

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION CORRECTED¹ ORDER NO 05-36

Z C Case No 05-36

First Stage & Consolidated PUD & Related Map Amendment-200 K Street, N E
April 20, 2006

Pursuant to notice the Zoning Commission for the District of Columbia (Zoning Commission or Commission) held a public hearing on January 5 2006 to consider applications from 200 K Street L P for (1) consolidated review and approval of a Planned Unit Development (2) preliminary review of a Planned Unit Development and (3) and a related map amendment to rezone all of Square 749 except Lots 804 805 and 31 (the PUD Site) from C M 3 and C 2 B to C 3 C The Commission considered the applications pursuant to Chapters 24 and 30 of the D C Zoning Regulations Title 11 of the District of Columbia Municipal Regulations (DCMR) The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 For the reasons stated below the Commission hereby approves the applications with conditions

FINDINGS OF FACT

The Applications, Parties, and Hearing

- 1 On November 29 2005 200 K Street L P filed applications with the Zoning Commission for preliminary and consolidated approval of a planned unit development (PUD) and for a PUD related map amendment for property located in the Northeast quadrant of Washington D C and generally bounded by 2nd Street to the west L Street to the north K Street to the south and 3rd Street to the east The PUD site is comprised all of Square 749 except Lots 804 805 and 31 200 K Street L P also requested that the Commission approve a PUD related map amendment rezoning the entire PUD site from C M 3 and C 2 B to C 3 C 200 K Street L P sought consolidated PUD approval for the property shown to the right of the Phase Line on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre Hearing Submission 200 K Street L P sought preliminary PUD approval for the property shown on the left of the Phase Line on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre Hearing Submission

¹ This is a corrected version of the Order previously published in the September 15 2006 edition of the *D C Register* This corrected version includes a discussion of NCPC s comments and corrects the statement of the zoning relief requested

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ZONING COMMISSION
District of Columbia
CASE NO.05-36
EXHIBIT NO.3A

- 2 The Applicant is a limited partnership organized and in good standing in the District of Columbia. It is one of several real estate investment entities operating under the umbrella of the Cohen Companies under the control of Ronald J. Cohen. The term Applicant is used in this Order to refer to 200 K Street L P to the other Cohen controlled entities that are the recorded owners of various properties within the PUD Site and to any successors in interest or title to 200 K Street L P and its related entities. The recorded owners of the properties within the PUD site are K Street Developers LLC, Casco Inc, Three Cee Investors LLC and Union North Corporation.
- 3 These applications are related to an earlier Zoning Commission case. Z C Order No 783 adopted September 11, 1995 approved a Consolidated PUD and PUD related map amendment for the PUD Site. Order No 783 was subsequently extended by Z C Order No 783 A adopted April 13, 1998 and Z C Order No 783 B adopted December 13, 1999. The Applicant applied for a further modification and time extension of Order 783. The application was designated as Zoning Commission Case No 01 28TE and was revised by the Applicant's submission dated January 18, 2005. The Zoning Commission convened a hearing on Case No 01 28TE on November 17, 2005. After reviewing evidence and written submissions from the Applicant and the Office of Planning on the time extension issue, the Commission voted to deny the time extension application. Denial of the time extension had the effect of terminating the PUD approved by Z C Order 783.
- 4 After voting to deny the time extension at the November 17, 2005 hearing, the Zoning Commission voted to set down the proposed modified project as a new case. The Commission also agreed to treat the Office of Planning reports submitted March 4, 2005, September 23, 2005 as its report for the new case and the pre hearing statements submitted by the Applicant on April 25, 2005 and September 29, 2005 as the pre hearing statement for the new case. The Commission scheduled the new case for a hearing on December 15, 2005, conditioned upon the Applicant's expedited payment of the filing and hearing fees and filing new application documents.
- 5 Upon the advice of the Office of the Attorney General, the Commission subsequently rescheduled the hearing on Case No 05 36 to January 5, 2006 in order to comply with § 492(b)(2) of the Home Rule Act codified at D C Official Code § 6 641 05(a) which requires a 30 day notice period for Commission hearings on proposed map amendments.
- 6 Advisory Neighborhood Commission (ANC) 6C which represents the area including the PUD Site adopted a resolution in support of the applications by a vote of 7 1 with one member absent at a regularly scheduled and publicly noticed meeting on December 14, 2005. The ANC submitted a copy of the resolution into the record and appeared as a party at the hearing.
- 7 After proper notice, the Zoning Commission conducted a public hearing on the applications on January 5, 2006. The parties to the case were the Applicant and ANC 6C.

- 8 At its meeting held February 23 2006 the Zoning Commission took proposed action by a vote of 4 0 1 to approve with conditions the applications and plans that were submitted into the record
- 9 The Zoning Commission took final action to approve the PUD and related map amendment on April 20 2006

The PUD Site and Surrounding Area

- 10 The 2.3 acre PUD Site (101 082 sf) consists of all of Square 749 except Lots 804 805 and 31 (the outparcels) in the Northeast quadrant of the District of Columbia bounded by L Street on the north 3rd Street on the east K Street on the south and 2nd Street on the west The outparcels are located in the northeast corner of Square 749 at 3rd and L Streets N E The neighborhood is known as Near Northeast in Ward 6 and the PUD Site is in ANC Single Member District 6C04
- 11 The PUD Site was most recently occupied by vacant and boarded up rowhouses along the 3rd Street side small structures once used as a church and for some commercial purposes on the K Street side and a small warehouse on the L Street side The Applicant applied for and received permits from the Department of Consumer and Regulatory Affairs to raze all of the existing structures except the warehouse which will be used for construction staging and storage
- 12 To facilitate development the Applicant has submitted an application to the Office of the D C Surveyor to close the public alleys within the PUD Site except for the portion of the north south alley adjacent to the rear of the outparcels
- 13 The PUD Site is within a neighborhood where the traditional land uses have been residential rowhouses to the east and south and small industrial facilities to the north To the west 2nd Street is adjacent to the railroad tracks on top of a rock walled embankment
- 14 Within the past five years the neighborhood has become a center of substantial office development and has emerged as a locus of mid to high rise residential developments – some under construction some awaiting zoning approval and some in preliminary planning stages It is within one half mile of two federal agency headquarters buildings to the north the Bureau of Alcohol Tobacco Firearms & Explosives will locate in a 350 000 square foot structure under construction at New York and Florida Avenues N E to the south the Securities & Exchange Commission and other office tenants located in the partially completed 1.3 million square foot Station Place complex on 2nd Street from F to H Streets N E Residential developments are under construction at the Capital Children s Museum site at 3rd and H Streets N E and in various planning stages at 318 I Street N E 300 L Street N E and on the east side of 3rd Street between K and L Streets N E
- 15 The PUD Site is fewer than two blocks south of the New York Avenue Metrorail Station and approximately five blocks north of Union Station It lies within the NoMa (North of

Massachusetts Avenue) area designated as a Redevelopment Area for city planning and economic development purposes. It is three blocks north of the H Street Corridor, subject of REVIVAL: The H Street NE Strategic Development Plan, proposed by the Executive Branch and adopted by the D C Council as a Small Area Plan in February 2004.

Existing and Proposed Zoning

- 16 The underlying zone districts are C 2 B for the easternmost portion of the PUD Site – 26 805 square feet – between 3rd Street and the north-south public alley bisecting the property, and C M 3 for the westernmost portion of the PUD Site – 74 277 square feet – between 2nd Street and the public alley.
- 17 The C 2 B zone district is designed to serve commercial and residential functions, with high-density residential and mixed uses. Developments as a matter of right may be 90 feet high with a maximum density of 3.5 FAR and a maximum lot occupancy of 80%.
- 18 The C M zones are designated as Commercial Light Manufacturing Districts, in which new residential uses are not permitted. In the C M 3 district, developments as a matter of right may be 90 feet high with a maximum density of 6.0 FAR. There is no prescribed maximum lot occupancy.
- 19 The Applicant requested a map amendment to rezone the PUD site to C 3 C to allow residential use and to permit greater height and density than permitted in C M 3 and C 2 B zone districts. In a C 3 C district, the matter of right maximum height is 90 feet, the maximum density is 6.5 FAR, and the maximum lot occupancy is 100%. The PUD Standards of the Zoning Regulations at 11 DCMR § 2405.1 allow a maximum height of 130 feet and maximum density of 8.0 FAR in a C 3 C district.

The PUD Project

- 20 The PUD is proposed as a residential development with ground-level retail to be named Union Place. The Applicant proposes construction in two phases, with the Consolidated PUD as Phase 1 and the Preliminary PUD as Phase 2.
- 21 Overall, the PUD will have a gross floor area of 849 338 square feet, apportioned as 831 841 square feet of residential and 17 497 square feet devoted to retail use, and to a child development center. The child development center will contain 3 449 square feet. The lot occupancy will be approximately 68%. The PUD will provide underground parking for Union Place residents at a ratio of one parking space per unit.
- 22 The PUD will include a landscaped central plaza of approximately 27 984 square feet as an aesthetic feature and an amenity for passive recreational and social use by Union Place and neighborhood residents. The plaza will be open for public use between the hours of 11 00 a.m. and 7 00 p.m. daily.

- 23 Loading docks and berths and access points will be situated so as to route delivery truck traffic along L Street or 2nd Street rather than along residentially oriented K and 3rd Streets Loading facilities will comply with the requirements of 11 DCMR § 2201 1

The Consolidated PUD

- 24 The Consolidated PUD will consist of 236 905 square feet of gross floor area with 233 206 square feet for residential use and 3 699 square feet for retail use The structure will be located on the eastern most portion of the PUD site with a land area of 42 995 square feet The location will be between K 3rd and L Streets NE The lot occupancy will be 64%
- 25 The Consolidated PUD will have a maximum height of 90 feet and ten (10) stories stepping down to 61 feet/6 inches and seven (7) stories at the northern end
- 26 The Consolidated PUD will include 202 residential units 28 of which will be set aside as affordable housing The affordable units are located on floors one (1) through five (5) as identified on floor plans submitted by the Applicant on January 20 2006
- 27 The Consolidated PUD will have 177 underground parking spaces for residents
- 28 The Consolidated PUD design features a façade primarily using three shades of brick and pre cast concrete trim caps and cornices The first through third floors will be red brick capped with a cornice The fourth through eighth floors will be set back four feet and will use tan brick capped with a cornice The ninth and tenth floors will use a light beige brick topped with a cornice The building will have a two to three story base emulating traditional Washington rowhouse design with unit entrances fronting on K Street and 3rd Street and also accessible from the project interior There will be balconies on the fourth through tenth floors

The Preliminary PUD

- 29 The Preliminary PUD is proposed to consist of approximately 612 433 square feet of gross floor area with approximately 598 635 square feet for residential use and approximately 13 798 square feet for retail use including a daycare center of approximately 3 449 square feet The structure will be located on the westernmost portion of the PUD Site with a land area of 58 087 square feet The location is between K 2nd and L Streets NE
- 30 The Preliminary PUD will contain approximately 500 residential units At least 10% of the residential square footage will be set aside as affordable housing providing approximately 50 affordable units The affordable units will be further defined by the Applicant in the second stage PUD application

- 31 The Preliminary PUD will have at least 525 underground parking spaces for residents if 500 units are built. In any case, the number of spaces will be sufficient to assure a 1:1 parking ratio for residents of the Consolidated and Preliminary PUD.

Development Incentives and Flexibility

- 32 In addition to the map amendment, the Applicant requests the following areas of flexibility from the C-3-C requirements and PUD standards:
- a An increase of five percent (5%) in the floor area to density of 8.4 FAR pursuant to 11 DCMR § 2405.3
 - b A variance from the residential recreation space requirements of 11 DCMR § 773.3 and
 - c A special exception from the prohibition of multiple roof structures set forth at 11 DCMR § 411.3
- 33 The 5% bonus FAR provides the necessary density to allow development of approximately 702 residential units (78 of which would be set aside as affordable housing) and a spacious interior plaza available for public recreation use.
- 34 The proposed PUD provides the equivalent of approximately four percent (4%) of residential gross floor area as residential recreation space in the form of the central plaza and the rooftop terrace on the Consolidated PUD, which is less than the 10% required by § 773.3. The Applicant stated that some additional residential recreation space may be made available in the second stage PUD, but in the meantime requested a variance from the 10% requirement.
- 35 The Zoning flexibility to permit multiple roof structures is necessary to allow elevator penthouses and stair towers on both the seven-story and the ten-story portions of the Consolidated PUD.

Public Benefits and Amenities

- 36 The following benefits and amenities will be created as a result of the PUD project:
- a Affordable Housing – The primary benefit is the creation of approximately 78 new residential units set aside as affordable for households at no more than 80% of the Area Median Income (AMI). The affordable units comprise 92,045 square feet, which is 11.07% of the total residential. In the Consolidated PUD, 28 of the 202 units will be designated as affordable units; this is 32,182 square feet (11.07% of the total Consolidated PUD residential area of 233,206 square feet). In the Preliminary PUD, 50 of approximately 500 units will be designated as affordable units; this is 59,863 square feet (10% of the approximate total Preliminary PUD residential area of 598,635 square feet). The Applicant will

reserve for sale units as affordable for a period of ten (10) years and rental units as affordable for a period of twenty (20) years. The Consolidated PUD affordable units are identified on the Applicant's floor plans for floors one (1) through five (5). The Preliminary PUD affordable units will be identified during second stage PUD review.

- b. Day Care Center – The Preliminary PUD will include a licensed and professionally operated child daycare center of approximately 3,449 square feet in size with convenient access to an outdoor play area. Based on per child space requirements in the District Government's daycare center regulations, the facility may accommodate up to 75-80 children. Union Place residents will have first priority in applications for admission. Other available daycare slots will be open to applicants from the community at large. The city and particularly Ward 6 has a substantial need for more daycare facilities. The Office of Early Childhood Development of the D.C. Department of Human Services has reported that as of December 2004, there were 882 children on waiting lists for the 3,175 slots available in licensed childcare facilities in Ward 6.
- c. Green Roof – The Consolidated PUD features an extensive green roof system with 11,928 square feet of roof space designed for plantings comprised of a variety of different sedums and other succulents hardy for the D.C. metropolitan region. On the seventh floor step down roof at the corner of 3rd and L Streets N.E., the green roof system is designed as a recreation amenity for residents. For the Preliminary PUD, the Applicant has committed to address the use of a green roof system and to explore the feasibility of a green and/or low impact surface or storm water management system for the surface of the courtyard that also serves as the roof for the parking garage. The reduction of negative environmental impacts is perhaps the foremost public benefit the proposed roofing system provides. Stormwater run off will be reduced by temporarily storing some of the rainwater within the growing medium and then slowly discharging the excess water into the off site storm water collection system, thereby reducing the peak flows of a major storm. It is estimated that this roof will store approximately 1,074 cubic feet of water, of which as much as 70-80% will never discharge directly into the public collection system. In addition, the plantings will extract a significant amount of airborne pollutants falling on the site, including acid rain and unhealthy particulates such as solid metals, dust, pollen, etc. The plants will also help improve air quality by reducing the amount of ozone and carbon dioxide often associated with smog. Also, because of the extra thickness of the soil medium, studies have shown that there is a significant energy savings over time for all seasons because of the insulation value of the green roof.
- d. Double Height Ground Floor Retail – The Consolidated PUD features ground floor retail space at a height of 18 feet, well above the requirements of the Zoning Regulations. This will provide flexibility for retail tenants to design unique and aesthetically appealing showcases for consumer goods. The glass walled double

height storefronts will enhance interior natural light and present an inviting exterior face to passers by

- e *Landscaped Central Plaza for Use by Residents and the Community* – The Union Place plaza of approximately 27 984 square feet is designed for both public and private use for passive recreation and social interaction. The plaza will be open to the from 11 00 a m to 7 00 p m daily accessible through a gated entrance that will be open during public hours and closed during non public hours except to Union Place residents. The Applicant will provide and maintain plaza signage to announce the public hours and general rules of use. The plaza will be protected by security personnel.
- f *Streetscape Beautification* – PUD landscaping constitutes a public benefit through substantial enhancement of the aesthetic appeal of the neighborhood streetscape.
- g *Interim Surface Parking for Phase 1 Residents* – During the interim between occupancy of the Consolidated PUD structure and completion of construction of the Preliminary PUD structure off street surface parking will be provided on the PUD Site to assure a 1 1 residential parking ratio at all times. The interim arrangement is necessary because the Consolidated PUD with 202 residential units is designed to provide 177 underground parking spaces. The Applicant stated that geotechnical factors make it difficult to provide the full complement of spaces for Consolidated PUD residents within the Consolidated PUD garage. The underground garage in the Preliminary PUD will provide a sufficient number of spaces to accommodate its residents at a 1 1 ratio plus the 25 additional spaces necessary for Consolidated PUD residents to assure a 1 1 space per unit ratio overall. Pervious materials will be used for the interim surface parking area.
- h *First Source Employment Agreement* – The Applicant entered into a First Source Employment Agreement with the Department of Employment Services effective September 13 2005.
- i *LSDBE Contracting Commitment* – The Applicant entered into a Local Small and Disadvantaged Business Enterprise (LSDBE) Memorandum of Understanding with the Department of Small and Local Business Development effective January 18 2006.

- 37 The Commission finds that the project is acceptable in all proffered categories of public benefits and amenities and is superior in public benefits and project amenities relating to housing and affordable housing the daycare facility use of green roof technology and the double height retail design.

Office of Planning Report

- 38 By report dated December 27 2005 and through testimony at the January 5 2006 hearing the Office of Planning (OP) recommended conditional approval of the PUD

OP supported the applications and found that the proposed PUD is not inconsistent with the Comprehensive Plan and the PUD evaluation standards. OP testified that the PUD is consistent with neighborhood trends toward denser residential uses to replace derelict industrial and commercial uses to replace in part by the completion of the New York Avenue Metrorail Station and the H Street Corridor Revitalization Plan of 2004 and the subsequent approval of the H Street NE Neighborhood Commercial Overlay Zone District.

- 39 OP recommended approval of the applications subject to the Applicant's submission of additional requested information and the following conditions:
- a The Consolidated PUD shall be constructed according to the plans submitted on November 29, 2005 (i.e., September 13, 2005 plans as amended September 29, 2005).
 - b The Preliminary PUD shall be restudied to address the height issue and the Applicant shall submit an alternative that maintains a 90 foot building height along K Street with at least a 40 foot horizontal setback from the building line as part of the second stage PUD application.
 - c The Applicant shall file for a building permit no later than 18 months from the effective date of the final order and commence construction no later than 30 months from the effective date of this order.
 - d At least 13.8% of the Consolidated PUD's residential gross floor area shall be made available as for sale units to households earning no more than 80% of the AMI. The units shall remain affordable for at least 10 years after their initial sale. The sale of a unit within this 10 year period shall initiate a new 10 year affordability period for the unit. The units shall be evenly distributed throughout the first five floors of the building. The location and square footages of the affordable units shall be agreed upon by the Applicant and the Zoning Commission prior to the signing of the PUD covenant.
 - e At least 10% of the Preliminary PUD's residential gross floor area shall be made available as rental or for sale units to households earning no more than 80% of the AMI. If the units are for sale, the 10 year affordability period shall apply. If the units are rental, they shall remain affordable for no less than 25 years.
 - f The Applicant shall construct an in-fill all residential building in Square 749 Lot 805. The building shall be no higher than 50 feet. The occupancy permit for the Preliminary PUD shall not be issued until the occupancy permit has been issued for the residential structure at Square 749 Lot 805.
 - g The Applicant shall provide for a rental car option similar to Flex Car or Zip Car when the Preliminary PUD's garage is completed.

- h The Applicant shall include a letter of intent with general details on rental terms and similar matters for the operation of the daycare center when filing the second stage PUD application
- i The ground floor retail space in the second stage PUD shall have an interior clear height of no less than 14 feet

40 In response to OP's recommendations the Commission finds as follows

- a The Commission concurs with OP's recommendations regarding approval of the bonus density and finds that the Applicant has met the burden of proof required by § 2405.3. The Commission finds that the high level of proffered affordable housing is an essential element of the proposed PUD and that the Applicant has demonstrated that the bonus density is essential to the successful functioning of the project as proposed and consistent with the purposes and evaluation standards of Chapter 24. The Commission further finds that any requested reduction in the level of proffered benefits and amenities will cause the Commission to consider a commensurate reduction in the bonus FAR.
- b The Commission finds that the Applicant has submitted the additional information requested in the OP report.
- c The Commission generally concurs with the conditions recommended by OP and has incorporated these conditions with minor changes in the Decision portion of this Order.
- d The Commission does not concur with the OP recommendation that the Applicant should be required to submit in the second stage PUD application a 90 foot height plan as an alternative to the requested maximum height of 130 feet for the Preliminary PUD structure. Instead the Commission has required that the Applicant submit design studies of approaches that ameliorate the appearance of the 130 foot height when presenting the second stage application to the Commission.
- e The Commission does not concur with the OP recommendation that the Applicant shall construct an in fill building or to limit the in fill building to Lot 805 and to a height of 50 feet and to link the occupancy permit for the Preliminary PUD to the occupancy permit for the in fill building. The Commission finds that because the out parcels are not part of the PUD it is inappropriate to link the Preliminary PUD occupancy permit to an occupancy permit for the out parcels structure.

Other Government Agency Reports

- 41 By report dated September 30, 2005 in the predecessor Case No. 01-28TE the District Department of Transportation (DDOT) stated that it has no objection to the proposed PUD. DDOT projected only a slight increase in trip generation as a result of the PUD.

development with no adverse impact on the surrounding transportation system DDOT found the PUD loading facilities and access and circulation system to be acceptable Consistent with DDOT policy to promote car sharing programs DDOT encouraged the Applicant to consider setting aside approximately five percent (5%) of the proposed garage parking spaces for car sharing vehicles

- 42 Stanley Jackson Deputy Mayor for Planning and Economic Development submitted a letter dated September 29 2005 in support of the identical project in the predecessor Case No 01 28TE Mr Jackson stated that that Applicant s affordable housing proffer will contribute to the District s priority goal of developing an additional 6 000 affordable housing units
- 43 Jalal Greene Director of the D C Department of Housing and Community Development submitted a letter dated September 29 2005 in support of the identical project in the predecessor Case No 01 28TE Mr Greene also stated that the Applicant s affordable housing proffer supports the city s goal of developing 6 000 more affordable units
- 44 D C Council Chairman Linda Cropp and Council member Vincent B Orange Sr submitted letters dated November 21 2005 and November 17 2005 respectively in support of the identical project in the predecessor Case No 01 28TE

The ANC Position

- 45 Advisory Neighborhood Commission 6C adopted a resolution in support of the applications with conditions by a vote of 7 1 with one member absent at a regularly scheduled and publicly noticed meeting on December 14 2005 The ANC resolution included the following conditions
 - a The Applicant shall file a Phase 1 (Consolidated PUD) building permit application within one (1) year following the effective date of a Zoning Commission approval order and shall also begin Phase 1 construction within one (1) year subject to timely D C Government action on legislation to close alleys within the PUD Site The Applicant will file quarterly reports to ANC 6C regarding the status of the building permit application and the construction start date
 - b The Applicant will file a second stage PUD application at the earliest opportunity in order to prevent delays in Phase 2 (Preliminary PUD) construction and will timely provide copies of the second stage PUD plans and documents to members of ANC 6C and its Planning and Zoning Committee for their review and comment
 - c The Applicant will provide the interim surface parking spaces as agreed upon with ANC 6C

- d The Applicant will set aside approximately 78 units – more than 11% of the total – as affordable housing and will deliver all of the other public benefits and amenities as set forth in the applications
- 46 ANC 6C Commissioner Daniel M Pernell who represents Single Member District 6C04 which includes the PUD site presented the ANC report at the January 5 2006 hearing He was accompanied by ANC 6C Chair Mark Dixon
- 47 The Commission generally concurs with the conditions recommended by ANC 6C and has incorporated these conditions with minor changes in the Decision portion of this Order

The Positions of Other Parties, Organizations, and Persons

- 48 There are no parties to the case other than the Applicant and ANC 6C
- 49 In support of the PUD the Commission received testimony at the January 5 2006 hearing from the following
 - a Loree Murray who resides at 1134 Seventh Street NE and was among the original organizers of the Near Northeast Citizens Against Crime and Drugs testified that Union Place will be a beneficial addition to the neighborhood particularly because it will include affordable housing a daycare center and public plaza
 - b Reverend William Bynum president of the Public Citizen Civic Association testified that Union Place is one of the few significant developments in the past 40 years that will bring tangible public benefits to the vicinity of the H Street NE Corridor
 - c William Howard who represented PSI Services a provider of daycare and other social services in the District commended the inclusion of a daycare center in the PUD project to meet community needs and said his firm will submit a proposal to the Applicant to operate the Union Place daycare center
 - d Anwar Saleem chairman of H Street Main Street and the H Street Merchants and Professionals Association testified that the Union Place development will be an asset to the community in continuing efforts to attract retailers to the H Street NE Corridor He said the Applicant s package of public benefits and amenities responds to community needs
- 50 In opposition to the PUD the Commission received testimony at the January 5 2006 hearing from Mozella Boyd Johnson who stated that she owns the property located at 229 K Street NE She spoke in opposition to the proposed 130 foot height of the Preliminary PUD structure and expressed the view that the project s height and mass would have an adverse effect on the neighborhood

NCPC Report

- 51 The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ('NCPC ') pursuant to § 492 of the District Charter
- 52 NCPC by action dated March 2 2006 concluded (1) the proposed consolidated PUD would not adversely affect the identified federal interests and would be consistent with the Comprehensive Plan for the National Capital and (2) the proposed first stage PUD would adversely affect the federal interest and would be inconsistent with the Comprehensive Plan for the National Capital and the Height of Buildings Act of 1910 NCPC indicated that the two structures shared no meaningful communication and thus comprised two separate buildings with two different fronts and therefore two distinct measuring points for height² Yet only the 3rd Street front was used to measure height NCPC therefore concluded that the Commission should either require the Applicant to establish a meaningful connection between two structures so as to permit the 3rd Street measuring point or to lower the height of the building fronting 2nd and L Streets
- 53 The Commission shared this same concern with the Applicant as part of the earlier PUD modification proceeding discussed in Find of Fact No 3 The plans in that case did indeed show two separate structures with a single point of measurement In response to the Commission s concerns the Applicant submitted the revised drawings on September 29 2006 that show a single building made of two parts connected by a twelve (12) story glass bridge After the Commission denied the request for a time extension on November 17 2005 thereby terminated the prior PUD the Commission immediately set this case down for hearing based on the plans showing the connected structures
- 54 Based upon statements in and attachments to the staff recommendation that accompanied NCPC action it appears that NCPC may have been looking at the plans from the earlier case In any event the Commission believes that the glass bridge will establish communication between the two portions of the structure thereby allowing the entire development to be considered a single building that fronts 3rd Street The 3rd Street front was therefore properly used as the measuring point for height

Compliance with PUD Evaluation Standards

- 55 Under the PUD regulations the Commission must judge balance and reconcile the relative value of project amenities and public benefits offered the degree of development incentives requested and any potential adverse effects 11 DCMR § 2403.8 Given the level of project amenities and public benefits particularly the significant amount of

² The definition of building that appears at 11 DCMR § 119.1 provides that the existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building This statement has therefore been interpreted to mean that the existence of communication at or above the main floor allows the connected structures to be deemed a single building

affordable housing the Commission finds that the value of the project amenities and public benefits justifies the development incentives allowed by the PUD Standards

- 56 Pursuant to 11 DCMR § 2403 3 of the PUD evaluation standards the Commission finds that the impact of the project on the surrounding area and the operation of city services and facilities is acceptable
- 57 The Commission finds that the project will have no detrimental impact on traffic and parking in the neighborhood

Compliance with the Comprehensive Plan

- 58 The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan
- 59 The proposed PUD fosters the objectives of the Land Use Element to encourage substantial new housing primarily near Metrorail stations to conserve and enhance the stability of residential neighborhoods and protect them from disruptive uses and to promote retention and expansion of residential uses in mixed use neighborhoods
- 60 The proposed PUD fosters the objectives of the Housing Element which calls for multi unit housing development near Metrorail stations and on vacant underutilized or unused properties with particular emphasis on meeting the housing needs of low and moderate income residents by means of zoning incentives such as permitting additional density
- 61 The proposed PUD fosters the objectives of the Transportation Element which supports higher density residential and non residential development near Metrorail stations
- 62 The proposed PUD fosters the Ward 6 Objectives for Housing which are to maintain and strengthen the quality and construction of housing in the various neighborhoods throughout Ward 6 stimulate production in Ward 6 of new and rehabilitated housing discourage encroachment of the non residential uses in residential areas and stimulate private investment in housing in Ward 6 and expand home ownership opportunities
- 63 The proposed PUD fosters the Ward 6 Objectives for Economic Development which include protect(ing) adjacent residential neighborhoods in Northeast against pressures for conversion to retail and office uses generated by Union Station development By creating a new residential community in the buffer zone the proposed PUD will shield the residential neighborhood from commercial redevelopment

CONCLUSIONS OF LAW

- 1 Pursuant to Zoning Regulations the PUD process is designed to encourage high quality development that provides public benefits 11 DCMR § 2400 1 The overall goal of the PUD process is to permit flexibility of development and other incentives provided that

the PUD project offers a commendable number or quality of public benefits and that it protects and advances the public health welfare and convenience 11 DCMR § 2400 2

- 2 Under the PUD process of the Zoning Regulations the Zoning Commission has the authority to consider these applications as a Consolidated and a Preliminary (first stage) PUD respectively The Commission may impose development guidelines conditions and standards that may exceed or be less than the matter of right standards identified for height FAR lot occupancy parking loading yards and courts The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment
- 3 The development of the PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter of right development
- 4 The proposed PUD meets the minimum area requirements of § 2401 1 of the Zoning Regulations
- 5 The PUD is within the applicable height bulk and density standards of the Zoning Regulations and the height and density will not cause a significant adverse effect on any nearby properties High density residential and retail uses are appropriate for the site which is located within the NoMa Redevelopment Area and in close proximity to mass transit The impact of the project on the surrounding area is not unacceptable The proposed project has been appropriately designed to complement and respect existing structures in the nearby neighborhood with respect to height and mass
- 6 The PUD applications meet the contiguity requirements of § 2401 3 of the Zoning Regulations
- 7 The PUD applications can be approved with conditions to ensure that any potential adverse effects on the area surrounding the development will be mitigated
- 8 The project benefits and amenities particularly the provision of housing affordable housing neighborhood serving retail the daycare center the green roof system and streetscape beautification are reasonable for the development proposed on the site and responsive to the needs of the community and the city
- 9 The Applicant seeks an increase in density as permitted by 11 DCMR § 2405 3 The Applicant has met the burden of proof required by 11 DCMR § 2405 3 for approval of 5% bonus density because the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations The bonus density will allow the Applicant to include a greater affordable housing component than would otherwise be feasible The large affordable housing component is one of the primary benefits of the project and is essential to the

success of the project and consistent with the standards of Chapter 24 of the Zoning Regulations

- 10 Approval of the PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan or with other public policies related to the subject site
- 11 Approval of the PUD is appropriate because the proposed development is consistent with other city policies particularly the policies to generate development of more affordable housing
- 12 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 position of the affected ANC As is reflected in the Findings of Fact contained herein the Commission has carefully considered the testimony and evidence submitted by ANC 6C and has incorporated conditions in this Order which reflect the recommendations of ANC 6C
- 13 The applications for a PUD and related map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia
- 14 The applications for a PUD and related map amendment are subject to compliance with D C Law 2 38 the Human Rights Act of 1977

DECISION

In consideration of the above Findings of Fact and Conclusions of Law the Zoning Commission for the District of Columbia orders **APPROVAL** consistent with this Order of the applications for (1) consolidated review of a Planned Unit Development (2) preliminary review of a Planned Unit Development and (3) a Zoning Map amendment from C M 3 and C 2 B to C 3 C for the PUD Site The approval is subject to the following guidelines conditions and standards

- 1 The consolidated approval of the PUD shall apply to the properties in Square 749 except Lots 804 805 and 31 shown to the right of the Phase Line on the Applicant s *Preliminary Subdivision Plan* dated September 7 2005 and submitted as Exhibit C of the Applicant s *Application and Pre Hearing Submission* ZC Case No 05 36 filed November 29 2005
- 2 The preliminary approval of the PUD shall apply to properties in Square 749 shown to the left of the Phase Line on the Applicant s *Preliminary Subdivision Plan* dated September 7 2005 and submitted as Exhibit C of the Applicant s *Application and Pre Hearing Submission* ZC Case No 05 36 filed November 29 2005
- 3 A PUD related map amendment shall rezone the PUD site in its entirety from C M 3 and C 2 B to C 3 C

- 4 With respect to the properties within the Consolidated PUD the map amendment shall take effect at the time the Applicant records the covenants required by Conditions No 6 No 13 No 14 and No 17 below With respect to the properties within the Preliminary PUD the map amendment shall take effect upon final approval of the second stage PUD application and the Applicant's recordation of the covenant as specified by the Commission in an Order approving the second stage PUD
- 5 The PUD shall have a maximum density of 8.4 FAR
- 6 The Applicant shall designate 11.07% of the total residential gross floor area of the total project as affordable housing for eligible households with annual household incomes of no more than eighty percent (80%) of the Area Median Income as determined and adjusted annually by the U.S. Department of Housing and Urban Development The affordable housing requirements shall be guaranteed by covenants that the Applicant shall execute and record in the land records of the District of Columbia The affordable units shall be guaranteed by covenant to be set aside as affordable for ten (10) years in the case of for sale units and twenty (20) years in the case of rental units as defined with specificity in the covenants
- 7 The Applicant shall apply green roof technology in the development and construction of the Consolidated PUD and the Preliminary PUD For the Consolidated PUD the Applicant shall apply the green roof plan as shown and described in Exhibit D *Sheets L 9 L 9 1 L 9 2 and L 9 3* of the Applicant's November 29 2005 submission For the Preliminary PUD the Applicant shall develop and submit with the second stage PUD application a similar green roof plan for the maximum amount of roof space minus the space needed for rooftop building systems such as elevator and mechanical penthouses
- 8 The Applicant shall provide a central plaza of approximately 27 000 square feet in size The central plaza shall be open to the public for passive recreational use between the hours of 11 00 a.m. and 7 00 p.m. daily and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities The plaza shall be accessible to the public through a 2nd Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees and any other authorized personnel between the hours of 7 00 p.m. and 11 00 a.m. In the second stage PUD application the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users including procedures defining the conditions requiring requests for Metropolitan Police Department assistance Specific rules and operational details for the plaza shall be developed collectively by the Applicant the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 *et seq.* and Advisory Neighborhood Commission 6C
- 9 Ground floor retail space in the Consolidated PUD shall have an interior clear height of 18 feet Ground floor retail space in the Preliminary PUD shall have an interior clear height of no less than 14 feet

- 10 The Consolidated PUD shall be developed in accordance with the plans prepared by GTM Architects dated September 13 2005 including the revisions submitted September 29 2005 and January 4 2006 (the Combined Plans) The Consolidated PUD shall have a total of 236 905 gross square feet with 233 206 square feet for residential use and 3 699 square feet for retail use
- 11 The Consolidated PUD shall be a residential development with ground floor retail space constructed to a maximum height of 90 feet above the measuring point stepping down to a height of 61 feet/6 inches on the northeast end
- 12 The Consolidated PUD shall contain 202 residential units 28 of which shall be designated as affordable units for an affordability period of ten (10) years if for sale units and twenty (20) years if rental units guaranteed by covenant between the Applicant and the District of Columbia and recorded in the land records of the District of Columbia
- 13 The covenant required by Condition No 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant s Post Hearing Submissions January 20 2006* revised only to provide the correct metes and bounds descriptions of the lots and parts of lots contained in the Consolidated PUD
- 14 Except as otherwise provided below the affordable housing units in the Consolidated PUD shall be the units designated by the Applicant in the floor plans for floors one (1) through five (5) submitted as Attachment 6 in the Applicant s Post Hearing Submissions dated January 20 2006 (Affordable Unit Designation Plans)
- 15 The Applicant shall have flexibility with the design of the Consolidated PUD in the following areas
 - a To replace some of the units designated as affordable on floors one (1) through five (5) with some units of comparable type and size on floor six (6) subject to the approval of the person or agency charged with implementing and enforcing the affordable housing requirements
 - b To increase or decrease the overall number of residential units by no more than five percent (5%) provided that the percentage of residential gross floor area designated for affordable units shall not be less than 13 8% of total residential gross floor in the Consolidated PUD
 - c To rearrange the unit types and mix provided that the number type size and distribution of the affordable units shall remain consistent with the Affordable Unit Designation Plans
 - d To vary the location and design of all interior components including partitions structural slabs doors hallways columns stairways mechanical rooms

elevators escalators and toilet rooms provided that the variations do not change the exterior appearance or configuration of the buildings

- e To vary the final selection of the exterior materials within the color ranges and material types as proposed based on availability at the time of construction without reducing the quality of the materials and
 - f To make minor refinements to exterior details and dimensions including balcony enclosures belt courses sills bases cornices railings and trim or any other changes necessary to comply with the Construction Codes of the District of Columbia or that are otherwise necessary to obtain a building permit
- 16 The landscaping, streetscape and exterior lighting shall be as shown on the Consolidated Plans Landscaping streetscape and lighting improvements to public space shall be in accordance with the Consolidated Plans and as approved by the Public Space Division of DDOT The Applicant shall maintain all landscaping streetscape and lighting improvements in good condition
 - 17 No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia between the owners and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) Such covenant shall bind the owners and all successors in title to construct on and use the property in accordance with this Order or amendment thereof by the Zoning Commission
 - 18 The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed copies of the covenant with the records of the Zoning Commission
 - 19 The Consolidated PUD approved by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this Order Within such time the first application must be filed for a building permit as specified in 11 DCMR § 2409.1 Construction on the Consolidated PUD shall begin within two (2) years of the effective date of this Order
 - 20 The Preliminary PUD shall be developed in accordance with the Combined Plans and the character scale mixture of uses and design of the uses proposed
 - 21 The Preliminary PUD shall have a maximum height of 130 feet from the measuring point and a maximum of 14 stories each of which shall have a minimum floor to ceiling height of 8 feet/6 inches within the 130 foot height of the structure as measured for zoning purposes The Preliminary PUD shall include approximately 500 dwelling units and 13 798 square feet for retail use including the daycare center
 - 22 The Commission is concerned with the proposed maximum 130 foot height of the second stage proposal along K Street The Commission expects the Applicant to develop

alternative design studies that ameliorate the appearance of the 130 Foot height in presenting the second stage application to the Commission

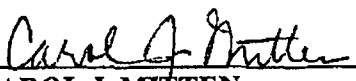
- 23 The Preliminary PUD shall include an affordable unit set aside of no less than 10% of the total residential gross floor area of the Preliminary PUD. Affordability periods of ten (10) years for for sale units and twenty (20) years for rental units shall be guaranteed by covenants agreed upon by the Applicant and the Commission and recorded in the land records of the District of Columbia. The affordable unit types and sizes shall be in reasonable proportion to the types and sizes of market rate units and shall be evenly dispersed among the central and lower residential floors
- 24 The Preliminary PUD shall include a daycare center of approximately 3 449 square feet in size. In the second stage PUD application the Applicant shall provide evidence of progress in identifying and securing an agreement with a suitable daycare provider to operate the facility
- 25 In the second stage PUD application the Applicant shall address the District Department of Transportation and OP recommendations for the inclusion of garage parking spaces for car sharing services
- 26 In the second stage PUD application the Applicant shall have flexibility with respect to
 - a Increasing or decreasing the overall number of residential units by no more than five percent (5%) provided that the percentage of residential gross floor area designated for affordable units shall not be less than 10 0% of total residential gross floor area in the structure and
 - b The exterior façade design and materials so long as the exterior appearance is compatible with the exterior of the Consolidated PUD structure and consistent in quality and character with the façade design and materials and overall exterior appearance of the Consolidated PUD
- 27 In the second stage PUD application the Applicant shall include as an element of the architectural materials street level renderings and a cross section showing the Second Street public access point of entry to the plaza and 2nd Street elevations
- 28 The second stage PUD application shall be submitted within one year following the effective date of this Order
- 29 The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve at a minimum the goal of thirty five percent (35%) participation by local small and disadvantaged business enterprises in the contracted development costs associated with the design development construction and security for the PUD project

- 30 The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty one percent (51%) of the jobs created by the PUD project
- 31 The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977 D C Law 2 38 as amended and this Order is conditioned upon full compliance with those provisions In accordance with the D C Human Rights Act of 1977 as amended D C Official Code § 2 1401 01 *et seq* (the Act) the District of Columbia does not discriminate on the basis of actual or perceived race color religion, national origin, sex age marital status, personal appearance sexual orientation familial status family responsibilities matriculation political affiliation disability source of income or place of residence or business Sexual harassment is a form of sex discrimination that is also prohibited by the Act In addition harassment based on any of the above protected categories is also prohibited by the Act Discrimination in violation of the Act will not be tolerated Violators will be subject to disciplinary action The failure or refusal of the Applicant to comply shall furnish grounds for the denial of or if issued revocation of any building permits or certificates of occupancy issued pursuant to this Order

The Zoning Commission at its public meeting held on February 23 2006 approved the application subject to conditions by a vote of 4 0 1 (Carol J Mitten Anthony J Hood, Gregory N Jeffries Michael G Turnbull in favor John G Parsons not participating not voting)

The Order was adopted by the Zoning Commission at its public meeting on April 20 2006 by a vote of 4 0 1 (Carol J Mitten Anthony J Hood and Michael G Turnbull to adopt Gregory N Jeffries to adopt by absentee ballot John G Parsons not participating not voting)

In accordance with the provisions of 11 DCMR § 3028 this Order shall become final and effective upon publication in the *D C Register* that is on OCT 13 2006


CAROL J MITTEN
CHAIRMAN
ZONING COMMISSION


JERRILY R KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



Z.C CASE NO 05-36

As Director of the Office of Zoning, I hereby certify that 8/10/2006 copies of this Z.C Corrected Order No 05-36 were mailed first class, postage prepaid or sent by inter office government mail to the following

- | | | | |
|---|--|----|---|
| 1 | D C Register | 6 | Councilmember Sharon Ambrose |
| 2 | John Ray Esq
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DC 20005 | 7 | Office of Planning (Ellen McCarthy) |
| 3 | Mark Dixon, Chair
ANC 6C
P O Box 77876
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1116 3rd Street, NE
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ATTESTED BY

Sharon S. Schellin
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO 05 36A
Z C Case No 05-36A
K Street Developers, LLC
(Second Stage PUD – 250 K Street, N E)
July 28, 2008

Pursuant to notice the Zoning Commission for the District of Columbia (the Commission) held a public hearing on May 19 2008 to consider an application from K Street Developers LLC (the Applicant) for review and approval of the second stage of a two stage planned unit development ('PUD) and related zoning map amendment pursuant to Chapters 24 and 30 of the District of Columbia Municipal Regulations (DCMR) Title 11 Zoning (the Zoning Regulations) The proposed project is a mixed use development containing residential uses and ground floor retail uses The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 For the reasons stated below the Commission hereby approves the application with conditions

FINDINGS OF FACT

Application, Parties, and Hearing

- 1 On November 29 2005 200 K Street L P the Applicant's predecessor in interest filed an application requesting preliminary and consolidated approval of a PUD as well as a related map amendment to the C 3 C Zone District for all of Lot 67 in Square 749 (the Subject Property) The original application sought to develop the proposed PUD in two phases The first phase of the development (the 'Phase I PUD) was to be located on the eastern portion of the Subject Property which contains approximately 42 839 square feet of land area (the Phase I Site) The second phase of the development (the Phase II PUD) was to be located on the western portion of the Subject Property which contains approximately 58 263 square feet of land area (the Phase II Site) The Phase I PUD was to contain approximately 236 905 square feet of gross floor area including 202 residential units and approximately 3 699 square feet of ground floor retail space The Phase I PUD was to be constructed to a maximum height of 90 feet and was to include 177 off street parking spaces in an underground garage The Phase II PUD was to contain approximately 612 433 square feet of gross floor area, including 500 residential units and approximately 13 798 square feet of residential use The Phase II PUD was to be constructed to a maximum height of 130 feet from the measuring point on 3rd Street N E and was to include 545 off street parking spaces for use by the building's residents The Phase I PUD and Phase II

PUD would surround an outdoor central plaza that would be available for use by the public between the hours of 11 00 a m and 7 00 p m

- 2 Pursuant to Z C Corrected Order No 05 36 (effective October 13 2006) (First Stage Order) the Commission granted consolidated approval for the first phase of the proposed development and preliminary approval for the second phase of the project That order required the Applicant to file an application for second stage approval of the Phase II PUD within one year of the effective date of the order
- 3 The Applicant is the owner of the Subject Property
- 4 On October 4 2007 the Applicant filed an application for second stage approval of the Phase II PUD
- 5 The Office of Planning (OP) filed a preliminary report dated November 30 2007 (Exhibit 12) The report recommended that the Commission set the application down for a public hearing
- 6 At its public meeting on December 10 2007 the Commission voted to schedule a public hearing on the application
- 7 On March 7 2007 the Applicant filed a prehearing statement and revised architectural plans and elevations dated January 11 2007 The Applicant's prehearing statement addressed a number of issues raised by OP and the Commission at the public meeting on December 10 2007
- 8 Advisory Neighborhood Commission (ANC) 6C voted to approve the Phase II PUD at its regularly scheduled meeting on February 13 2008 The ANC submitted a letter to the Commission dated May 21 2008 (Exhibit 36) recommending approval of the application
- 9 On April 29 2008 the Applicant filed supplemental materials in support of the application including a revised set of architectural plans and elevations dated April 29 2008 (Exhibit 26) These revised plans responded to a number of comments received from OP following the submission of the Applicant's prehearing statement
- 10 On May 9 2008 OP filed a report (Exhibit 27) recommending approval of the second stage PUD subject to the Applicant's resolution of certain outstanding issues
- 11 On May 19 2008 the District Department of Transportation (DDOT) filed a report dated May 14 2008 (Exhibit 29) In its report DDOT requested that the Applicant be granted the flexibility to modify the landscaping and other streetscape improvements located in public space in coordination with DDOT The report stated that DDOT had no objections to the site access or proposed circulation system

- 12 After proper notice the Commission held a public hearing on May 19 2008 The parties to the case were the Applicant and ANC 6C
- 13 The Applicant submitted a number of exhibits at the public hearing on May 19 2008 These exhibits included revised architectural sheets a letter from Smart Start Inc expressing its continued interest in operating the proposed daycare facility in the new development written testimony prepared by the Applicant's land use expert and a document demonstrating that the amount of affordable housing provided in the proposed development would be the same regardless of whether that requirement is calculated on a net to net basis or on a gross to gross basis The Applicant also submitted an affidavit demonstrating compliance with the posting requirements of 11 DCMR § 3015 4
- 14 The Applicant presented eight witnesses at the Commission's hearing on May 19 2008 including Alan D Cohen of ADC Builders on behalf of the Applicant Richard Conrath Colline Hernandez Ayala and Kimberly Lee of GTM Architects (architecture) Jonathan Fitch and Curt Millay of LAB (landscape architecture) Iain Banks of O R George & Associates Inc (transportation) and Steven E Sher Director of Zoning and Land Use Services at Holland & Knight LLP (zoning and land use planning) Based upon their professional experience as evidenced by the resumes submitted for the record and prior appearances before the Commission Messrs Conrath Fitch Banks and Sher were qualified by the Commission as experts in their respective fields At the conclusion of the public hearing the Commission requested additional materials from the Applicant and scheduled a special public meeting on the application for June 16 2008 to decide the case
- 15 At the Commission's request the Applicant submitted supplemental materials in support of the application on June 2 2008 These materials included a revised set of architectural plans and elevations dated June 2 2008 (Exhibit 38) (the Final Plans) The Final Plans addressed a number of issues raised by the Commission during the public hearing on May 19 2008 The Applicant also submitted a supplemental transportation memorandum prepared by O R George & Associates Inc which indicated that any parking demand generated by the retail uses in the proposed project can be adequately accommodated by on street parking spaces adjacent to the site In addition the Applicant submitted materials boards for the Commission's use during the special public meeting on the application Finally the Applicant submitted a revised Leadership in Energy and Environmental Design (LEED) checklist which indicated that the proposed project would qualify for nineteen points on the U S Green Building Council's LEED New Construction 2 2 (LEED NC) rating system
- 16 At a special public meeting on June 16 2008 the Commission took proposed action by a vote of 5 0 0 to approve with conditions the application and the Final Plans

- 17 On June 19 2008 the Applicant submitted a request for modification to the First Stage Order regarding Condition No 8 The Commission assigned the request Z C Case No 05 36B The Commission granted the modification request on July 14 2008 The Commission's order granting the modification requested in Z C Case No 05 36B is published separately This Order describes the PUD as modified
- 18 The proposed action of the Commission was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Home Rule Act NCPC by letter dated July 14 2008 informed the Commission that it considered the Application and took no action on the proposal
- 19 The Commission took final action to approve the application on July 28 2008 by a vote of 3 0 2

The Subject Property, the Surrounding Area, and the Proposed Project

- 20 The Subject Property includes all of Lot 67 in Square 749 and contains approximately 101 102 square feet of land area Square 749 is bounded by 2nd Street to the west L Street to the north 3rd Street to the east and K Street to the south in Northeast Washington D C The Subject Property is located within the C 3 C Zone District and falls within the jurisdiction of ANC 6C The site slopes significantly from northeast to southwest Ground elevations on the Subject Property range from approximately 54 65 feet at the northeast corner of the site to 35 20 feet at the southwest corner of the site
- 21 The Subject Property is located within the North of Massachusetts (NoMA) planning area Most of the adjacent property to the east and south is occupied by rowhouses and other residential uses and is zoned C 2 B while the area to the north is devoted primarily to light industrial uses and is zoned C M 1 and C M 3 The properties located further to the east are located within the R 4 Zone District The Subject Property is located across 2nd Street N E from the Metrorail right of way to the west and is located two blocks south of the New York Avenue Florida Avenue Gallaudet University Metrorail station and five blocks north of Union Station Consistent with the District's policy objectives for the NoMA planning area the surrounding area is currently experiencing significant residential and commercial office development The Subject Property is located within one half mile of two federal agency headquarter buildings the Bureau of Alcohol Tobacco Firearms and Explosives to the north and the U S Security and Exchange Commission to the south
- 22 The PUD is being developed in two separate phases but will be constructed as a single building for zoning purposes The Commission granted consolidated approval of the Phase I PUD in Z C Corrected Order No 05 36 The Phase I PUD is located on the eastern portion of the Subject Property and contains 236 905 square feet of gross floor area including 3 699 square feet of retail space The Phase I PUD is currently under construction and includes 202 residential units and 177 off street parking spaces in an

underground garage This portion of the PUD has a maximum height of 90 feet as measured from 3rd Street N E The Commission also granted preliminary approval of the Phase II PUD on the western portion of the site As originally approved the Phase II PUD contained 612 433 square feet of gross floor area and had a maximum height of 130 feet as measured from 3rd Street N E As originally approved by the Commission the PUD as a whole would contain 849 338 square feet of gross floor area including 17 497 square feet devoted to retail uses

- 23 In response to the Commission's concerns regarding the perceived height and massing of the Phase II PUD the Applicant has eliminated one story from that portion of the building and reduced its maximum height from 130 feet to 121 feet The building will be 12 stories above the measuring point on 3rd Street N E and 14 stories above the sidewalk on 2nd Street N E and K Street N E Setbacks were also introduced on the upper stories The reduction in the height of the building and the related setbacks have reduced the total gross floor area of the Phase II PUD from 612 433 square feet to 555 545 square feet The Phase II PUD will include 415 307 square feet of gross floor contained in approximately 500 residential units as well as 13 801 square feet of gross floor area devoted to retail uses (including a 3 446 square foot daycare center) Additionally the Phase II PUD will contain 13 328 square feet of gross floor area devoted to ancillary residential uses and 113 109 square feet of gross floor area devoted to core and service areas The Phase II PUD will have a density of 5 49 FAR resulting in an overall PUD density of 7 84 FAR less than the 8 4 FAR originally approved
- 24 The Phase II PUD has been designed to minimize the negative impacts of the building's height and mass as experienced from the pedestrian level and complement the character of the surrounding neighborhood Drawing from the local vernacular the brick veneer double story "warehouse" windows stone cornice headers and sills are incorporated into the façade design to integrate the overall building within its surrounding context The façade will read as separate buildings rather than as a single monolithic mass At certain points along the façade the massing at the building's upper levels steps back from the property line to reveal a glazed curtain wall system which reduces the perceived height of the building from the pedestrian level The building's contrasting exterior colors break up the building into smaller masses and soften the structure's appearance against the skyline Both phases of the PUD have similar cornice and masonry detailing that will be repeated throughout the entire project
- 25 The Phase II PUD will include a four level underground garage containing 545 vehicle spaces and 55 bicycle spaces The underground parking garage will be accessed from 2nd Street N E The Phase II PUD will also contain two 55 foot loading berths two 20 foot service/delivery spaces and two 200 square foot loading platforms These loading facilities will also be accessed from 2nd Street N E The Applicant intends to work with DDOT and Zipcar to establish car sharing spaces on the streets surrounding Square 749

- 26 The Phase II PUD will incorporate a number of sustainable design features including a 16 000 square foot green roof and stormwater management system that will increase the building's energy efficiency and reduce the volume of stormwater runoff from the site. The significant landscaping of the development's central plaza will also reduce runoff by minimizing the percentage of the site covered by impervious surfaces. The daycare center's outdoor play area will be surfaced with a recycled poured in place material topped with a resilient layer. The Applicant intends to use low emitting wall coverings, carpeting, and adhesives on the interior of the new building and will install low flow plumbing fixtures in the residential units. Finally, the central plaza and building perimeter will be illuminated by energy efficient LED lighting. Although the building will not be LEED certified, the Commission finds that the proposed project's sustainable design features are superior to what would be provided in a matter of right residential development at this location.
- 27 The Applicant will reserve 10% of the gross floor area devoted to residential units in the Phase II PUD, or approximately 41 558 square feet, for households earning no more than 80% of Area Median Income (AMI) for the time periods set forth in Z.C. Corrected Order No. 05-36. These affordable housing units will be evenly distributed throughout all but the top four floors of the Phase II PUD and will be comparable in exterior design materials and finishes to the market rate units in the building.
- 28 The PUD will surround an outdoor central plaza containing approximately 28 476 square feet of area. The elevated eastern portion of the plaza, which contains approximately 10 721 square feet, will be reserved for use by the residents of the Phase I PUD. Approximately 2 050 square feet of area in the southwest corner of the plaza will be used as an outdoor play area for the daycare center. The remaining portions of the western plaza, containing approximately 15 705 square feet, will be open to the public between the hours of 11 00 a.m. and 7 00 p.m. each day for passive recreational use. The central plaza will include significant landscaping, furniture, and public art displays. The central plaza will be accessed by the public through an arched gateway on 2nd Street N.E.

Flexibility from the Zoning Regulations

- 29 The Applicant requests the following areas of flexibility from the requirements of the C-3-C Zone District and the corresponding PUD standards:
- a relief from the off street parking requirements of 11 DCMR § 2101.1 for the retail uses in the proposed project
 - b relief from the prohibition on multiple roof structures set forth in 11 DCMR § 411.3 and
 - c relief from the roof structure setback requirements of 11 DCMR § 770.6 for two of the four mechanical penthouses on the Phase II PUD

- 30 In Z C Case No 05 36 the Commission granted the Applicant flexibility to allow a five percent increase in the gross floor area of the overall PUD to permit a maximum density of 8.4 FAR. The Commission notes that the overall density for the PUD as a whole has been reduced to 7.84 FAR, which is below the applicable PUD standards for the C 3 C Zone District. The Applicant no longer requires such flexibility.
- 31 Under 11 DCMR § 2101.1 the Applicant is required to provide 14 off street parking spaces for the retail uses in the Phase II PUD. The supplemental memorandum submitted by the Applicant's transportation consultant dated May 30, 2008 (Exhibit 37) indicates that any parking demand generated by the retail uses in the PUD can be fully accommodated by on street parking spaces surrounding Square 749. The Applicant has presented evidence, moreover, that the provision of retail parking spaces in the underground garage would entail significant costs and would create serious security and safety risks for the building's residents. The Commission finds that the costs of strict compliance with the off street parking requirements for the retail uses in the PUD would far exceed any likely benefits.
- 32 The Zoning Regulations provide that all penthouses and mechanical equipment on a building's roof must be placed within a single enclosure that harmonizes with the main structure in architectural character, material, and color (11 DCMR § 411.3). Although the Applicant may provide a separate enclosure for each of the building's two elevator cores, the Phase II PUD will include four separate mechanical penthouses. Multiple enclosures are necessary in this case due to the size of the building, the configuration of the building's mechanical equipment, and location of the planted green roof areas. The Commission further finds that compliance with the single enclosure requirement in this case would only increase the visibility of the structure from the surrounding streets and would have an adverse visual impact on adjacent properties.
- 33 Within the C 3 C Zone District, any structure located on a building's roof must be set back from each of the building's exterior walls by a distance at least equal to the structure's height above the roof upon which it sits (11 DCMR § 770.6). Although the four mechanical penthouses on the roof of the Phase II PUD will be set back at least that distance from all of the building's street facing walls, two of the penthouses will not be sufficiently set back from the walls of the building's interior courtyard. The Commission finds that the placement of these penthouses is dictated by the location of the Phase II PUD's stairway and elevator cores, and that it would be impractical to relocate these two enclosures to comply with the setback requirement.

Reports of the D C Office of Planning

- 34 OP filed a preliminary report on the application dated November 30, 2007 (Exhibit 12). The report recommended that the Commission set the application down for public hearing.

and requested that the Applicant provide additional information and materials on the proposed project prior to the hearing

35 OP filed its final report on the application (Exhibit 27) on May 9 2008 The report recommended that the Commission approve the application subject to the resolution of the following issues

- a OP asked the Applicant to revise the architectural plans to more clearly illustrate the connections between the Phase I PUD and the Phase II PUD to ensure that the entire project would function as a single building for zoning purposes As illustrated on Sheets A1 02a through A1 09a of the Final Plans the first and second phases of the development will be connected at every floor The Commission finds that the Phase I PUD and the Phase II PUD constitute a single building for zoning purposes
- b OP asked the Applicant to discuss whether calculating the 10% affordable housing requirement on a net to net basis rather than on a gross to gross basis would result in less affordable housing The Applicant's land use expert submitted written testimony dated May 19 2008 (Exhibit 31) at the Commission's public hearing That testimony included an attachment demonstrating that the calculation of the affordable housing requirement on a net to net basis does not result in any diminution in the amount of affordable housing that is provided The Commission finds that the provision of 41 558 square feet of affordable housing in the Phase II PUD satisfies the 10% affordable housing requirement set forth in Z C Corrected Order No 05 36
- c OP asked the Applicant to establish a minimum square footage for each type of affordable dwelling unit Because the size and configuration of the market rate dwelling units in the proposed development have not been finalized the Commission will not establish a minimum requirement for the size of the affordable units in the Phase II PUD During the public hearing on the application the Applicant testified that the gross floor area of each affordable housing unit would be no less than 95% of the average gross floor area of market rate units of the same type
- d OP asked the Applicant to explain why the core and service areas represented such a high percentage of the development's gross floor area According to the Final Plans the building's core and service areas contain approximately 113 109 square feet of gross floor area which represents approximately 20% of the project's total gross floor area These areas include the building's elevators stairs corridors administrative areas loading areas trash rooms utility rooms and storage areas Although the core and service areas in other buildings typically represent approximately 15% of a building's gross floor area the Applicant explained that the size and configuration of these areas is dictated by the need for multiple egress stairways and by the location of the central elevator and stair cores The placement of these circulation cores in turn was made necessary by the location of the garage entry previously approved by the Commission

in Corrected Order No 05 36 Furthermore the covered arched walkway to the central plaza is included in the project s density along with an indoor swimming pool and two sets of loading berths

- e OP asked the Applicant to explain why the eastern portion of the central plaza would not be open to the public and whether any other public benefits would be provided to justify this reduction in public access The Applicant testified that the elevated eastern portion of the central plaza is surrounded by dwelling unit windows Opening this portion of the central plaza to the public would compromise the privacy and safety of the Phase I PUD s residents
- f OP requested that the Applicant continue to work with DDOT to refine the design of the landscaping and other improvements located in public space and recommended that the Commission grant the Applicant the flexibility to modify the design of the ground floor of the proposed project as well as improvements within the adjacent public space along K Street N E

Report of the District Department of Transportation

- 36 DDOT filed a report dated May 14 2008 (Exhibit 29) recommending approval of the application In its report DDOT requested that the Commission grant the Applicant the flexibility to work with DDOT on the final design of the landscaping and other streetscape improvements located in public space adjacent to the proposed project

Reports of Advisory Neighborhood Commission 6C

- 37 ANC 6C submitted a letter to the Commission dated February 19 2008 (Exhibit 13) reporting that the ANC voted to recommend approval of the proposed project at its regularly scheduled public meeting on February 13 2008 Although the letter stated that all nine commissioners had participated in the ANC s consideration of the project it did not indicate the number of commissioners who actually voted in support of the application The Commission requested that ANC 6C submit an additional letter for the record providing such information
- 38 ANC 6C submitted a supplemental letter to the Commission dated May 21 2008 (Exhibit 36) indicating that the ANC had voted 8 1 0 to recommend approval of the proposed project at its public meeting on February 13 2008

Testimony in Support and Opposition

39 No other parties testified in support of or opposition to the application

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations the PUD process is designed to encourage high quality development that provides public benefits (11 DCMR § 2400 1) The overall goal of the PUD process is to permit flexibility of development and other incentives provided that the PUD project offers a commendable number or quality of public benefits and that it protects and advances the public health safety welfare and convenience (11 DCMR § 2400 2)
- 2 Under the PUD process of the Zoning Regulations the Commission has the authority to consider this application as a two stage PUD The Commission may impose development conditions guidelines and standards that may exceed or be less than the matter of right standards identified for height density lot occupancy parking loading yards and courts The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment
- 3 The proposed development carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable in a matter of right development
- 4 The proposed PUD meets the minimum area requirements set forth in § 2401 1 of the Zoning Regulations
- 5 The PUD is within the applicable height and density standards approved by the Commission in Z C Corrected Order No 05 36 Indeed the Applicant has significantly reduced the height and density of the Phase II PUD below what was approved in Z C Corrected Order No 05 36 The height and density of the proposed project will not cause an adverse impact on any nearby properties The proposed mixed use development is appropriate for this site which is located in close proximity to public transportation and is adequately served by existing public services and facilities
- 6 The Applicant's request for flexibility from the Zoning Regulations is consistent with the present character of the surrounding area and are not inconsistent with the Comprehensive Plan The Commission concludes that the project's benefits and amenities represent a reasonable tradeoff for the requested development flexibility
- 7 Approval of this application is appropriate because the proposed development is consistent with the present character of the area and will promote the orderly development of the site

in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map

- 8 Approval of this application and the related map amendment is not inconsistent with the Comprehensive Plan or with the site's designation for medium density residential land uses on the Future Land Use Map
- 9 The Final Plans are consistent with the conditions set forth in the Z C Corrected Order No 05 36 as modified by Z C Order No 05 36B
- 10 Pursuant to 11 DCMR § 2608.2 all other provisions of Chapter 26 of the Zoning Regulations Inclusionary Zoning do not apply to this application because it was set down for hearing prior to March 14 2008
- 11 This application is subject to compliance with D C Law 2 38 the Human Rights Act of 1977
- 12 The Commission is required under D C Official Code § 1 309 10(d)(3)(A) to give great weight to the issues and concerns raised by the affected ANC in its written report The Commission has carefully considered the report submitted by ANC 6C and concurs in its recommendation of approval

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein the Zoning Commission orders **APPROVAL** of the application for second stage review and approval of a Planned Unit Development on a portion of Lot 67 in Square 749 This approval is subject to the following guidelines conditions and standards

- 1 The PUD shall be developed in accordance with the architectural plans and elevations dated June 2 2008 and marked as Exhibit 38 of the record in this case (the Final Plans) and as modified by the guidelines conditions and standards of this Order The Applicant shall have the flexibility to modify the design of the PUD in the following areas
 - a To vary the location and design of all interior components including partitions structural slabs doors hallways columns stairways mechanical rooms elevators and bathrooms provided that the variations do not change the exterior configuration of the building
 - b To vary the final selection of the exterior materials within the color ranges and material types as proposed based on availability at the time of construction without reducing the quality of the materials

- c To make minor refinements to exterior details and dimensions including balcony enclosures belt courses sills bases cornices railing and trim or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit
 - d To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation
 - e To increase or decrease the overall number of residential units by no more than five percent provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Z C Corrected Order No 05 36 and
 - f To vary the number and location of parking spaces in the underground garage provided that the total number of parking spaces is no less than 545 vehicle spaces and 55 bicycle spaces
- 2 The Phase II PUD shall have an overall density of no more than 5.49 FAR. The development shall contain approximately 555,545 square feet of gross floor area including 13,801 square feet devoted to retail uses. The retail uses in the building shall include a daycare center containing at least 3,446 square feet of gross floor area.
 - 3 The Phase II PUD shall have a total height of no more than 121 feet as measured from the measuring point on 3rd Street N E identified on Sheet C 6 of the Final Plans. Each floor in the Phase II PUD shall have a minimum floor to ceiling height of no less than eight feet six inches.
 - 4 The Phase II PUD shall provide a green roof covering at least 16,000 square feet of surface area on the building's roof.
 - 5 The ground floor retail space in the Phase II PUD shall have a clear floor-to-ceiling height of no less than 14 feet.
 - 6 No less than 10% of the gross floor area devoted to residential units in the Phase II PUD shall be reserved for households earning no more 80% of Area Median Income (AMI) and for the time frames set forth in Z C Corrected Order No 05 36.
 - 7 The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve at a minimum the goal of 35% percent participation by local small and disadvantaged

business enterprises in the contracted development costs associated with the design development construction and security for the PUD project

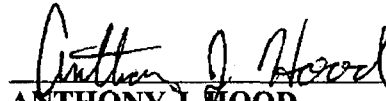
- 8 The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD project
- 9 The Owner is required to comply fully with the provisions the D C Human Rights Act of 1977 D C Law 2 38 as amended D C Official Code § 2 1401 01 *et seq* (the Act) This Order is conditioned upon full compliance with those provisions In accordance with the Act the District of Columbia does not discriminate on the basis of actual or perceived race color religion national origin sex age marital status personal appearance sexual orientation gender identity or expression familial status family responsibilities matriculation political affiliation genetic information disability source of income or place of residence or business Sexual harassment is a form of sex discrimination that is prohibited by the Act In addition harassment based on any of the above protected categories is prohibited by the Act Discrimination in violation of the Act will not be tolerated Violators will be subject to disciplinary action The failure or refusal of the Owner to comply shall furnish grounds for denial or if issued revocation of any building permits or certificates of occupancy issued pursuant to this Order
- 10 No building permit shall be issued for the construction of any improvements pursuant to this Phase II PUD until the owner of the Subject Property has recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs
- 11 The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this order Within such time an application must be filed for a building permit as specified in 11 DCMR §§ 2408 8 and 2409 1 Construction shall begin within three (3) years of the effective date of this Order

On June 16 2008 the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5 0 0 (Anthony J Hood Curtis L Etherly Jr Gregory N Jeffries and Peter G May to approve Michael G Turnbull to approve by absentee ballot)

The Order was **ADOPTED** by the Zoning Commission at its public meeting on July 28 2008 2008 by a vote of 3 0 2 (Anthony J Hood Michael G Turnbull and Peter G May to adopt Gregory N Jeffries and Curtis L Etherly Jr not present not voting)

Z C ORDER NO 05 36A
Z C CASE NO 05 36A
PAGE 14

In accordance with the provisions of 11 DCMR § 3028 this order shall become final and effective upon its publication in the *D C Register* that is on NOV 14 2006


ANTHONY J HOOD
CHAIRMAN
ZONING COMMISSION


JERRILY R KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z C CASE NO 05-36A

As Secretary to the Commission, I hereby certify that on **NOV 13 2008** copies of this Z C Order No 05 36A were mailed first class postage prepaid or sent by inter office government mail to the following

- | | | | |
|---|--|----|---|
| 1 | <i>DC Register</i> | 6 | Councilmember Tommy Wells |
| 2 | Norman Glasgow Esq
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Washington DC 20006 | 7 | Office of Planning (Harnet Tregoning) |
| 3 | Karen Wirt Chair
ANC 6C
P O Box 77876
Washington, DC 20015 7787 | 8 | DDOT (Karina Ricks) |
| 4 | Commissioner Anne Phelps
ANC/SMD 6C04
1150 5 th Street, NE
Washington, DC 20002 | 9 | Zoning Administrator (Matthew LeGrant) |
| 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue NW
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| | | 11 | Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY

Sharon S Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO

05-36A

EXHIBIT

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District of Columbia
CASE NO. 05-36A
EXHIBIT NO. 43

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-36B
Z.C. Case No. 05-36B
K Street Developers, LLC
Modification of a Planned Unit Development at 200 K Street, N.E.
July 14, 2008

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 14, 2008. At the meeting, the Commission approved an application from K Street Developers, LLC (the "Applicant") for a modification to an approved planned unit development ("PUD") for property located at 200 K Street, N.E. (Lot 67 in Square 749). Because the modification was deemed minor, a public hearing on the request was not required. The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

On November 29, 2005, the Applicant filed an application requesting preliminary and consolidated approval of a PUD and a related map amendment to the C-3-C Zone District for all of Lot 67 in Square 749 (the "Subject Property"). In Z.C. Corrected Order No. 05-36 (effective October 13, 2006), the Commission granted consolidated approval for the portion of the project located on the eastern portion of the site ("Phase I") and preliminary approval for the portion of the project located on the western portion of the site ("Phase II"). Condition No. 8 of the Commission's order applied to both phases of the project and required, *inter alia*, the provision of an outdoor central plaza containing approximately 27,000 square feet of land area that would be available for passive recreational use by the public between the hours of 11:00 a.m. and 7:00 p.m.

On October 4, 2007, the Applicant filed an application for second-stage approval of Phase II. As currently designed, the proposed project will include an outdoor central plaza containing approximately 28,476 square feet of land area in both phases. Although the portion of the plaza located within Phase II will be open to the public between the hours of 11:00 a.m. and 7:00 p.m. each day, the Applicant now requests that the use of the elevated terrace located within Phase I be limited to the residents of Phase I. Because the windows of residential units are located at ground level along the perimeter of the elevated terrace, the Applicant claims that public access to that area would compromise the safety and privacy of the building's residents.

During the public hearing on the second-stage PUD application for Phase II on May 19, 2008, the Applicant requested that the Commission provide "flexibility" from Condition No. 8 of Z.C. Corrected Order No. 05-36. The Applicant's proposal to restrict public access to the elevated

terrace within the central plaza was discussed extensively during the proceedings on the second-stage PUD application for Phase II, and the Office of Planning ("OP") concluded that the loss of public access to this portion of the plaza was more than offset by other project amenities.

However, because the Applicant seeks to limit public access to the portion of the central plaza located within Phase I and because the proceeding in Z.C. Case No. 05-36A applies only to Phase II, the Office of the Attorney General ("OAG") concluded that the Applicant should file an application for a modification of Z.C. Corrected Order No. 05-36 as to Phase I.

The Applicant therefore requested the modification to Condition No. 8 in Z.C. Corrected Order No. 05-36 as described above. Although, the proposed modification would limit access to the portion of the central plaza located within Phase I to the residents of Phase I, the majority of the central plaza will remain open to the public. No other aspects of the proposed project will be changed, and the Applicant has stated that it will observe all other conditions of Z.C. Corrected Order No. 05-36. The modifications proposed by the Applicant are fully consistent with the central plaza conditions approved in Z.C. Case No. 05-36A.

There was no opposition to this minor modification request. Advisory Neighborhood Commission ("ANC") 6C, the ANC in which the property is located, was served by the Applicant with a copy of the requested modification but did not submit a written report. The Commission did not request a written report from OP.

On July 14, 2008, at its regular monthly meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the minor modification to Z.C. Corrected Order No. 05-36. The Commission concurs with the Applicant that the approval of the requested modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission finds that the proposed modification is minor and consistent with the intent of the previously approved PUD in Z.C. Corrected Order No. 05-36. Further, the Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purposes of the Zoning Regulations.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the proposed modification does not impact the essential elements of the approved PUD, including use, height, gross floor area, lot occupancy, setbacks, or number of off-street parking spaces. The material facts relied upon by the Commission in approving the PUD have not changed, and the modification request is of such a minor nature that its consideration as a Consent Calendar item without a public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a minor modification to the approved PUD. Condition No. 8 of Z.C. Corrected Order No. 05-36 is hereby revised to read as follows:

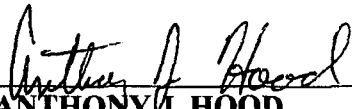
8. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. ~~¶~~**With the exception of the proposed daycare center's outdoor play area, the portion of the central plaza located within the Preliminary PUD** shall be opened to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. **This portion of the plaza shall be accessible to the public through a 2nd Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. Use of the portion of the central plaza located within the Consolidated PUD shall be limited to the residents of the Consolidated PUD.** In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 et seq., and Advisory Neighborhood Commission 6C.

Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs ("DCRA") for the minor modification until the Applicant has recorded a "Notice of Modification" of Z.C. Corrected Order No. 05-36 in the land records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Corrected Order No. 05-36 and this Order (Z.C. Order No. 05-36B), which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the site in accordance with this Order and any amendments thereof by the Zoning Commission.

This application was approved by the Zoning Commission at its public meeting on July 14, 2008, by a vote of 5-0-0 (Anthony J. Hood, Michael G. Turnbull, Gregory N. Jeffries, and Curtis Etherly, Jr. to approve; Peter G. May to approve by absentee ballot).

Z.C. ORDER NO. 05-36B
Z.C. CASE NO. 05-36B
PAGE 4

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on NOV 14 2008.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



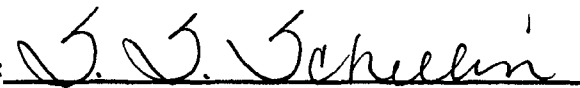
Z.C. CASE NO.: 05-36B

As Secretary to the Commission, I hereby certify that on **NOV 13 2008** copies of this Z.C. Order No. 05-36B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Councilmember Tommy Wells |
| 2. Norman Glasgow, Esq.
Holland & Knight LLP
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006 | 7. Office of Planning (Harriet Tregoning) |
| 3. Karen Wirt, Chair
ANC 6C
P.O. Box 77876.
Washington, DC 20015-7787 | 8. DDOT (Karina Ricks) |
| 4. Commissioner Anne Phelps
ANC/SMD 6C04
1150 5 th Street, N.E.,
Washington, DC 20002 | 9. Zoning Administrator (Matthew LeGrant) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. General Counsel - DCRA
941 North Capitol Street, N.E.
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| | 11. Office of the Attorney General
(Alan Bergstein) |

ZONING COMMISSION
District of Columbia
CASE NO. 05-36B
EXHIBIT NO. 7

ATTESTED BY:


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ZONING COMMISSION
District of Columbia
CASE NO. 05-36B
EXHIBIT NO 7

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-36C

Z.C. Case No. 05-36C

Union Place I, LLC

(Modification to a Consolidated Planned Unit Development at 200 K Street, N.E.)

December 14, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on December 14, 2009. At the meeting, the Commission approved an application from Union Place I, LLC (the "Applicant") requesting a modification to an approved planned unit development ("PUD") in Square 749 bounded by 2nd, K, 3rd, and L Streets N.E., pursuant to Chapter 24 and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Corrected Order No. 05-36, the Commission on April 20, 2006, approved a consolidated PUD, first-stage PUD and related Zoning Map Amendment for the property located in the entirety of Square 749 bounded by 2nd, K, 3rd, and L Streets N.E. The consolidated PUD, located on the eastern portion of the site, is a residential building containing 212 residential units with ground-floor retail space. Pursuant to 11 DCMR § 3028, Z.C. Corrected Order No. 05-36 became final and effective upon publication in the D.C. *Register* ("DCR") on October 13, 2006.
2. Z.C. Corrected Order No. 05-36 requires the Applicant to set aside 30 residential units in the consolidated PUD as affordable units for eligible households with household incomes of no more than 80% of the Area Median Income ("AMI"), as adjusted annually by the U.S. Department of Housing and Urban Development. The affordable units were to be guaranteed by covenant between the Applicant and the District of Columbia, and the covenant was to be the same as the Draft Covenant submitted as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised only to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the consolidated PUD.
3. The Applicant recorded the planned unit development and Affordable Housing Covenant ("Covenant") in the land records of the District of Columbia in the form approved by the Commission in Z.C. Corrected Order No. 05-36. The Covenant requires that the sale

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prices and terms or the rental rate, as applicable, of the affordable units shall be determined by the District of Columbia Department of Housing and Community Development ("DHCD") in accordance with regulations applicable to the District's Affordable Housing Program so as to assure that the monthly housing payment of the buyer or renter shall not exceed 30% of the buyer's or renter's monthly household income, as defined by DHCD.

4. The Applicant retained the consulting services of the Cultural Development Corporation to devise plans to attract artists as tenants of the affordable units in the consolidated PUD in furtherance of the Arts and Culture Element of the 2006 Comprehensive Plan and other District policies promoting the development of affordable housing for arts professionals.
5. DHCD notified the Applicant on October 15, 2009, that the Covenant would prohibit any consolidated PUD affordable-unit tenant from spending more than 30% of household income for housing cost.
6. The Applicant on October 29, 2009, submitted this request for minor modification of Z.C. Corrected Order 05-36 in order to permit the Applicant to amend the Covenant to allow consolidated PUD tenants to spend more than 30% of their monthly household income for housing cost if they choose to do so. The Applicant stated that the Covenant amendment is necessary to provide the flexibility to accommodate arts professionals, as well as other prospective tenants, whose household incomes may be less than 80% of AMI. The Applicant submitted a clarifying supplement to the request for minor modification on November 12, 2009.
7. The District of Columbia Office of Planning ("OP"), after reviewing the Applicant's request, submitted an initial report on November 13, 2009, which concluded that the household income limitation in the Covenant is overly restrictive and that a Covenant amendment would be appropriate to permit the flexibility needed to accommodate arts professionals with fluctuating incomes. However, OP determined that the Covenant amendments proposed by the Applicant in the request for minor modification would not accomplish the intended purpose and would not satisfy the requirements of 11 DCMR § 3030 for Consent Calendar consideration as a minor modification.
8. On December 4, 2009, the Applicant submitted a revised request for minor modification with revisions of the proposed Covenant amendments to accommodate OP concerns and recommendations.
9. OP, after reviewing the Applicant's revised request, submitted an additional report on December 8, 2009, which recommended that the Commission approve the Applicant's request, with minor revisions to which the Applicant has agreed, as a minor modification.
10. OP stated at the Commission's public meeting on December 14, 2009, that the revised Covenant amendments, as finally agreed upon by OP and the Applicant, accomplish the

intended purpose and qualify as a minor modification. OP recommended Commission approval of amendments to strike the existing paragraphs 3 and 4 of the Covenant and replace them with the following new paragraphs 3 and 4:

“3. Affordable Housing-Household Eligibility Standards. Notwithstanding the fact that the Project is not subject to the Inclusionary Zoning Program (“IZ”) by virtue of its being set down for hearing prior to March 14, 2008, Developer covenants that during the applicable control periods the affordable units shall be reserved for purchase by or rental to eligible households.

“Eligible households are defined as those households which as of the date of the sales agreement or as of the date of the initial lease, or any renewal or extension thereof, meet the following requirement:

“a. The household’s annual income, as certified in writing by DHCD or a certifying entity within the meaning of 11 DCMR § 2214, does not exceed 80% of the Area Median Income (AMI) for the Washington, D.C., Metropolitan Statistical area and adjusted for family size, as determined and published annually by the U.S. Department of Housing and Urban Development. For the purposes of determining a household’s “annual” income at the time of lease renewal or extension, “annual income” shall be the household’s income averaged over the household’s previous two years of income.

“b. For a for-sale unit, the household will not expend more than forty-one percent (41%) of its annual income on mortgage payments, insurance, taxes, and condominium and homeowner association fees for the applicable unit;

“c. For a rental unit, the household will not expend more than thirty-eight percent (38%) of its annual income on rent and utilities if not included in the rent for the applicable unit;

“d. Each household member will occupy or has occupied the unit as his or her principal residence; and

“e. The household has no ownership interest in any other housing or will divest such interest before closing on the purchase of, or signing the lease for, the unit.

“Except for the rental and price requirements of paragraph 4, no other requirement of IZ applies to the Project, unless “a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more”, 11 DCMR § 2601.1 (c) (iii).

“4. Affordable Housing Unit Cost. Developer covenants that the sale price and terms or the rental rate, as applicable, of the affordable units shall be as follows:

- “(a) For a for-sale unit, the initial sale price shall be that stated for the applicable unit size in the Rent and Price Schedule in place on the date of the sales agreement. The price for a re-sale of any such unit shall be determined by DHCD pursuant to the formula set forth at 14 DCMR § 2218.
- “(b) For a rental unit, the rental charge shall be that stated for the applicable unit size in the Rent and Price Schedule in place on the date the initial lease was executed or renewed or extended as applicable.

“For the purposes of this condition, the term “Rent and Price Schedule” means the rent and price schedule published in the D.C. Register pursuant to § 103(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(b)).”

11. The Applicant delivered copies of the request for minor modification and the clarifying supplement to Advisory Neighborhood Commission (“ANC”) 6C, which represents the area in which the consolidated PUD is located. On November 16, 2009, ANC 6C submitted a letter to the Commission stating that the ANC voted 5-0-0 to support the Applicant’s request at its regularly scheduled, duly-noticed monthly meeting on November 12, 2009. The Applicant served ANC 6C with copies of its revised request for minor modification on December 4, 2009; ANC 6C submitted no additional comments to the Commission.
12. On December 14, 2009, at its regular public meeting, the Commission reviewed the modification request as a Consent Calendar matter and granted approval of the minor modification to Z.C. Corrected Order 05-36. The Commission concurs with the Applicant and OP that the approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved Z.C. Corrected Order No. 05-36.

Further, the Commission concludes that its decision is in the best interests of the District of Columbia and is consistent with the intent, purpose, and integrity of the Zoning Regulations and Zoning Map.

The approval of the modification is not inconsistent with the Comprehensive Plan.

The proposed modification does not affect any of the other conditions to the approved PUD. The modification is minor such that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification of an approved PUD in Square 749, bounded by 2nd, K, 3rd, and L Streets N.E.

Condition No. 13 of Z.C. Corrected Order 05-36 is modified to read:

“13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised **only** to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD **and further revised as set forth in No. 10 of the Findings of Fact of Z.C. Order No. 05-36C.**”

Pursuant to the intent of 11 DCMR § 2409.3, this modification shall not become effective until a Notice of Modification of Z.C. Corrected Order No. 05-36 is filed in the Land Records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Corrected Order No. 05-36 and this Order (Z.C. Order No. 05-36C) which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the PUD site in accordance with this modification order and any amendments thereof. Because the construction of the building is already under way, this minor PUD modification shall be fully vested upon the filing of the Notice of Modification.

After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of the Notice of Modification with the Office of Zoning.

On December 14, 2009, upon the motion made by Chairman Hood, as second by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating III, Konrad W. Schlater, Michael J. Turnbull, and Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become final and effective upon publication in the *D.C. Register*, that is, on March 5, 2010.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO 05 36D
Z C Case No 05 36D
K Street Developers, LLC
(Extension to Approved Planned Unit Development 250 K Street, N E)
November 8, 2010

Pursuant to notice a public meeting of the Zoning Commission for the District of Columbia (the Commission) was held on November 8 2010 At that meeting the Commission approved an application from K Street Developers LLC (the Applicant) for extension of time to a previously approved planned unit development (PUD) and Zoning Map amendment in Lot 67 in Square 749 which is bounded by 2nd 3rd K and L Street, N E (the Property) pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR)

FINDINGS OF FACT

- 1 By Z C Order No 05 36 effective October 10 2006 the Commission granted first stage PUD approval to permit the construction of a two phase apartment development around an outdoor central plaza with a total of approximately 702 dwelling units including 78 units restricted for affordable housing ground-floor retail and daycare uses with a total gross floor area of 850 000 square feet on a site measuring approximately 101 000 square feet The two phases of the Applicant's overall project are being constructed as a single building for zoning purposes with the second phase being constructed as an addition to the first phase At the same time that it granted first stage approval for the overall project the Commission granted consolidated approval for the Applicant to move forward with the first phase of the total project Construction of this first phase has now been timely completed and is in process of being leased and occupied
- 2 By Z C Order No 05 36A effective November 14-2008 the Commission granted second stage approval for the project's second phase consisting of 500 dwelling units (including 50 dedicated affordable housing units) and approximately 14 000 square feet of retail uses to be constructed on the western portion of the Property The resulting density of the overall project is 7.49 floor area ratio (F A R) and the approved height is 121 feet
- 3 By Z C Order No 05 36B also with an effective date of November 14 2008 the Commission approved minor modification to the first phase of the PUD to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only

ZONING COMMISSION
District of Columbia

CASE NO 05 36D

EXHIBIT NO 9

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Web Site www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.05-36D
EXHIBIT NO.9

- 4 By ZC Order No 05-36C with an effective date of March 5 2010 the Commission approved minor modification to the PUD to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals
- 5 By letter dated and received by the Commission October 8 2010 the Applicant filed a request to extend the validity of the PUD approval for a period of two years such that a building permit application for the second phase of the PUD must be filed no later than November 14 2012 and construction must start no later than November 14 2013 The letter indicates that the basis for extension of the validity of the PUD is as follows
 - The Applicant has made extensive efforts to engage and secure project financing from a number of potential capital partners both domestic and foreign While those interactions have encouraged the Applicant that the recent volatility in the financial markets may be diminishing especially in the metropolitan DC market investors have yet to commit to Phase Two of the overall project The Applicant notes that it continues to work with potential investors to obtain necessary project financing including the possibility of restructuring the phasing of development of Phase Two
 - The Project has not changed in any significant form The use height density and other zoning parameters have not changed The community benefits proffered have not changed The only potential change proposed by the Applicant is the above mentioned restructuring of the phasing of construction of Phase Two which does not rise to the level of substantial change in material facts that would undermine the Commission's justification for approving the original PUD The Applicant is not aware of any material factual conflict generated as a result of the PUD
- 6 The District of Columbia Office of Zoning referred this matter to the Office of Planning (OP) for analysis and recommendation By memorandum dated October 29 2010 OP stated its support for approval of the requested time extension
- 7 The Commission did not receive a written report by the affected Advisory Neighborhood Commission (ANC) 6C However the representative of the ANC single member district 6C04 submitted a letter to the Commission dated October 29 2010 indicating support for the extension and recommending that the Commission approve the requested extension
- 8 Pursuant to notice a public meeting of the Commission was held on November 8 2010 At the meeting the Commission considered the request of the Applicant and the recommendations of OP and ANC 6C04

CONCLUSIONS OF LAW

Pursuant to § 2408 10 of the Zoning Regulations the Zoning Commission may extend the validity of the PUD approval for good cause shown upon a request made before the expiration of the approval

Section 2408 10 (a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the original PUD application ANC 6C when it filed the time extension application on October 8 2010. As noted no ANC report was received although the Commission did receive a letter from the Single Member Commissioner for ANC 6C04 expressing support of the time extension request into the record of the case.

Section 2408 10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. The Commission concludes that extending the time period of approval is appropriate as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally § 2408 10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension. Subsection 2408 11 identifies three means by which good cause may be shown and requires substantial evidence as to each. The first of these is an inability to obtain sufficient project financing for the PUD following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control (24 DCMR § 2408 (a)). Upon consideration of the record in this application the Commission concludes that the Applicant has sufficiently demonstrated an inability to obtain sufficient project financing for the PUD because of changes in economic and market conditions beyond the Applicant's reasonable control.

Section 2408 12 of the Zoning Regulations provides that the Commission shall hold a public hearing on a request for an extension of the validity of a PUD only if in the determination of the Commission there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408 11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute. The Commission concludes that there is no material factual conflict in issue and that consideration of the request for extension is appropriate without need for a public hearing.

The Commission concludes that an extension of time of the validity of the PUD is in the best interests of the District of Columbia and is consistent with the intent and purposes of the Zone Plan.

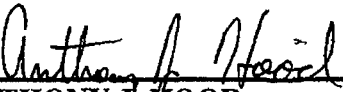
The Commission is required under § 5 of the Office of Zoning Independence Act of 1990 effective September 20 1990 (DC Law 8 163 D C Official Code § 6 623 04) to give great weight to OP recommendations (as discussed in paragraph 6 above) OP recommended approval of the time extension request and the Commission concurs in its recommendation and therefore gives OP the great weight to which it is entitled

DECISION

In consideration of the reasons set forth in this order the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two year time extension of an approved PUD for Lot 67, Square 749 at 250 K Street N E In order for this PUD to remain valid a building permit application for the second phase¹ of the PUD must be filed not later than November 14 2012 with construction to commence not later than November 14 2013

On November 8 2010 upon the motion of Commissioner May as seconded by Commissioner Turnbull the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5 0 0** (Anthony J Hood Konrad W Schlater Peter G May Greg M Selfridge and Michael G Turnbull to approve)

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 May 27 2011



ANTHONY J HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L WEINBAUM
DIRECTOR
OFFICE OF ZONING

¹ Subsequent to the Commission's decision in this case the Commission approved a modification to the PUD See Z C Order No 05 36E which is being published concurrently with this Order Among other things the modification bifurcates the second phase into a Phase II A and a Phase II B For the purposes of this Order the phrase a building permit application for the second phase of the PUD means a building permit application for Phase II A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z C CASE NO 05 36D/05 36E

MAY 25 2011

As Secretary to the Commission I hereby certify that on MAY 25 2011 copies of these Z C Order Nos 05 36D & 05 36E were mailed first class postage prepaid or sent by inter office government mail to the following

- | | | | |
|---|---|---|---|
| 1 | <i>D C Register</i> | 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue N W
Washington D C 20004 |
| 2 | Norman Glasgow Jr
Holland & Knight
2099 Pennsylvania Ave N W
Suite 100
Washington D C 20006 | 6 | Councilmember Tommy Wells |
| 3 | Karen Wirt Chair
ANC 6C
P O Box 77876
Washington D C 20013 | 7 | DDOT (Karina Ricks) |
| 4 | Commissioner Ann Phelps
ANC/SMD 6C04
1150 5 th Street N E
Washington D C 20002 | 8 | Melinda Bolling Acting General Counsel
DCRA
1100 4 th Street S W
Washington D C 20024 |
| | | 9 | Office of the Attorney General (Alan Bergstein) |

ATTESTED BY

A handwritten signature in dark ink, appearing to read "S S Schellin", is written over a horizontal line.

Sharon S Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-36E

Z.C. Case No. 05-36E

K Street Developers, LLC

(Modification to Approved Planned Unit Development - 250 K Street, N.E.)

December 13, 2010

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 29, 2010. At that meeting, the Zoning Commission considered an application from K Street Developers, LLC (the "Applicant"), for modification to a previously approved planned unit development ("PUD") and related Zoning Map amendment in Lot 67 in Square 749, which is bounded by 2nd, 3rd, K, and L Streets, N.E. (the "Property"), pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR). Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations. The Commission deferred action until its December 13, 2010, public meeting, at which time the Commission voted unanimously to grant the application.

FINDINGS OF FACT

1. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval to permit the construction of a two-phase apartment development around an outdoor central plaza, with a total of approximately 702 dwelling units, including 78 units reserved for affordable housing, ground-floor retail, and daycare uses, with a total gross floor area of 850,000 square feet on a site measuring approximately 101,000 square feet. The two phases of the Applicant's overall project are being constructed as a single building for zoning purposes, with the second phase being constructed as an addition to the first phase.
2. At the same time that it granted first stage approval for the overall project, the Commission granted consolidated approval for the Applicant to move forward with the first phase of the total project. Construction of this first phase has now been timely completed and is in process of being leased and occupied.
3. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval for the project's second phase, consisting of 500 dwelling units (including dedicated affordable housing units) and approximately 14,000 square feet of retail uses to be

ZONING COMMISSION
District of Columbia

CASE NO. 05-36E
ZONING COMMISSION

EXHIBIT NO. 12
District of Columbia

CASE NO. 05-36E
EXHIBIT NO. 12

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

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constructed on the western portion of the Property. The resulting density of the overall project is 7.49 floor area ratio ("FAR"), and the approved height is 121 feet.

4. By Z.C. Order No. 05-36B, also with an effective date of November 14, 2008, the Commission approved minor modification to the first phase of the PUD, to restrict access, for safety purposes, to a small portion of the outdoor plaza to project residents only.
5. By Z.C. Order No. 05-36C, with an effective date of March 5, 2010, the Commission approved minor modification to the PUD to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals.
6. By Z.C. Order No. 05-36D with an effective date of May 27, 2011, the Commission extended the validity of the second-stage PUD approval granted in Z.C. Order No. 05-36A, to November 14, 2012, within which time application must be made for a building permit, and with construction to commence not later than November 14, 2013. Z.C. Order 05-36D is being published concurrently with this Order, and, as explained in its footnote one, contemplates the phasing of the second phase as granted in this order.
7. By letter dated October 28, 2010, the Applicant requested minor modification to the second-stage PUD approval granted for the second phase of the project in Z.C Order No. 05-36A. In support of this request, the Applicant noted difficulty it is experiencing in moving forward with its development and financing plans for the PUD's second phase given the uncertain economic climate impacting development financing and the comparative scale of the second phase of the PUD (500 dwelling units in second phase as compared to 212 constructed units in first phase). As a result, the Applicant has developed a phasing plan for this second stage of the PUD to allow it to be developed in two smaller sub-phases (Phase II-A and Phase II-B) in efforts to allow the project to be more readily and favorably financed and constructed.
8. According to the Applicant's phasing plan, as provided in its October 28, 2010, letter, the overall design of the second phase of the PUD remains unchanged in terms of building envelope and appearance. Upon completion of Phases II-A and II-B, the second phase will contain 500 dwelling units and approximately 14,000 square feet of retail uses (including daycare). Fifty affordable housing units are still proposed. No change in building materials is proposed, nor is there any reduction in overall scope of the project. All the approved PUD amenities will remain unchanged. The Applicant proposes to first construct that portion of the second phase closest to the completed first phase. This Phase II-A is proposed to include 244 dwelling units (including 25 of the 50 affordable housing units). Phase II-B will follow upon completion of Phase II-A, and will include 256 dwelling units (and the remaining 25 affordable housing units).

9. As identified on Sheets A2.03A and A4.01 of the drawings submitted with its October 28, 2010 letter, the Applicant proposes to finish the north wall of Phase II-A with the same materials as utilized for the first phase of the PUD. This north wall ultimately will become an internal wall once Phase II-B is constructed. Similarly, plans for the interim landscaping for the second phase are shown on Sheets A4.01 and A4.02 of the drawings. Upon completion of construction of Phase II-B, the completed PUD, including the landscaped plaza area, will appear as approved by the Commission in Z.C. Case Nos. 05-36, 05-36A, and 05-36B, and all of the proposed project amenities and community benefits that the Commission approved will continue to be provided in the project.
10. In its October 28, 2010 letter, the Applicant also noted that, pursuant to the Commission's direction in Z.C. Order No. 05-36A, the Applicant has worked with the District of Columbia Office of Planning ("OP") and the District of Columbia Department of Transportation ("DDOT") to improve the public space transition from the first and second phases of the PUD along K Street, N.E. These refinements, reflected in Sheets L.1a through L.1d of the drawings, address the Commission's Finding of Fact 35f in Z.C. Order No. 05-36A that OP requested the Commission grant the Applicant flexibility to make improvements within the adjacent public space along K Street. The Applicant likewise notes the Commission's Finding of Fact 36, wherein DDOT requested the Commission grant the Applicant flexibility to work with DDOT on the final design of the landscaping and other streetscape improvements located in public space adjacent to the project.
11. In its October 28, 2010 letter, the Applicant also proposed to provide parking for the completed PUD at a ratio of 0.71 spaces per dwelling unit, as opposed to the earlier-approved one space per dwelling unit ratio. The Applicant submitted that its proposal, which was supported by OP, was a result of its market experience in general and in particular with the utilization of the parking area of the completed first phase. The Applicant also noted public policy considerations directing toward a reduced parking count and modal alternatives, especially for developments in close proximity to Metrorail, as is the case with the PUD.
12. The District of Columbia Office of Zoning referred this matter to OP for analysis and recommendation. By memorandum dated November 19, 2010, OP stated its support for approval of the modified project as a minor modification, with requests for further clarification regarding the Applicant's parking calculations and confirmation that the Applicant will attempt to market the day care center upon completion of construction of Phase II-A.
13. Responding to the OP report, the Applicant submitted a letter dated November 23, 2010, confirming that it intends to market the daycare center in Phase II-A upon completion of construction and clarifying that it is proposing a "total parking ratio" for the entire Phase I and Phase II PUD of 0.71 spaces per dwelling unit. When applied to the total PUD project

(Phases I and II), the anticipated parking to be provided by the Applicant is between 488 and 506 parking spaces, as follows:

- The Applicant plans to provide at least 506 parking spaces throughout the total PUD project, based upon the current configuration for the total project yielding 712 dwelling units (212 units in the completed Phase I; 244 units in Phase II-A; and 256 units in Phase II-B) (**712 units x 0.71 = 506 spaces**); and
 - However, should the Applicant determine to reduce the total unit count in Phase II by five percent, as allowed based upon flexibility granted in the approved PUD, the resulting dwelling unit count would then be 687 units (212 units in completed Phase I plus 475 units in Phase II), which would result in a minimum total parking requirement of 488 spaces (**687 units x 0.71 = 488 spaces**).
14. Advisory Neighborhood Commission ("ANC") 6C submitted a letter to the Commission dated November 15, 2010, stating unanimous support for the modification and recommending that the Commission approve the requested modification.
 15. On November 29, 2010, at its regular public meeting, the Commission reviewed the modification request as a Consent Calendar matter and deferred consideration until its December 13, 2010, public meeting to allow the Applicant opportunity to submit additional information to support the Commission's approving the parking space reduction request as a consent calendar minor modification and for clarification from the ANC.
 16. In response to questions raised by the Commission at its November 29, 2010 public meeting, ANC 6C submitted a supplemental letter dated November 30, 2010, confirming that the ANC is aware and supportive of the Applicant's request to reduce the amount of off-street parking provided in the project to a ratio of .71 parking spaces per dwelling unit throughout the PUD.
 17. The Applicant submitted additional information responsive to the Commission's requests by letter dated December 7, 2010.
 18. The Commission concurs with the Applicant, ANC 6C, and OP that the approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that proposed modification is minor and is consistent with the intent of the approved PUD. Further, the 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, gross floor area, or project amenities or benefits.

The Commission is required under § 13 (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)), to give great weight to the issues and concerns of the affected ANC as expressed in its written report. ANC 6C recommended approval of the requested modification and the Commission concurs in its recommendation, and therefore gives OP the great weight to which it is entitled.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in paragraphs 12 and 13 above). OP recommended approval of the modification request and the Commission concurs in its recommendation, and therefore gives OP the great weight to which it is entitled.

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 following modifications of an approved PUD for Lot 67, Square 749, at 250 K Street, N.E.:

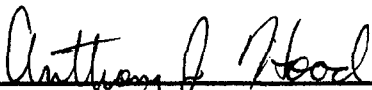
1. The second phase of the PUD, approved in Z.C. Order Nos. 05-36A and 05-36B may be constructed pursuant to the phasing plan shown in the plans marked as part of Exhibit 2 of the official record of Z.C. Case No. 05-36E.
2. Parking shall be provided throughout the PUD at a ratio of 0.71 parking spaces per dwelling unit. Any references to amount of parking provided in any prior order shall be superseded by this Order.
3. Pursuant to Z.C. Order No. 05-36D, in order for approval for the second phase of the PUD to remain valid, a building permit application for Phase II-A must be filed not later than November 14, 2012, with construction of Phase II-A to commence not later than November 14, 2013. Further, in order for Phase II-B's approvals to remain valid, a building permit application for that phase must be filed not later than two years following the date of issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction of Phase II-B required to commence not later than one year thereafter.

Pursuant to § 2409.3 of the Zoning Regulations, the Applicant shall record a notice of modification of Z.C. Order No. 05-36 among the land records of the District of Columbia. After

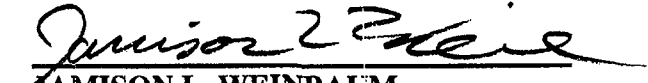
recordation of the notice of modification, the Applicant shall provide a copy of same for the records of the Office of Zoning.

On December 13, 2010, upon the motion of Commissioner May, as seconded by Commissioner Selfridge, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve).

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 May 27, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-36D/05-36E

As Secretary to the Commission, I hereby certify that on **MAY 25 2011** copies of these Z.C. Order Nos. 05-36D & 05-36E were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
| 1. <i>D.C. Register</i> | 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Norman Glasgow, Jr.
Holland & Knight
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006 | 6. Councilmember Tommy Wells |
| 3. Karen Wirt, Chair
ANC 6C
P.O. Box 77876
Washington, D.C. 20013 | 7. DDOT (Karina Ricks) |
| 4. Commissioner Ann Phelps
ANC/SMD 6C04
1150 5 th Street, N.E.
Washington, D.C. 20002 | 8. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, D.C. 20024 |
| | 9. Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:


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

ZONING COMMISSION ORDER NO. 05-36F
Z.C. Case No. 05-36F
K Street Developers, LLC
(Two-Year Time Extension for PUD @ 250 K Street, N.E.)
July 30, 2012

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on July 30, 2012. At that meeting, the Commission approved an application from K Street Developers, LLC ("Applicant") for an extension of time to a previously approved planned unit development ("PUD") and Zoning Map amendment in Lot 67 in Square 749, which is bounded by 2nd, 3rd, K, and L Streets, N.E. ("Property"), pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR).

FINDINGS OF FACT

1. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval to permit the construction of a two-phase apartment development around an outdoor central plaza, with a total of approximately 702 dwelling units, including 78 units restricted for affordable housing, ground floor retail and daycare uses, with a total gross floor area of 850,000 square feet on a site measuring approximately 101,000 square feet. The two phases of the Applicant's overall project are being constructed as a single building for zoning purposes, with the second phase being constructed as an addition to the first phase. At the same time that it granted first stage approval for the overall project, the Commission granted consolidated approval for the Applicant to move forward with the first phase of the total project. Construction of this first phase has now been timely completed and is in process of being leased and occupied.
2. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second stage approval for the project's second phase, consisting of 500 dwelling units (including 50 dedicated affordable housing units) and approximately 14,000 square feet of retail uses to be constructed on the western portion of the Property. The resulting density of the overall project is 7.49 floor area ratio ("FAR"), and the approved height is 121 feet.
3. By Z.C. Order No. 05-36B, also with an effective date of November 14, 2008, the Commission approved minor modification to the first phase of the PUD, to restrict access, for safety purposes, to a small portion of the outdoor plaza to project residents only.
4. By Z.C. Order No. 05-36C, with an effective date of March 5, 2010, the Commission approved minor modification to the PUD to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals.
5. By Z.C. Order No. 05-36D, the Commission extended the validity of the second stage approval granted in Z.C. Order No. 05-36A to November 14, 2012, by which time application must be made for a building permit, with construction to commence by November 14, 2013.

6. By Z.C. Order No. 05-36E, the Commission approved the Applicant's phasing plan to allow the second phase of the development to be constructed in two sub-phases (Phase II-A, to include approximately 244 dwelling units, and Phase II-B, to include approximately 256 dwelling units), with timing such that in order for the PUD to remain valid, a building permit application for Phase II-A must be filed by November 14, 2012 and construction commence by November 14, 2013. In order for approval for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.
7. By letter dated and received by the Commission June 11, 2012, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that a building permit application for Phase II-A must be filed by November 14, 2014 and construction commence by November 14, 2015, and in order for approval for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter. The letter indicates that the bases for extension of the validity of the PUD are as follows:
 - a. Over the past several months, the Applicant has continued to make extensive efforts to engage and secure project financing for Phase II from a number of potential equity and debt sources. While those interactions have encouraged the Applicant that the metropolitan DC market is weathering the recent turbulence in the real estate industry better than many competing markets, investors have yet to commit to Phase II of the project. Positive outlook for the project generated by the promising leasing absorption of Phase I as well as enhancements within the immediate neighborhood have been somewhat tempered by concerns over potential near-term oversupply in the NOMA residential submarket given the delivery of hundreds of new dwelling units within the coming 12-18 months.
 - b. In the present case, an additional impediment to the Applicant's efforts to proceed with Phase II of the project has been litigation it has become engaged in with its investment partner for the project. This ongoing litigation has sidetracked redevelopment and is affecting efforts to secure financing for Phase II. Thus, despite diligent, good faith efforts, the Applicant is having difficulty obtaining project financing for the approved project while the litigation has worked through first D.C. Superior Court and now the United States District Court for the District of Columbia. At this time, the Applicant is encouraged that resolution of the litigation will be reached in time to allow the Applicant to secure the needed financing to move forward with the approved plans within the timeframe requested as part of this extension request.

- c. The Project has not changed in any significant form. The use, height, density, and other zoning parameters have not changed. The community benefits proffered have not changed. The Applicant is not aware of any material factual conflict generated as a result of the PUD.
8. The District of Columbia Office of Zoning referred this matter to the Office of Planning for analysis and recommendation. By memorandum dated July 20, 2012, the Office of Planning stated its support for approval of the requested time extension.
9. Advisory Neighborhood Commission ("ANC") 6C submitted a letter to the Commission dated July 16, 2012, indicating support for the extension and recommending that the Commission approve the requested extension.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving ANC 6C with a copy of the application and allowing it 30 days to respond.

The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

The Commission further concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a) and (c). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of continuing stress in economic

and real estate market conditions beyond the Applicant's reasonable control. In addition, the Applicant has demonstrated good cause as a result of the existence of pending litigation.

Subsection 2408.12 of the Zoning Regulations provides that the Commission shall hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute. The Commission concludes that there is no material factual conflict in issue and that consideration of the request for extension is appropriate without need for a public hearing.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request for a two-year time extension of an approved PUD for Lot 67 Square 749, at 250 K Street, N.E. In order for this PUD to remain valid, a building permit application for Phase II-A must be filed by November 14, 2014 and construction commence by November 14, 2015. In order for approval for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

This request was approved by the Zoning Commission at its public meeting on July 30, 2012, by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael J. Turnbull to adopt; 3rd Mayoral appointee position vacant, not voting).

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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 October 5, 2012.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-36G
Z.C. Case No. 05-36G
K Street Developers, LLC
(Modification to Approved Planned Unit Development &
Related Zoning Map Amendment @ Square 749)
November 18, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on June 27, 2013, and September 26, 2013, to consider an application filed by K Street Developers LLC, owner of part of Record Lot 67 in Square 749 known for assessment and taxation purposes as Lots 826 and 827 ("K Street") and CASCO, Inc., owner of Lots 31, 804, 805, and 830 in Square 749 ("CASCO") (K Street and CASCO collectively referred to herein as the "Applicant"), for approval of a modification to a planned unit development ("PUD") approved pursuant to Z.C. Order No. 05-36, as amended.¹ CASCO filed a related application to rezone Lots 31, 804, 805, and 830 in Square 749 from C-2-B to C-3-C. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Applications

1. On September 13, 2012, K Street and CASCO filed an application to modify a multi-phase PUD first approved in Z.C. Order No. 05-36. CASCO also filed an application for a related Zoning Map amendment from C-2-B to the C-3-C Zone District for Lots 31, 804, 805, and 830 in Square 749 (the "Phase III Land") (the PUD modification and Zoning Map amendment applications herein collectively, the "Applications").² The Applications were submitted in order to expand the scope of the multi-phased residential redevelopment of property in Square 749 to include virtually all the remaining land in Square 749 not previously a part of the PUD, and to incorporate an additional 41

¹ Subsequent to the filing of the Applications, in April 2013, K Street transferred ownership of Lots 826 and 827 in Square 749 to Toll DC LP. The Applicant submitted a copy of the Agreement to Cooperate entered into between K Street and Toll DC LP (Exhibit 29) whereby, among others, Toll DC LP agreed to cooperate and support the PUD modification application.

² Lot 830 was added to CASCO's rezoning request as part of the Applicant's prehearing statement filed April 8, 2013, at Exhibit 14.

dwelling units and third phase of construction, bringing the total to more than 770 residential units.³

2. The PUD approval which the Applicant seeks to modify was first approved by the Zoning Commission in 2006 in Z.C. Order No. 05-36 (as amended, the "Approved PUD") and was structured as a two-phased residential project to occupy the entirety of Square 749 with the exception of a few small lots totaling approximately 5,300 square feet in the northeast corner of the Square. With the current modification application, the Applicant seeks to incorporate this additional land into the Approved PUD and to complete redevelopment of the entirety of Square 749 with this phase being for residential purposes and in a consistent manner with the improvements and further proposed development already approved by the Commission.⁴

Background of Approved PUD

3. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval and a related Zoning Map amendment from C-M-3 and C-2-B to C-3-C for virtually the entirety of Square 749, all to permit construction of a two-phase apartment development around an outdoor central plaza, with a total of approximately 712 dwelling units, including 78 units restricted for affordable housing, ground-floor retail, and daycare uses with a total gross floor area of approximately 850,000 square feet. At the same time that it granted first-stage approval for the overall project, the Commission granted consolidated approval for Phase I of the total project, to be located in the eastern portion of Square 749 with frontage along 3rd Street, N.E., and consisting of a 10-story apartment building including approximately 202 dwelling units, 3,700 square feet of ground-floor retail, and 177 parking spaces (the "Phase I Building").⁵ Construction of this Phase I Building has been completed.
4. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval of Phase II of the project, consisting of a 14-story building containing 500 dwelling units and approximately 14,000 square feet of retail uses and a child care containing approximately 3,500 square feet, to be constructed along the western portion of

³ The only remaining lot in Square 749 not impacted is Lot 829, a small lot owned by Union Place Phase I, LLC ("UPPI") that was created as part of the alley closing in the square.

⁴ The only lot in Square 749 not included in the Approved PUD or the Phase III Land is Lot 829, which was created as a result of the closing of the small stub alley in the northeast corner of Square 749 and is owned by UPPI, current owner of Lot 828, which property is improved with the first phase of the Approved PUD.

⁵ The PUD Approval was later modified per authority of the Zoning Administrator pursuant to 11 DCMR § 2409.6(b) to permit development of 212 dwelling units in Phase I.

Square 749 with frontage along 2nd Street as well as K and L Streets, N.E. (the "Phase II Building").⁶

5. In Z.C. Order Nos. 05-36B and 05-36C, the Commission approved minor modifications to the Phase I Building, to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only (05-36B), and to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household income for payment of rent in order to accommodate arts professionals (05-36C).
6. By Z.C. Order No. 05-36D, the Commission extended the validity of the second-stage approval granted for Phase II of the Approved PUD to November 14, 2012, by which time application must be made for a building permit, with construction to commence by November 14, 2013.
7. Pursuant to Z.C. Order No. 05-36E, the Commission approved K Street's phasing plan to allow the Phase II Building to be constructed in two sub-phases (Phase II-A, to include approximately 244 dwelling units, and Phase II-B, to include approximately 256 dwelling units). The modification approved by the Commission with this Order also directed that parking shall be provided throughout the Approved PUD at a ratio of 0.71 spaces per dwelling unit. The time extension approved pursuant to Z.C. Order No. 05-36E provided that in order for the PUD to remain valid a building permit application for Phase II-A must be filed by November 14, 2012 and construction commence by November 14, 2013. In order for approval for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.
8. Pursuant to Z.C. Order No. 05-36F, approved on July 30, 2012, the Commission granted K Street a further time extension for Phase II of the Approved PUD such that a building permit for Phase II-A must be filed by November 14, 2014, and construction must commence by November 14, 2015, and in order for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of the final certificate of occupancy for the residential portion of Phase II-A, with construction of Phase II-B to commence within one year thereafter.
9. Most recently, by Z.C. Order No. 05-36H, dated March, 2013, the Commission granted minor modification of the Approved PUD to allow the Phase I Building and the Phase II Building to be constructed, occupied, and operated as separate buildings on a single record lot, to be accomplished through the Commission's approval of the removal of all door openings and above-grade connections between the phases.

⁶ Flexibility granted in this Order allowed up to 525 units to be constructed.

Procedural Background

10. By report dated October 19, 2012, the District of Columbia Office of Planning ("OP") recommended that the Commission schedule a public hearing for the Applications. (Exhibit ["Ex."] 12.)
11. At its November 14, 2012 public meeting, the Commission determined to schedule the Applications for public hearing.
12. The Applicant filed its supplemental statement and request for hearing date with the Office of Zoning on April 8, 2013.
13. On April 23, 2013, Union Place Phase I, LLC ("UPPI"), owner of that certain property in Square 749 known for assessment and taxation purposes as Lots 828 and 829, submitted through its counsel, Greenstein, Delorme & Luchs P.C., motions to either dismiss the Applications or for reconsideration by the Commission of its determination to set down the Applications for public hearing. In support of its motions, UPPI argued that it had not consented to the filing of the Applications; that the Phase III Land was never conceived of as being a future phase of the Approved PUD; and that the Applications appear to propose the use of the UPPI property for parking, recreational, and other uses without the consent of UPPI. (Ex. 15.)
14. The Applicant filed an Opposition to the UPPI motions on April 30, 2013, disputing factual allegations set forth in the UPPI motion and also arguing in support of the appropriateness of the Applications in light of the Commission precedent that an application for modification of one building within a PUD may be considered without the other owners in the PUD joining in or consenting to said modification. (Ex. 16.)
15. The Commission considered the UPPI motion and the Applicant's Opposition at the Commission's public meeting held on May 13, 2013, and directed that UPPI and the Applicant argue their respective pleadings as a preliminary matter before the public hearing on the Applications scheduled for June 27, 2013.
16. On June 7, 2013, the Applicant submitted its supplemental prehearing statement, including refined architectural drawings and additional details regarding the proposed project amenities and community benefits. (Ex. 20.)
17. On June 17, 2013, OP submitted its final hearing report to the Commission recommending approval and requested certain additional documentation from the Applicant. (Ex. 23.)

18. On June 18, 2013, the District of Columbia Department of Transportation ("DDOT") submitted a memorandum to the Commission indicating no objections to the Applications subject to certain conditions. (Ex. 24.)

Public Hearing

19. The Commission held a public hearing for the Applications on June 27, 2013. As a preliminary matter at the public hearing, the Commission heard oral argument from counsel for UPPI and the Applicant regarding UPPI's motion and the Applicant's opposition thereto. After consideration of the pleadings, oral arguments, and testimony from Ronald Cohen on behalf of K Street and CASCO, the Commission voted unanimously to deny UPPI's motions. In its deliberations, the Commission noted that it was persuaded by the facts of the application; namely, that the Cohen family had been involved for more than two decades in the redevelopment of Square 749, from assemblage of all the properties in the square, to selection of the project architects, to working with the impacted community; and further, that the Cohen family retained an ownership interest in Phase I of the PUD and also Phase II as of the time the Applicant made application for the present modification. The Commission noted further that it was persuaded by the past actions of the Commission to allow phases of PUDs to move forward absent consent of all owners of property with said PUD, which approach was upheld and confirmed as appropriate by the District of Columbia Court of Appeals in *1330 Connecticut Avenue, Inc. v. D.C. Zoning Commission*, 669 A.2d 708 (1998), and other examples included in the Applicant's submissions to the record. The Commission also noted that UPPI could actively participate in the public hearing as a party to the application.
20. As an additional preliminary matter, and without opposition from the Applicant, the Commission determined to accept UPPI as a party in opposition to the Applications.
21. At the hearing, the Applicant presented several witnesses in support of its applications: Eric Siegel on behalf of the Applicant; George Myers and Colline Hernandez-Ayala of GTM Architects, project architects; and Osborne George of O.R. George and Associates, transportation engineering. Based upon their professional experience and qualifications, Mr. Myers was recognized as an expert in architecture and Mr. George as an expert in transportation engineering. The Commission also accepted Mr. George's Transportation Impact Statement ("TIS") and Trash and Loading Management Plan into the record. (Ex. 14E, 30.) The Commission also accepted Mr. Curt Schreffler of CAS Engineering as an expert in civil engineering, although Mr. Schreffler did not testify.
22. The Applicant's expert witness for zoning and land use, Steven E. Sher, did not testify at the public hearing; however, the Applicant submitted Mr. Sher's written report for the record. (Ex. 31.) Counsel for UPPI objected to the inclusion of Mr. Sher's report into the record without Mr. Sher's attendance at the hearing. UPPI subsequently filed a motion to

strike the written testimony. The Commission's ruling to require a further limited hearing is discussed at Finding of Fact 47.

23. UPPI, as party in opposition, at the June 27, 2013 public hearing cross-examined the Applicant's witnesses, except Mr. Sher, and OP but did not present direct testimony nor offer any witnesses to rebut the Applicant's testimony.

Office of Planning

24. Through its Setdown Report dated October 19, 2012, and its Final Report dated June 17, 2013, and through testimony presented at the public hearing, OP expressed its support for the proposed modification of the approved PUD and related Zoning Map amendment to C-3-C for the Phase III Land. (Ex. 12, 23.)
25. In its Setdown Report, OP noted that, as part of its review and approval of the Approved PUD, the Commission suggested that the lots now under consideration as part of the Applications be incorporated into the PUD.
26. In its Setdown Report, OP further noted that the proposed PUD modification would result in a high quality development that would neither be inconsistent with the Comprehensive Plan, nor require zoning relief that is out of balance with the expected public benefits.
27. In its Setdown Report and its Final Report, OP noted that the proposed PUD modification would further several Comprehensive Plan policies:
 - (a) Housing Element: The modification would permit the addition of 41 units of housing for balanced, mixed-use growth near certain Metro stations, as encouraged by policies 1.1.3 and 1.1.4;
 - (b) Central Washington Element: The additional housing proposed by the Applications is responsive to Policy CW 1.1.4's encouragement of denser housing in the central area, particularly in NoMA; and
 - (c) Urban Design Element: Phase III's design and massing would be integrated with the Approved PUD and would serve as a transition element to the nearby rowhouses. This would be consistent with policy UD 2.2.7's encouragement of appropriately scaled infill, and policy UD 3.3.1's encouragement of quality treatment of public spaces.
28. In its Setdown Report and its Final Report, OP noted that the Generalized Policy Map includes the Property within the boundaries of the NoMA/New York Avenue Metro land use change area and that the Commission has already determined as part of the approved

PUD that the C-3-C Zone District is appropriate for Phases I and II of the PUD, which comprise more than 95% of Square 749.

29. In its Setdown Report and its Final Report, OP noted that, if considered independent of the approved PUD, the Phase III building would require relief to provide no parking rather than the required 10 vehicle parking spaces given the number of units in the building, and that, while such relief would not be necessary in the context of the full PUD, a modification of PUD Condition No. 2 of Z.C. Order 05-36E is needed to permit the marginal diminution in the required parking ratio of from one space per 0.71 residential unit to what OP calculates as one space per 0.67 unit.
30. In its Setdown Report and its Final Report, OP noted that the Applications included a request for flexibility from the Commission to provide a rear yard not meeting the required setback dimension. OP determined that the diminution of the rear yard would have little to no impact on future building occupants or the public.
31. In its Final Report, OP recommended approval of the Applications upon provision by the Applicant of certain additional information, which the Commission notes was provided by the Applicant in its post-hearing submissions. (Ex. 28, 30, 32, 36.)
32. The Commission concurs with OP's findings in support of the Applications.

Department of Transportation

33. By memorandum dated June 18, 2013, and through testimony presented at the public hearing, DDOT indicated no objection to the Applications, with certain conditions. (Ex. 24.)
34. DDOT indicated that the Applicant coordinated with DDOT in the development of the TIS and study scope as well as the Applicant's loading management and trash removal plan, and DDOT confirmed that the Applicant's methodology for evaluating existing and future traffic conditions is generally consistent with DDOT procedures. DDOT noted that the project site is well served by mass transit facilities and located only three blocks east of the NoMa-Gallaudet Metrorail Station and is also served by several major Metrobus routes (including D3, D4, and D8). The DDOT report indicated that the residents of Phase III would be able to utilize parking elsewhere within the Approved PUD; however, DDOT acknowledged that its determination of no objections remained effective even in the event that residents of Phase III were not able to park in the other buildings of the PUD.
35. DDOT further indicated that it had worked with the Applicant to establish a transportation demand management ("TDM") program for the Project, including the following commitments: to designate a resident transportation coordinator, to provide a

secure bicycle parking room with capacity for 15 bicycles, to develop a loading management plan, and to develop a program with DDOT assistance to monitor the site to analyze mode split assumptions and traffic generation. DDOT also requested the Applicant to provide each unit, upon move-in and at the discretion of each tenant, either a one-time complimentary annual membership in the Capital Bikeshare program or a one-year membership to a car-sharing program. The Applicant indicated its agreement to the TDM components, and indicated that its bicycle room provides for a total of 30 bicycle parking spaces. The Applicant requested that the car and bike sharing incentive offered to tenants be provided at initial lease-up only, to which DDOT agreed.

36. With respect to the loading management plan, the Applicant submitted a "preliminary loading & trash management plan" comprised of three elements: (1) a proposed loading and short-term parking zone located on the south side of L Street that would be subject to DDOT approval; (2) scheduling and coordination of move-in and move-out activity by building management and maintenance staff; and (3) providing that trash will be transported from the first-floor trash room to the L Street curb via small-wheeled receptacles. (Ex. 24, 30.) DDOT testified at the hearing that, while it largely supported the loading management plan the Applicant proposed, it was in the process of amending its curbside loading regulations, and that the proposed loading zone would be in conflict with the DDOT's new policy. DDOT stated that it preferred to decide whether it would approve the loading zone when the issue was presented to DDOT's Public Space Committee for approval, and declined to weigh in on whether it would approve the loading zone if it was requested. DDOT did, however, also state that it did not believe that a loading zone was necessary for the Project's loading operations. The Applicant subsequently stated in a letter to ANC 6C that it would not seek approval of the loading zone. (Ex. 46D.)
37. The Commission concurs with DDOT's recommendation in support of the Applications. The Commission believes the Applicant's loading management plan, without the loading zone, is adequate to mitigate any potential adverse effects of the Project related to loading.

ANC 6C

38. Advisory Neighborhood Commission ("ANC") 6C did not appear at the public hearing nor submit any report in advance of the public hearing. At the hearing, the Applicant noted that it had presented to the ANC at its June 12 public meeting and that the ANC deferred action until its July 10 public meeting. The Commission held the record open until July 15, 2013, for the ANC to submit its formal recommendation to the Office of Zoning.
39. By letter dated July 12, 2013, ANC 6C indicated its unanimous opposition to the Applications, noting that the ANC did not agree with the Applicant that the Phase III

project was properly integrated with the Approved PUD, that the ANC did not believe the parking impacts were adequately mitigated, that the Applicant did not provide any loading facilities for the Phase III Building, and that the project amenities offered as part of the Applications is much less than that of the Approved PUD. (Ex. 39.)

40. The Applicant responded to the ANC's stated concerns by letter to the Commission dated July 19, 2013, wherein the Applicant addressed the ANC's criticisms regarding parking, loading, and proposed benefits and amenities for the Phase III Building. (Ex. 41.) In its letter, the Applicant detailed that the project would generate a requirement of approximately 10-14 parking spaces, that the small size and configuration of the property prevented any feasible provision of parking on the Phase III land, and that the Applicant proposed a number of innovations to minimize parking demand, including working with the District of Columbia to remove the Phase III Building from the Residential Parking Permit ("RPP") registry and include within every residential lease in the Phase III Building a prohibition upon registering a vehicle for RPP parking. The Applicant also addressed the ANC's stated concerns regarding loading operations through reference and submission of the Trash and Loading Management Plan prepared by its expert witness, Osborne George. In a subsequent letter to the Chair of ANC 6C dated August 21, 2013, the Applicant stated that it would not pursue the portion of the loading plan which provided for a loading zone on the street. (Ex. 46D.)
41. By letter dated September 16, 2013, ANC 6C repeated its opposition to the Applications. The letter stated that the ANC did not believe that the new project was sufficiently integrated into the PUD as a whole, citing that the loading facilities for the project were adjacent to, rather than sharing the existing loading facilities of the already constructed portions of the PUD, and that the Cohen family no longer owned a controlling ownership interest in any of the existing portions of the PUD. (Ex. 48.)
42. The Commission finds that the Applicant adequately addressed all of the ANC 6C's issues and concerns. In addition, the Commission finds that the Phase III Building is sufficiently integrated into the existing PUD, and that the Trash and Loading Management Plan (without the loading zone) addresses the ANC's concerns.

Persons in Support or Opposition to the Applications

43. The Commission received one letter in opposition to the Application, from Mozella Boyd Johnson, who generally indicated opposition to the parking and rear yard flexibility proposed by the Application as well as complained that the retail space constructed as part of Phase I of the PUD had not been occupied. (Ex. 22.)
44. No testimony was received from any person in support of the Applications.

Conclusion of June 27 Hearing, Additional Limited Hearing, ANC, and Closing of Record

45. The record was left open for the Applicant and UPPI to provide limited post-hearing submissions and responsive pleadings. The record was also left open to receive the report of ANC 6C following its July 10, 2013 public meeting and the Applicant's response thereto, as detailed above.
46. By letter dated July 12, 2013, counsel for UPPI requested the Commission reject Mr. Sher's report and moved to have it stricken from the record based upon an argument of unreliability and unfairness as Mr. Sher did not appear at the public hearing. (Ex. 38.) By letter dated July 19, 2013, the Applicant opposed UPPI's request to strike Mr. Sher's report from the record. (Ex. 40.)
47. At its July 29, 2013 public meeting, the Commission deliberated on the UPPI Motion to Strike Mr. Sher's testimony and voted unanimously to conduct a special limited public hearing to receive Mr. Sher's testimony and to allow UPPI opportunity to conduct cross-examination of Mr. Sher. The Commission also expressed concern over the July 12, 2013 letter from the ANC indicating unanimous opposition to the Application and requested that the Applicant explore further discussions with the ANC given the ANC's long record of support of the numerous earlier approvals associated with the Approved PUD. The Commission also requested that the Applicant provide more responsive information to the Commission regarding the cost analysis for its proffer of more affordable housing than required by the Inclusionary Zoning regulations and regarding efforts to comply with local contracting and employment commitments during the construction of Phase I of the Approved PUD.
48. By letter dated August 30, 2013, the Applicant provided the materials requested by the Commission regarding local contracting and employment records for Phase I of the Approved PUD as well as documentation relating to its subsequent outreach to address concerns raised by ANC 6C. (Ex. 46.)
49. ANC 6C's submission is discussed in Finding of Fact 41.
50. Pursuant to notice, a special limited public hearing was conducted on September 26, 2013, for purposes of receiving Mr. Sher's expert testimony in support of the outline submitted as Exhibit 31 and provided UPPI the ability to cross-examine the witness. As part of that limited hearing, the Commission accepted Mr. Sher's testimony outline into the record. (Ex. 31.)
51. At its September 30, 2013 public meeting, the Commission took proposed action to approve the Applications.

52. The Applicant submitted its final list of proffered public benefits and proposed conditions pursuant to § 2403.16 on October 7, 2013. (Ex. 50.) Following dialogue with the Office of the Attorney General pursuant to § 2403.19, the Applicant submitted a revised list of proffered public benefits and proposed conditions on October 21, 2013. (Ex. 51.)
53. The proposed action of the Commission 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 action dated November 13, 2013, found that the Applications would not have any adverse impact on the federal interests.
54. The Commission took final action to approve the Applications at its public meeting on November 18, 2013.

The Property and Surrounding Area

55. The property now included in the Approved PUD, currently known as Record Lot 67 in Square 749 (known as Lots 826, 827, and 828 for assessment and taxation purposes), contains a lot area of approximately 101,000 square feet and represents virtually the entirety of land in Square 749 (the "Approved PUD Land").
56. Square 749 is located in the emerging NoMa neighborhood in Northeast Washington and is bounded by 2nd Street to the West, K Street to the South, 3rd Street to the East and L Street to the North. The only land in Square 749 not currently included as part of the Approved PUD Land are the few small lots located in the northeast corner of the Square, at the intersection of 3rd and L Streets, N.E., constituting the Phase III Land and a small remainder from the closed alley stub, Lot 829, owned by UPPI. The combined lot area of the Phase III Land totals approximately 5,295 square feet, representing approximately five percent of the total lot area of Square 749. The Phase III Land was utilized for staging operations involving the construction of Phase I and is currently vacant and unimproved.
57. The property immediately to the east, across 3rd Street, N.E., from the Approved PUD Land and the Phase III Land, is zoned C-2-B and is improved with a recently constructed six-story student intern housing development (approximately 350 sleeping rooms) known as the Washington Center. The property to the immediate north of this development (and northeast of the Phase III Land) across L Street, N.E., in Square 773, is likewise zoned C-2-B, with construction recently completed at that site of a matter-of-right six-story, 60-unit apartment building.
58. To the immediate north of the Phase III Land, a zoning boundary line runs along L Street, N.E., between Square 749 to the south and Square 748 to the north, with the land to the immediate north zoned C-M-1 and unimproved. The Uline Arena is located in the

northern portion of Square 748 and abuts the railroad tracks and the NoMa-Gallaudet New York Avenue Metrorail Station to its west.

59. As noted by DDOT, the NoMa-Gallaudet Metrorail Station (Red Line) is located approximately three blocks away. Square 749 and the immediate neighborhood also are served by a number of Metrobus routes.

Existing and Proposed Zoning

60. The Approved PUD Land is located in the C-3-C Zone District as a result of its rezoning from a mixture of C-2-B and C-M-3 as part of the PUD approval. The Phase III Land is currently zoned C-2-B.
61. The C-2-B Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core and permit high-density residential and mixed-use development. The C-2-B Zone District is a general commercial district, permitting a broad range of retail, service and office uses, hotels, residential uses (single and multi-family), and many institutional uses. Height in the C-2-B Zone District is permitted to a maximum of 65 feet with no limit on the number of stories. A total building density of 3.5 floor area ratio ("FAR") is permitted; however not more than 1.5 FAR of that amount may be devoted to uses other than residential uses. Incorporating the Inclusionary Zoning density bonus, which applies to residential development of 10 or more dwelling units, a maximum density of 4.2 FAR would be permitted. A maximum of 80% lot occupancy is permitted.
62. CASCO requests rezoning of the Phase III Land to the C-3-C Zone District. In the C-3-C Zone Districts, medium-high density development is permitted. The maximum permitted height in the C-3-C Zone District is 90 feet. The maximum density is 6.5 FAR. A maximum of 100% lot occupancy is permitted. Pursuant to the PUD development standards, a maximum height of 130 feet is permitted in the C-3-C Zone Districts and a maximum density of 8.0 FAR.
63. As OP noted in its Setdown Report and its Final Report, the Generalized Policy Map includes the Property within the boundaries of the NoMA/New York Avenue Metro land use change area, and the Commission has already determined as part of the Approved PUD that the C-3-C Zone District is appropriate for Phases I and II of the PUD, which comprise more than 95% of Square 749. The Commission finds that rezoning of the Phase III Land to C-3-C is not inconsistent with the Comprehensive Plan and is in keeping with its earlier approvals regarding Square 749.
64. The Comprehensive Plan's Future Land Use Map designates the Phase III Land for mixed-use moderate-density commercial and moderate-density residential, the same

designation given to the eastern portion of the Approved PUD, which the Commission approved for the C-3-C zoning designation in the PUD.

Nature of Project and PUD Modification

65. The Applications before the Commission are for modification to an approved PUD to allow construction of a seven-story apartment house on the Phase III Land measuring approximately 63 feet 8 inches in height (the "Phase III Building" or the "Project"). Building density on the Phase III Land would total approximately 6.48 FAR and when incorporated into the larger PUD would result in a total density for the PUD of approximately 7.80 FAR, which is within the PUD standards of 8.0 FAR for C-3-C-zoned properties. The Phase III Building would occupy approximately 97% percent of the Phase III Land, where 100% is permitted. Across the entire Square, the combined Phase I, II, and III improvements, once constructed, will occupy only 69% of the total site area.
66. The Phase III building has been designed to contain a total of 41 dwelling units in a mixture of studio and one-bedroom units. Consistent with the commitments offered as part of the Approved PUD, Phase III will include dedication of certain units for affordable housing; however, unlike the earlier phases which have time limits on their affordability components, dedicated units within Phase III will be subject to the controls of Chapter 26 of the Zoning Regulations, including dedication of units to affordable housing for the life of the Project. The Applicant has committed to provide a total of five units, representing approximately 10% of the total residential gross floor area and more than 10% of the unit count in the Phase III building, with said units to be distributed throughout the building except for the top two floors. The Commission notes that the Applicant has undertaken further study of its affordable housing commitment upon request of the Commission at its July 27, 2013, public meeting, and while the Applicant's overall dedication of square footage to inclusionary housing remains at approximately 10% of the overall residential square footage of the Phase III Building (consistent with the amount of affordable housing commitment in the earlier phases of the PUD), the reallocation and expansion of the affordable housing proffer to include a fifth dedicated unit within the Phase III Building represents a meaningful effort by the Applicant to enhance the affordability aspect of the project. By placing an obligation for so long as the Project exists on an additional unit, the Applicant is providing an opportunity for an additional household to qualify under the District's Inclusionary Zoning program and at the same time accepting lost revenue and the administrative/enforcement obligations relating to that additional unit. While the number of units and square footage are in the abstract not as much as other projects, the Commission notes that this is a small part of the overall development in Square 749 and represents 10% of the residential density (2,644 sq. ft.) versus the eight percent requirement (2,065 sq. ft.), and five out of 41 units, which is 12% of the units. At the Commission's request, the Applicant provided information to the record calculating that the cost to the Applicant to subject two

additional dwelling units (over and above the three units required to be made subject to Inclusionary Zoning pursuant to regulation), would total approximately \$173,000, discounted to present-day value. (Ex. 46A.)

67. The Phase III building will be freestanding from Phases I and II and will abut to the north of Phase I, which drops down from 10 to six stories along this portion of its 3rd Street frontage. The Phase III building's main entrance will be located on L Street, N.E., with additional articulated frontages along 3rd Street, N.E., and along its north elevation.
68. The Applicant has engaged GTM Architects, the architect responsible for the design of both Phases I and II of the Approved PUD, to design a building which serves to complete the redevelopment of Square 749 by providing an appropriate transition in massing from Phase I along 3rd Street, N.E., wrapping around to L Street and the significantly higher Phase II building. Through its use of line, stepback, massing, and articulation of the base and cornice as well as use of such devices as bay windows along 3rd Street and a prominent balcony feature above the L Street entrance, and through its materials and color palette, the Commission finds that the Phase III building reads as an independent yet sympathetic insertion between Phases I and II.
69. The Commission requested the Applicant to undertake further study of the West elevation of the Phase III Building in efforts to increase the amount of fenestration provided on that façade. As part of its post-hearing submission, the Applicant provided an alternative design for the west elevation (Ex. 36A2, p. Ex. 3) and committed to pursue approval of the alternative design with DCRA and to the extent applicable to pursue a waiver request under the District of Columbia Construction Code to construct the alternative design.
70. Given the small lot size and configuration with frontage on two streets, the Phase III Building will not include any parking facilities. As part of its post-hearing submission responding to the comments from ANC 6C, the Applicant provided studies demonstrating the significant difficulty and impracticality that would confront the Applicant in order to provide parking in the Phase III Building. The Commission notes that the Applicant has undertaken several measures to mitigate its inability to provide parking on-site, including a commitment to work with the District of Columbia to keep the Phase III Building address from being included on the Residential Parking Permit ("RPP") registry and also a commitment by the Applicant to include in all its residential leases language making it a lease violation for any tenant to register his/her vehicle in the RPP program and to actively pursue and evict any tenant who violates said lease provisions. In addition, Toll DC LP, the new owner of Phase II of the Approved PUD, has confirmed that if upon construction of Phase II, Toll determines there to be excess available parking, Toll agrees to make such parking available for lease by residents of the Phase III Building. (Ex. 46D (attachment).)

71. The Commission notes that no loading facilities are required for the Phase II Building under Chapter 22 of the Zoning Regulations given its size.
72. The Property will be extensively landscaped, as identified in the landscaping plans. A green roof is proposed for the roof. (Ex. 36A.)
73. The Applicant has included a draft LEED scorecard in its updated drawings and indicated that it intends to pursue sustainability measures in the design, construction, and operation of the Phase III Building that would be equivalent to certification for the Project under the United States Green Building Council's LEED New Construction (NC) for Silver rating. (Ex. 36A.)

Development Incentives and Flexibility Requested

74. The Applicant requests the following areas of flexibility from the C-3-C Zone District requirements and PUD standards to facilitate development of the Project:
 - (a) To provide rear yard not meeting requirements of the Zoning Regulations with front of the Phase III Building being L Street, N.E.;
 - (b) To provide no on-site parking spaces pursuant to § 2101 of the Zoning Regulations;
 - (c) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
 - (e) To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - (f) To pursue approval by DCRA of the alternative design for the west elevation shown on Exhibit 36A2, Page Ex.3, and in the event said alternative design is not approved by DCRA, to pursue the original design for the west elevation shown on Exhibit 36A1, Page A21; and

- (g) To vary the final selection of landscaping and vegetation types as proposed, based upon availability at the time of construction and finalization of site grading and utility plans.

Public Benefits and Project Amenities

75. The Commission finds that this application to modify the PUD Approval will achieve the goals of the PUD process by providing additional high-quality residential development in coordination with a residential project that has already been reviewed and approved by the Commission, in a neighborhood where infill development, especially of a residential nature, is strongly encouraged by the District, and in close proximity to a Metrorail station and that the following superior benefits and amenities will be created as a result of the Project:

- (a) *Urban Design and Architecture.* The Project has been designed to "complete" the coordinated design and development of Square 749, providing a finished corner piece to complement Phases I and II and to visually enclose the outdoor plaza that serves as the focal point of the PUD. This coordination extends to compatible materials, design elements and treatments, as well as public space landscaping improvements, all of which lend to a higher quality finished product than likely would be available as part of a matter-of-right development on the Phase III Land;
- (b) *Site Planning and Efficient Land Utilization.* The Project makes efficient use of its shape and topography. The proposed modification will generate a significant amount of revenue for the District in the form of vastly increased property taxes payable and income taxes payable by new residents. Furthermore, the new occupants of the 41 units will add to the market demand for existing neighboring retail uses and amenities, further invigorating the neighborhood;
- (c) *Housing and Affordable Housing.* The Project will add a total of 41 residential units to the 712 units that are included in the PUD Approval, including five affordable units (totaling approximately 10% of the residential gross floor area of the Project, or approximately 2,644 square feet) restricted for so long as the Project exists as Inclusionary Zoning units as established in Chapter 26 of the Zoning Regulations. This exceeds the requirement established in Chapter 26 of the Regulations that the Applicant provide eight percent of the total residential gross floor area, or 2,065 square feet, as Inclusionary Zoning units. As a result, an additional approximately 599 sq. ft. of residential gross floor area of space will be restricted as Inclusionary Zoning units;
- (d) *Effective and Safe Vehicular and Pedestrian Access and Transportation Management.* The Applicant has demonstrated that the Project will operate in an

efficient and safe manner as a result of a number of initiatives that will be executed, including its loading and trash management plan, extensive bicycle parking within the Phase III Building and around the entirety of Square 749, and commitments from the Applicant to restrict resident access to the RPP registry. Further, the Applicant has established a transportation demand management plan in coordination with DDOT, that includes the following elements: designate a Resident Transportation Coordinator to encourage and disseminate information about non-private automobile trips and serve as the building's TDM leader; provide a secure bicycle parking room with 30 spaces; monitor and audit the site, with assistance from DDOT, to analyze the mode split assumptions; and provide each dwelling unit in the Phase III Building, upon initial move-in only, a complimentary one-year membership to Capital Bikeshare or to a car-sharing program, at the tenant's discretion;

- (e) *Employment and Training Opportunities.* The Applicant has agreed to enter into a First Source Employment Agreement with the District's Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for a significant percentage of the jobs created by Phase III of the PUD. Applicant also has agreed to enter into a Certified Business Enterprise Agreement with District's Department of Small and Local Business Development ("DSLBD") with regard to Phase III;
- (f) *Environmental Benefits.* The Project's environmental benefits include a commitment to incorporate into the design, construction and operation of the Phase III Building sustainability measures equivalent to LEED NC 2009 Silver rating, including installation of a green roof as part of the new construction, and extensive landscaping on the Property; and
- (g) *Uses of Special Value to the Neighborhood or the District as a Whole.* The Commission finds that the Project provides funding or in-kind work to provide streetscape or public space improvement within NoMa Business Improvement District.

76. The Commission finds that the PUD is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, urban design and architecture, employment and training opportunities, environmental benefits, and uses of special value to the neighborhood. These proffered benefits and amenities are appropriately balanced against the requested development incentives for the Project, namely an increase of approximately 12,000 square feet of density over the matter-of-right limit.

Compliance with Comprehensive Plan

77. The Commission finds that the proposed modification is consistent with the Future Land Use Map and the Generalized Policy Map and advances the purposes of the Comprehensive Plan and furthers and complies with the major themes and policies in the Citywide and Area Elements in the Comprehensive Plan. With regard to the Future Land Use Map, the Phase III Land is identified for mixed-use moderate-density commercial and moderate-density residential, as is the eastern portion of the Approved PUD Land, which the Commission approved for C-3-C zoning designation in the PUD Approval. The entire PUD Site is included in the NoMa New York Avenue Land Use Change Area pursuant to the Generalized Policy Map.
78. The Commission further finds that the Project advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan, as follows:
- (a) *Land Use Element.* The Project is consistent with a number of policies established in the Land Use Element, including Policy LU-1.4.1: Infill Development. The proposed modification responds to the District's priority of encouraging infill development on vacant urban land, especially those which create gaps in the urban fabric and detract from the character of residential streets;
 - (b) *Housing Element.*
 - (1) Policy H - 1.1.3: Balanced Growth. The proposed modification responds to the District's strong encouragement to develop new housing on vacant and underutilized land; and
 - (2) Policy H - 1.1.4: Mixed Use Development. The PUD Approval, as proposed to be modified, addresses the District's priority of promoting mixed-use development, including housing, on commercially-zoned land, particularly around appropriate Metrorail stations;
 - (c) *Urban Design Element.*
 - (1) Policy UD - 2.2.7: Infill Development. The proposed modification addresses the District's direction to avoid overpowering contrasts of scale, height and density as infill development occurs. The Project provides a contextual corner piece that brings together the taller Phase II and the lower-scale Phase I, to provide a suitable bridge to the buildings either recently constructed or under construction at the intersection adjacent to the Phase III Land;

- (2) Policy UD 3.1.1: Improved Streetscape Design. The modification addresses the District's call to improve the appearance of the District's landscaped areas through its significant beautification efforts along both the 3rd Street and L Street frontages. These public space improvements are compatible and in keeping with similar public space improvements included in the PUD Approval;
- (d) *Transportation Element.* The overall goal of the Transportation Element is to create a safe, sustainable, and efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce and visitors, supports economic prosperity, and enhances the quality of life for District residents. The Project supports this goal through its various transit-enhancement components, including the Applicant's commitment to restricting resident access to the RPP registry, extensive bicycle parking capacity within the Phase III Building and around Square 749, a loading and trash management plan, and transportation demand management initiatives, including promotion of non-automotive transit options;
- (e) *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality. The Project includes extensive landscaping, energy efficiency, and green engineering practices, including a commitment to providing sustainability measures and features within the Phase III Building equivalent to LEED NC Silver and is therefore consistent with the Environmental Protection Element; and
- (f) *Central Washington Area Element.* Policy CW 1.1.4: New Housing Development in Central Washington. The modification directly responds to the District's encouragement to develop new high-density housing in Central Washington, particularly in NoMa, as a strong downtown residential community can create pedestrian traffic, meet local housing needs, support local businesses in the evenings and on weekends, and increase neighborhood safety and security.

CONCLUSIONS OF LAW

1. Pursuant to §2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Subsection 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project. (11 DCMR § 2403.3.)
3. The overall PUD, including as modified by the Applications, meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
4. The development of the PUD, as modified by the Applications, carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The PUD's benefits and amenities are reasonable for the development proposed on the Property. The impact of the PUD on the surrounding area is not unacceptable. Accordingly, the Applications should be approved.
6. Evaluating the PUD modification according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the Applications qualify for approval. Judging, balancing, and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits herein, in conjunction with the amenities discussed above, are appropriate in this case.
7. Approval of this PUD modification and change of zoning is not inconsistent with the Comprehensive Plan.
8. Approval of this PUD modification and change of zoning is not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code § 6-641.02, including as follows:
 - (a) The proposed rezoning is not inconsistent with the Comprehensive Plan;
 - (b) The proposed rezoning will not produce objectionable traffic conditions; and
 - (c) The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land.

9. Approval of this PUD modification will promote the general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, and civic activity.
10. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
11. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, building density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that would otherwise require approval by the Board of Zoning Adjustment.
12. The Commission is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6C's recommendation in opposition to the Applications. The Commission notes in this regard that the principals of the Applicant herein have owned all the property in Square 749 and retain an ownership interest in UPPI, owner of Phase I, have submitted for the record evidence of an agreement with the new owner of Phase II to cooperate in the Applications, and own all of the Phase III Land and have spent many years working with the District, OP, and the Commission on the development of Square 749. Therefore, for this, among other reasons set forth in the record, the Commission deems the Applications an appropriate modification to the Approved PUD. The ANC's comments concerning loading were addressed in Applicant's letter to ANC Commissioner Goodman on August 21, 2013. The Commission affords the views of ANC 6C the great weight to which they are entitled.
13. The Commission concludes that it is appropriate to review the Applications absent the consent of UPPI as the Phase I Owner in light of past decisions of the Commission allowing phases of PUDs to move forward absent consent of all owners of property with said PUD, which approach was upheld and confirmed as appropriate by the District of Columbia Court of Appeals in *1330 Connecticut Avenue, Inc. v. D.C. Zoning Commission*, 669 A.2d 708 (1998), and other examples included in the Applicant's submissions to the record. In addition, the Commission notes that the Applicant is no outsider trying to tag on this PUD. Rather, as previously stated, the Cohen family had been involved for more than two decades in the redevelopment of Square 749, from assemblage of all the properties in the square, to selection of the project architects, to working with the impacted community; and further, that the Cohen family retained an ownership interest in Phase I of the PUD and also Phase II as of the time the Applicant made application for the present modification.

14. The Applications for a PUD modification and Zoning Map amendment will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
15. The Applications for a PUD modification and Zoning Map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
16. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP's recommendation that the Commission approve the Applications. For the reasons stated above, the Commission concurs with the OP's recommendation and approves the Applications.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Applications for modification to an approved planned unit development and for a Zoning Map amendment from C-2-B to C-3-C for Lots 31, 804, 805, and 830 in Square 749. This approval is subject to the following guidelines, conditions, and standards:

A. Project Development

1. The Project shall be developed in accordance with the plans submitted to the Commission on July 12, 2013, located at Exhibit 36 of the Record, and the guidelines, conditions, and standards herein. These plans incorporate comments received from the Commission and supersede all earlier Project drawings included in the Record. The Applicant has committed to pursue approval by DCRA of the alternative design for the west elevation submitted to the Commission (Ex. 36A2, p. Ex. 3) and to the extent applicable to pursue a waiver request under the District of Columbia Construction Code to construct the alternative design.
2. The Project shall be an apartment house measuring approximately 63 feet eight inches in height from 3rd Street, N.E., with a building density of not more than 6.48 FAR.
3. The Applicant is granted flexibility with the design of the Project to provide a rear yard setback not meeting the requirements of § 774.1 of the Zoning Regulations.
4. The Applicant is granted flexibility with the design of the Project to provide no on-site parking in the Phase III Building pursuant to § 2101 of the Zoning

Regulations. To that end, Condition No. 2 of Z.C. Order No. 05-36E is amended to reflect an overall diminution in the permitted parking ratio from one parking space per 0.71 residential units to one parking spaces per 0.67 residential units across the PUD.

5. The Applicant is granted flexibility with the design of the Project to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
6. The Applicant is granted flexibility with the design of the Project to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials.
7. The Applicant is granted flexibility with the design of the Project to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.
8. The Applicant is granted flexibility with the design of the Project to vary the final selection of landscaping and vegetation types as proposed, based upon availability at the time of construction and finalization of site grading and utility plans.

B. Public Benefits and Project Amenities

9. The Phase III Building shall be designed and constructed to receive a sufficient number of points under the United States Green Building Council's LEED New Construction (NC) 2009 standards that would have entitled the Phase III Building to the LEED NC Silver rating if the Applicant had made such an application.
10. Prior to the issuance of the certificate of occupancy for the Phase III Building, the Applicant shall demonstrate that it has entered into a First Source Employment Agreement with DOES whereby the Applicant commits to work through DOES to ensure that at least 51% of any new hires created by the project shall be District of Columbia residents.
11. Prior to the issuance of the certificate of occupancy for the Project, the Applicant shall demonstrate that it has entered into a Certified Business Enterprise Utilization Agreement with DSLBD applicable to the Phase III Building whereby

the Applicant agrees to contract with Certified Business Enterprises for no less than 35% of the adjusted development budget for the Project.

12. Prior to the issuance of the certificate of occupancy for the Phase III Building, the Applicant shall demonstrate that a total of 21 bicycle racks meeting DDOT standards have been installed in public space around the perimeter of Square 749.
13. For so long as the project exists, the Phase III Building shall include a total of five dwelling units (approximately 2,644 square feet of residential GFA) within the Project devoted as Inclusionary Zoning units, as controlled by the provisions of Chapter 26 of the Zoning Regulations. The Inclusionary Zoning units shall be located generally as provided in the drawings provided as Exhibit 36 (Sheet Ex.1).
14. Prior to the issuance of the certificate of occupancy for the Project, the Applicant shall demonstrate that it has provided financial support in the amount of \$5,000 to the NoMA Park Fund or provide an equivalent amount in services in NoMa in the form of construction of streetscape or public space improvements, and submit a letter to DCRA demonstrating that the streetscape or public space improvements have been completed or are underway.
15. For the life of the Project, the Applicant shall abide by the transportation demand management plan set forth in the DDOT report and as agreed at the public hearing, which shall include the following: (i) designating a Resident Transportation Coordinator to encourage and disseminate information about non-private automobile trips and serve as the building's TDM leader; (ii) providing a secure bicycle parking room with 30 spaces; (iii) monitoring and auditing the site, with assistance from DDOT, to analyze the mode split assumptions; and (iv) providing each dwelling unit in the Phase III Building, upon initial move-in only, a complimentary one-year membership to Capital Bikeshare or to a car-sharing program, at the tenant's discretion.
16. For the life of the Project, the Applicant shall take such steps as are necessary to ensure that residents do not receive a residential parking permit ("RPP"), including without limitation (i) placing a clause in emphasized typeface in all leases for residential units prohibiting any resident from applying for or obtaining a RPP, with a provision for mandatory lease termination, to the full extent permitted by law; (ii) ensuring that DDOT removes the property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP; and (iii) should the Applicant sell any units at the property, adding a covenant that runs with the land to the deed for the units prohibiting residents from applying for or obtaining RPPs, to the full extent permitted by law.

17. For the life of the Project, the Applicant shall abide by the second and third elements of the preliminary loading management plan provided as Exhibit 26, namely, (i) the Applicant, thorough site management staff, shall schedule move-in and move-out activity so that access to the front entrance, side/service entrance and the elevator will be coordinated, and the Applicant will ensure that maintenance staff is on duty during all move-in and move-out activity; and (ii) trash will be transported from the first-floor trash room to the L Street curb via the service door using small-wheeled receptacles.

C. Miscellaneous

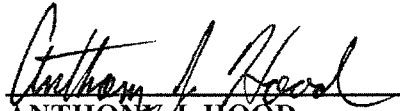
18. No building permit shall be issued for the Project until the Applicant has recorded a Notice of PUD Modification in the Land Records of the District of Columbia between CASCO and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such Notice shall bind CASCO and all successors in title to construct on and use the Property in accordance with this order or amendment thereof by the Commission.
19. The Zoning Map Amendment referenced herein shall become effective only upon the recordation of said Notice.
20. The modification approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in § 2409.1 of the Zoning Regulations. Construction of the Project shall begin within three years of the effective date of this Order.
21. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 30, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the Applications at it public meeting

by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On November 18, 2013, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 27, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION ORDER NO. 05-36H
Z.C. Case No. 05-36H
K Street Developers, LLC
(Minor Modification to Approved Planned Unit Development @ Square 749)
March 11, 2013

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on March 11, 2013. At that meeting, the Commission considered an application from K Street Developers, LLC ("Applicant"), for modification to a previously approved planned unit development ("PUD") and Zoning Map amendment for Record Lot 67 in Square 749, which is bounded by 2nd, 3rd, K, and L Streets, N.E., pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations (11 DCMR). Because the modification was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations and voted unanimously to grant the application.

FINDINGS OF FACT

1. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval and a related Zoning Map amendment to allow for the construction of a two-phased apartment development around an outdoor central plaza. The PUD approval provided for a total of approximately 712 dwelling units with ground-floor retail and other non-residential uses. Phase I contemplated approximately 212 dwelling units, and Phase II was planned to provide approximately 500 units. The two phases were designed to be constructed as a single building for zoning purposes, with above-grade connections located on various upper-level corridors. As part of the original order, the Commission granted consolidated approval for Phase I of the PUD and first stage approval for Phase II. The Applicant confirms that construction of the first phase of the development, located on that certain portion of Record Lot 67 known as Lot 828, has been completed and is being occupied and that this first phase is now owned and operated by an entity known as Union Place Phase I, LLC, which, as was previously stated, is a separate entity from the Applicant.
2. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval for the second phase of the PUD, to be located on that portion of Record Lot 67 known for assessment and taxation purposes as Lots 826 and 827.
3. In Z.C. Orders Nos. 05-36B and 05-36C, the Commission approved minor modifications to Phase I of the PUD, to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only (05-36B), and to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household expenses for payment of rent in order to accommodate arts professionals (05-36C).
4. The Commission granted time extensions for Phase II of the PUD in Z.C. Order Nos. 05-36D and 05-36F, such that a building permit application for Phase II must be filed by November 2014.

5. In Z.C. Order No. 05-36E, the Commission granted the Applicant flexibility to construct Phase II in two sub-phases, and modified the PUD's parking requirement.
6. Application No. 05-36G, which is currently pending before the Commission, regards a proposed modification to the PUD to include additional land in Square 749 as part of the PUD in order to allow construction of a seven-story, 41-unit freestanding apartment house.
7. The multi-phase PUD was designed as a single building for zoning purposes by virtue of the installation of door connections along certain of the upper level residential corridors of Phases I and II. Aside from the connections, the two phases have been designed to be occupied and operated completely independent of one another.
8. The Applicant has stated that its relationship with Union Place Phase I, LLC, the record owner of Assessment and Taxation Lot 828 within the PUD, has been strained to the extent that future cooperation between the parties in the completion and operation of the two phases of the PUD appears remote. As a result, the Applicant filed the present application for minor modification to the PUD - solely to allow the PUD to be constructed, occupied, and operated as separate buildings on a single record lot. This modification would be accomplished through the Commission's approval of the removal of all door openings and above-grade connections between Phase I and Phase II.
9. The Commission's grant of the Applicant's minor modification would have no detrimental impact upon the PUD in its entirety, nor upon Union Place Phase I, LLC, nor the occupants of the Phase I building. No physical modifications would be required to be made to the Phase I building. There would be absolutely no discernible change to the exterior appearance of the PUD. All of the amenities of the PUD would continue to be provided as approved by the Commission. The overall design and programming of the PUD would remain unchanged. The Applicant has stated that this minor modification is solely requested by the Applicant to allow Phase II to move forward to financing, construction, occupancy, and operation without future involvement by Union Place Phase I, LLC.
10. According to the Applicant's February 27, 2013, letter, aside from the minor modification to the approved plans for the PUD of removing a single door opening/building connection on the Phase II portion of the property, the overall PUD project that the Commission approved has not changed in any fashion. The use, height, and density of the PUD have not changed. The overall gross floor area of the PUD remains unchanged. The project amenities and community benefits of the project, including the significant affordable housing commitment, likewise remain unchanged and will continue to be provided as part of the PUD.

11. As identified on Sheets A2.03A and A4.01 of the drawings submitted with its October 28, 2010, letter (Exhibit 2, Z.C. Case No. 05-36E), the Applicant proposes to finish the north wall of Phase II-A with the same materials as utilized for the first phase of the PUD. This north wall ultimately will become an internal wall once Phase II-B is constructed. Similarly, plans for the interim landscaping for the second phase are shown on Sheets A4.01 and A4.02 of the drawings. Upon completion of construction of Phase II-B, the completed PUD, including the landscaped plaza area, will appear as approved by the Commission in Z.C. Case Nos. 05-36, 05-36A, and 05-36B, and all of the proposed project amenities and community benefits that the Commission approved will continue to be provided in the project.
12. The District of Columbia Office of Zoning referred this matter to the Office of Planning for analysis and recommendation. By memorandum dated March 8, 2013, the Office of Planning stated its support for approval of the modified project as a minor modification.
13. Responding to the Office of Planning report, the Applicant submitted a letter dated March 1, 2013, clarifying that approval of the application by the Commission would result in there being two principal buildings on Record Lot 67 in Square 749, which condition is permitted pursuant to § 2517 of the Zoning Regulations. The Applicant further confirmed that upon the approval of the application the PUD will continue to satisfy all of the requirements of section § 2517, including use, height, bulk, and open spaces. The point of measurement for the Phase II building will be from L Street, N.E., and the height of the Phase II building will not exceed 130 feet from that point of measurement.
14. Ward 6 Councilmember Tommy Wells submitted a letter to the Commission, dated February 28, 2013, recommending approval of the application.
15. Advisory Neighborhood Commissioner Tony Goodman, Single Member District Representative for ANC 6C06, the district in which the property is located, submitted a letter to the Commission dated March 4, 2013, stating support for the modification and recommending that the Commission approve the requested modification. No report was received from ANC 6C.
16. On March 11, 2013, at its regular public meeting, the Commission reviewed the modification request as a Consent Calendar matter.
17. The Commission concurs with the Applicant, and the Office of Planning that the approval of the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved PUD. Further, the 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, gross floor area, or project amenities or benefits. The Commission concludes that the two phases of the PUD will have separate points of measurement for purposes of determining building height. The Phase II point of measurement for building height shall be taken from L Street, N.E., and the height of the Phase II building from that point of measurement shall not exceed 130 feet in height.

The Commission is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of the Office of Planning. The Office of Planning recommended approval of this application as a minor modification, and the Commission concurs in this recommendation.

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 of an approved PUD for Lot 67 Square 749. Condition No. 1 of Z.C. Order No. 05-36A is modified to read:

1. The PUD shall be developed in accordance with the architectural plans and elevations dated June 2, 2008 and marked as Exhibit 38 of the record in this case (the "Final Plans"), **as may be modified by the revised floorplans shown in the plans marked as Exhibit C to Exhibit 1 of the official record of Case No. 05-36H, which plans provide no above-grade building connections between Phase I and Phase II of the PUD,** and as modified by the guidelines, conditions, and standards of this order. The Applicant shall have the flexibility to modify the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and bathrooms, provided that the variations do not change the exterior configuration of the building;
 - (b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;

- (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railing, and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit;
- (d) To modify the design of all landscaping and other streetscape improvements located in public space in order to secure any necessary permits from the District Department of Transportation;
- (e) To increase or decrease the overall number of residential units by no more than 5% percent, provided that the percentage of residential gross floor area designated for affordable units shall be no less than 10% of the total gross floor area devoted to residential units and shall be provided consistent with the Commission's approval in Corrected Z.C. Order No. 05-36; and
- (f) To vary the number and location of parking spaces in the underground garage, provided that the total number of parking spaces is no less than 545 vehicle spaces and 55 bicycle spaces.¹

Pursuant to § 2409.3 of the Zoning Regulations, the Applicant shall record a notice of modification of Z.C. Order No. 05-36 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.

On March 11, 2013, upon the motion of Chairman Hood, as seconded by Commissioner Miller, this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael J. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on June 21, 2013.

¹ Through Z.C. Order No. 05-36E, the Commission approved a modification to Z.C. Order 05-36A that provided in part that:

Parking shall be provided throughout the PUD at a ratio of 0.71 parking spaces per dwelling unit. Any references to amount of parking provided in any prior order shall be superseded by this Order.