GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED[1] ORDER NO. 05-17B/05-32B
Z.C. Case Nos. 05-17 and 05-32
Approvals for Planned Unit Developments for
the Property Located in the Vicinity of the Intersection of Florida Avenue, 9th Street, and V Street, N.W. (Square 2873, Lots 1, 232, 852, 853, 859, and 864; Square 2875, Lots 1106, 1107, 2012, 2026, and 2030)
April 20, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 26, 2006 to consider applications from Broadway Atlantic One LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") in Squares 2873 (Lot 864) and 2875 (Lots 1106, 1107, 2012, 2026, and 2030). The application was assigned Z.C. Case No. 05-17, and then was split into two applications. Case No. 05-17 included the properties in Square 2875, and Case No. 05-32 included the property in Square 2873. Case No. 05-32 was later amended to add the following property in Square 2873: Lots 1, 232, 852, 853, and 859. The applications were filed on behalf of and with the consent of the owners of the properties that are the subject of the applications. The Zoning 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. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the applications subject to conditions.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On June 14, 2005, the Applicant filed an application with the Commission for review and approval of two PUDs that together comprise one project, and for a related map amendment for property located at 2030 8th Street, N.W. (Square 2875, Lot 2030). The Applicant later withdrew its request for a map amendment. Comprising a total of approximately 2.2 acres, the PUD site initially included Lot 864 in Square 2873 and Lots 1106, 1107, 2012, 2026, and 2030 in Square 2875. Subsequently Lots 1, 232, 852, 853, and 859 in Square 2873 (together with the aforementioned properties, the "Property") were included in the two PUDs.

[1] The original Order was published at 53 DCR 4517. This Corrected Order corrects a typographical error on page 16, Decision paragraph 6 – "Parcels A, B, and D" are replaced with "Parcels A, B, and C."

2. During its public meeting held October 17, 2005, the Zoning Commission voted to schedule a public hearing on each application. The Zoning Commission decided to review the application as two separate cases, and, accordingly, the application was designated Z.C. Cases No. 05-17 and 05-32. The Zoning Commission also requested that the Applicant provide a more detailed landscape and grading plan, a more detailed circulation and loading plan, additional information about relief from the requirements applicable to roof structures, and additional elevations showing the scale in relation to adjacent buildings.

3. Through the two PUD applications, the Applicant proposes to construct four mixed-use buildings with a combined total of up to 700 residential units (the "Project").

4. Three of the proposed buildings are included in Case No. 05-17. This portion of the Project is known as Atlantic Plumbing South and includes the portions of the Property located in Square 2875: Lots 1107, 2012, and 2026 ("Parcel A"); Lot 2030 ("Parcel B") and Lot 1106 ("Parcel D"). It is located in Ward 1 and contains approximately 58,023 square feet of land area. Parcel A is located in the CR zone district at the northwest corner of the intersection of 8th and V Streets, N.W. Parcel B is located in the ARTS/C-2-B zone district at the southeast corner of 8th and V Streets, N.W. Parcel D is located in the CR zone district on 9th Street, just north of the 9:30 Club, a well-known nightclub. The Applicant proposes to construct a separate building on each of the three parcels, for a total of three buildings in Atlantic Plumbing South. The Applicant has withdrawn its request for a zoning map amendment and requests PUD approval under the existing zoning categories.

5. One of the four buildings in the Project is included in Case No. 05-32. This portion of the Project is known as Atlantic Plumbing North and includes the portions of the Property located in Square 2873: Lots 1, 232, 852, 853, 859, and 864 ("Parcel C"). It is located in Ward 1 and contains approximately 37,493 square feet of land area. Parcel C is located in the CR zone district between Florida Avenue and 9th Street, N.W., south of the Howard University parking lot.

6. On November 3, 2005, the Applicant filed two prehearing statements, one for each case, including additional information requested by the Zoning Commission and the Office of Planning.

7. After proper notice, the Commission held a hearing on the applications on January 26, 2006. One hearing was conducted for the two applications. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B, the ANC within which the Property is located.

8. As a preliminary matter, the Applicant requested that the Commission waive the notice requirements set forth in § 3015.11 to enable the Applicant to add Lot 1 in Square 2873 (a 2,948-square-foot lot) to Case No. 05-32 (Atlantic Plumbing North). The Applicant explained that it had purchased additional property in order to accommodate an easement requested by the Office of Planning. Initially, the owner of Lot 1 was not inclined to sell, but the owner ultimately decided to sell the property to the Applicant shortly before the scheduled public hearing. As a

result, Lot 1 was not included in the public notice of the hearing. The Commission found that the inclusion of Lot 1 in Case No. 05-32 would have no effect on which property owners received notice of the hearing, because Lot 1 abuts property owned by the Applicant on three sides. Therefore, ample notice of the Project had been given. The Commission voted unanimously to waive the provision of § 3015.11 with regard to Lot 1.

9. At its duly noticed meeting held January 5, 2006, with a quorum present, ANC 1B voted 8-0-0 to support a proposed traffic improvement for the extension of Bryant Street culminating in a traffic circle intersection with Florida Avenue. This proposal was made by the District Department of Transportation ("DDOT") in connection with its study of the immediate area. The ANC vote in support of the Project failed on a vote of 3-5-0. The ANC subsequently voted 7-1-0 to request that the Zoning Commission delay consideration of the applications for one month in order to allow the ANC further time to discuss the Project with the Applicant. Some members of the ANC voiced concern about the size of the development, the amount of affordable housing, and the composition and extent of the amenities package. At its duly noticed meeting held February 2, 2006, with a quorum present, ANC 1B voted 7-2 to endorse the applications. The Applicant agreed to make a $100,000 contribution to the ANC for use in connection with various neighborhood organizations.

10. There were no parties or persons in support of the PUD.

11. There were no parties in opposition to the PUD. Christopher Hopson, a representative of Howard University, testified in opposition to the Project. He stated that Howard University did not object to the Project itself, but, rather, to the proposed extension of Bryant and/or W Streets. He testified that the extended streets would cross Howard's campus and might interfere with the Howard Town Center project and the construction of a new School of Engineering.

12. At the hearing, the Applicant submitted into the record updated plans and elevations for Atlantic Plumbing North and Atlantic Plumbing South.

13. At its meeting held March 2, 2006, the Commission took proposed action to approve the applications with conditions. The vote on each application was 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael Turnbull voting to approve; Carol J. Mitten not present, not voting; John G. Parsons not voting, not having participated).

14. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated March 30, 2006, found the proposed PUDs would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

15. The Commission took final action to approve the applications of Cases No. 05-17 and 05-32 on April 20, 2006, by votes of 4-0-1.

<u>The PUD Project</u>

16. The Project comprises four sites located between Florida Avenue and 8th Street, N.W. The total land area of the Property is 95,516 square feet. Z.C. Case No. 05-17, known as Atlantic Plumbing South, includes Parcels A, B, and D. Parcel A is situated at the northwest corner of 8th and V Streets and is the largest of the four sites at 40,530 square feet. Parcel B is situated at the southwest corner of 8th and V Streets and comprises 13,420 square feet. It abuts the Housing Finance Agency building and is located across the street from the General Baking Co. building. Parcel D is the smallest of the four sites at 4,073 square feet and is situated directly north of the 9:30 Club on the east side of 9th Street, N.W. Z.C. Case No. 05-32, known as Atlantic Plumbing North, includes Parcel C. Parcel C is situated on the east side of Florida Avenue, directly west of the intersection of W Street, N.W. It comprises 37,493 square feet.

17. The Generalized Land Use Map recommends a mix of moderate- and medium-density residential and commercial uses for the Property. The Property currently is improved with a mixture of commercial uses such as parking lots, concrete-block industrial buildings, and warehouses. All of the existing buildings will be demolished as part of the Project. Much of the property to the north and east of the Property is owned by Howard University and is part of the plan for the Howard Town Center. Much of the property to the north is currently devoted to parking lots for Howard University. The Property is just north of the U Street Corridor and lies in the northern portion of the Uptown Destination District Plan. The Property also is located within the Howard Gateway Housing Opportunity Area. This area has been designated as a desirable location for the development of housing and residential uses.

18. The proposed Project is a mixed-use development of residential and retail uses. The Applicant has requested flexibility to construct up to 700 residential units among Parcels A, B, C, and D. The Applicant currently proposes to construct approximately 342 units on Parcel A, approximately 91 units on Parcel B, approximately 262 units on Parcel C, and approximately 10 units on Parcel D. Each building will feature some ground-floor retail. Parcels A and B will provide ground-floor retail on the V Street frontages to take advantage of the prominent corner locations of these buildings. Parcel C may feature retail on the Florida Avenue frontage and Parcel D may feature retail on the 9th Street frontage, depending on market conditions.

19. The largest building in Atlantic Plumbing South will be constructed on Parcel A. This building has a prominent corner location with frontage on 8th and V Streets. The largest retail component for this building will be situated at the corner location at the intersection of 8th and V Streets. The building will feature a parking garage below grade that will provide approximately 313 parking spaces, including full-sized and compact spaces. Access to the parking garage will be from the alley behind the building. The roof of the building will feature a pool, landscaped areas, and green roof technology. The rear court of the building will be landscaped with plants. The proposed height is 100 feet, and the proposed lot occupancy is 82 percent. The proposed floor area ratio ("FAR") is 8.0, which results from the combined FAR of Parcel A and Parcel D.

20. The building to be constructed on Parcel B, which is located in Atlantic Plumbing South, will feature a tower that will emphasize and enhance the building's prominent corner location. It will feature a rear courtyard and roof terrace. The ground floor retail will be focused at the

prominent corner location. The parking garage will include three levels below grade and will provide approximately 76 parking spaces, including full-sized and compact spaces. Access to the garage will be directly from V Street. The building will have a height of 90 feet, which will be stepped down to 65 feet at the southern elevation in response to the adjacent rowhouses. The FAR will be 6.3, and the lot occupancy will be 83 percent.

21. The building to be constructed on Parcel C, which comprises Atlantic Plumbing North, will feature a large open courtyard. The roof will feature a pool with recreation and gathering space. It will contain a parking garage with three levels below grade, which will provide approximately 256 parking spaces, including full-sized and compact spaces. Access to the parking garage will be directly from 9th Street. The building will have a height of 100 feet, an FAR of 8.0, and a lot occupancy of 83 percent.

22. The building to be constructed on Parcel D will be the smallest of the buildings in the Project. A part of Atlantic Plumbing South, it will feature approximately 10 residential units with a small ground-floor retail component. There will be no parking in this building, but the residents will have access to the parking across the alley in the building located on Parcel A. The height of the Parcel D building will be 60 feet, and the lot occupancy will be 81 percent. The proposed FAR is 8.0, which results from the combined FAR of Parcel D and Parcel A.

23. In a submission made February 13, 2006, the Applicant indicated that all parking spaces for retail uses on both Atlantic Plumbing North and Atlantic Plumbing South will be located on Parcel A at grade and outside of the parking garage. The spaces will be easily accessible, and will avoid conflicts that could result from the combined use of the garage for residential and retail parking.

24. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study and the testimony presented by Martin J. Wells, the Applicant's traffic consultant, during the public hearing. As discussed below, the Applicant plans to contribute $250,000 toward the construction of a DDOT-endorsed extension to Bryant Street that will connect Georgia and Florida Avenues and will terminate in a traffic circle at the intersection of Sherman and Florida Avenues. In addition, the Property is located in close proximity to the U Street/African-American Civil War Memorial/Cardozo Metrorail Station.

Matter-of-Right Development under Existing Zoning

25. The Property is located primarily in the CR district, which is designated for mixed-use development. The maximum building height permitted as a matter-of-right in the CR district is 90 feet. The maximum density permitted as a matter-of-right is 6.0 FAR. Parcel B is located in the ARTS/C-2-B district, which is designated to serve commercial and residential functions with high-density residential and mixed uses. The maximum height permitted as a matter of right in the ARTS/C-2-B district is 65 feet. The maximum density permitted as a matter of right is 3.5 FAR.

Development Incentives and Flexibility

26. The Applicant requested the following areas of flexibility from the Zoning Regulations:

a. FAR: The Applicant is seeking density above the matter-of-right maximum for the applicable zone district. Parcel A will be developed to an FAR of 8.0, which is the maximum density permitted for a PUD in the CR zone. Parcel B will be developed to an FAR of 6.3, which is greater than the maximum 6.0 FAR permitted for a PUD in the ARTS/C-2-B zone. For Parcel B, the Applicant is seeking an additional five percent density, which is permitted under § 2405.3 if the increase is essential for the functioning of the project. Parcel C will be developed to an FAR of 8.0, which is the maximum density permitted for a PUD in the CR zone. Parcel D will be developed to an FAR of 4.8, which is less than the maximum 8.0 FAR permitted for a PUD in the CR zone.

b. Roof Structures: The Applicant has requested minor relief from the roof structure requirements. The roof structure on the Parcel B building will be 18 feet, 6 inches in height and will be set back only 10 feet from the edge of the building along the alley on the west. The roof structure on Parcel C will not be set back from the southern elevation.

c. Lot Occupancy: The proposed lot occupancy for all four sites is greater than the maximum allowed as a matter of right under the Zoning Regulations. All four of the sites are limited to a 75 percent lot occupancy for the residential floors. As set forth above, all four of the Parcels have proposed lot occupancies between 80 and 83 percent.

d. Recreation Space: Both the CR and C-2-B districts require residential developments to provide recreation space equal to 15 percent of the total residential gross floor area. The Applicant is proposing to provide recreation space equal to approximately 10 percent of the residential gross floor area. The recreation space will be enhanced by the spacious outdoor courtyards and roofscapes, as well as the private balconies and gardens.

e. Public Space at Ground Level: The CR district requires at least 10 percent of the lot area to be open public space. Parcels A and C will provide approximately five percent, and Parcel D will provide approximately eight percent open public space. The public space at ground level will be enhanced by the proposed upgraded streetscapes, courtyards, and private gardens.

f. Loading: Parcel B will not provide all of the loading facilities required by the Zoning Regulations. It will provide the required 30-foot berth, 20-foot service bay, and 200-square-foot loading platform. It will not provide a 55-foot loading berth or a 100-square-foot loading platform.

g. Courts: The building proposed for Parcel A will feature a closed court in lieu of a rear yard. The proposed court is 15 feet. A 25-foot court is required.

h. Parking: Because of the small size of the building proposed for Parcel D, the Applicant has requested that the required parking for Parcel D be located in the Parcel A garage.

i. The additional five percent of FAR the Applicant is requesting for Parcel B is essential for the functioning of the Project and meets the requirements of § 2405.3 of the Zoning Regulations. Two factors related to the Property have directly affected the design of the building and created a need for an additional five percent FAR on Parcel B. First, the alley that once existed to the west of this property has been incorporated into the neighboring property. As a result, the building's loading functions must be located within the first floor plan, and thus will count toward FAR. Second, because of the narrow right of way and sidewalks of 8th Street to the west, the bay projections will be located on the property and cannot project into public space. (Bays in public space do not count towards FAR.) The bays are an important part of the design of this building that help it to integrate with the adjacent rowhouses. Also, because of the bay design, the elevation of the building will be pushed back four feet, therefore affecting all eight levels of the building.

Public Benefits and Amenities

27. The following benefits and amenities will be created as a result of the Project:

a. Housing and Affordable Housing: The greatest benefit to the neighborhood and the District as a whole will be the creation of new housing opportunities consistent with the Zoning Regulations, the Comprehensive Plan, the Mayor's housing initiative, and the "DUKE" Plan for a cultural destination district within Washington, DC's Greater Shaw/U Street Plan. The Applicant proposes to devote an area equal to 15 percent of the density gained through the PUD process to affordable housing for those households whose income does not exceed 80 percent of the Area Median Income as that term is defined by the U.S. Department of Housing and Urban Development. The proposed Project will include a total of 695 apartments on the four parcels. Of these, approximately 14 percent will be studio apartments, 29 percent will be one-bedroom units, 40 percent will be one-bedroom with den units, and 16 percent will be two-bedroom units. The Applicant proposes a similar mix of units for the affordable housing requirement, providing 18,800 square feet of affordable housing on the Atlantic Plumbing South parcels and 11,000 square feet of affordable housing on the Atlantic Plumbing North parcel. The Applicant has requested flexibility with regard to the size and type of units. If the allocation of market-rate unit types changes, the allocation of affordable units will change to reflect this allocation. The affordable units will be distributed among floors on Parcels A, B, and C. The units will be affordable for a 20-year term. The Department of Housing and Community

Development will determine the price and enforce the affordability of the units through covenants and other legal mechanisms.

b. Transportation: Initially, the Applicant, OP, and DDOT proposed that the Applicant would provide an easement to the District over the northern portion of Parcel C in order to allow the future extension of Bryant Street. This street extension is important to the development of the area between Georgia and Florida Avenues north of V Street. There is currently no east-west connection between V Street to the south and Barry Place to the north, and access to the Project and the future Howard Town Center will be difficult without the increased mobility and access through this unusually large block. Following further discussions with DDOT, it was determined that the preferred location for the street extension is further north of Parcel C, and not adjacent to the Applicant's property. DDOT has proposed a traffic circle at the corner of Florida and Sherman Avenues that would connect to a proposed Bryant Street to the east. The Applicant has agreed to contribute $250,000 to DDOT toward the engineering and design costs of the circle and future Bryant Street extension. In addition, the Project will provide the benefit of effective and safe vehicular and pedestrian access.

c. Urban Design, Architecture, Site Planning, and "Green" Building Practices: The high quality of design in the development of the architecture for the Project exceeds that of most matter-of-right projects. The landscaping, raised first floor access, and alternating composition of projecting bays all combine to create a sense of scale and visual interest. The open courtyards will be an attractive amenity for the buildings' residents. The bays of the buildings have been designed to provide ample room for street trees to grow and thrive. This Project features numerous aspects that are superior to those typical for a matter-of-right project. Some of these include: no through-wall vents or exhaust flues; a superior quality of brick with tinted mortar, and a custom bonding pattern with numerous special shapes; embellished brick window heads; pre-cast window sills and window heads that project into surrounding brick; recessing windows beyond standard to create better shadow lines and weathering characteristics; superior glass; green roof technologies with pool and accessory amenities and equipment; architectural rooftop embellishments that incorporate exhaust vents and fans to provide wind-screening and shade; ornamental metal; direct access to ground level units requiring more site work and custom units; nine-foot ceilings; water source H.P.S., which uses 40 percent less energy than air-to-air; 100 percent outside ventilation air-to-air corridors; a recycling chute to encourage compliance; generous bike storage; a 1:1 ratio of parking spaces to residential units; increased exterior wall R-value based on using a rigid insulation system outside of sheathing; and D.C. standard streetscape at street facades; and bio-water detention system in addition to green roof technologies.

d. Uses of Special Value: The Project will provide ground-floor retail that will be a significant contribution toward realizing the vision set forth in the DUKE Plan for a

cultural, 18-hour destination district. The ground-floor retail will be a pedestrian-oriented use that will greatly enhance the street activity of the area. The Applicant also will provide more parking spaces than are required by the Zoning Regulations. The Applicant has agreed to provide at least one parking space per residential unit. Parking is a major concern of the neighbors, and the proposed rate will prevent further impacts on surrounding parking problems.

e. Monetary Contributions to Neighborhood Organizations: As part of the amenities and benefits package offered in connection with the applications, the Applicant agreed to contribute $100,000 to ANC 1B to assist the neighborhood programs and initiatives identified by ANC 1B. By letter dated March 1, 2006, ANC 1B indicated that the Applicant's contribution would be distributed as follows: $20,000 to Housing Counseling Services, Inc. for the creation and representation of tenant associations in apartment buildings converted to condominiums in the ANC 1B area; $15,000 for the purchase of historic street signs, call boxes, and history plaques in LeDroit Park; $10,000 for the 1400-block of W Street for a pilot public safety camera project and contribution to a police work station; $10,000 to the Boys and Girls Club and Anthony Bowen YMCA for the development of a first tee program; $10,000 to the Casey Tree Foundation for the planting of trees in areas of ANC 1B with the greatest need (e.g., Georgia Avenue, 14th Street); $10,000 for the development of a career exploration program for children in public housing developments in ANC 1B; $10,000 to the MidCity Business Association for funding for the Green Team; $5,000 for the Mary Terrell house restoration project in LeDroit Park; $5,000 to the Hospitality Review Panel for a pilot project involving business, residential, and government stakeholders in the 1900-block of 9th Street; and $5,000 to the Westminster Neighborhood Association for the installation of a playground sprinkler system.

f. Historic Signage: The Applicant also plans to work with the Historic Preservation Office to contribute $10,000 towards new historic district signage in the area.

g. Employment and Training Opportunities: In order to further the District's policies relating to the creation of employment and training opportunities, the Applicant will participate in a First Source Agreement with the District of Columbia Department of Employment Services ("DOES"). The Applicant also has agreed to enter into a Memorandum of Understanding with the Local Business Opportunity Commission ("LBOC") to use local firms in the development and construction of the Project.

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

Compliance with PUD Standards

29. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. Given the level of project amenities and public benefits, and the fact that the development will proceed under the existing zoning, the Commission finds that the development incentives are appropriate to increase the overall residential density to 8.0 FAR for Parcels A and C and up to 6.3 FAR for Parcel B. As stated above, the Commission finds that the extra five percent of density permitted under § 2405.3 is appropriate and essential to the functioning of the Project. The Commission also finds that the requested flexibility in roof structures, lot occupancy, recreation space, public space at ground level, and loading are justified by the superior benefits and amenities offered by this Project.

Comprehensive Plan and Public Policies

30. The Project is consistent with and furthers the goals and policies enumerated in the Comprehensive Plan.

a. The Generalized Land Use Map: The Project is consistent with the Generalized Land Use Map, which recommends the subject site for a mix of moderate- and medium-density residential and commercial uses. The Project will not be inconsistent with this use category. In addition, the Generalized Land Use Policies Map shows the Property located within the Howard Gateway Housing Opportunity Area, which has been designated as a desirable location for the development of residential uses. The Project will be developed under the existing CR and ARTS/C-2-B zone districts. In addition, the proposed residential project is foregoing a majority of the commercial density that would otherwise be allowed on the Property in the existing CR zone district.

b. Stabilizing the District's Neighborhoods: The creation of up to 700 new residential units will help enhance and stabilize the U Street/Cardozo neighborhood. The creation of a significant residential development on the site also is likely to attract additional residential and retail development and stabilize the neighborhood.

c. Increasing the Quantity and Quality of Employment Opportunities in the District: As stated above, the Applicant has agreed to enter into a First Source Agreement with DOES and a Memorandum of Understanding with the LBOC.

d. Respecting and Improving the Physical Character of the District: The Project has been designed to improve the site's integration with the surrounding neighborhood and to improve the streetscape on 8th, 9th, and V Streets. The facades, landscaping, raised first floor access, and alternating composition of projecting bays will all combine to create a sense of scale and visual interest. The height of the building to be constructed on Parcel B will be gradually stepped back from 90 feet to 65 feet in

order to respect the lower-density massing of the adjacent rowhouses. The Project as a whole employs traditional, time-tested materials in new and modern ways in a design that will be aesthetically enduring and that will add to the fine urban texture of the city. Finally, the construction of a high quality residential project will be an important asset for the community.

e. Preserving and Ensuring Community Input: Through the PUD process, the Applicant has worked with representatives of ANC 1B, as well as the surrounding neighborhood, to create a new residential community that is a benefit to the neighborhood and the District of Columbia. The Applicant hosted community meetings and presented the Project to the LeDroit Park Civic Association and the Cardozo Shaw Neighborhood Association.

31. The Project also complies with the major elements of the Comprehensive Plan.

a. Housing: The creation of up to 700 residential units on this currently underutilized site fully satisfies all of the above-noted provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Project will devote 15 percent of the bonus density gained through the PUD process to affordable housing. The inclusion of these affordable units in the Project also is entirely consistent with the provisions of the Comprehensive Plan noted above.

b. Urban Design: As shown in the detailed plans, elevations, and renderings included in the Applicant's January 6, 2006 submission (Exhibit 21), as modified by its PowerPoint presentation of January 26, 2006 (Exhibit 31) and its post-hearing submissions of February 13, 2006 (Exhibit 33), the Project exhibits all of the characteristics of exemplary urban design and architecture. The construction of prominent residential buildings will complement the established residential neighborhood that surrounds the site.

c. Ward 1 Goals and Policies: The Ward 1 Element of the Comprehensive Plan seeks to stimulate production of new housing, maintain and strengthen the quality and construction of housing, and promote low- and moderate-income housing development opportunities. (See 10 DCMR § 1206.1 and 10 DCMR § 1207.1). The Project is consistent with these provisions of the Ward 1 Element of the Comprehensive Plan and the "appropriate study" discussed below.

d. DUKE Plan: The Project is located within the area of land studied under the Draft Development Framework for a cultural destination district within Washington, DC's Greater Shaw/U Street Plan. The DUKE Plan has been proposed by the Office of Planning to celebrate and re-create an historical economic, cultural, social, and institutional center for the District's African-American community. The DUKE Plan seeks to guide future development of the project area by capitalizing on the area's historic context to restore the neighborhood with 18-hour destinations. As discussed in depth above, the Project will be consistent with the DUKE Plan's vision and will

be the first step in accomplishing a major goal of the DUKE Plan by contributing towards the design fees for the extension of Bryant Street. Several goals of the DUKE Plan will affect the Property. The DUKE Plan seeks: (1) an increase from moderate- to medium-density land use designations, (2) the designation of V Street as a neighborhood retail and service center, (3) residential development that includes affordable housing, and (4) the development of ground floor retail/entertainment uses and a mix of national and unique, locally-owned retail establishments on 7th, 9th, and U Streets and Florida Avenue. In addition, the Project will contribute design fees to further the goal of extending the street system in the vicinity of Bryant and W Streets to provide an east-west cut-through to link Georgia and Florida Avenues.

Office of Planning Report

32. By reports dated January 9, 2006, and February 20, 2006, the Office of Planning ("OP") recommended approval of the PUD applications. The recommendation was based on its findings that the Project is consistent with and will further important Comprehensive Plan objectives, is consistent with the zoning for the area, and provides an amenity package appropriate to the amount of density being gained through the PUD process. OP also stressed the importance of traffic mitigation in the area and recommended that the applications be approved subject to the contribution toward the proposed Bryant Street extension.

33. OP conditioned its recommendation for approval on the provision of the following amenities:

a. A $250,000 contribution to DDOT for design and engineering costs for a traffic circle and extension of Bryant Street;

b. A $100,000 contribution to ANC 1B for neighborhood amenities;

c. Affordable housing totaling 29,800 square feet offered at 80 percent of the Area Median Income;

d. Incorporation of green building technologies;

e. Retail development of the V Street and Florida Avenue frontages including neighborhood serving retail;

f. A First Source Agreement with DOES; and

g. A Memorandum of Understanding with LBOC.

34. The Commission finds that the Applicant has offered to provide affordable housing in an amount equal to 15 percent of the bonus density generated by the PUD process. Under the gross floor area currently proposed, the affordable housing the Applicant would be required to provide would equal approximately 29,800 square feet.

Other Government Agency Reports

35. By report dated January 23, 2006, DDOT concluded that it had no objections to the Project. In its report, DDOT expressed concern that the driveway entrances for the parking garage and loading docks on Parcel B would be located adjacent to each other and would not provide the adequate clearance required by DDOT design standards.

36. During the public hearing and in its post-hearing submission of February 10, 2006, the Applicant addressed DDOT's concern about the driveway entrances for the parking garage and loading docks on Parcel B. The Applicant explained that the service entry to Parcel B, off the north frontage of V Street near the center of the block, will meet the D.C. Streetscape Standards dimension from the western property line. It will also meet the recommended maximum width for garage or loading entries. It will primarily serve the Parcel B parking garage and, to a much lesser extent, will serve a loading area that will be used, at most, once a day for trash pick-up and possibly twice a month for moving. Because of the small number of units in the building, a second entry exclusively for the minimal loading that will occur is not necessary. A second entry also would adversely affect the quality of the streetscape. Additionally, moving activities are normally scheduled by condominium unit owners to occur off-peak when the level of garage activity and local pedestrian traffic is at its lowest, and possible conflicts are therefore minimized. The minimum width of the garage ramp will be 14 feet, and the minimum width of the loading berth will be 12 feet. The total 26-foot width can be handled by one 24-foot wide opening and curb cut as illustrated in the attached plan. A six-foot- wide wall segment will be provided between the proposed loading/parking entry and the adjacent property to allow for pedestrian clearance, should the neighboring site locate its service entries in a manner similar to the subject site.

37. The Applicant learned, through conversations with DDOT, that a comprehensive study of streets, curbs, and sidewalk widths in this neighborhood is likely in the near future. The Applicant will continue to work closely with DDOT to ensure that the streetscape of the Project addresses the needs and requirements set forth by any new standards of street and sidewalk design for the neighborhood.

38. The Commission finds that the Applicant has demonstrated that the entrances to the parking garage and loading facilities for Parcel B are sufficient and that DDOT's concerns are unfounded.

CONCLUSIONS OF LAW

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

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

2. Under the PUD process, the Commission has the authority to consider these applications as either consolidated or first-stage PUDs. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than would be available under matter-of-right development.

4. Each of the applications (Case No. 05-17 and Case No. 05-32) individually meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The Project is within the applicable height, bulk, and density standards of the Zoning Regulations. The proposed height and density will not cause a significant adverse effect on any nearby properties and will help provide the critical concentration of residents required to transform this underutilized area. Mixed use is appropriate for Atlantic Plumbing North (Parcel C), which is located in the CR Zone. Mixed use also is appropriate for Atlantic Plumbing South (Parcels A, B, and D), which is located in the CR and ARTS/C-2-B zone. The Commission notes that the zoning for the Property will not be changed, and the proposed uses are permitted as a matter of right for the appropriate zone. As demonstrated in the Traffic Study submitted by the Applicant, the Project will not cause adverse traffic impacts, and the Property is located in close proximity to mass transit. The Project has been appropriately designed to complement and respect the existing adjacent buildings with respect to height and mass.

6. The application in Case No. 05-17, Atlantic Plumbing South (Parcels A, B, and D), meets the contiguity requirements of § 2401.3. The application in Case No. 05-32, Atlantic Plumbing North (Parcel C), also meets the contiguity requirements of § 2401.3.

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

8. The benefits and amenities provided by the Project, particularly the provision of housing and affordable housing, parking, neighborhood-serving retail, and substantial monetary contributions to improve the neighborhood, are reasonable for the development proposed in Cases No. 05-17 and 05-32.

9. The applications seek an increase in height, FAR, and lot occupancy. They also seek a reduced court width requirement for Parcel A, aggregation of parking between Parcel A and Parcel D, and a reduction in the public space and residential recreation space requirements. They

also seek flexibility with regard to height and setback requirements for roof structures and with respect to loading requirements. The benefits and amenities provided by the Project, particularly the provision of affordable housing, the superior design of the buildings, the contribution toward the proposed Bryant Street extension, and the transformation of an underutilized and largely vacant site into a vibrant mixed-use community, are all reasonable trade-offs for the requested development flexibility.

10. Approval of the PUD applications is appropriate, because the proposed development is consistent with the present character of the area and the existing zoning.

11. Approval of the PUD applications is not inconsistent with the Comprehensive Plan.

12. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 1B voted in favor of recommending approval of the applications in Cases No. 05-17 and 05-32. The Commission agrees with the ANC that this Project should be approved.

13. Although the Commission has considered the objection of Howard University to the proposed extension of Bryant Street and the proposed traffic circle intersection with Sherman and Florida Avenues, the Commission notes that it does not have the jurisdiction to approve the proposed extension and implement DDOT's plan. The Commission also notes that the $250,000 contribution by the Applicant to DDOT could be used to extend the street network in other areas or to find an alternative traffic mitigation solution.

14. The two applications for PUDs under the existing zoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

15. The two applications for PUDs 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 Case No. 05-17 and Case No. 05-32 for consolidated review and approval of two planned unit developments. This approval shall apply to the following properties included in Case No. 05-17: Square 2875, Lots 1106, 1107, 2012, 2026, and 2030. This approval shall apply to the following properties included in Case No. 05-32: Square 2873, Lots 1, 232, 852, 853, 859, and 864. The approval is subject to the following guidelines, conditions, and standards:

1. The PUD in Case No. 05-17 shall be developed in accordance with the plans prepared by Esocoff & Associates, dated January 6, 2006, marked as Exhibit 21 in the record, as modified by the PowerPoint presentation presented during the public hearing on January 26, 2006, marked as

Exhibit 31 in the record, and as further modified by the Applicant's post-hearing submission, dated February 13, 2006, marked as Exhibit 33 in the record.

2. The PUD in Case No. 05-32 shall be developed in accordance with the plans prepared by Esocoff & Associates, dated January 6, 2006, marked as Exhibit 11 in the record, as modified by the PowerPoint presentation presented during the public hearing on January 26, 2006, marked as Exhibit 21 in the record, and as further modified by the Applicant's post-hearing submission, dated February 13, 2006, marked as Exhibit 23 in the record.

3. The Project shall be a mixed-use development. With regard to the PUD in Case No. 05-17 (Atlantic Plumbing South), the building on Parcel A shall be constructed to a maximum height of 100 feet and a maximum density of 8.0 FAR, which is the combined FAR for Parcel A and Parcel D. The building on Parcel B shall be constructed to a maximum height of 90 feet and a maximum density of 6.3 FAR. The building on Parcel D shall be constructed to a maximum height of 60 feet and a maximum density of 8.0 FAR, which is the combined FAR for Parcel D and Parcel A. With regard to the PUD in Case No. 05-32 (Atlantic Plumbing North), the building on Parcel C shall be constructed to a maximum height of 100 feet and a density of 8.0 FAR.

4. With regard to the PUD in Case No. 05-17 (Atlantic Plumbing South), approximately 426,175 square feet of gross floor area shall be devoted to residential use. With regard to the PUD in Case No. 05-32 (Atlantic Plumbing North), approximately 295,269 square feet of gross floor area shall be devoted to residential use. The Applicant shall have the flexibility to construct between 630 and 700 residential units in the Project, including Atlantic Plumbing North and Atlantic Plumbing South.

5. The retail use is required on Parcels A, B, and C in the following amounts: Parcel A – 6,245 square feet; Parcel B – 4,306 square feet; and Parcel C – 4,243 square feet. Retail use is permitted, but not required, on Parcel D. If retail use is not provided on Parcel D, that space will be used for residential use.

6. Of the residential gross floor area for the Project, a minimum of approximately 29,800 square feet shall be devoted to affordable housing for residents with an income that is no greater than 80 percent of the Area Median Income. The required affordable housing shall be divided proportionately among the buildings on Parcels A, B, and C, and shall be phased accordingly.

7. The PUD approved as Case No. 05-17 (Atlantic Plumbing South) shall include a minimum of one parking space per residential unit with a minimum of nine spaces devoted to the retail uses. The PUD approved as Case No. 05-32 (Atlantic Plumbing North) shall include a minimum of one parking space per residential unit. This parking requirement may be satisfied with any combination of full and compact parking spaces.

8. Prior to the issuance of a building permit for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall make a monetary contribution of $250,000 to the District Department of Transportation.

The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the requirement for the other PUD.

9. Prior to the issuance of a building permit for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall make a monetary contribution of $100,000 to ANC 1B for allocation consistent with Finding of Fact No. 27e. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the requirement for the other PUD.

10. Prior to the issuance of a building permit for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall make a monetary contribution of $10,000 to the Historic Preservation Division of the Office of Planning to provide historic signage. The Applicant's contribution for one of the approved PUDs shall satisfy the requirement for the requirement for the other PUD.

11. The Applicant shall have flexibility with the design of the Project 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 toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structures;

b. To vary the final selection of the exterior materials within the color ranges and material types as proposed without a reduction in quality, based on availability at the time of construction;

c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;

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

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

12. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development. The Applicant shall abide by the terms of the Memorandum of Understanding in order to achieve, at a minimum, the goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the Project to be created as a

result of Case No. 05-17 (Atlantic Plumbing South) and Case No. 05-32 (Atlantic Plumbing North).

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

14. No building permit shall be issued for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North) until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct on and use the applicable PUD Parcel in accordance with this Order or amendment thereof by the Zoning Commission.

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

16. Prior to the issuance of a certificate of occupancy for any building approved by either Case No. 05-17 (Atlantic Plumbing South) or Case No. 05-32 (Atlantic Plumbing North), the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable units in such buildings to affordable housing for not fewer than twenty (20) years.

17. The PUDs approved in Case No. 05-17 (Atlantic Plumbing South) and Case No. 05-32 (Atlantic Plumbing North) 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 for one of the buildings in either PUD as specified in 11 DCMR § 2409.1. The phasing of the four buildings is permitted. The filing of an application for a building permit for one of the four buildings shall vest this Order with regard to Case No. 05-17 (Atlantic Plumbing South) and Case No. 05-32 (Atlantic Plumbing North). However, an application for the final building permit must be filed within five (5) years of the issuance of a certificate of occupancy for the first building.

18. 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, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in

violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 2, 2006, the Zoning Commission **APPROVED** the application in **Case No. 05-17** by a vote of 3-0-2 (Anthony J. Hood, Michael G. Turnbull, and Gregory N. Jeffries to approve; John G. Parsons, having not participated, not voting; and Carol J. Mitten, not present, not voting) and **APPROVED** the application in **Case No. 05-32** by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting; and Carol J. Mitten, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, in **Case No. 05-17** by a vote of 4-0-1 (Anthony J. Hood, Michael G. Turnbull, and Carol J. Mitten to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons, having not participated, not voting) and **ADOPTED** by the Zoning Commission at its public meeting on April 20, 2006, in **Case No. 05-32** by a vote of 4-0-1 (Carol J. Mitten, Michael G. Turnbull, and Anthony J. Hood to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons, having not participated, 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 MAY 18 2007.

Carol J. Mitten

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning