

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 05-19**

**Case No. 05-19**

**(Application for the Consolidated Review and Approval of a Planned Unit Development by  
The Neighborhood Development Company, LLC)**

**April 20, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 6, 2006, to consider an application from The Neighborhood Development Company, LLC, for the consolidated review and approval of a planned unit development application and related zoning map amendment for Lots 803 and 35, and the alley between them, in Square 2910 located at 4100 Georgia Avenue, N.W., pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

**FINDINGS OF FACT**

1. The project site consists of Lots 803 and 35, and the alley between them, in Square 2910 and has an address of 4100 Georgia Avenue, N.W. (the “Property”).

2. On June 21, 2005, The Neighborhood Development Company, LLC (the “Applicant”), filed an application with the Zoning Commission (“Commission”) for review and approval of a planned unit development (“PUD”) and a Zoning Map amendment. The Applicant requested the amendment of the Zoning Map from the C-2-A Zone District to the C-3-A Zone District for the Property. The proposed height and lot occupancy of the project are significantly less than the maximum provided under the PUD guidelines in the C-3-A Zone District. The PUD project involves a condominium building with approximately 72 new residential units that are all affordable rental units for at least 60% of the Washington, D.C. Area Median Income (“AMI”). The PUD project also includes approximately 10,486 square feet of retail space. (Exhibit 14, Pre-Hearing Statement of the Applicant (“Pre-Hearing Statement”) at pp. 1, 8; Exhibit 18 at p. 2.)

3. At a Special Public Meeting on September 15, 2005, the Commission did not set the project down for a hearing and advised the Applicant to enhance its designs. At a Special Public Meeting on October 16, 2005, the Commission voted to set down the application for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on February 6, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022.

4. At the February 6, 2006 public hearing, the Commission accepted Scott Knudson and Marc Feinstein, of Weincek and Associates, as experts in architecture based on a review of their resumes (submitted as Exhibits 22 and 23 in the record, respectively). The Commission also accepted Nicole White of Symmetra Design as an expert in traffic and parking based on previous approval of such expert status for Ms. White. There were other preliminary matters before the Commission involving: (i) waiving of the hearing fee for the Applicant under 11 DCMR § 3042 based on the affordable nature of the project and the letter from the District of Columbia Department of Housing and Community Development (“DHCD”) (Exhibit E to the Applicant’s post-hearing submission dated February 24, 2006 (“Post-Hearing Submission”)); (ii) waiving of the rules under 11 DCMR § 3013.8 to allow the submission of Exhibit 18 to the record, dated January 23, 2006; and (iii) the granting of permission to amend the application pursuant to 11 DCMR § 3013.9 so that the Applicant could slightly amend the project design at the hearing. There were no applications for party status. Advisory Neighborhood Commission (“ANC”) 4C, the ANC in which the Property is located, is automatically a party to this application. The Commission denied the waiver of the hearing fee because of the applicant’s untimely request for a waiver<sup>1</sup>; waived the rules under 11 DCMR § 3013.8 to allow the submission of Exhibit 18 to the record, dated January 23, 2006; and granted the Applicant’s amendment to the project design at the hearing under 11 DCMR § 3013.9.

5. The Zoning Commission took proposed action on March 13, 2006 by a vote of 4-0-1 to approve), with conditions, the applications and plans that were submitted into the record.

6. 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 PUD and related map amendment would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.

7. The Commission took final action on April 20, 2006 by a vote of 5-0-0.

#### PROJECT SITE

8. The Property consists of approximately 17,640 square feet of land area and includes the southern portion of Square 2910 between Kansas Avenue, Georgia Avenue, Taylor Street, and Upshur Street, N.W. It is commercially zoned and was used as an automobile lot for a number of decades. (Exhibit 14, Pre-Hearing Statement at p. 4.)

9. The square to the west of the Property includes a self-storage facility, an office building, and an auto repair shop directly across from the Property. To the south is a used car lot

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<sup>1</sup> 11 DCMR § 3042 provides the procedures the Commission is to follow when deciding to waive hearing fees. 11 DCMR § 3042.5 provides that the Commission should make the decision when it sets the matter down for a public hearing. In this case, the Commission decided to set the case down for a public hearing on September 15, 2005. The Applicant did not apply for the fee waiver until February 24, 2006, which was after the Commission held its hearing on the case.

with parcels of vacant land adjoining it, lining the whole of the south side of Taylor Street, N.W., between Georgia Avenue and Kansas Avenue, N.W. A park is located directly to the east of the Property, across Georgia Avenue, N.W. Further still, along the east side of 9<sup>th</sup> Street, N.W., are two churches, a vacant lot, and several other structures. Directly to the north, and adjacent to, the Property along the west side of Georgia Avenue, N.W., is a building housing an Internet café and a carry-out restaurant. North of, and adjacent to, the Property along the east side of Kansas Avenue, N.W., is a commercial storage structure. A gas station is located north of the retail building and the storage structure, at the intersection of Georgia Avenue and Kansas Avenue, N.W. To the southeast of the Property, along the west side of Georgia Avenue, N.W., between Taylor Street and Shepherd Street, N.W., are retail buildings. Along the east side of Georgia Avenue, between Taylor Street and Shepherd Street, N.W., is a large, 6-story apartment complex. To the southwest of the Property, along the west side of Kansas Avenue, N.W., between Taylor Street and Shepherd Street, N.W., are several apartment buildings and along the east side of the block are seven townhouses. (Exhibit 14, Pre-Hearing Statement at p. 5.)

10. The Property is .3 miles (approximately a five-minute walk) to the Georgia Avenue-Petworth Metro Station. A number of new developments, either proposed or approved, are or will be located along Georgia Avenue, N.W., between the Property and the Metro station, including 3910 Georgia Avenue (a proposed mixed-use or retail-only project on 31,000 square feet of land area); 3646 Georgia Avenue, N.W. (a proposed development of sit-down restaurants and quick eateries); and a large \$40 million mixed-use project at the Metro station that will include 148 condominiums, 17,000 square feet of retail space, and underground parking. (Exhibit 14, Pre-Hearing Statement at p. 5.)

11. The City's planning objectives call for more residential use in the area of the Property. The site is located in the Low-Density Commercial/Moderate-Density Residential land use category as shown on the District of Columbia Generalized Land Use Map. The properties to the south of the Property on Georgia Avenue, N.W., are in the Moderate-Density Commercial/Medium-Density Residential land use category. Given its location and prominence on the Georgia Avenue corridor, the Property shares many of the same characteristics of the properties in this land use category. The properties north, west, and south of the Property are also in the Low-Density Commercial/Moderate-Density Residential land use categories, as is the property one-half block to the east, and the properties to the northeast, northwest, and southwest. The property beyond one-half block to the east is in the Moderate-Density Residential land use category, as is the square to the southeast. (Exhibit 14, Pre-Hearing Statement at pp. 5-6.)

12. The PUD guidelines for the C-2-A Zone District allow a height of 65 feet and a maximum density of 3.0 FAR, with a limit of 2.0 FAR for non-residential uses. The C-2-A Zone District, as a matter-of-right, permits a maximum height of 50 feet, a maximum lot occupancy of 60% for residential uses, and a maximum density of 2.5 FAR, with a limit of 1.5 FAR for non-residential uses.

13. The PUD guidelines for the C-3-A Zone District allow a maximum height of 90 feet and a maximum density of 4.5 FAR, with a limit of 3.0 FAR for non-residential uses. The C-3-A Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum lot

occupancy of 75% for residential uses, and a maximum density of 4.0 FAR, with a limit of 2.5 FAR for non-residential uses.

#### PUD APPLICATION AND PROJECT

14. The Applicant stated that the proposed project will result in the creation of a unique residential building with approximately 72 residential units and a retail space on the ground floor (the "Project"). All of the residential units will be affordable rental units at 60% of AMI. The main lobby for the building will be accessed from the Georgia Avenue entrance. (Exhibit 14, Pre-Hearing Statement at p. 6; Exhibit 18 at p. 2.)

15. The new building will be constructed to a height of 72 feet. The building will be a gateway for the Petworth neighborhood and will also provide impetus and direction for the development of the Petworth community in the future. (Exhibit 14, Pre-Hearing Statement at p. 6.)

16. The building will be primarily masonry and Hardiplank cementitious siding. The massing of the building, decorative masonry base, cornice detailing, corner towers, patterned brick, and projecting bays from the face of building will create an expression appropriate to this neighborhood. The building was significantly redesigned in response to the comments of the Commission at the September 15, 2005 and October 17, 2005 setdown meetings and the comments of the Office of Planning ("OP"). The Applicant seeks to implement a design that is both attentive to Commission concerns and brings a fresh design statement to Petworth. Different, more subdued, colors are now incorporated in a more cohesive pattern that blends traditional and modern elements. The building materials have been simplified. The first two floors of the building are articulated with a large expanse of brick masonry, including banded brick accents. A muted and complimentary Hardiplank exterior meets the brick base. A top layer of even lighter color, comprised of Hardiplank exterior tops the façade. A hardcoat stucco is used on the bay projections along Taylor Street, N.W. The tower elements have been emphasized and add vibrancy to the Property. All of the stucco is at least two stories above the ground. Windows have been added at the ground level retail along Taylor Street and Georgia Avenue, N.W., to create more inviting space. In addition, the Applicant reduced the unit count from 78 to 72 units, in part to decrease the intensity of the use and the size of the building. The scale of the Georgia Avenue elevation has been reduced to be a more cohesive part of the streetscape. The Applicant worked through the design with OP at meetings following the Commission setdown hearings, and OP responded favorably to the refinements. The Applicant revised the project design after the February 6, 2006 public hearing, including such items as a redesign of the Georgia Avenue and Kansas Avenue façades and altering the color of the building, as requested by the Commission. (Exhibit 14, Pre-Hearing Statement at pp. 6-7; Exhibit A to the Post-Hearing Submission.)

17. The roof of the new building will include as a recreation terrace that will allow a lively visual ending to the building that, combined with the tower detailing, will create a memorable skyline. The Applicant updated the roof with a green roof. (Exhibit 14, Pre-Hearing Statement at p. 7.)

18. As shown on page 8 of Exhibit A to Post-Hearing Submission, vehicular ingress/egress to the site, including the largely below-grade parking garage of approximately 54 parking spaces, will be onto Kansas Avenue, N.W., approximately 75 feet north of Taylor Street, N.W. A portion of the parking area is sloped down so that it effectively forms a ramp below the retail space. Residents of the Project can proceed directly from their parking space in the below-grade garage to their units. The main lobby for the residential portion of the building will be accessed from the Georgia Avenue entrance to the Project via a glass entranceway and lobby, which creates a visual connection to Georgia Avenue. A pedestrian-only entrance for the retail space will be located on the corner of Georgia Avenue, N.W. and Taylor Street, N.W. The Project will enliven the street by its pedestrian access and ground-floor retail. The separation of the vehicular and pedestrian entrances to the Project will reduce overlap and conflicts at the Property.

19. As a result of input from the District Department of Transportation (“DDOT”), OP, and community members, the Applicant added 20 parking spaces to its initial project design and closed a proposed vehicular entrance off Taylor Street. The 20 parking spaces will be added through the inclusion of the Space Savers parking structure system at the Property. This system incorporates a “pit” at certain parking spaces so that two cars are parked vertically and an elevator raises and lowers the cars to grade.

20. The proposed Project will include landscape and hardscape improvements on the Property. In addition to a landscaped area on the southwest corner of the building, there will be a green space created along Taylor Street, N.W. The landscaping and the finish on the building will help to reinvigorate the surrounding neighborhood.

21. The total gross floor area included in the proposed PUD is approximately 79,467 square feet, for a total Floor Area Ratio (“FAR”) of approximately 4.5. The building will have a height of approximately 72 feet, as measured from Georgia Avenue, N.W. The proposed Project will have a lot occupancy of approximately 68%. The proposed Project is equal to or smaller than the building envelope permitted under the C-3-A District PUD Guidelines (maximum density of 4.5 FAR and a maximum building height of 90 feet). It is necessary to rezone the Property to the C-3-A Zone District in order to allow the proposed 72 foot height and density of 4.5 FAR. The proposed height and density on the Property is critical to allow for the affordable housing. (Pre-Hearing Statement at p. 8; Exhibit B of Exhibit 18.)

22. The Project will have approximately 5,281 square feet of residential recreational space (8% of the residential space), less than the 15% residential recreational space required in the C-3-A Zone District. It will be comprised of space on the roof terrace, a tenant meeting room, lobby space, and landscaped recreation space. (Pre-Hearing Statement at p. 8, Exhibit B of Exhibit 18.)

23. The loading platform and recycling areas will be enclosed within the building and located at the rear side of the building. They will be accessed from a separate loading entrance on Kansas Avenue, N.W. (Pre-Hearing Statement at p. 9; Post-Hearing Submission, Exhibit A.)

FLEXIBILITY UNDER PUD GUIDELINES

24. The PUD Process was created to allow greater flexibility in planning and design than is possible under conventional zoning procedures. The PUD regulations specifically allow the Commission to approve any zoning relief that would otherwise require the approval of the Board of Zoning Adjustment ("BZA"). The proposed development complies with the broad parameters of the C-3-A Zone District. However, the design scheme proposed for the PUD has created a configuration that does not meet all of the exact requirements of this zone. (Pre-Hearing Statement at p. 9.)

25. Specifically, the Applicant seeks to establish 54 parking spaces, rather than the 61 that are required under 11 DCMR § 2101.1. This change is requested and is necessary in order to maintain the affordability of the units, while still constructing a residential project that will satisfy the District and neighborhood planning goals for the area. It would be cost-prohibitive to excavate an additional level of parking on the site. Due to the Property's proximity to the Georgia Avenue-Petworth Metro Station, as well as Metrobus lines on Georgia Avenue, N.W., and because the immediate vicinity of the Property is relatively uncongested, this smaller number of parking spaces will not result in any negative effects. The Applicant's parking report and DDOT support this conclusion. (Pre-Hearing Statement at pp. 9-10.)

26. The Applicant requests relief from the residential recreation space requirement of 15% of residential gross floor area required by 11 DCMR § 773. Instead, the Applicant seeks to provide residential recreational space in the amount of approximately 8% of the residential gross floor area. This reduction will not conflict with the spirit or intention of the requirement, because the close proximity of the Upshur Recreation Center (an extensively-equipped park including a lighted basketball court, lighted athletic fields, a swimming pool, a playground, and a multi-purpose room) and the ground floor retail space will provide ample diversionary and recreational outlets for residents of all ages to accommodate the gap between the 8% residential recreation space offered by the Project and the 15% required under the Zoning Regulations. In addition, the space that will be provided will be highly functional and desirable to the residents. Both the roof deck and the residents' meeting room will be useful spaces. Also, the Project will have green space surrounding the building on the Property. Further, the Applicant requests relief from 11 DCMR § 773.6 in order to include areas that are less than 25 feet wide in the calculation of residential recreation space. The requested relief is the result of the irregular shape of the roof and will maximize the available open space on the roof for tenant enjoyment. (Pre-Hearing Statement at p. 10; Exhibit 18 at p. 2.)

27. The Applicant requires relief from 11 DCMR § 411. The Project has two roof structures – one houses a stairwell and the elevator and the other houses the emergency stairwell. It would be impractical to connect the roof structures, and such a connection would lead to an appearance of greater height. Also, the design of the roof structures has been integrated into the design of the tower elements. As a result, the Applicant also requires relief from § 400.7 of the Zoning Regulations regarding setback of the roof structures. By working the roof structures into the tower elements, the building has become more cohesive and can offer a greater amount of space on the roof for residential recreation space. In addition, the roof structures are not setback

from the exterior walls of the building a distance equal to their height, in order to enhance the design of the Project and to allow for a greater amount of residential recreation space on the roof. (Pre-Hearing Statement at pp. 10-11.)

28. The Applicant requests relief from the requirements of 11 DCMR § 776 regarding the minimum width of courts in buildings with a residential component. The court was created, because the elevator shaft has been pushed away from the building in order to give nearby bedrooms windows. The proposed court begins at the top of the roof of the first floor and extends 51 feet 8 inches in height. Therefore, a court of 17 feet 3 inches in width would be required. The court provided is 9 feet 6 inches in width. This relief will not violate the intention of the Zoning Regulations and will allow for greater flexibility in design of the building. (Pre-Hearing Statement at pp. 10-11.)

29. Applicant requests relief from the provisions of 11 DCMR § 2201.1 requiring a loading space and second loading platform for residential and retail areas. The Project only has one complying loading berth and loading platform. These loading facilities are sufficient due to the smaller size of the Project. There are only 72 units (50 units trigger the loading requirements) and less than 11,000 square feet of retail (5,000 s.f. of retail trigger the loading requirements). By only having one loading berth and platform, the Project economizes the site and allows for more parking. (Testimony of the Applicant.)

30. Finally, the Applicant requests relief from the parking space distribution provisions of 11 DCMR § 2115.4. The Applicant proposes a parking garage that contains one area of three (3) contiguous compact parking spaces rather than the required five (5) contiguous compact parking spaces. Since it is an oddly configured lot and space is at a premium, the arrangement of such parking spaces maximizes all open areas in the most efficient manner. Such a configuration also allows more parking to be on the site without excavation, which would be cost-prohibitive in an affordable housing development. (Pre-Hearing Statement, Exhibit A.)

31. As detailed in Exhibit E of Exhibit 2 in the record, no adverse environmental impact will result from the construction of the Project. In addition, the increased use of water and sanitary services that will occur as a result of the Project, will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project.

32. As detailed in Exhibit E of Exhibit 2 in the record, the Project will not have an adverse impact on the public facilities that it will rely on for service. The Property is located within easy walking distance of the Petworth/Georgia Avenue Metrorail Station. In addition, numerous Metrobus lines utilize Georgia Avenue, such that the Project is adequately served by public transportation.

33. The Applicant communicated with the community a great deal. D.C. Councilmember Adrian Fenty supported the Project. ANC 4C offered support and suggestions for the Project, many of which were incorporated into the plan.

34. The Project is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan for the National Capital, D.C. Law 12-275, 10 DCMR (Planning and Development) § 100 *et seq.* (1998) ("Comprehensive Plan"). The Project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input.

The Project is also consistent with many Major Elements of the Comprehensive Plan (including the Housing and Urban Design Elements) and fulfills the goals and policies of the Ward 4 Plan. The OP report submitted on January 27, 2006 stated that OP believes that the land use impact of the Project would be favorable to the District. (Pre-Hearing Statement at pp. 18-22; Exhibit 19.)

35. Testimony and evidence on behalf of the Applicant was provided by Karl Jentoft, Chief Executive Officer, The Neighborhood Development Company, LLC; Scott Knudson and Marc Feinstein of Weincek & Associates Architects (who testified as an expert in the field of architecture); and Nicole White, of Symmetra Design (who testified as an expert in the field of traffic and parking engineering).

36. As addressed in the Applicant's Pre-Hearing Statement and in the testimony of Mr. Jentoft, Mr. Feinstein, and Mr. Knudson, the following public benefits and project amenities will be created as a result of this Project.

- Housing and Affordable Housing – Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This Project will create approximately 72 new, rental apartments in the Petworth neighborhood. As a whole, the Project will result in the creation of approximately 68,981 square feet of affordable housing units. The units will be available to potential residents with a household income that does not exceed 60% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area. In addition, the District Department of Housing and Community Development ("DHCD") requires that at least fourteen (14) units will be required to be reserved for potential residents with a household income between 31% and 50% of the AMI. The Applicant will be receiving a loan from DHCD's Housing Production Trust Fund. The Applicant will enter into an agreement with DHCD requiring that the building remain 100% affordable for at least 60% AMI for forty (40) years. Given the current strong interest in the production of

- affordable housing in the District of Columbia, this is a significant amenity. (Pre-Hearing Statement at p. 14; Exhibit 18 at p. 2; and Post-Hearing Submission at p. 3.)
- Urban Design and Architecture – Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. Mr. Jentoft, Mr. Feinstein, and Mr. Knudson noted the significant architectural quality and superior urban design involved in the PUD project are greater than the same found in a matter-of-right project. As shown in the detailed plans, elevations, and renderings included in Exhibit A of Exhibit 31 to the record [Post-Hearing Submission], the proposed Project exhibits all of the characteristics of exemplary urban design and architecture. The high level of building finish, freshness of design, and alternating composition of projecting bays combine to create a sense of energy and visual interest. In addition, the Applicant is providing enhanced landscaping on the Property. The Applicant revised and enhanced the design to address the comments of OP and the Commission. (Pre-Hearing Statement at p. 14; Post-Hearing Submission.)
  - Site Planning – Pursuant to § 2403.9(b) of the Zoning Regulations, "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. The proposed Project has been designed to provide residents and their guests with open and inviting spaces, including the roof terrace and landscaped area. In addition, the Project would bring much needed retail space to the area and a great deal of affordable housing to an area close to the Metro. The Project would be an efficient use of the Property and take advantage of its many positive characteristics. (Pre-Hearing Statement at p. 15; Post-Hearing Submission.)
  - Effective and Safe Vehicular and Pedestrian Access – The Zoning Regulations, pursuant to § 2403.9(c), state that "Effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. The proposed Project will provide a parking garage with approximately 54 parking spaces. The entrance and exit to this garage will be on Kansas Avenue, and it will be landscaped and buffered from neighboring properties. Residents of the Project will be able to proceed directly from their parking space in the garage to their units, and patrons of the retail space will be able to park in designated retail parking spaces. The Project will also provide two separate entrances/exits for pedestrians on Georgia Avenue – one for the retail space and one for residents. These separate and distinct vehicular and pedestrian entrances/exits will mitigate any potential pedestrian and vehicular conflicts. (Pre-Hearing Statement at p. 15; Post-Hearing Submission.)
  - Environmental Benefits – The Project will include numerous environmentally-sensitive features that would not typically be included in a matter-of-right project. These attributes include: a green roof system covering part of the building's roof top; a landscaped roof terrace reducing the effects of urban heat islands; and the use of extensive landscaping for most open spaces. (Post-Hearing Submission.)

- First Source Employment Program – According to § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, the Applicant has voluntarily entered into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 32; Pre-Hearing Statement at p. 16.)
- Local Business Opportunity Program – Pursuant to § 2403.9(e), the use of local firms in the development and construction of the Project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a Memorandum of Understanding ("MOU") with the Department of Small and Local Business Development ("DSLBD") to use the resources of the DSLBD to utilize LSDBEs in the development of this Project. Further, the Applicant is an LSDBE in accordance with the spirit of D.C. Law 12-268. The District should make a particular effort to allow the Applicant this opportunity to grow its business in strength and vitality, and to allow the Applicant to be a key participant in "stimulating economic development in the District." It should be noted that the Property is directly adjacent to the Applicant's headquarters. (Pre-Hearing Statement at p. 16; Post-Hearing Submission, Exhibit D.)
- Public Benefits of the Project – Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of the Pre-hearing Statement and during the February 6, 2006 hearing. It is only as a result of the funding provided by DHCD, the District of Columbia Housing Finance Authority, and the additional density and height provided through the PUD process that the Applicant is able to construct such a well-designed project and provide so much new affordable housing. The building will be well-designed and integrated into its surroundings and equipped with all modern safety amenities as well as parking and recreational space. As a substantial investment, the Project will be a valuable addition to the urban fabric of the Petworth neighborhood. The architectural detailing of the proposed building, landscaping, and the large amount of quality affordable housing provided in this Project set it apart from a matter-of-right residential project. Whereas a matter-of-right project would not be required to provide any affordable housing, the approval of this PUD application will result in the creation of approximately 68,981 square feet of high-quality affordable housing. In addition, the surrounding neighborhoods will greatly benefit from the first floor retail space. The Project is likely to have a highly desirable catalytic effect on development in the immediately surrounding area.

37. At the public hearing and in her transportation impact study and amendment submitted into the record as Exhibit B to Exhibit 14 and as Exhibit 27, the Applicant's traffic engineer, Ms. White, concluded that the proposed Project will have no significant impact on peak-hour levels of service at nearby intersections. Ms. White testified that all key intersections around the Property currently operate at acceptable levels of service. The redevelopment of the

Property will be adequately accommodated at the key intersections in the study area and have only minimal impact on the delay and volume/capacity ratios in the study area. (Exhibit B to Exhibit 14; Exhibit 27.)

38. In response to issues raised by Commissioners during the public hearing, the record of the case was left open for the Applicant to provide post-hearing materials including: revisions to the site plans including the updated first level plan showing new parking plan and traffic flow; updated elevation for the Georgia Avenue façade; specifics about the Space-Saver parking spaces proposed for the parking garage; details of the green roof; drawings that show the elevator tower and the main corner tower at the same height; and details of the affordability program for the Property. The Applicant submitted the required materials on February 24, 2006. (Post-Hearing Submission.)

### GOVERNMENT REPORTS

39. OP, in its report dated January 27, 2006 and through its testimony at the public hearing, recommended approval of the Project subject to the provision of more information. The OP report noted that the project benefits and amenities are commensurate with the amount of development incentives requested, that the application meets the standards for a PUD, and that the Project is not inconsistent with the Comprehensive Plan. The information and conditions to approval that OP listed are:

- The Applicant will provide more detail and articulation along the Kansas Avenue façade.
- The Applicant will restrict all loading and unloading from Georgia Avenue and Taylor Street.
- The Applicant will provide details of the arrangement regarding the provision of an off-site location for car-sharing for use by residents of the development.
- The Applicant will remove the large sign from the side of the building.
- The Applicant will provide a signed First Source Agreement with the District of Columbia Department of Employment Services and a Memorandum of Understanding with the Local Business Opportunity Commission prior to the Zoning Commission's final action.

(Exhibit 19.)

40. In testimony at the public hearing, representatives of OP noted that the significant amenities of the Project include: the construction of an entirely affordable residential project on a commercially-zoned site and the site planning and urban design aspects of the Project.

41. The DDOT submitted a report dated February 7, 2006 ("DDOT Report") that supported the Project with a recommendation that it include 57 parking spaces. As stated, the Applicant revised the site plan to include 54 parking spaces. DDOT also requested that the Applicant submit a site plan indicating the size of the loading dock and dimension of the

driveway. The Applicant provided such a site plan to DDOT on February 6, 2006. The DDOT Report stated that the Property is well-served by public transportation. (Exhibit 30, p. 2.)

#### ADVISORY NEIGHBORHOOD COMMISSION REPORTS

42. ANC 4C voted to support the Project with no conditions at a regularly scheduled and publicly-noticed meeting on February 14, 2006. The letter sent by Joseph Martin, Chairman of ANC 4C, on February 27, 2006, states that the Applicant held community meetings to explain the Project and answer questions. That letter stated that a meeting with Single Member District Commissioner Shanel Anthony did not result in any significant opposition to the Project. No one from ANC 4C was present at the public hearing. (Exhibits 25 and 26.)

#### PARTIES AND PERSONS IN SUPPORT

43. In a letter dated February 23, 2006, the Petworth Action Committee noted its support for the application. (Post-Hearing Submission; Exhibit F.)

44. No persons testified in support of the application at the public hearing.

#### PARTIES AND PERSONS IN OPPOSITION

45. There were no parties that testified or submitted any materials in opposition to the application.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

2. Notice of the public hearing was provided in accordance with the Zoning Regulations.

3. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance and would otherwise require approval by the BZA. In this application, the Commission finds that:

- The requested flexibility from the requirements of 11 DCMR § 2101.1 regarding parking spaces can be granted with no detriment to surrounding properties and without detriment

to the zone plan or map. The Project has adequate parking and the site is well-served by mass transit.

- The requested flexibility from the requirements of 11 DCMR § 773 regarding the provision of 15% residential recreation space can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has adequate space for resident recreation and the surrounding neighborhood offers many opportunities for recreation. In addition, the requested flexibility from 11 DCMR § 773.6 can be granted since the Applicant is attempting to maximize the residential recreation space available on the roof for tenant enjoyment.
- The requested flexibility from the requirements of 11 DCMR § 411 regarding the roof structures and their setbacks can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. It would be impractical to connect the roof structures and detract from the design of the building.
- The requested flexibility from the requirements of 11 DCMR § 776 regarding the minimum width of courts in buildings with a residential component can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The courts were created in an attempt to give certain bedrooms windows. This relief will allow for greater flexibility in design of the building.
- The requested flexibility from the requirements of 11 DCMR § 2201.1 regarding loading space and second loading platform for residential and retail areas can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has sufficient loading facilities due to the smaller size of the Project.
- The requested flexibility from the requirements of 11 DCMR § 2115.4 regarding compact parking space distribution can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project is maximizing the space given on an oddly-configured lot. Such a configuration also allows more parking to be on the site without excavation, which would be cost-prohibitive in an affordable housing development.

4. The development of this Project 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 under matter-of-right development.

5. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

6. The Commission agrees with the testimony of the project architect and the representative of the Applicant and finds that this Project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the affordable housing

provided in the Project, the enhanced design and environmental sensitivity of the Project, and the landscape and hardscape improvements provided on the site are significant and substantial project amenities of this PUD application.

7. The Commission finds that the Project is designed to be compatible with nearby buildings. The Commission finds that the treatment of the lower levels of the building, including residential entry, will have a rhythm and scale similar to that of the neighboring properties. The designs of the façades of the building, particularly the Taylor Street, Georgia Avenue, and Kansas Avenue façades are consistent with the buildings throughout the neighborhood.

8. Approval of the application 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 Zoning Map of the District of Columbia.

9. The Commission evaluates the impact of the Project as follows:

- Land Use Impact – The proposed PUD Project will create a significant residential development along the important Georgia Avenue Corridor and will improve dramatically the appearance of the site. The proposed height and massing of the Project are consistent with the buildings in the area and with the District's planning goals for the future of this area of the City. In order to create a more compatible building with the surrounding neighborhood, the Applicant designed the Project to a height of 72 feet.
- Zoning Impact – The proposed PUD-related Zoning Map Amendment can be granted without adversely affecting nearby and adjacent Zone Districts. The proposed C-3-A Zone District is consistent with the Moderate-Density Residential/Low-Density Commercial Land Use Category designation for the Property and the surrounding Generalized Land Use Map designations. It is particularly consistent with the Medium-Density Residential/Moderate-Density Commercial Land Use Category designation for the properties on the Georgia Avenue Corridor. Those properties are zoned C-3-A. The PUD-related rezoning of the Property comports with the District's planning initiatives in the vicinity of the Property. Further, the requested rezoning does not constitute spot zoning. The D.C. Court of Appeals has held that PUDs do not constitute spot zoning. Daro Realty, Inc. v. District of Columbia Zoning Commission, 581 A. 2d 295, 299.
- Facilities Impact – The proposed Project will not have an adverse impact on the public facilities on which it will rely for service. As previously mentioned, the Property is located within easy walking distance of the Georgia Avenue-Petworth Metro Station. In addition, Metrobus lines utilize Georgia Avenue, N.W., such that the Project is well-served by public transportation. The increased use of water and sanitary services that will occur as a result of the Project will have an inconsequential effect on the District's delivery systems. The site is currently

served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems.

10. In accordance with D.C. Official Code § 1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission takes note of ANC 4C's support of the Project, and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission notes the support that the Project received from the Petworth Action Committee. Based on the letters and support from the community, the Commission concludes that the application has been well-received by the community.

11. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

12. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. 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 matter-of-right zoning. The instant application will achieve the goals of the PUD process by creating a quality affordable housing and retail building on the Property that will help to enliven and revitalize the Georgia Avenue Corridor and the Petworth neighborhood of Ward 4.

13. The proposed PUD is consistent with and fosters the goals and policies enumerated in the District of Columbia Comprehensive Plan. The proposed Project significantly advances these purposes by furthering the social and economic development of the District through the creation of approximately 72 new affordable residential units and active ground level retail space on a site that is critically important to the development of the Georgia Avenue Corridor. Further, the Property is vacant and underutilized property near the Metrorail system. The affordability of the units is a realization of a main aspect of the Comprehensive Plan. The Applicant's proposal is consistent with three major themes as follows:

- Stabilizing the District's Neighborhoods – The creation of approximately 72 new residential units, which will be rented rather than sold, will help stabilize the Petworth neighborhood by providing an opportunity for District residents to live in desirable housing in the District even if they cannot afford or do not wish to buy. The creation of a significant retail and residential development on the Property is also likely to help stimulate additional residential development and further stabilize the neighborhood. The affordability will allow long-time District residents who have been priced out of housing elsewhere in the District maintain a residence in the City. The influx of new residents in the neighborhood will help provide the critical mass of customers needed to patronize existing, and hopefully new, commercial uses along Georgia Avenue, N.W. In addition, the first floor retail space will bring much-needed services to the area and begin the active streetscape that the District seeks. In

addition, the retail space will offer much needed goods and services for the immediate neighborhood. Therefore, the Project will both have a catalytic effect on surrounding areas, while respecting the massing and scale of the neighborhood.

- Respecting and Improving the Physical Character of the District – The proposed Project has been designed to improve the site's integration with the surrounding neighborhood, put it to a more beneficial use than the current vacant lot, and to dramatically improve the streetscapes along Taylor Street, Georgia Avenue, and Kansas Avenue. By increasing the density and maximizing the lot usage, the Project will not only contribute to the streetscape along Georgia Avenue, N.W., but also create a new streetscape on Taylor Street. Although the building will be taller than its immediate neighbors, the Project's architects have used materials, alternating projecting bays, banding, and layering of textures to unite the building with its surroundings and scale. Thus, the Project will not overwhelm the neighborhood, will fit in well with the surrounding buildings, and will create a sense of scale and visual interest.
- Preserving and Ensuring Community Input – Through the PUD process, the Applicant has worked with representatives of ANC 4C, as well as the surrounding neighborhood, to create a new residential building and retail space that is a benefit to the neighborhood and the District. The Applicant's further commitment to community input is demonstrated by the support from Councilmember Fenty.

14. The Comprehensive Plan also contains 11 major elements. The Project furthers the objectives and policies of several of these elements as follows:

- Housing Element – The creation of approximately 72 rental residential units on this currently underutilized property fully satisfies all of the provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Applicant will provide 68,981 square feet of affordable housing priced for at least 60% of the AMI. The affordability of the Project is also entirely consistent with the provisions of the Comprehensive Plan and furthers the intent of many of its housing provisions.
- Urban Design Element – As shown in the detailed plans, elevations, and renderings included in Exhibit A to the Pre-Hearing Statement and in post-hearing submissions to the Commission submitted as Exhibits 14 and 31 of the record, the proposed Project exhibits superior design and architecture. The construction of a well-designed residential building will complement and enhance the neighborhood that surrounds the site. The integration of the site design into a prominent lot at the corner of Georgia Avenue, Kansas Avenue, and Taylor Street, and the offering of street-level retail will tie the Project into the neighborhood. The Applicant met with OP several times on the proposed Project. As a result of OP's input and the comments of the Zoning Commission during the setdown hearing, the design was greatly enhanced. The result is a sensitive design that utilizes modern materials for a traditional appearance.

- Generalized Land Use Map – As previously mentioned, the Generalized Land Use Map includes the Property in the Moderate-Density Residential/Low-Density Commercial Land Use Category. It should be noted that, while the Generalized Land Use Map typically is helpful in determining appropriate uses and density in areas of the city, it is not intended to serve as a “general” zoning map, nor does it mandate a parcel-by-parcel limitation on permitted development. The proposed Project and C-3-A Zone District are consistent with the flexibility that the Moderate-Density Residential/Low-Density Commercial Land Use category provides for the Property. Such a designation supports the construction of a high-quality affordable housing project with a retail component on the site of a vacant lot. In addition, the Georgia Avenue corridor adjacent to the property is a long stretch designated as Medium-Density Residential/Moderate-Density Commercial. Therefore, the Project would fit well in the plan for the establishment of Georgia Avenue as a rejuvenated vibrant corridor.
  
- Ward 4 Goals and Policies – The Ward 4 Element of the Comprehensive Plan seeks to “capitalize on Metrorail station areas as focal points for retail services...and community activities” (10 DCMR § 1501.1(d)); “create and expand retail activity” (10 DCMR § 1505.1(a)); expand development on vacant commercial properties (10 DCMR § 1506.1(a)); maintain, conserve, and expand the housing stock, particularly of affordable housing (10 DCMR § 1507.1(a)); provide affordable housing in particular near the Georgia Avenue-Petworth Metro Station (10 DCMR § 1507.3)); provide for the housing needs of moderate-income households (10 DCMR § 1508.1(a)); encourage the private sector to provide new housing (10 DCMR § 1508.1(c)); and support the construction of rental housing (10 DCMR § 1508.1(d)). Furthermore, the Ward 4 Land Use Plan calls for the implementation and upgrading of local neighborhood centers in a small area that includes the Property (10 DCMR § 1530.1 (h)(2)(C)(ii)). The proposed PUD is consistent with these provisions of the Ward 4 Elements of the Comprehensive Plan. It is difficult to imagine a project that better satisfies the goals and objectives of the Ward 4 Element of the Comprehensive Plan.

### 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 application for consolidated review and approval of a Planned Unit Development application for Lots 35, 803, and the alley between them, in Square 2910, and a Zoning Map amendment from C-2-A to C-3-A for the PUD site subject to **CONDITIONS**. The approval of this PUD is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit A to Exhibit 14 submitted with the initial application materials, as amended by Exhibit A to Exhibit 18 submitted on January 23, 2006, as amended by Exhibit 21 submitted at the hearing, and as amended by Exhibit A to the Post-Hearing

Submission submitted on February 24, 2006 (which includes the illustration of finish materials on page 29), as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of a project that includes a minimum of 72 residential units. The entire Project will include approximately 79,467 square feet of gross floor area resulting in an FAR of approximately 4.5. The Project shall include 68,981 square feet of affordable residential space and 10,486 square feet of commercial space. The new building will have a height of 72 feet and total lot occupancy of the Project of approximately 72%.

3. There will be a minimum of 54 parking spaces provided on site. The use of Space-Saver parking spaces (as described in this Order), or Space-Saver-like spaces shall be permitted.

4. All of the residential units in the Project shall be made available as affordable units to residents having an income not exceeding 60% of AMI and consistent with the eligibility requirements and enforcement mechanisms enumerated in the DHCD guidelines and policies. In addition, at least fourteen (14) units shall be reserved for potential residents with a household income between 31% and 50% of the AMI. All of the units shall remain affordable to residents having an income not exceeding 60% AMI for forty (40) years. The Applicant shall enter into an agreement or agreements with DHCD requiring these affordability requirements. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant will work with DHCD to make such changes comply with the same.

5. The Applicant shall restrict all loading and unloading from Georgia Avenue and Taylor Street and only perform such activities from Kansas Avenue.

6. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services before submitting an application for a building permit.

7. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the draft Memorandum of Understanding submitted as Exhibit D to the Post-Hearing Submission before submitting an application for a building permit.

8. The Applicant shall have flexibility with the design of the PUD in the following areas:

- 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 appearance or configuration of the structures;
- 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;

- To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
- To make alterations to the parking garage design provided that the parking garage contains a minimum of 54 parking spaces, which requirement may be satisfied with any combination of compact and full-sized spaces;
- To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and
- To make minor adjustments to the site plan, including such areas as the loading areas and driveway, to accommodate DDOT, if necessary.

9. The consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit and construction of the Project must start within three years of the date of the effective date of this Order pursuant to 11 DCMR §§ 2408.8 and 2408.9.

10. No building permit shall be issued for this PUD and the PUD-related map amendment shall not become effective until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and 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 this property in accordance with this Order or amendment thereof by the Zoning Commission.

11. The Applicant 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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sexual 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **APPROVED subject to CONDITIONS**.

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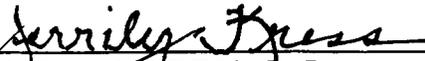
On March 13, 2006, the Zoning Commission approved the application by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, and Michael G. Turnbull to approve; Gregory N. Jeffries not present, not voting).

The Order was adopted by the Zoning Commission at its public meeting on April 20, 2006, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on JUL 21 2006.



CAROL J. MITTEN  
CHAIRMAN  
ZONING COMMISSION



JERRILY R. KRESS, FAIA  
DIRECTOR  
OFFICE OF ZONING