning Regulations. As noted elsewhere in this order, this PUD project in this area on this site, as the project is to be modified, does not conflict with the development plans and policies of the city, it enhances the neighborhood and provides a superior environment and amenities as specifically set forth in previous findings herein;
- h. There are no other identifiable and available residential projects in or immediately adjacent to the Downtown area to which the available financial resources could be directed which have a reasonable chance of proceeding. The contribution to the Salvation Army project will achieve housing for a class of residents who are clearly underserved; and the benefits, both fiscal and societal, which will be achieved are comparable or better than those which would have been gained were the original off-site housing project still viable. The investment in housing within the boundaries of ANC 2F will provide a nearby residential amenity which was not previously a part of the PUD; and
- i. The Commission is satisfied with the applicant's record response to the Commission's concern about the implementation, timing and payment regarding the off-site housing for the Salvation Army to insure that the 1850 New York Avenue project will proceed.

36. The Commission notes that this is not an entirely new project, but a modification to a previously approved PUD. The substitution of the Salvation Army PUD for the Peabody PUD for the receipt of funds is to facilitate the development of the previously approved PUD. The Commission also took note of the agreement between the ANC 2F and the applicant about the expenditure of \$500,000 within the ANC's boundaries within three years, and concurs with the timing of the disbursement of the funds.

37. After careful review and consideration of the position of the parties and of the advice of the Office of the Corporation Counsel on the Blagden Alley case, the

Commission determined that approval of this modification application and its housing linkage to the Salvation Army site and ANC agreement would not defeat the Commission's original intention of encouraging housing in the downtown through the PUD process. The Commission also specifically restricted its decision to the facts and record of this case, especially the unique ability of this project to comply with the Commission's interpretation of the PUD regulations and Comprehensive Plan, and noted that until the Commission passed final off-site PUD regulations, its decisions on off-site PUD amenities would be made on a case-by-case basis, without reliance on this case for any binding precedential value for its future decisions. The Commission also made clear the importance in its decision of the fact that the original PUD application had been approved before the DD off-site housing linkage system was adopted. The Commission added that its decision herein should not be construed as its approval or endorsement of a policy of cash in lieu of downtown housing production, and took proposed action to approve the modification with conditions.

38. The proposed action of the Zoning Commission to modify the approved PUD was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC by report dated October 27, 1994, indicated that the modification would not adversely affect the Federal Establishment or other Federal interests in the National Capital.

#### CONCLUSIONS OF LAW

1. The current planned unit development process and regulations and the Comprehensive Plan serve as appropriate guidelines for and means of controlling development of the subject site and in assessing off-site amenities until the zoning regulations are amended with off-site amenity provisions.
2. The PUD, as modified, carries out the purposes of 11 DCMR 2400 to encourage the development of well-planned, residential, institutional, commercial and mixed-use developments, which will offer a variety of building types with more attractive and more efficient overall planning and design not achievable under a matter of right development.
3. The development of this PUD, as modified, is compatible with city-wide goals, plans and programs and is sensitive to environmental protection and energy conservation.

4. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital, the purposes of the Zoning Act and the criteria for planned unit developments set forth in Chapter 24, of the Zoning Regulations.
5. The application shall be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community, will assure appropriate off-site housing amenities and will enhance the District of Columbia.
6. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the text of the Zoning Regulations and the Zoning Map.
7. The Zoning Commission has accorded to ANC 2F the "great weight" to which it is entitled by statute.
8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

#### DECISION

In consideration of the findings of fact and conclusions of law set forth in this order, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the application for a modification of the approved PUD for Lot 96 in Square 247 at 1331 L Street, N.W., with the guidelines, conditions and standards set forth in Z.C. Order No. 684 modified as follows:

1. Condition No. 6(a) is revised to read as follows:

Housing: Funds in the amount of \$3,000,000 to enable the construction of housing and other facilities for 200 men and women as part of the Salvation Army planned unit development (PUD) at 1850 New York Avenue, N.E. The applicant shall provide the \$3,000,000 amount to the Salvation Army, the owner of housing and other facilities that are being constructed at 1850 New York Avenue, N.E. (Zoning Commission Order No. 744).

2. Create a New Condition No. 11 to read as follows:

Within sixty (60) days of the issuance of a final order of the Zoning Commission granting the modification request, the applicant shall make the payment of funds in the specified amount to the Salvation Army for use in constructing the 1850 New York Avenue, N.E. project. No later than thirty (30) days after receipt of such funds from the applicant, the Salvation Army shall file an application for a building permit to construct the project at 1850 New York Avenue, N.E.

3. Existing Condition 11 is renumbered as Condition No. 12 and revised to read as follows:

The applicant shall receive a building permit when an opinion letter is presented to the Zoning Administrator, with a copy to the Zoning Commission, that the funds discussed in this Order have been disbursed to the Salvation Army for the residential purposes stated herein and according to its agreement with the Salvation Army.

4. Create a New Condition No. 13 to read as follows:

The applicant agrees to work with Advisory Neighborhood Commission (ANC) 2F, through its specifically designated subcommittee, to identify and develop mutually agreeable sites for the expenditure of \$500,000 for a number of housing units for residential occupancy within the boundaries of ANC 2F. Applicant will seek the approval of ANC 2F regarding residential properties for which expenditures shall be made.

5. Create a New Condition No. 14 to read as follows:

The applicant shall expend the \$500,000 for housing referred to in Condition No. 13 within three years of the final date of this order.

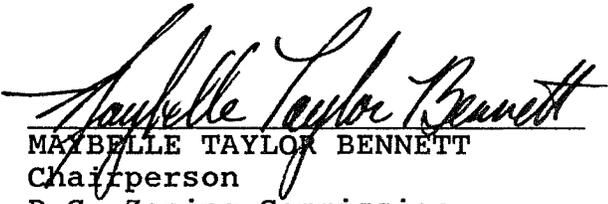
6. The applicant shall provide certification to the Zoning Commission of the expenditure of funds in the form designated as part of Exhibit No. 42 of the record, and shall report to the Commission the status of the agreements between the applicant and ANC 2F, and the applicant and the Salvation Army.
7. The applicant shall certify to the Zoning Administrator (ZA) that the \$3,000,000 has been disbursed to the Salvation Army prior to the issuance of the building permit for the PUD project at 1331 L Street, N.W.
8. Original Condition Nos. 12 through 16 shall be renumbered as Condition Nos. 15 through 19.
9. All of the other guidelines, conditions and standards in Z.C. Order No. 684 shall remain as originally adopted.

Vote of the Zoning Commission taken at the public meeting on August 1, 1994: 4-1 (Jerrily R. Kress, William B. Johnson, William L. Ensign and Maybelle Taylor Bennett to approve - John G. Parsons, opposed).

Z.C. ORDER NO. 684-A  
CASE NO. 94-1M/89-34C  
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This order was adopted by the Zoning Commission at its public meeting on November 14, 1994, by a vote of 4-1 (William B. Johnson, William L. Ensign, and Maybelle Taylor Bennett, to approve; Jerrily R. Kress to approve by absentee vote - John G. Parsons, opposed by absentee vote).

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

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
D.C. Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

zco684-b/VCE/LJP

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 684-B  
Case No. 94-1M/89-34C  
(PUD Modification @ 1331 L Street, N.W.)  
February 12, 1996

By Z.C. Order No. 684, dated February 11, 1991, the Zoning Commission for the District of Columbia granted approval for an application from Square 247 Associates for a mixed-use planned unit development (PUD) and related change of zoning from HR/SP-2 to C-4 for Lot 96 (formerly Lots 71, 72, 86, 88, 89, 864 and 866) in Square 247.

The PUD site is located at 1331 L Street, N.W. It measures 18,456.17 square feet, and is bounded by 13th, 14th and L Streets, and Massachusetts Avenue, N.W. It is presently improved with and used as a surface parking lot.

The approved PUD project consisted of a commercial building with general office and some ground floor retail uses. The PUD had a lot occupancy of 98.7 percent, a floor area ratio (FAR) of 9.25, a height of 110 feet and a minimum of 94 parking spaces. Additionally, the approval was subject to 16 guidelines, conditions and standards.

On February 14, 1994, Square 247 Associates filed an application to modify Condition Nos. 6a and 11 of Z.C. Order No. 684, and to add a new Condition No. 12. The application also requested that the original Condition Nos. 12 through 16 be renumbered as Condition Nos. 13 through 17. The record in the prior proceedings, that is case 89-34C, was made part of the record in the modification application.

By Z.C. Order No. 684-A, dated November 14, 1994, the Commission granted the applicant's request for the modification of condition Nos. 6(a) and 11, addition of a new Condition No. 12, and the renumbering of Condition Nos. 12 through 16.

Z.C. Order No. 684-A became final and effective on December 30, 1994. The validity of the order is for three years from the effective date of the order, that is until December 30, 1997. Within that period, the applicant is to expend \$500,000 for housing rehabilitation within the jurisdictional area of Advisory Neighborhood Commission (ANC) 2F, and construction is to commence by that time.

94-1M  
ZONING COMMISSION  
District of Columbia  
CASE NO. 94-1  
EXHIBIT NO. 57

Z.C. ORDER NO. 684-B  
CASE NO. 94-1M/89-34C  
PAGE NO. 2

Subsection 2406.10 of the Zoning Regulations allows for the Zoning Commission to extend the validity of a PUD "for good cause shown," upon the request of the applicant being made prior to the expiration of the PUD.

By letter dated November 22, 1995 counsel for the applicant filed a motion for the extension of Z.C. Order Nos. 684 and 684-A for two years that is until December 30, 1999.

The applicant's motion for extension stated the following as the basis for the extension request:

1. The project's opponent challenged Z.C. Order No. 684-A in the D.C. Court of Appeals, claiming that the Commission lacked the authority under the Zoning Regulations to approve a PUD modification with off-site housing amenities. The pending litigation is a major factor in the applicant's inability to secure a lead tenant, which has hampered the applicant's efforts to commit to a construction schedule, and also encumbers the project in terms of obtaining financing.
2. The applicant has provided significant portions of the amenity package in compliance with Condition Nos. 6(a) and 11 of Order No. 684-A. The applicant has posted \$3,000,000 for the Salvation Army for the provision of the off-site housing. The applicant has been discussing with Advisory Neighborhood Commission (ANC) 2F about the utilization of \$500,000 for housing rehabilitation within the ANC as provided in Z.C. Order Nos. 684 and 684-A.
3. The applicant also pointed out that unfavorable real estate market conditions contribute to the inability to proceed with construction since the PUD's approval.

The counsel for the applicant indicated that copies of the motion for extension were served on ANC-2F and other parties in the case.

By memorandum dated November 27, 1995, the District of Columbia Office of Zoning (OZ) referred the extension request to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan since the Zoning Commission initially decided the case will affect this request.

The Office of Planning (OP), in a memorandum dated December 8, 1995, recommended that the applicant's motion for extension be granted and added as follows:

"Because of the pending litigation, the applicant is requesting a two-year time extension. The litigation

Z.C. ORDER NO. 684-B  
CASE NO. 94-1M/89-34C  
PAGE NO. 3

hampers the applicant's ability to commit to a construction schedule for a potential lead tenant and encumbers the project relative to obtaining financing. In addition, the applicant has posted \$3 million for the Salvation Army (consistent with modified Condition Nos. 6(a) and 11 of Order No. 684-A) and is pursuing the utilization of \$500,000 for housing within ANC 2F's jurisdiction.

Based on the analysis of the motion for extension and the discussion above, the Office of Planning concludes that the Zoning Regulations and Map have not changed since the Zoning Commission approved the PUD and map amendment. In addition, the Comprehensive Plan land use designation for the site (mixed-use high density commercial and high density residential) has not changed. Accordingly, the Office of Planning recommends that the Zoning Commission extend the validity of the approved PUD and related map amendment for an additional two years, pursuant to Subsection 2405.10 of 11 DCMR."

The Office of Zoning received no comments on this matter from ANC-2F, or any other party.

On December 11, 1995 at its regular monthly meeting, the Zoning Commission reviewed and considered the motion for extension, the OP report and verbal comments from counsel for the applicant.

The Commission concurred with the applicant and the OP recommendation that a two-year extension of the validity of Z.C. Order Nos. 684 and 684-A is appropriate.

The Commission believes that an extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Zoning Commission believes that the applicant has shown good cause for the extension of time.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia orders that the validity of Z.C. Order Nos. 684 and 684-A be **EXTENDED** for a period of two-

Z.C. ORDER NO. 684-B  
CASE NO. 94-1M/89-34C  
PAGE NO. 4

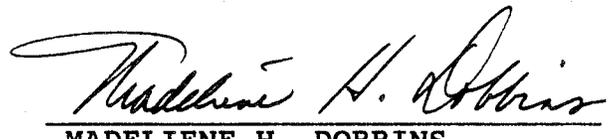
years; that is, until December 30, 1999 prior to the expiration of that time, the applicant shall file for a building permit as specified in 11 DCMR 2406.8 construction will begin not later than December 30, 2000.

Vote of the Zoning Commission taken at the public meeting on December 11, 1995: 4-0 (William L. Ensign, John G. Parsons and Maybelle Taylor Bennett, to extend, Jerrily R. Kress to extend by absentee vote).

This order was adopted by the Zoning Commission at its public meeting on February 12, 1996 by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress, to adopt, and John G. Parsons, to adopt by absentee vote).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on \_\_\_\_\_.

  
\_\_\_\_\_  
JERRILY R. KRESS  
Chairperson  
Zoning Commission

  
\_\_\_\_\_  
MADELIENE H. DOBBINS  
Director  
Office of Zoning

zco684-B/VCE/LJP

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 684-C  
Case No. 94-1M/89-34C  
(PUD Modification @ 1331 L Street, N.W.)  
May 12, 1997

By Z.C. Order No. 684, dated February 11, 1991, the Zoning Commission for the District of Columbia approved the application of Square 247 Associates Limited Partnership for consolidated review and approval of a planned unit development (PUD) and related change of zoning from HR/SP-2 to C-4 for Lot 96 (formerly Lots 71, 72, 86, 88, 89, 864 and 866) in Square 247.

Z.C. Order No. 684 granted approval for a 110-foot office/retail project located at 1331 L Street, N.W. The order became final and effective upon publication in the District of Columbia Register on March 1, 1991.

By Z.C. Order No. 684-A, dated November 14, 1994, the Zoning Commission granted the applicant's request to modify Condition Nos. 6a and 11 of Z.C. Order No. 684, to add a new Condition No. 12 and renumber Condition Nos. 13 through 17.

By Z.C. Order No. 684-B, dated February 12, 1996, the Commission extended the validity of the PUD for two years, that is until December 30, 1999. Prior to the expiration of that time, the applicant shall file an application for a building permit in accordance with 11 DCMR 2408.8.

Z.C. Order No. 684-B became final and effective upon publication in the District of Columbia Register on March 22, 1996.

On January 15, 1997, Square 247 Associates Limited Partnership filed a motion to extend the validity of Z.C. Order Nos. 684, 684-A and 684-B for ten years pursuant to 11 DCMR 2408.10. In that motion, the applicant stressed continued unfavorable economic conditions.

The motion summarized the basis for the extension request as follows:

"The applicant is prepared to build the office building as soon as it is financially prudent to do so. There is no benefit to the applicant to delay construction. However, the applicant cannot begin the construction

Z.C. ORDER NO. 684-C  
CASE NO. 94-1M/89-34C  
PAGE NO. 2

process without lease commitments from enough tenants to convince a lender to back the project. The production of working drawings must begin approximately nine months to one year prior to filing for the building permit and entails a substantial expenditure of funds. These drawings must also take into account the needs of the lead tenant. Given the continuing state of the real estate and financial markets in the District of Columbia, the applicant is unable to determine at this time when the circumstances will allow the construction process to proceed."

Advisory Neighborhood Commission (ANC) 2F by report dated November 14, 1996, voted to support the applicant's request for the ten year extension.

By memorandum dated January 22, 1997, the District of Columbia Office of Zoning (OZ) referred the extension request to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Regulations or Map or to the Comprehensive Plan since the Zoning Commission initially decided the case would affect this request.

The OP, in a memorandum dated February 28, 1997 recommended that the applicant's motion for extension be granted for the term allowed under the current Zoning Regulations and stated the added following:

"Relative to this currently requested time extension, the Office of Planning recommends that the Zoning Commission extend the application in accordance with Subsection 2408.8 through 2408.10 of 11 DCMR. Specifically, the Office of Planning believes that the Commission should extend the validity of the approved PUD for the current maximum time allowed under the existing regulations (Subsections 2408.8 and 2408.9). The Commission could amend these regulations with a text amendment, to allow for a longer time extension period. However, in previous requests, the Commission has adhered to the regulations as currently promulgated."

Pursuant to Section 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On March 10, 1997, at its regular monthly meeting, the Zoning Commission concurred with the recommendation and the position of ANC-2F, and in part with the recommendation of OP. The Commission determined that the extension of time, as requested by the applicant, was reasonable and would not adversely affect any party or person.

Z.C. ORDER NO. 684-C  
CASE NO. 94-1M/89-34C  
PAGE NO. 3

The Commission believes that an extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval of the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission believes that an extension of time, as requested by the applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

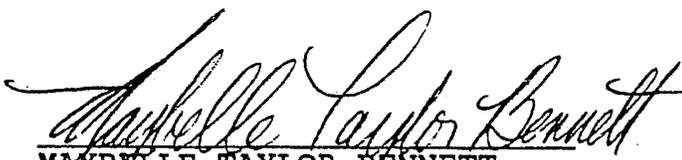
Pursuant to 11 DCMR 2408.10 of the Zoning Regulations, the Zoning Commission believes that the applicant has shown good cause for the extension of time.

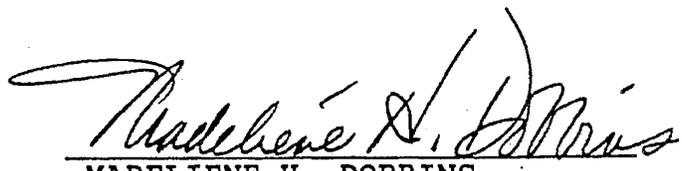
In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia ORDERS that the validity of Z.C. Order Nos. 684 and 684-A, 684-B be EXTENDED for a period of TEN YEARS; that is, until December 30, 2009. Prior to the expiration of that time, the applicant shall file for an application for a building permit as specified in 11 DCMR 2406.8. Construction shall start not later than December 30, 2010.

Vote of the Zoning Commission taken at the monthly meeting on March 10, 1997: 4-0 (Jerrily R. Kress, John G. Parsons, Maybelle Taylor Bennett and Herbert M. Franklin, to extend for TEN YEARS).

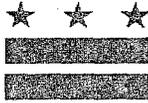
This order was adopted by the Zoning Commission at its public meeting on May 12, 1997 by a vote of 4-0: (Herbert M. Franklin, Jerrily R. Kress, Maybelle Taylor Bennett and John G. Parsons to adopt).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is on JUN 6 1997.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. DOBBINS  
Director  
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



MEMORANDUM

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To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin <sup>53</sup>  
Secretary to the Zoning Commission

Date: September 21, 2006

Re: Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on September 29, 2006:

1. Z.C. Order No. 684-D (Case No. 94-01A); and
2. Z.C. Notice of Final Rulemaking & Order No. 04-18 (Case No. 04-18).  
This rulemaking is also included on the attached diskette in MS Word format.

Attachment

RECEIVED  
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCE  
SEP 21 2006  
10:25 AM  
ZONING COMMISSION  
District of Columbia

CASE NO. 94-01A  
EXHIBIT NO. 29

**ZONING COMMISSION ORDER NO. 684-D**  
**Z.C. Case No. 94-01A**  
**Modification to Approved Consolidated Planned Unit Development**  
**1331 L Street, N.W., LP**  
**July 24, 2006**

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia (the "Commission") was held on June 1, 2006. At that hearing session, the Zoning Commission considered an application from 1331 L Street, NW, L.P. (the "Applicant"), for modification to a previously approved planned unit development. The public hearing was conducted in accordance with the provisions of § 3022 of the District of Columbia Zoning Regulations (11 DCMR). The Zoning Commission hereby approves the requested modifications.

**FINDINGS OF FACT**

1. By Order No. 684, the Zoning Commission granted approval of an application for a consolidated planned unit development ("PUD") and Zoning Map Amendment from HR/SP-2 to C-4 for Lot 96 in Square 247. Order No. 684 granted approval of a 110-foot tall, 9.25 FAR, mixed-use office/retail building to be located at 1331 L Street, NW. Façade design treatment and materials were to be consistent with plans made part of the official record of the case, with certain areas of flexibility provided to the Applicant in terms of tower design; location and configuration of interior components; façade, window, and balcony detailing; landscaping; and exterior lighting. Final selection of exterior material samples was to be approved by the Zoning Commission. The Order became final and effective upon publication in the *District of Columbia Register* on March 1, 1991.
2. By Order No. 684-A, with an effective date of December 30, 1994, the Zoning Commission approved modification of certain conditions of the approved PUD pertaining to its off-site housing amenities. As part of this modification, the Zoning Commission required that funds in the amount of \$3,000,000 be paid to the Salvation Army for the construction of housing as part of a PUD at 1850 New York Avenue, NE. The Zoning Commission further required that at least \$500,000 be expended by the Applicant, in consultation with Advisory Neighborhood Commission (ANC) 2F, for the provision of housing within the boundaries of ANC 2F. As provided at Exhibit C of the Applicant's prehearing statement (Exhibit No. 3 in the official record), these funds have been provided and the off-site housing amenities required under the PUD have been satisfied.

3. By Order No. 684-B, with an effective date of March 22, 1995, the Zoning Commission extended the validity of the PUD approval to December 30, 1999, within which time application must be made for a building permit.
4. By Order No. 684-C, with an effective date of June 6, 1997, the Zoning Commission extended the validity of the PUD approval to December 30, 2009, within which time application must be made for a building permit. Construction is to commence not later than December 30, 2010.
5. By letter dated and received by the Zoning Commission on February 17, 2006, counsel on behalf of the Applicant filed a request for a minor modification to the approved PUD relating only to updates proposed to the exterior design of the approved building. No increase in any aspects of the previously approved zoning envelope were requested nor were reductions in any setbacks or off-street parking being sought. No changes were proposed to the off-site housing amenities provided as part of the approved PUD.
6. The District of Columbia Office of Zoning referred this matter to the District of Columbia Office of Planning ("OP") for analysis and recommendation. By memorandum dated March 3, 2006 and received into the official record on March 7, 2006, OP indicated its support for the modified project and recommended that the Zoning Commission set the application for a public hearing.
7. The Zoning Commission, at its public meeting on March 13, 2006, removed the request for minor modification from its consent calendar pursuant to 11 DCMR § 3030.12, and set it down for public hearing on June 1, 2006.
8. Advisory Neighborhood Commission ("ANC") 2F, which represents the area including the PUD site, voted 6-0 to support the application for modification to the PUD at a regularly scheduled and publicly noticed meeting on March 1, 2006. ANC 2F submitted a letter to the Zoning Commission dated March 5, 2006 and received into the official record on April 19, 2006, indicating its support for the modification and recommending that the Zoning Commission approve the requested modification.
9. By memorandum dated March 3, 2006 and received into the official record on May 22, 2006, OP recommended approval of the modification application. OP noted that the request was consistent with a number of elements of the District of Columbia Comprehensive Plan. The Office of Planning further stated that the proposed design modification responds extremely well to the project site's mid-block location, with exceptional emphasis at the street and alley level, and that the attention to detail regarding the height and massing of the tower, the passive use of the tower, restrictions on lighting of the tower, and treatment of the area of the roof level, respond equally well to the comments raised by the Zoning Commission when determining to set down the application for public hearing.

10. Upon notice pursuant to § 3015 of the Zoning Regulations, the Zoning Commission held a public hearing on June 1, 2006 and received testimony from the Applicant and OP. No other parties or persons testified at the public hearing.

11. At the conclusion of the June 1, 2006 hearing, the Zoning Commission took proposed action by a vote of 4-1-0 to approve, with conditions, the application and plans that were submitted into the record.

12. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated July 6, 2006, found the proposed PUD modification to be in conflict with Section 5 of the Height of Building Act of 1910 and requested the Zoning Commission to eliminate the canopy and guardrail, or set back these elements from the exterior walls to distances equal to their respective heights above the adjacent roof.

13. The Zoning Commission took final action to approve the PUD modification on July 10, 2006.

### CONCLUSIONS OF LAW

Under § 2409.9 of the Zoning Regulations, any modification to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for a second-stage application, except from minor modifications and technical corrections as provided in § 3030 of the Zoning Regulations. Because the Zoning Commission determined that the requested modifications were not minor modifications pursuant to § 3030 of the Zoning Regulations, the requested modifications were processed as a second-stage application.

Upon consideration of the record in this application, including the testimony received at the public hearing, the Zoning Commission concludes that the PUD, as proposed to be modified, is consistent with the intent of the previously approved PUD. Further, the Zoning Commission concludes that approval of the requested modification is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

Approval of the modification to the approved PUD also is not inconsistent with the District of Columbia Comprehensive Plan (10 DCMR). Further, the modification does not impact material elements of the PUD, including use, height, density, or parking, nor does the modification propose any reduction in the off-site housing amenities package, which was earlier approved and has been fully satisfied.

In accordance with D.C. Official Code § 1-309.10(d)(3)(A) (2001 ed.), the Commission is required to give "great weight" to the issues and concerns of the affected ANC. The Commission has carefully considered the testimony and evidence submitted by ANC 2F recommending approval of the modification application and concurs with the recommendation.

The requested modifications are subject to compliance with D.C. Law 2-39, the Human Rights Act of 1977.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the application for modification to the design of an approved PUD for Lot 96 in Square 247, at 1331 L Street, NW. The approval of this modification to the design of the PUD, as an alternative to the previously approved design for the PUD, is subject to the following guidelines, conditions, and standards:

1. The project shall be constructed either in accordance with the plans approved as part of Zoning Commission Order No. 684 or this Order (No. 684-D). If the project is constructed pursuant to this Order:
  - (a) it shall be constructed in accordance with the plans marked as part of Exhibits 18 and 24 of the official record;
  - (b) approved building materials shall be consistent in general color and appearance to those represented in the official record; and
  - (c) the roof area of the PUD shall be limited to passive activities and the tower feature of the PUD may not be lighted.
2. Pursuant to § 2409.3 of the Zoning Regulations, the Applicant shall record a notice of modification of Zoning Commission Order No. 684 among the land records of the District of Columbia. After recordation of the notice of modification, the Applicant shall provide a copy of same for the records of the Office of Zoning.
3. The PUD modification, as an alternative to the previously approved PUD, shall be valid until December 30, 2009, by which time application for a building permit must be filed. Construction is to commence no later than December 30, 2010.
4. All other guidelines, conditions, and standards of Order No. 684, as modified by Orders No. 684-A, 684-B, and 684-C, remain in effect.

Vote of the Zoning Commission at the end of the public hearing on June 1, 2006: **4-1-0** (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, and Michael Turnbull to approve; John G. Parsons opposed).

This Order was adopted by the Zoning Commission at its public meeting on July 24, 2006, by a vote of **3-2-0** (Carol J. Mitten, Anthony J. Hood, and Gregory N. Jeffries (by absentee ballot) to adopt; John G. Parsons and Michael G. Turnbull opposed).

Z.C. ORDER NO. 684-D  
Z.C. CASE NO. 94-01A  
PAGE 5

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

~~SEP 29 2006~~