GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-28
Z.C. Case No. 10-28
Consolidated Approval for a Planned Unit Development and Zoning Map Amendment for 901 Monroe Street, N.E. (Square 3829, Lots 3, 4, 11, 22, and 820)

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on January 19 and February 2, 2012 to consider an application from 901 Monroe Street, LLC ("Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 2, 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 Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. The project site consists of Lots 3, 4, 11, 22, and 820 in Square 3829 ("Subject Property" or "Property"). The Subject Property is split-zoned C-1 and R-2. The Subject Property includes approximately 60,000 square feet of land area and is located within the boundaries of Advisory Neighborhood Commission ("ANC") 5A. (Exhibit ["Ex."] 4.)

2. On November 16, 2010, the Applicant submitted an application seeking review and approval of a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District for a new multifamily apartment building with ground-floor retail. (Ex. 4.)

3. Notice of the public hearing was published in the *D.C. Register* on October 28, 2011 and was mailed to ANC 5A, and to owners of all property within 200 feet of the Property.

4. The public hearings on the application were conducted on January 19 and February 2, 2012. The hearings were conducted in accordance with the provisions of 11 DCMR § 3014 and 3015.

5. On February 24, 2011, in response to requests from community stakeholders, the Applicant filed a supplemental submission and updated its application materials. (Ex. 4, 11.)

6. By memorandum dated March 4, 2011, and through testimony at the public meeting held on March 14, 2011, the Office of Planning ("OP") recommended that the Commission set down the application for public hearing on the application for a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District. OP also recommended, in the alternative, that the Commission set down the application for public hearing on the application for a consolidated PUD and related Zoning Map amendment to the C-2-A Zone District. (Ex. 12; 3/14/11 Transcript ["Tr."] pp. 44-45.)

7. At the March 14, 2011 public meeting, the Commission requested additional information about the Future Land Use Map, its relationship with the Comprehensive Plan, the calculation of the project's floor area ratio ("FAR"), the relationship of the new building to the existing buildings nearby, the public benefits and amenities, and shadow studies. (3/14/11 Tr., pp. 46-63.)

8. On July 5, 2011, in response to issues and requests from the Commission at the March 14 public meeting, the Applicant filed an additional supplemental submission. The additional supplemental submission included revised plans for the project and a recalculated overall density for the project. (Ex. 18.)

9. By a revised report dated July 15, 2011 and through testimony, OP recommended that the Commission set down the application for public hearing on the application for a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District. OP no longer recommended setting down the application in the alternative in the C-2-A Zone District because of an error in the density calculation; the proposed density does not conform to C-2-A standards. (Ex. 20; 7/25/11 Tr., pp. 97-101.)

10. At its July 25, 2011 public meeting, the Commission set the case down for a public hearing as a contested case. The Commission adopted OP's recommendation that the application be set down as a consolidated PUD and related Zoning Map amendment to the C-2-B Zone District.

11. On October 13, 2011, the Applicant filed a pre-hearing submission, and a public hearing was timely scheduled for January 19, 2012. On December 29, 2011, prior to the public hearing, the Applicant supplemented its application with additional information, including updated plans and a traffic impact study. (Ex. 21, 41.)

12. In addition to the Applicant, ANC 5A was automatically a party in this proceeding. ANC 5A submitted a report and resolution in support of the application. (Ex. 156.)

13. The Commission received a timely party status request in opposition from a group of residents residing within 200 feet of the Subject Property ("200-Footers"). The Commission granted party status to the 200-Footers. (Ex. 29, 44; 1/19/12 Tr., pp. 17-19.)

14. The Commission received a timely party status request in support from the Brookland Neighborhood Civic Association ("BNCA"). The Commission granted party status to the BNCA. (Ex. 43; 1/19/12 Tr., pp. 10-16.)

15. At the public hearing, the Commission heard testimony and received a report from the Office of Planning ("OP") in support of the application. At the Commission's request, OP also filed a post-hearing supplemental report providing more information concerning the relationship among Comprehensive Plan elements. (Ex. 80, 320; 1/19/12 Tr., pp. 189-193.)

16. At the public hearing, the Commission heard testimony and received a report from the District Department of Transportation ("DDOT") in support of the application. (Ex. 79; 1/19/12 Tr., pp. 193-196.)

17. At the January 19, 2012 hearing, the Applicant presented evidence and testimony from Bo Menkiti, a member of the development team; David Roodberg, a member of the development team; Phil Esocoff, qualified as an expert in architecture; and Jami Milanovich, qualified as an expert in traffic engineering. (1/19/12 Tr., pp. 21-149.)

18. At the February 2, 2012 hearing, the Applicant submitted additional information in response to issues and questions raised at the January 19 public hearing. The submission included responses to OP's conditions of support, responses to DDOT's recommendations, a neighborhood parking evaluation, the potential location of the Inclusionary Zoning ("IZ") units, additional information about the proposed community amenities, and the Applicant's Closing Statement. (Ex. 308-315.)

19. On February 23, 2012, the Applicant submitted additional information in response to the Commission's requests at the February 2, 2012 public hearing. The submission included information about additional community outreach, a revised and enhanced construction management agreement, a revised community amenities package, and additional architectural renderings. (Ex. 318.)

20. On March 1, 2012, the Applicant made a motion to reopen to the record in this case in order to provide additional details regarding the proposed undergrounding of utilities for this Project. The Applicant noted that based on further engineering design work associated with the Project, it would also underground the utilities and remove utility poles along 9th Street, N.E. between Monroe Street, N.E. and Lawrence Street, N.E. This additional undergrounding of utilities will cost the Applicant approximately $350,000, which the Applicant added to the value of the community amenities package. (Ex. 323, 326.)

21. On April 2, 2011, the Applicant submitted a final and updated list of its proffered public benefits and amenities together with a list of proposed conditions to enforce each proffer. (Ex. 336.)

22. On April 9, 2012, the 200-Footers submitted comments on the Applicants final list of proffers and proposed conditions. (Ex. 337.)

23. At a public meeting held on March 12, 2012, the Commission took proposed action to approve the application.

24. At a public meeting on April 30, 2012, the Commission took final action to approve the application in Z.C. Case No. 10-28, subject to conditions.

<u>The Subject Property and Surrounding Area</u>

25. The Subject Property is bounded by Monroe Street, N.E. to the north, 10th Street, N.E. to the east, Lawrence Street, N.E. to the south and 9th Street, N.E. to the west. The Subject Property includes the entire frontage along the south side of Monroe Street between 9th and 10th Streets. The Col. Brooks' Tavern restaurant, located at 901 Monroe Street, N.E., and its parking lot to the south are located on the Subject Property. The remainder of the Subject Property consists of free-standing residential buildings. (Ex. 4.)

26. The Subject Property is located in the Brookland neighborhood. The Colonel Brooks Mansion is located on the north side of the 900 block of Monroe Street, directly across Monroe Street from the Subject Property. An entrance to the Brookland/CUA Metro Station is located northwest of the Brooks Mansion. The north side of Monroe Street between 10th Street and 12th Street includes a mix of single-family residential structures of varying architectural styles and quality. The established commercial center of Brookland is located along 12th Street north of the Subject Property. The south side of Monroe Street from 12th Street to 10th Street includes several institutional uses, including St. Anthony's Catholic Church and school and the Luke C. Moore Academy. Lawrence Street, to the south of the Subject Property, includes single family homes on a raised hill on the south side of Lawrence Street. The properties on the west side of 9th Street, directly across from the Subject Property, include eight townhouses. (Ex. 4.)

27. The Subject Property is located among residential, institutional, and commercial properties. Residential properties are to the south of the Property, and institutional and residential properties are to the east and southeast. Commercial properties are directly to the west. Slightly further to the west along Monroe Street across the bridge is the location of the new CUA / South Campus mixed-use PUD. (1/19/12 Tr., p. 37)

28. The Subject Property is located in the Low-Density Residential, Mixed-Use Moderate-Density Commercial, and Moderate-Density Residential categories on the District of

Columbia Future Land Use Map. The Applicant requested a PUD-related rezoning of the Subject Property to the C-2-B Zone District. (Ex. 4.)

Description of the PUD Project

29. The project will be a mixed-use project with ground floor retail, residential apartments in the floors above, and underground parking. (Ex. 4, 25; 1/19/12 Tr., pp. 35-54.)

30. The project will feature neighborhood-serving retail tenants on the ground floor along Monroe Street. The retail space will consist of approximately 12,720 square feet and has been laid out in a manner that will allow for a range of five to seven retail tenants. Ceiling heights of approximately 16 feet will be provided on the ground floor along Monroe Street in order to provide high quality space for the retail tenants. The entire structure will be set-back from the property line to allow for an improved ground level experience. The +/- 15- foot setback along Monroe Street will allow for the development of a four-foot wide planting strip, a six-foot wide sidewalk, and a five- to seven-foot wide café zone for the retail tenants. (Ex. 25; 1/19/12 Tr., pp. 35-54.)

31. The residential component of the project will include 205-220 residential units located on the second through fifth levels of the structure along Monroe Street and 10th Street and on the garden through sixth levels along 9th and Lawrence Streets. The main entrance to the residential units is located on 9th Street. The residential units will consist of a mix of studios, junior one bedrooms, one bedrooms, one bedrooms with den, and two bedroom units. Outdoor amenity spaces for the residents will provided at the garden level and on the third courtyard level which will include a pool and recreation space. Approximately 15,151 square feet of the residential square footage (eight percent of the total amount of residential square footage in the project) will be reserved as workforce affordable units for households earning up to 80% of the Area Median Income ("AMI"). (Ex. 25; 1/19/12 Tr., pp. 35-54.)

32. The project will include approximately 150 parking spaces and approximately 66 bicycle parking spaces. Approximately 13-37 spaces will be made available for patrons of the retail tenants. The remaining parking spaces will be reserved for the residential tenants and their guests. Vehicular access to the project will be provided through an east-west enclosed private alley that will be covered by the second story of the structure and will include retractable garage doors at the 9th and 10th Street entrances/exit. Personal vehicles will enter and exit the parking structure via an entrance along 9th Street, which will include a garage door that is setback an additional 26 feet from the building's façade in order to minimize its appearance and move cars off the sidewalk in order to provide for safe pedestrian traffic patterns. Delivery trucks will access the loading docks via the east-west alley from 10th Street. Similar to the treatment of the garage door on the 9th Street side of the structure, the garage door on the 10th Street side of the of the structure will be set back 10-12 feet from the façade of the building. (Ex. 25; 1/19/12 Tr., pp. 35-54.)

33. Along 9th Street towards Lawrence Street, the project will provide entrances to the individual units directly from 9th Street and will provide outside garden areas for those garden level units in the 15-foot setback area. The depth of the outside areas on the garden level are approximately nine feet deep. The horizontal width of the outside areas along 9th Street ranges from five feet–four inches to 10 feet; and along Lawrence Street their horizontal width ranges from seven feet–four inches to 12 feet. The depth of these areas require that the adjacent residential areas be included in the calculation of the building's gross floor area. (Ex. 25; 1/19/12 Tr., pp. 35-54.)

34. The façade materials of the building will include brick, stone, pre-cast elements, and pressed metal accents. All elevations of the building will include the same architectural materials. In addition to the +/- 15-foot setback of the entire structure, the sixth level of the building will be set back an additional five to seven feet from the building edge. This stepping back of the top level of the building will allow the creation of terraces and patios for the units on the top story and also will minimize the visual impact of the entire structure on the surrounding properties. (Ex. 25; 1/19/12 Tr., pp. 35-54.)

35. In response to concerns raised by OP, the Commission, and adjacent neighbors, the project will include many features to enhance its appearance and its relationship to the single family homes adjacent to or across the street from the project. Along Lawrence Street, the project will include bays of approximately 14 feet in width, and the upper levels will be pulled further back from the street edge along Lawrence Street and the alley in the Square in a series of setbacks. In addition, the areaways along Lawrence Street will range from a depth of six feet at the intersection of 9th and Lawrence Streets to 13 feet at the alley on the eastern edge of the Subject Property. At the eastern edge of the Subject Property along Lawrence Street, adjacent to the north-south public alley in the Square, the project will include a series of setbacks from the property line. These setbacks will allow for the planting of trees on the Property that will help soften the visual impact of the project on the other properties located along 10th Street in this Square. Further, the project's design will include a series of setbacks from both the street and side lot to mediate the height differential between the adjacent townhouses on 10th Street and the project. At their lowest points, these setbacks will nearly equal the height of the nearest townhouses. In addition, the project will incorporate architectural features that recall elements found in the adjoining townhouses, such as chimney masses and small mansard roofs. The overall effect is one that will result in a compatible scale relationship between the existing and proposed buildings. (Ex 25; 1/19/12 Tr., pp. 35-54.)

<u>Density Proposed and Flexibility Requested</u>

36. The total gross floor area included in the project will be approximately 198,480 square feet, for a total density of approximately 3.31 FAR. Because the project will include larger below-grade area ways, it is required to include 12,737 square feet of truly below-

grade residential space in its FAR calculation. The height of the building at its tallest point will be approximately 60 feet–eight inches, with the top floor of the structure set back from the edge of the building at 50 feet. (Ex. 25.)

37. The Applicant requested flexibility from the strict application of the roof structure requirements in § 411.2, 411.3, and 411.5 of the Zoning Regulations. The project will have multiple roof structures, all of which are set back from the roof of the sixth level at a 1:1 ratio. The building will have two roof structures to house the elevator overrun and the roof access stair tower, both 12 feet in height above the sixth level of the building. The Commission has the authority to grant this flexibility pursuant to § 2405.7. (Ex. 25, p. 10.)

38. The Applicant requested flexibility from the strict application of the loading requirements in § 2201.1 of the Zoning Regulations to provide a 55-foot loading berth. A delivery truck that would utilize a 55-foot loading berth would not be able to access the Property from 10th Street, given the existing roadway width of 10th Street. The Applicant believes that the proposed loading facilities (which include a 30-foot loading berth, a 400-square-foot-loading platform, and two 30-foot delivery spaces) will be able to satisfy the loading needs of this project. The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 25, p. 11.)

<u>Public Benefits and Amenities</u>

39. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:

a. *Housing and Affordable Housing*

The Project will create approximately 205-220 residential units and approximately 15,151 square feet of workforce affordable housing (eight percent of the total amount of residential square footage in the project) for households earning up to 80% of the AMI. The affordable housing units will be distributed throughout the building (except for the upper two stories of the building). (Ex. 25.)

b. *Urban Design, Architecture, Landscaping, or Creation of Open Spaces*

The massing, height, and articulation of the building will create a project that provides new housing and retail opportunities for the surrounding community, while keeping with the surrounding buildings and uses. The height of the project generally will be consistent with the overall perceived height of other buildings and structures in the immediate area. Further, the building's setbacks will result

in less visual impact on the adjacent properties than a building which is 50 feet tall and extends all the way out to the property line. Finally, the Applicant will eliminate the public utility poles and move the existing overhead public utility lines underground for the span of Monroe Street between 9th and 10th Streets and along 9th Street between Monroe and Lawrence Streets. The elimination of the overhead utility lines and poles along Monroe Street will enhance the streetscape and add to the visual appeal of the building. (Ex. 25.)

c. *Site Planning, and Efficient and Economical Land Uses*

The creation of a mixed-use project on the Subject Property, with housing and community-serving retail uses will be appropriate site planning and efficient and economical land use as a project amenity. Given the Subject Property's proximity to the Brookland/CUA Metro Station, it is appropriate to have this level of density on the Subject Property. (Ex. 25.)

d. *Effective and Safe Vehicular and Pedestrian Access*

No curb cuts are proposed for Monroe Street, and an existing curb cut on Monroe Street will be removed. The enclosed east-west private alley system will minimize vehicular-pedestrian conflicts and will allow for safe access to and from the parking and loading facilities. The project will not use the existing north-south alley in the Square which is currently utilized by the existing houses on 10th Street. The approximately 66 dedicated bicycle parking spaces will also be provided in the ground floor and the first below-grade level of the building. Changing and shower facilities for employees of the retail tenants will be provided. (Ex. 25.)

The traffic and parking engineering consultant for this project, prepared a Transportation Impact Study ("TIS"). (Ex. 42; 1/19/12 Tr., pp. 56-63.) The preparation of the TIS resulted in the following conclusions:

i. The Subject site is well-served by Metro and is located within one block of the Brookland/CUA Metro Station;

ii. At the off-site study intersections, the number of trips generated by the proposed redevelopment is expected to account for approximately four percent or less of the total future traffic;

iii. The existing pedestrian facilities, along with the sidewalk reconstruction and the bulb-outs planned along the Property's frontage, will adequately accommodate the anticipated pedestrian traffic from the project; and

iv. The proposed redevelopment of the Subject Property will not have a significant impact on the traffic operations in the study area.

The Applicant will abide by a transportation demand management ("TDM") program and loading management plan that includes the following components:

i. The Applicant will provide initial residents in the building with SmarTrip cards pre-loaded with $5. The total value for each card will be $10 ($5 for the card itself and $5 of credit);

ii. The Applicant will coordinate with Zipcar to determine the feasibility of locating Zipcars on site. The final determination on whether and how many Zipcars will be located at the site will be made by Zipcar;

iii. Significant bicycle parking (66 bicycle parking spaces inside the building, with the ability to provide up to 20 bicycle parking spaces in the public space adjacent to the building) will be provided on-site for both retail employees and residents. Bicycle parking for the retail employees will be provided on the first floor. Bicycle parking for the residents will be provided on the garden level;

iv. Shower and changing facilities will be provided on site for employees who wish to walk, jog, or bike to work;

v. A business center will be provided in the residential building for residents who telecommute;

vi. The Applicant shall designate a Loading Coordinator for the site;

vii. All tenants shall be required to use the loading dock for move-in/move-out activities, except when trucks greater than 45 feet are required;

viii. All tenants shall be required to notify Loading Coordinator of move-in/move-out dates;

ix. When trucks greater than 45 feet are required for tenant move-in/move-out, the Loading Coordinator shall assist tenants in obtaining proper permits from DDOT;

x. All retail tenants and vendors shall be required to use the loading dock for deliveries;

xi. The Applicant shall prohibit vendors to retail uses in the project from making deliveries in trucks larger than 45 feet;

xii. No truck idling shall be permitted; and

xiii. The Applicant will include a provision in all leases (residential and commercial) that notes that the north/south alley in Square 3829 is not to be used by residents and tenants of the project for unloading, loading, or as the primary entrance to the building.

e. *Environmental Bene*fits

The project is designed to be able to achieve LEED Certification. The Applicant is unsure whether it will ultimately apply for the actual certification from the United States Green Building Council ("USGBC"), but the structure will be designed in a manner that would allow for such certification. No adverse environmental impact will result from the construction of this project. The project's proposed stormwater management and erosion control plans will minimize impact on the adjacent properties and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the project. (Ex. 25.)

f. *Uses of Special Value*

Throughout this process, representatives of the Applicant engaged in outreach to the neighboring community. The Applicant and its design team held over 35 meetings and presentations with community organizations, individuals, ANC 5A, and individual ANC 5A Commissioners. The project's community amenities and public benefits were the result of the outreach and community engagement in which the Applicant engaged. (Ex. 25, 41, 318.)

The Applicant's February 23, 2012 and March 1, 2012 submissions included a revised and enhanced community amenities package (Ex. 318, 326). As updated in its April 2, 2012 submission (Ex. 336) the package includes the following:

i. The cost of undergrounding the utility lines along the south side of Monroe Street between 9th Street and 10th Street, and along the east side of 9th Street between Monroe Street and Lawrence Street;

ii. Replacement of the sidewalk, curb, and gutters around the entire block that includes the project, and re-grade and repave the alley in Square 3829 that will only be utilized by the adjacent 10th Street property owners;

iii. The provision to each of the six adjacent 10th Street property owners with a $5,000 worth of in-kind labor and materials (for a total expense to the Applicant of $30,000) which can be used for hardscape and/or landscape

improvements on their property. The Applicant will be responsible for performing this work on behalf of each 10th Street property owner;

iv. The installation of eight security cameras on the exterior of the building to monitor activity on the sidewalks adjacent to the property, as well as the entire block bound by Monroe, 9th, Lawrence and 10th Streets. It is intended that these camera will be able to monitor activity on the block that includes Square 3829. Footage from these cameras will be made available to the Metropolitan Police Department, if requested;

v. The following financial contributions within the specified period:

(a) $25,000 to the Washington Area Community Investment Fund to be used for a 12th Street, N.E. Façade Improvement Program. The Applicant will make this payment prior to the issuance of the building permit for the project;

(b) $25,000 to Byte Back for the purchase of 26 desktop computers for their computer lab. The Applicant will make this payment prior to the issuance of the building permit for the project;

(c) $50,000 to The Community Foundation for the National Capital Region to fund and administer no-interest loans for small businesses that are located within the Brookland Community. The Applicant will make this payment prior to the issuance of the building permit for the project; and

(d) $25,000 to Dance Place to be used for improvements to the new dance studio in Dance Place's main theater building and their new dance studio in the Brookland Artspace Lofts. The Applicant will make this payment prior to the issuance of the building permit for the project;

vi. Payment for and construction of $25,000 worth of enhancements to the playground equipment and open spaces at the Turkey Thicket Recreation Center, located at 1100 Michigan Avenue, N.E. The Applicant will provide evidence that this work was completed prior to the issuance of a certificate of occupancy for the residential portion of the project, subject to the approval of the Department of Parks and Recreation ("DPR");

vii. The Applicant will continue to work with the Greater Brookland Business Association ("GBBA") to identify potential business opportunities for Brookland businesses throughout the life of the project. The Applicant

will adhere to the following procedures in order to cultivate these business opportunities:

(a) The Applicant will semi-annually obtain from the GBBA a list of products and services offered by its members. This list shall include a notation for each business as to whether it is a CBE;

(b) The Applicant shall offer Brookland businesses an opportunity to bid on products and service offerings prior to selecting a vendor; and

(c) The Applicant and GBBA will meet quarterly to review business opportunities and the selection of Brookland businesses.

In addition, the Applicant submitted a revised construction management agreement ("CMA") resulting from negotiations with the 200-Footers following the February 2, 2012 hearing. The CMA is a reasonable compromise between the Applicant and the 200-Footers. (Ex. 318.)

g. *Revenue for the District*

The construction and operation of this project will result in a significant positive economic impact for the Brookland neighborhood and the entire District of Columbia, especially compared to the current uses on the property. The Applicant projects that this project will result in one-time economic benefits of $3,024,000 to the City, with additional net annual economic benefits to the City of approximately $1,859,585. The ultimate present value economic contribution of this project (including both one-time and annual economic contributions) will be $26,268,813. The significant positive economic impact that this project will have on the District, Ward 5, and the Brookland neighborhood retail coffers is a significant project benefit. (Ex. 25.)

h. *First Source Employment Program and Use of Local Businesses*

The Applicant will voluntarily enter 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. Local businesses are a key component of the project's development team. The Applicant will work with the GBBA to identify potential business opportunities for Brookland businesses throughout the life of the project. The Applicant will adhere to specific procedures in order to cultivate these business opportunities. (Ex. 25.)

Comprehensive Plan

40. The Property is located in the Monroe Street Sub-Area of the Brookland CUA Metro Station Area Small Area Plan ("SAP"). The PUD project fully achieves the goals outlined in the Small Area Plan's Guiding Principles and Framework Plan for the Monroe Street Sub-Area. The Guiding Principles for the Monroe Street Sub-Area include:

    a. *Land Use and Neighborhood Character* - "Monroe Street is envisioned as a tree-lined mixed-use street, with neighborhood-serving retail, restaurants, arts and cultural uses on the ground floor, and residential above";

    b. *Economic Development and Neighborhood Amenities* - "The Small Area Plan proposes new mixed-use and residential development to bring people to the neighborhood, and to provide needed neighborhood retail, amenities and services";

    c. *Transportation, Connectivity, Walkability* - "The Small Area Plan proposes strategies to create better and more efficient pedestrian and vehicular connectivity and linkages to neighborhood destinations. Reestablishing the fabric and grid of streets and blocks through street extensions and realignments wherever possible will reconnect the neighborhood by allowing for better circulation around the neighborhood and better pedestrian connectivity";

    d. *Green Space, Open Space and Environment* - "New public spaces, open spaces, and civic plazas are envisioned for the Metro Station area and along Monroe Street"; and (See Small Area Plan, pp. 3, 6, 39, 40, 46.)

    e. The Small Area Plan's Framework Plan for the Monroe Street Sub-Area calls for:

    > Mixed-use development with community-serving retail, residential, cultural uses and public spaces along Monroe Street from Michigan Avenue to 12th Street to connect Brookland from west to east. (See Small Area Plan, p. 46.)

41. The Commission agrees with the Applicant's statements that the ground floor neighborhood-serving retail uses, with residential uses above, will help create the "Main Street" that the SAP envisions for Monroe Street and exemplifies all of the attributes of transit-oriented development. In addition, the treatment of the streetscape along Monroe Street (with dedicated areas for tree planting, an enlarged sidewalk due to the setback of the entire building, and a café zone) is entirely consistent with the Green Space, Open Space and Environment Guiding Principle enumerated in the SAP.

42. The Commission finds that this Project will also fully support the SAP's Guiding Principles related to Transportation, Connectivity, and Walkability. The project will provide parking spaces at a ratio of approximately 0.6 parking spaces per residential unit. Also, the project will provide a significant amount of bicycle parking spaces for both residents and retail employees in the building and will also include shower facilities for employees who work in the retail spaces along Monroe Street.

43. The Commission finds that the density and height of the buildings in the project generally will be consistent with the outlines provided in the Monroe Street Sub-Area in the SAP. The 205-220 units will be consistent with the 750-900 units proposed for Monroe Street (between Michigan Avenue and 12th Street). The 12,720 square feet of retail in the project will be consistent with the 80,000-100,000 square feet of retail (for Monroe Street between Michigan Avenue and 12th Street) envisioned in the SAP. The project will include 150 parking spaces, which is generally consistent with the guidelines noted in the SAP (which anticipates 650-850 parking spaces in the Monroe Street Sub-Area).

44. The Commission finds that, while the SAP notes building heights of six stories (50 feet) east of the train tracks and setbacks above 50 feet, the proposed use of "urban design techniques" in this project, such as setting the entire building back from the property line and the setback at the sixth level (at a building height of approximately 50 feet), are generally consistent with the SAP's goals. The visual impact of the building with the setbacks of the entire building and again at the sixth level will be less than or consistent with the visual impacts that would occur if a building was constructed on the property that was 50 feet tall and brought out to the property line along Monroe, 9th, 10th, and Lawrence Streets. The building's development area above 50 feet will be roughly equivalent to the development area that could be achieved on the Property if no setbacks were provided and the building had a maximum height of 50 feet.

45. The Comprehensive Plan's Upper Northeast Elements includes the following pertinent provisions:

> Encourage moderate-density mixed-use development on vacant and underutilized property in the vicinity of the Brookland/CUA Metro station, including the parking lot east of the station... (Policy UNE-2.6.1 Brookland/CUA Metro Station Area.)

The Commission finds that the Property's current C-1 and R-2 zoning is not consistent with this provision and that the proposed PUD project and related Zoning Map Amendment is consistent with these policies. The project will create an appropriately sized mixed-use project near the Brookland/CUA Metro Station.

46. The Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

> Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. (Policy H-1.1.4: Mixed Use Development.)

The Commission finds that the project's provision of ground floor retail and 205-220 residential units, including approximately 15,151 square feet of workforce affordable housing, is consistent with this policy of encouraging mixed-use development in close proximity to Metrorail Stations.

47. The Land Use Element of the Comprehensive Plan includes the following policy:

> Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide... (Policy LU-1.3.1: Station Areas as Neighborhood Centers.)

The Commission finds that the creation of this mixed-use project advances this policy. Development on the Subject Property will provide the most realistic development opportunity along Monroe Street between the WMATA/CSX train tracks and 12th Street. The creation of 205-220 residential units in such close proximity to the Brookland/CUA Metro Station, with a parking ratio of 0.6 residential units for each parking space will be below the market demand and will help encourage the reduction of reliance on automobiles. The opportunity for an appropriate number of new residents on the Subject Property in an attractive new building will enhance neighborhood stability and create a strong sense of place at this end of the Brookland neighborhood.

48. Based on the written submissions of the Applicant and OP (discussed below), the Commission finds that the proposed PUD-related Zoning Map amendment to the C-2-B Zone District is not inconsistent with the Property's designation on the Future Land Use Map. The C-2-B Zone District is congruent with both the Moderate-Density Commercial Land Use category and the Medium-Density Commercial Land Use category in the Comprehensive Plan. (See Future Land Use Map and Categories, § 225.8 and 225.9). The project's 3.31 FAR is 0.69 less than the C-2-B matter of right maximum for an Inclusionary Zoning project, and the project's 60'8" maximum height is 9'4" less than what is permitted a matter of right C-2-B development. The project's density and height

are not inconsistent with what the Generalized Future Land Use Map shows for over one-half of the Applicant's site.

49. The Commission also concludes that while this PUD-related Zoning Map amendment will extend a commercial Zone District into a portion of a property that is included in the Low-Density Residential land use category on the Future Land Use Map, the "interpretation guidelines" in the Comprehensive Plan for the Future Land Use Map are explicit that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The interpretation guidelines also indicate that the "typical building heights and densities included in the land use category simply describe the 'general character' of the area, and state that the 'granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here.' Finally, the Guidelines indicate that the Future Land Use map designations are not parcel-specific and should be interpreted in conjunction with the text of the [Comprehensive] Plan." Accordingly, the Commission finds that in the context of the overall Comprehensive Plan and the project, the PUD-related Zoning Map amendment is not inconsistent with the Future Land Use Map. (Comprehensive Plan § 226 [Frame-Work Element].)

<u>Government Agency Reports and District Government</u>

50. By report dated January 9, 2012, OP recommended, subject to further clarification from the Applicant, that the proposed PUD and related Zoning Map amendment should be approved. In its testimony at the public hearing, OP reiterated its recommendation. (Ex. 80; 1/19/12 Tr., pp. 190-193.)

51. OP's requests for further clarification from the Applicant concerned details of the proposed community benefits grants; clarification of the proposed contribution to the Turkey Thicket Recreation Center; the specific LEED elements of the project totaling 43 points; the amount of fare to be included on each residential unit's one-time complimentary SmarTrip card; and procedures for discouraging curb-side loading, particularly for trucks larger than 45 feet. (Ex. 80.)

52. OP determined that the project and related Zoning Map amendment would not be inconsistent with the Comprehensive Plan. In its report, OP stated, "The [Future Land Use Map and the Generalized Policy Map] do not, in and of themselves, determine whether an application is not inconsistent with the Comprehensive Plan. A project, including benefit proffers for a PUD, must be evaluated within the context of the full document to determine whether it would be not inconsistent with the Comprehensive Plan." Thus, OP concluded, "OP's analysis indicates that the proposed project would strike an appropriate balance among several policies, including those addressing transit oriented development, commercial revitalization and neighborhood conservation. Given the location and the proposed design, height and FAR restrictions and uses of the PUD,

the project and the associated zoning request would not be inconsistent with the Comprehensive Plan." (Ex. 80, p. 5.)

53. OP further determined that the project and related Zoning Map amendment would not be inconsistent with the SAP because it advances several of the SAP's goals and policies. Also, the project's public benefits and amenities would be consistent with the SAP's recommendations. (Ex. 80, pp. 10-13.)

54. In its supplemental report, dated February 23, 2012, OP provided additional analysis concerning the relationship among Comprehensive Plan components and in support of the project's consistency with the Comprehensive Plan. The report explained how the Comprehensive Plan includes guidance on how its components are to be used, including the Future Land Use Map, the Generalized Policy Map, the Small Area Plan, the citywide elements, and the area elements. The report concluded that all components are to be considered and balanced together, with greater emphasis placed on certain aspects. With respect to interpreting the maps, OP concluded:

> The Maps do not, in and of themselves, determine whether an application or a particular zoning designation is not inconsistent with the Comprehensive Plan. They are to be interpreted in conjunction with other written elements and an adopted Small Area Plan. Although several zone districts may be appropriate for a particular land use category, it should not be assumed that the densest district or the maximum permitted density of a zone is appropriate for a particular land use designation. (Ex. 320, p. 2.)

With respect to the citywide and area elements, OP concluded:

> While there is overlap among the elements and shifting emphasis among policies from one element to another, PUD proposals should be guided by the Citywide elements and its accompanying maps, the relevant Areawide Element, and an adopted Small Area Plan. Among the written elements, the Land Use element is to be given greater weight than other elements, because it is intended to integrate the policies of the other elements. (Ex. 320, pp. 2-3.)

OP's report further stated, "Determining the type of development appropriate for the applicant's site must involve a balancing of this map with the Generalized Future Land Use Map, the written elements—particularly the Land Use element—as well as additional guidance from the SAP." (Ex. 320, p. 4.) OP's analysis of the PUD project and related Zoning Map amendment, using the guidance from the Comprehensive Plan and the SAP, affirmed its position that that the project is not inconsistent with the Comprehensive Plan, that the PUD-related C-2-B Zoning Map amendment is appropriate for the site, and that

the project fulfills many goals and policies of both the Comprehensive Plan and the SAP. (Ex. 320.)

55. By its report dated January 9, 2012, DDOT recommended approval of the PUD and related Zoning Map amendment, with recommendations. DDOT stated that it "has worked with the Applicant on a number of recommendations and the Applicant has responded affirmatively to most of them." (Ex. 79, p. 2.) Further, DDOT stated that it believes many residents, workers, and visitors will use public transit as their primary mode of transportation because of the numerous transit options in the immediate vicinity. DDOT recommended that the Applicant provide the necessary crash data to support the safety aspects of the surrounding intersections in addition to what mitigations are being installed for the intersection approaches that will see increased delay in the future. Finally, DDOT suggests that the Applicant follow the provided options and employ some form of performance monitoring. (Ex. 79.)

ANC 5A Report

56. On January 11, 2012, ANC 5A submitted a letter in support of the application. The letter stated that, on January 4, 2012, the ANC voted to approve a motion in support of the PUD and related Zoning Map amendment application. Further, the report stated, "ANC 5A concludes that the Applicant's PUD project and proposed Zoning Map Amendment to the C-2-B Zone District satisfies the Zoning Regulations standards for PUD approval outlined in 11 DCMR Chapter 24, and is consistent with the Brookland/CUA Metro Station Small Area Plan and the Comprehensive Plan. ANC 5A concluded that the mixed-use project will create an overall benefit to the neighborhood by creating new residential opportunities near the Brookland Metro Station, new retail stores along Monroe Street east of the train tracks, and will help enhance security in the area by having people live along 9th Street between Monroe and Lawrence Streets (and have direct entrances to ground floor units on 9th Street)." No one testified on behalf of the ANC at the public hearing. (Ex. 156.)

Parties in Support

57. BNCA testified as a party in support of the application. Caroline Petti testified on behalf of the BNCA. Ms. Petti testified that BNCA held two votes on the application. She stated that the first vote, held on September 13, 2011, was against the C-2-B map amendment and in favor of a C-2-A map amendment. She stated that the second vote, held on December 13, 2011, was in favor of the proposed project. (1/19/12 Tr., pp. 240-251.)

58. At the request of the Commission, BNCA, through a letter dated February 23, 2012, submitted email correspondence that reflected the two votes. (Ex. 319.) In an email dated September 14, 2011, Ms. Petti reported on the outcome of the vote on the "application for

a re-zoning of the property". According to the email, the BNCA first rejected "BNCA supports the C-2-B zoning change" by a vote of 8 to 12 and then voted to approve "BNCA supports the C-2-A zoning change" by a vote of 17 to 1, with one abstention.

59. In a second email dated December 13, 2011, Ms. Petti reported on the outcome of the vote on the "proposed Colonel Brooks project" as follows:

> BNCA takes the following position on 901 Monroe Street, LLC's proposed Colonel Brooks project:
>
> 51 Support
>
> 49 Oppose.

60. Ms. Petti further testified that BNCA voted to support a C-2-A map amendment, instead of the proposed C-2-B, because C-2-A's lower height and lower density is more in scale with the surrounding neighborhood. BNCA felt that:

    a. C-2-B sets an unacceptable precedent for future Brookland Development east of the tracks;

    b. C-2-B is more than is needed to be a profitable project, C-2-A would be possible if minor modifications were made to reduce the project's density;

    c. C-2-A is preferred by residents adjacent to the proposed project (i.e., "200-footers") and their views should be given great consideration; and

    d. C-2-B is contrary to the Brookland Small Area Plan. (1/19/12 Tr., pp. 244-245.)

61. Ms. Petti testified that BNCA supported the project because of the new services and amenities; community-driven retail; smart growth; increased foot traffic that would result; more activity to deter crime; the exemplary architecture; and the quality of the amenities package. (1/19/12 Tr., pp. 242-243.)

62. In response to a Commissioner's question, Ms. Petti indicated that, based upon the feedback she has since received, she did not believe that everyone understood that that December vote was exclusive of the zoning issue and that it did not supersede the vote that was taken in September. (1/19/12 Tr., p. 256.)

63. On March 1, 2012, BNCA submitted its response to the Applicant's post hearing submission of February 23rd. (Ex. 325.) The purpose of the response was to clarify the role played by BNCA's representatives during post-hearing meetings described in the Applicant's submission and in discussing possible alternatives to the community amenities package,

64. On March 6, 2012, BNCA submitted a supplemental motion to reopen the record to correct what it alleged were "inadvertent" mischaracterizations of its position made in the Applicant's proposed findings of facts. (Ex. 327.) The Commission indicated it would attempt to resolve the issues raised and believes that Findings of Fact 56 through 62 accurately reflect BNCA's separately stated positions that it "supports the C-2-A zoning change" and it is in "support" of the "proposed Colonel Brooks project."

Persons in Support

65. At the public hearing, 23 persons testified in support of the application and related C-2-B Zoning Map amendment. Supporters included many members of the community, including those within 200 feet of the Property. Supporters cited many reasons for their support of the application. Reasons cited for support of the project included: architectural quality; superior public amenities; consistency with character of the neighborhood; enhancement of the streetscape and public realm; improved safety; improved neighborhood retail; influx of residents to the area; appropriateness of more density near a Metro station; benefits to adjacent homeowners; important precedent for good development that the project will set; the necessity of more density in Brookland; and the exemplary development team based in the neighborhood. One supporter stated that the amenities package would be a benefit and compensation to the neighborhood for the requested zoning relief and that the amenities package directly resulted from discussion with the community. Many of those testifying in support also stated that, having participated in the Brookland Small Area Plan process, they believed the project would be consistent with the SAP and that height and density would be appropriate. Further, many supporters noted the commitment of the Applicant to the neighborhood and the tremendous effort by the Applicant to reach out to the community and to include the community in planning for the project and the amenities package. (1/19/12 Tr., pp. 275-332; 2/2/12 Tr., pp. 12-52.)

66. Several persons who testified in support of the project stated that they attended the BNCA meeting on December 13, 2011 and that they understood that the vote in support was for the project with a C-2-B related Zoning Map amendment. (1/19/12 Tr., pp. 275-332.)

67. The Commission received 120 letters of support for the project. The letters expressed support of the project based on the attractive and high quality design; public amenities package; the streetscape and infrastructure improvements; the sensitive design that evolved in response to community concerns; the openness and responsiveness of the Applicant; new retail; benefits to the community; increased foot traffic; enhancement of the commercial corridor from the presence of new residents; increase in tax revenue for the District; the appropriateness of the project's design for the neighborhood; the appropriateness of the site for transit oriented development; the commitment of the development team to the neighborhood; consistency with the SAP and the Comprehensive Plan; the appropriateness and importance of higher density in this

location; the design accommodation for height and density by stepping back the building near adjacent houses; the Applicant's active solicitation of community input; improved safety; and connection to the new development to the west. (Ex. 48-78; 81-155.)

Parties in Opposition

68. Barbara Kahlow testified in opposition on behalf of the 200-Footers. She testified that the C-2-B related map amendment will not be consistent with the Comprehensive Plan and that the project will have adverse effects, including reduced air and light; increased traffic on 9th and 10th Streets and reductions in nearby levels of service; disruption of traffic from on-street loading for trucks larger than 45 feet; reduced on-street parking, increased crime; and damage to adjacent homes from construction activity. Ms. Kahlow also testified that the amenities package is insufficient and did not incorporate requests from the 200-Footers. Further, Ms. Kahlow testified that the construction management agreement was insufficient for the 200-Footers and that the project would be a *de facto* "expansion of a campus plan" since she was concerned that Catholic University students will be attracted to the new residential units. Finally, Ms. Kahlow testified that the ANC and BNCA votes in support do not reflect the concerns of the 200-Footers. (Ex. 296, 296B; 2/2/12 Tr., pp. 53-86.)

69. Carolyn Steptoe, ANC 5A07 Commissioner, testified in opposition on behalf of the 200-Footers. Ms. Steptoe testified that the 200-Footers were not included in discussions regarding community amenities and that they were not invited to certain community meetings. Ms. Steptoe also testified that the community is divided and that many in the neighborhood oppose the project, including some of the members of the ANC, particularly with regard to the C-2-B related map amendment. Finally, Ms. Steptoe requested additional information concerning the Applicant's economic analysis and requested that a fiscal analysis of the project be conducted. (Ex. 298; 2/2/12 Tr., pp. 86-94.)

70. Guy Durant, a resident owner adjacent to the Property, testified in opposition on behalf of the 200-Footers. Mr. Durant testified that only a project with a C-2-A related amendment should be considered and that a C-2-A-conforming version of the project should be produced, particularly with respect to lot occupancy. Also, Mr. Durant testified that the Applicant should produce more amenities and should produce a more substantial construction management agreement with more protections for the adjacent neighbors. Further, Mr. Durant testified that other objectionable impacts will result from the project, including cell tower interference; transient residents since the units will be rentals; and shadows. Mr. Durant requested that the Applicant meet with the 200-Footers to discuss a construction management agreement. (Ex. 297; 2/2/12, Tr., pp. 117-124.)

71. On March 1, 2012, the 200-Footers submitted their response to the Applicant's post-hearing submission of February 23rd. (Ex. 324.) The 200-Footers again expressed their

view that the public benefits were inadequate and also inconsistent with "the Commission's current policy not to accept Applicant checks to non-profit organizations instead of Applicant purchased/supplied hard amenities (e.g., trees, benches, equipment)." The group also questioned the propriety of the contribution to Dance Place asserting that a member of the developer's team is on the Dance Place Board of Directors and the son of another has a position there.

72. The response also expressed concern that the Department of Parks and Recreation might not accept the proposed improvements to the Turkey Thicket Recreation Comer. and whether Byte Back might become ineligible to receive its proposed contribution should it move beyond the radius for off-site benefits set forth in §2403.13 (b). Along those same lines, the 200-Footers stated that the location limits for the recipients of the no-interest small business loan is based upon the current boundary of ANC 5B.

73. The Commission's response to these issues may be found in Findings of Fact 89 through 91.

Persons in Opposition

74. At the public hearing, 10 people testified in opposition to the project. Reasons cited for opposition to the project included: concern about rezoning to C-2-B and possible precedent; preference for rezoning to C-2-A; traffic congestion; decrease in available light; lack of community input; not characteristic of the neighborhood; too much height and density for neighborhood; not consistent with the SAP; and insufficient amenities. (2/2/12 Tr., pp. 143-183.)

75. The Commission received 14 letters in opposition to the project. Opponents cited many reasons for their opposition to the project, including the following: the project is out of scale with the neighborhood; the project is not consistent with the SAP; the project jeopardizes the scale of 12th Street; the change to the character of the neighborhood that will result from the project; reduced light and air; increased pollution; increased traffic congestion; damage to adjacent houses during construction; increased property taxes; insufficient assessment of traffic impacts; and the unacceptable precedent that the C-2-B zone would set. (Ex. 26, 32, 47, 157, 215, 246, 247, 252, 254, 255, 256, 258, 267, 287.)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

76. 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.) The Commission finds that the Applicant developed a comprehensive amenities package (valued at approximately $740,000) that reflects the community's desires and that the Applicant put forth a great effort to develop a package that reflected input from many

members of the community. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate and that the application satisfies the requirements for a PUD under Chapter 24 of the Zoning Regulations. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project.

77. Based on evidence and testimony submitted by the Applicant, 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 land use, urban design, site planning, transportation, and uses of special value to the neighborhood and District as a whole.

78. The Commission credits the written submissions and testimony of the Applicant that the PUD, related map amendment, and community amenities package resulted from community outreach and input. The Commission is not persuaded by testimony from opponents that the Applicant did not engage them or include their input in creating the project. The Commission finds that the Applicant engaged in public outreach during the planning for the project and that no community member was ever deliberately excluded from any public meetings. Further, the Commission finds that the Applicant engaged the 200-Footers to create community amenities and an enhanced construction management agreement that serves the interest of both the 200-Footers and the Applicant.

79. The Commission credits the written submissions and testimony of the Applicant and OP that the PUD and related rezoning to the C-2-B Zone District is appropriate and that the proffered amenities and benefits are adequate for the project.

80. The Commission is cognizant of the concerns expressed over the precedent of this rezoning. In response, the Commission notes that the requested rezoning was driven by economic and design considerations. The Commission finds that this project could not succeed with only the 3.0 FAR available under C-2-A zoning or it were subject to the more stringent Inclusionary Zoning requirements applicable to C-2-A properties. However, economic considerations alone would not justify a PUD-related map amendment. The project itself must be compatible with its surroundings. As noted elsewhere in this Order, this project, as designed, is both compatible with and complimentary to adjacent properties. The Commission further concludes that the amount of C-2-B density utilized was only the amount needed for this project to succeed.

81. It is this combination of economic and design considerations, the project's compatibility with its surroundings, and the use of only the additional density needed that warrants the approval of this PUD-related map amendment. A developer seeking a C-2-B map

amendment at this site without the same degree of justification and compatibility would have its request denied.

82. Finally, the Commission wishes to repeat its general view of the precedent set by a PUD related map amendment:

> [A] map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Tenley Park LLC, Z.C. Order No. 921 (2001) (Conclusion of Law No. 13). *Accord 5401 Western Avenue, N.W.,* Z.C. Order No. 02-17 (2003; *Skyland Holdings*, Z.C. Order No. 09-03 (2010).

83. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan, the Future Land Use Map, or the Brookland Small Area Plan. The PUD project and related rezoning advance numerous policies of the Comprehensive Plan and the SAP, and the project reflects the intent behind the SAP.

84. The Commission finds that the proposed PUD and related map amendment of the Property to the C-2-B Zone District is appropriate given the superior features of the project. Such features include the high quality architecture; the ground-level and upper level setbacks; the setbacks and transitions to the adjacent townhouses; the significant landscaping, and context-sensitive design. In addition, the project will include superior features related to transportation, including its location in close proximity to many forms of public transit; the provision of numerous bicycle parking facilities; and internal loading facilities. Further, the provision of community-serving retail and the connection between the 12th Street retail and the CUA South Campus PUD project are superior features of the project. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

85. The Commission finds that through the Applicant's rebuttal testimony and submissions at the February 2, 2012 hearing, the Applicant satisfied all five of OP's recommendations in its report. (Ex. 310; 2/2/12 Tr., pp.184-224.)

86. The Commission finds that through the Applicant's rebuttal testimony and submissions at the February 2, 2012 hearing, the Applicant sufficiently responded to DDOT's recommendations in its report. The Applicant proposed thorough and comprehensive TDM and Loading Management programs. Moreover, the Applicant agreed to prohibit the retail tenants from using delivery trucks that are larger than 45 feet. The Applicant's

provision of $5 worth of fare on each SmarTrip card is sufficient to encourage use of public transit, and performance monitoring is unnecessary for a project of this size and nature. Further, the Applicant sufficiently demonstrated through testimony and evidence that residents will be encouraged to park in the underground facility and that adequate on-street parking is available in the neighborhood during peak times. (Ex. 311; 2/2/12 Tr., pp. 193-198.)

87. The Applicant has also provided sufficient additional illustrations regarding landscaping, alternative views of the project, perspective renderings, and a proposed plan for the locations of the affordable residential units. (Ex. 308, 309, 312-315; 2/2/12 Tr., pp. 198-211.)

88. From evidence and testimony presented at the February 2, 2012 hearing, the Commission finds that the Applicant adequately addressed questions raised at the January 19, 2012 hearing. The Applicant provided sufficient detail regarding its community amenities package and the nature of the contributions to community organizations.

89. The Commission further notes that in response to the Commission's Procedural Order dated March 12, 2012, the Applicant made several revisions to its proposed conditions to clarify their intent and to ensure that the promised public benefits will be delivered. The delivery of most of the off-site pubic benefits is required prior to the issuance of a building permit or a certificate of occupancy as indicated in the applicable condition of approval. If delivery is not made or a recipient is unable or ineligible to accept a contribution, the Applicant will need to request a modification to substitute a different recipient or a reprogramming of the funds.

90. Contrary to the assertion of the 200-Footers in their March 1, 2012 submission, there is no current Commission "policy not to accept Applicant checks to non-profit organizations instead of Applicant purchased/supplied hard amenities." Nevertheless, in response to the Procedural Order, the Applicant has included language in its proposed conditions requiring it to seek modifications if Dance Place or Byte Back have not used the funds as intended and has agreed to reporting requirements for the other contributions. Lastly, the Commission finds entirely irrelevant the allegations that a member of the developer's team is on the Dance Place Board of Directors and the son of another has a position there. Neither of these associations lessens the value of the contribution because it meets the definition of public benefit in § 2403.6 and the radius and policy requirements of 11 DCMR § 2403.13.

91. At proposed action, the Commission noted the 200-Footers' concern that the proposed boundary for the recipients of the no-interest small business loans may not be the same as the new boundary for ANC 5A. That new boundary will become effective January 1, 2013 as a result of the 2010 Census. This issue arises from § 2403.13 (b),which requires that an off-site benefit must be located within one-quarter mile of the PUD site or within

the boundaries of the Advisory Neighborhood Commission for the area that includes the PUD site. During the Commission's discussion, the Applicant signified its willingness to utilize the future ANC boundary, and the related conditions of approval has been modified accordingly.

92. Also during proposed action, the Commission raised the question of whether the affordable housing being provided by the project should count as a public benefit. The Applicant is providing no more affordable housing than is required by the Inclusionary Zoning regulations of Chapter 26 of Title 11. However, the Commission noted that the current R-1/C-1 zoning of the site would produce less affordable housing on the site than what is being provided under C-2-B zoning and requested the Applicant to calculate the difference.

93. In its submission dated March 1, 2012, the Applicant indicated that under the existing zone designation, the subject property would have to set aside between 4,350 to 7,200 square feet of gross area for affordable housing, while under C-2-B zoning the project will have to set aside 15,151 square feet for this purpose. (Ex. 335.) Using the higher figure of 7,200 square feet, the Commission concludes that the additional 7,951 square feet of affordable housing resulting from this PUD-related map amendment should be considered a public benefit of this PUD.

94. The Commission finds that the Applicant's submission on February 23, 2012 adequately addressed questions raised during the February 2, 2012 hearing, including those from both the Commission and the 200-Footers. The Commission credits the evidence that the Applicant submitted regarding its community outreach and finds that the Applicant engaged in significant additional community outreach, particularly with regard to the 200-Footers. The construction management agreement submitted by the Applicant adequately addresses the concerns of the 200-Footers in a way that is a satisfactory compromise between the Applicant and the 200-Footers. Further, the final public amenities package submitted by the Applicant, including the additional information regarding the undergrounding of utilities along 9th Street, provides important community amenities that resulted from meaningful community engagement and will sufficiently offset the potentially adverse impacts resulting from the project. Finally, the Applicant's additional architectural renderings and aerial perspectives of the project demonstrate how the project is appropriate and respectful of the surrounding neighborhood while creating a memorable and identifiable building at a prominent location. (Ex. 318.)

95. In response to the issues raised by the 200-Footers in their April 9, 2012 filing (Ex. 337.), the Commission adopts the changes suggested in the last six bullet points listed on page two of Exhibit 337, and notes that the Applicant indicated that it consented to these changes.

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 this application as a consolidated PUD (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and 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 (11 DCMR § 2405.)

3. The development of the PUD 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 and that would not be available under matter-of-right development.

4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The application meets the contiguity requirements of § 2401.3.

6. The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development of this area near a Metro station. Any impact of the project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the TIS submitted by the Applicant and supported by DDOT, the project will not cause adverse traffic impacts.

7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the project will be properly mitigated. The Commission finds that the conditions of approval proposed by the Applicant are sufficient given the potential impacts of the project on the surrounding and adjacent properties and the development incentives and flexibility requested in this application.

8. The Commission finds that the benefits and amenities provided by the project are significant, and the project will offer superior features that will benefit the neighborhood to a greater extent than a matter-of-right development would. Thus, granting the development incentives proposed in this application is appropriate.

9. The application seeks a PUD-related zoning map amendment to the C-2-B Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding loading requirements and roof structure requirements. The requested rezoning to the C-2-B Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. The Commission finds that approval of the PUD and change in zoning is not inconsistent with the Brookland CUA Metro Station SAP or the Comprehensive Plan including the Future Land Use Map. The Commission finds that the PUD-related rezoning of the Property to a commercial zone is not inconsistent with the Future Land Use Map or the SAP when it is considered in the context of the PUD and the interpretation guidance in the Comprehensive Plan.

10. The Commission finds that the PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan and the Brookland CUA Metro Station SAP. The Project is consistent with the major themes and citywide elements of the Comprehensive Plan, including the Land Use, Housing, and Upper Northeast Area Elements. The PUD project is also consistent with and advances the goals of the Monroe Street Subarea of the SAP.

11. The Commission finds that its granting of the PUD-related map amendment will not lead to an undesirable precedent or to multiple upzoning requests in the area. Each PUD and related map amendment application presented to the Commission is evaluated on its own merit. In this case, the Commission finds that the proposed PUD-related map amendment to the C-2-B Zone District supports a PUD that is not inconsistent with the Comprehensive Plan and SAP, that is appropriate height and scale for the neighborhood, and that will offer superior public benefits and amenities.

12. The Commission is required under §13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns of the affected ANCs. As reflected in the Findings of Fact, ANC 5A voted to support the application. By virtue of the preceding discussion, the Commission has accorded ANC 5A the great weight to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 5A holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission recognizes that the Applicant met with the community on numerous occasions to address residents' concerns about the project. The Commission also finds that the Applicant worked with the ANC to resolve differences and to incorporate and address as much community input as possible.

13. The Commission is also required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP. The Commission gives OP's recommendation to approve the PUD and related Zoning Map amendment to the C-2-B Zone District great weight and concurs with its conclusions.

14. The PUD project and the rezoning of 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 Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the C-2-B Zone District is appropriate given the superior features of the PUD project and is subject to the limitations stated herein.

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 this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment to the C-2-B Zone District for the Subject Property (Lots 3, 4, 11, 22, and 820 in Square 3829). The approval of this PUD is subject to the following guidelines, conditions and standards. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

A. PROJECT DEVELOPMENT

A.1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 25A, 41A, 308, 318D of the record, as modified by the guidelines, conditions, and standards of this Order.

B. PUBLIC BENEFITS

B.1. Prior to the issuance of a certificate of occupancy for the residential portion of the project, the Applicant will provide evidence that it paid for the cost of undergrounding the utility lines along the south side of Monroe Street between 9th Street and 10th Street, and along the east side of 9th Street between Monroe Street and Lawrence Street and that the undergrounding of such utility lines did occur.

B.2. Prior to the issuance of a certificate of occupancy for the residential portion of the project, the Applicant will provide evidence that it replaced the sidewalk, curb, and gutters around the entire block that includes the project, and re-graded and repaved the alley in Square 3829.

B.3[1]. Prior to the issuance of a certificate of occupancy for the residential portion of the project, the Applicant will provide evidence that it provided each of the six adjacent 10th Street property owners with $5,000 worth of in-kind labor and materials (for a total expense to the Applicant of $30,000) which can be used for hardscape and/or landscape improvements on their property. Each individual 10th Street property owner will be able to determine whether they will use the $5,000 worth of in-kind labor and materials for improvements to the front of their homes on 10th Street (such as for repairs or replacement of the retaining walls on their property adjacent to the sidewalk), to the rear of their property (which could be used for plantings to provide additional visual buffering), or a combination of the two. The Applicant will be responsible for performing this work on behalf of each 10th Street property owner.

B.4. Prior to the issuance of a certificate of occupancy for the residential portion of the project, the Applicant will provide evidence that it installed eight security cameras on the exterior of the building to monitor activity on the sidewalks adjacent to the property, as well as the entire block bound by Monroe, 9th, Lawrence, and 10th Streets. It is intended that these cameras will be able to monitor activity on the block that includes Square 3829. Footage from these cameras will be made available to the Metropolitan Police Department, if requested.

B.5. Prior to the issuance of a certificate of occupancy for the residential portion of the project, the Applicant will provide evidence that it paid for and constructed $25,000 worth of enhancements to the playground equipment and open spaces at the Turkey Thicket Recreation Center, located at 1100 Michigan Avenue, N.E., subject to DPR approval.

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[1] Please note that the chart included in the Applicant's April 2, 2012 filing included a typographical error that listed two of the proposed Conditions as B.2. This revised set of conditions fixes that typographical error.

B.6. Beginning on the first date after the building permit is issued and continuing throughout the life of the project, the Applicant will provide annual reports (on July 15th of each year, to the Zoning Administrator ("ZA") and the Office of Zoning, which detail the actions taken to identify business opportunities for Brookland businesses. The Applicant will adhere to the following procedures in order to cultivate these business opportunities which detail the actions taken to identify business opportunities for Brookland businesses. The Applicant will adhere to the following procedures in order to cultivate these business opportunities:

- The Applicant will semi-annually obtain from the Greater Brookland Business Association ("GBBA") a list of products and services offered by its members. This list shall include a notation for each business as to whether it is a CBE;

- The Applicant shall offer Brookland businesses an opportunity to bid on products and service offerings prior to selecting a vendor; and

- The Applicant and GBBA will meet quarterly to review business opportunities and the selection of Brookland businesses.

B.7. The Applicant shall make the following financial contributions:

A. Prior to the issuance of the building permit for the project, the Applicant will make a contribution of $25,000 to the Washington Area Community Investment Fund to be used for a 12th Street, N.E. Façade Improvement Program. The Applicant will provide annual reports (on July 15th of each year, beginning on the first date after the building permit is issued) to the ZA and the Office of Zoning identifying the recipients of any monies distributed from this fund. This reporting requirement will remain in effect until all of the funds have been disbursed;

B. Prior to the issuance of the building permit for the project, the Applicant will make a contribution of $25,000 to Byte Back for the purchase of 26 desktop computers for their computer lab. The Applicant will present evidence to the ZA and the Office of Zoning demonstrating that the money was been applied to the designated use within six months of receiving the contribution. If the money has not been applied to the designated use within six months, then the Applicant will provide a reasonable explanation to the ZA and the Office of Zoning as to why not and must present evidence to the ZA and the Office of Zoning within one year indicating that the contribution has been properly allocated. Prior to the issuance of a certificate of occupancy for the residential portion of the

project, if this condition is not met the Applicant will request a modification to the order to reprogram the funds;[2]

C. Prior to the issuance of the building permit for the project, the Applicant will make a contribution of $50,000 to The Community Foundation for the National Capital Region to fund and administer no-interest loans for small businesses that are located within the Brookland Community. For the purposes of this condition, the Brookland Community is deemed to be those areas which are located within the boundaries of the future ANC 5B (which will be determined based on the redistricting of ANC boundaries based on the results of the 2010 Census). The Applicant will provide annual reports (on July 15th of each year, beginning on the first date after the building permit is issued) to the ZA and the Office of Zoning identifying the recipients of any loans distributed from this fund. This reporting requirement will remain in effect until all of the funds have been disbursed; and

D. Prior to the issuance of the building permit for the project, the Applicant will make a contribution of $25,000 to Dance Place to be used for improvements to the new dance studio in Dance Place's main theater building and their new dance studio in the Brookland Artspace Lofts. The Applicant will present evidence to the ZA and the Office of Zoning demonstrating that the money was been applied to the designated use within six months of receiving the contribution. If the money has not been applied to the designated use within six months, then the Applicant will provide a reasonable explanation to the ZA and the Office of Zoning as to why not and must present evidence to the ZA and the Office of Zoning within one year indicating that the contribution has been properly allocated. Prior to the issuance of a certificate of occupancy for the residential portion of the project, if this condition is not met the Applicant will request a modification[3] to the order to reprogram the funds.

B.8. Construction Management: The Applicant will undertake the following actions to mitigate any adverse impact on adjacent properties resulting from construction activity related to the development of the project.

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[2] The Applicant indicated that it will seek a "minor" modification. While such a modification may well be minor, it is premature for this Commission to make such a determination.

[3] See footnote 2.

A[4]. Alley Construction Logistics: There will be no use by any construction vehicle or construction affiliate of the north-south public alley behind the six abutting 10th Street row-houses. This alley is the only ingress and egress route for the car driveways of these residents and their porches, living rooms, and bedrooms face this 10-foot alley and are the sole means of their essential air and light on that side. The Applicant will not block or obstruct in any way owner ingress and egress to this public alley. This alley will remain open during the project's general construction. However, it will be briefly closed in order to undertake the re-grading (which will result in the slope of the alley being re-graded away from the six rowhouses on 10th Street in Square 3829), repaving, and utility relocation work proposed by the Applicant. This alley shall never be used for staging. For purposes of this CMA, staging is defined as "use of any portion of said public alley for construction-related purposes, such as a construction trailer, construction equipment, a materials trailer, building materials and other related uses for ingress and egress by the Applicant";

B. Traffic and Construction Control Plan: All ingress and egress for the site will be from Monroe Street or up to the proposed East-West alley between 9th and 10th Streets at the northern end of the site, subject to DDOT approval. Vehicular ingress and egress will be only through approved, permitted construction entrances. At no time are trucks permitted to queue (which is deemed to be waiting for more than 15 minutes) or idle in residential areas along 9th, 10th, and Lawrence Streets. Nor are workers allowed to individually congregate, queue, or idle in the residential areas before the 7:00 a.m. or 8:00 a.m. start of the construction day. There will be a single, regulated construction entrance for workers on foot, especially after the building superstructure is up. Flagmen will be positioned on 9th and 10th Streets, as necessary, to direct the flow of construction traffic and to maintain the public's safety in this residential area:

i) Throughout construction, the Applicant agrees to ensure safe pedestrian access around the perimeter of the site. The Applicant agrees to develop and implement (after approval by DDOT) a plan for temporary pedestrian and vehicular circulation during construction. At a minimum, the plan shall identify temporary sidewalks, interim lighting, fencing around the site, construction vehicle routes, and any other features necessary to ensure safe pedestrian and vehicular travel around the site during construction; and

[4] The Alley Construction Logistics paragraph in the April 2, 2012 filing was not properly noted as Paragraph A. This document fixes that typographical error.

ii) The Applicant agrees to notify all adjacent property owners as well as all property owners facing the property across perimeter streets in writing or, if mutually agreeable, by e-mail, at least seven calendar days in advance of any street closure of more than one hour duration on any street, "emergencies" excepted, with "emergencies" as jointly defined by the Applicant and the 200-Footers Group;

C. Construction Truck Route: Construction truck traffic to and from the site will travel only on the following surrounding streets: North Capitol Street, Michigan Avenue, Monroe Street, Rhode Island Avenue, and 12th Street. The Applicant will not use 9th, 10th, Lawrence, or Kearney Streets as construction truck or construction-related truck thoroughfares. There shall be no construction use of parking spaces along 9th, 10th, Lawrence, and Kearney Streets, except for the spaces on 9th Street and 10th Street that are located to the north of the proposed east-west covered loading dock/alley;

D. Construction Parking: Parking for construction workers will be provided within the fenced boundaries of the construction site or in the parking lot located in the Lawrence Street right-of-way, west of 9th Street, which is currently used as a parking lot for the Col. Brooks Restaurant. Construction personnel will be encouraged to utilize mass transit, including Metrorail and Metro bus. Parking by construction personnel in the residential areas of 9th, 10th, Lawrence, and Kearney Streets will not be permitted. Alternatively, construction personnel can utilize short-term parking in the Brookland-CUA Metro parking lot or park elsewhere off-site and be shuttled to the site;

E. Site Management:

i) *Fence:* Once construction commences, an eight-foot high construction fence with privacy fabric will be erected to screen construction activities and debris from the nearby affected properties. All construction trailers, all construction materials and all equipment, and portable toilets will be located and always retained on the Applicant's property behind the construction fence for the duration of the construction. The eight-foot fence will shield the trailers and portable toilets from the neighborhood and residential areas;

ii) *Odors*: There will be no noxious odors emanating from the construction site;

iii) *Lighting*: Ongoing temporary on-site lighting during construction will be erected for the site to provide lighting for safety and security. No generators will be used at night to provide temporary site lighting. The Applicant will keep the lighting directed into the site only and not impact the surrounding community. In addition, the Applicant will maintain current lighting in the North-South alley at all times, subject to temporary construction needs;

iv) *Electrical Generators:* All electrical generators and compressors will be turned off at the end of each day's construction activities, i.e., by 7:00 p.m.;

v) *Stormwater Management*: The Applicant will maintain temporary stormwater management systems throughout the Project's construction until such time as the permanent facilities are constructed, approved, and functioning such that there shall be no adverse water impacts on the adjacent neighborhood; and

vi) *No Disruption of Services to Property Owners in Square 3829:* The Applicant will work with all relevant utilities, Verizon, and Comcast to assure that construction activity on the 901 Monroe Street Property will not result in the disruption of utility, cable or phone services to other property owners within Square 3829, and that this will occur at no cost to the Square 3829 Property Owners;

F. Hazardous Waste, Hazardous Materials and Pollutants: The Applicant shall not use, generate, manufacture, store, transport or dispose of, on or over the construction area any flammable liquids, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or any other "hazardous materials" as defined under Federal or DC law. However, materials that are commonly used in the construction of mixed-use projects such as the project proposed by the Applicant are not subject to this provision. The Applicant does not anticipate that any blasting will be required; however, should blasting be required, the Applicant shall notify the Neighborhood Contact Persons (discussed in provision J) at least 48 hours prior to any blasting. The Applicant shall also give 48 hours notice to the Neighborhood Contact Persons prior to any Foundation Pile work (described in provision N);

G. Excavation and Rodent Infestation: Currently there are no conspicuous rodent holes and rodent sightings on 9th, 10th, Lawrence, and Kearney Streets. The Applicant will enact a substantive rodent abatement/rodent control program during pre-construction and while construction activity is

occurring on the 901 Monroe Street Property. Rodents are deemed to include rats, possums, raccoons, snakes, etc. Upon receipt of any rodent complaint, rodent damage and/or rodent issues from 200-Footers up until completion of project, the Applicant will immediately resolve and provide fair market compensation for any problems and inconvenience resulting from rodent infestation;

H. Cleanliness: The Applicant will require the continuous removal of rubbish and construction debris during the normal construction day and during any other periods of work. During construction activities, there will be a dumpster on-site (*i.e.*, inside of the fence) for the removal of trash and construction debris. The dumpster will remain covered at all times and will never overflow onto the ground. The removal and replacement of the dumpster will take place during normal working hours on Monday through Saturday. The Applicant will undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period. All excavation or back-fill trucks will be covered before proceeding from the Applicant's property onto city streets:

i) The areas adjacent to the site will be policed daily by the contractor and will always remain clean of any trash or debris resulting from construction activities. The Applicant will ensure regular cleaning of the north-south alley and all surrounding streets (*i.e.*, 9th, 10th, and Lawrence);

ii) At the end of each work day during construction, the Applicant agrees to ensure that any streets used for hauling construction materials and the entrance to the construction site are free of mud, dirt, trash, dust and debris and that all streets adjacent to the construction site are free of trash and debris; and

iii) The Applicant agrees to maintain street surfaces adjacent to the site in a clean, smooth condition devoid of potholes at all times during the construction period;

I. Work Hours and Workers: The normal construction work-week will be Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturday, 8:00 a.m. to 4:00 p.m. The Applicant will make good faith efforts to limit the work that could disturb the residents of the neighborhood to weekdays, except where limitations on work during the week require work on Saturdays to meet the requirements of construction teams for a 40- hour work week. No Sunday or holiday work hours will be utilized:

i) *Trucks:* All trucks for delivery of materials, construction or otherwise, will arrive, depart and operate on the Applicant's property during the foregoing hours. There will be no queuing (which is deemed to be waiting for more than 15 minutes), idling, standing, or parking of delivery trucks on 9th, 10th (except up to the proposed east-west covered loading dock/ alley, as approved by DDOT), Lawrence, or Kearney Streets *(i.e.,* only on Monroe Street if permitted);

ii) *Workers:* Workers will not be on Applicant's property prior to stated work hours. Workers will not congregate, loiter, talk loud, or play loud music on 9th, 10th, Lawrence, and Kearney Street. Workers will remain on Monroe Street; and

iii) *Noise* (also see provision O)*:* There will be no noise generating activities prior to the start of the work day. There will be no start-up or idling of equipment prior to the start of the work day. Indoor construction activity, defined as activity occurring entirely within a structure fully enclosed on all sides by insulated exterior walls, windows and or doors shall end at midnight each day, and any such activity that occurs after 7:00 p.m. shall not annoy or disturb reasonable persons of normal sensitivities. The Applicant agrees to place a minimum of one sign per street-front around the perimeter indicating the permissible hours of construction, to place additional signage within construction field offices, and to provide a written copy of the permissible hours and rules of construction to all subcontractors prior to the start of their work;

J. Communication: The Applicant shall designate a representative (the "Representative") to be the key contact for interaction with members of the community (especially the 200-Footers) regarding construction. The Representative will have a local office, cell, fax, and voice mail and be accessible during all business hours. The Representative will respond to all community queries within the same business day (Monday-Saturday). In addition, the Applicant will provide an emergency point of contact who can be reached 24 hours a day for construction concerns. The name of the key contact and his or her telephone numbers will be conspicuously posted on the Applicant's property at all times. The Applicant will work with residents of 10th Street, N.E. whose homes are adjacent to the development site, residents of 9th Street, N.E. whose homes are directly across the street from the 901 Monroe Street Property, and residents of the 900 block of Lawrence Street, N.E., to designate two contact persons ("Neighborhood Contact Persons"), who may change from time to time, to represent the

surrounding community. The initial Neighborhood Contact Persons shall be designated by the community and will be determined prior to the start of construction activity on the Property. The Neighborhood Contact Persons will receive and disseminate information from the Applicant to the community. The Applicant shall provide to the Neighborhood Contact Persons, and keep updated, the names of and pertinent information about the Representative, the designee and emergency contact, including their home phone numbers and beeper numbers, as appropriate. In the event that two Neighborhood Contact Persons cannot be agreed upon, the Applicant shall provide the information described in this Plan to the ANC 5B Single-Member District Commissioner for the Property:

i) The Applicant's designated Representative shall: (a) receive notice of violations of the Construction Management Plan/Agreement; (b) respond to the person who reported the violation within the same business day (Monday-Saturday); (c) act to remedy the violation as soon as possible; (d) correspond with the Neighborhood Contact Persons to explain the complaint, proposed remedy, and timeframe for resolution of the problem; and (e) maintain a log of all complaints received and the steps taken to address the complaints (this log shall be continually available for inspection by the 200-Footers);

ii) Before commencing any clearing, grading, or demolition activities, the Applicant shall hold a meeting with the 200-Footers to review the construction hauling route, location of construction worker parking, plan for temporary pedestrian and vehicular circulation, and hours and overall schedule for construction. In addition, the Applicant shall meet with the 200-Footers periodically during the construction activities and shall meet with the 200-Footers, at a minimum, once every three months in order to address issues such as proposed landscaping (including a review of the proposed landscaping plans), alley repaving, sidewalk and retaining wall repair and replacement and stormwater management issues; and

iii) Copies of the plan and maps shall be posted on the construction site and provided to each subcontractor before its work commences;

K. Contractors: The Applicant will enforce contractor compliance with all rules and regulations described herein with all such conditions included in all general and sub-contractor oral and written contracts. The Applicant

will require that all contractors and subcontractors use only licensed vehicles and that they comply with all DC traffic laws and regulations;

L. Pre-Construction Survey of Adjacent Structures and Responsibility for Damage to Adjacent Properties: The Applicant will hire an independent testing and inspection firm to conduct a thorough pre-construction survey of adjacent properties to the 901 Monroe Street Property in order to document the pre-construction condition of existing structures. The following properties will be surveyed: the rowhouses on the west side of 9th Street in Square 3829W, the six rowhouses on the west side of 10th Street in Square 3829, the properties in the 900 block of Lawrence Street (907-919 Lawrence Street) on the south side of Lawrence Street in Square 3830, and 1000 Monroe Street in Square 3881. These properties are hereinafter referred to as the "Surveyed Properties". Prior to beginning the pre-construction survey, the name and firm's biographical information will be provided to the owners of the Surveyed Properties. This survey will include not only photographs but also videos. A copy of this report will be provided to each owner of an adjacent property. If damage occurs from the construction activity on the 901 Monroe Street Property the Applicant agrees to repair, at its own expense and as promptly as reasonably possible, any damage to the Surveyed Properties and any improvements thereon (returning the improvements on the Surveyed Property to its pre-construction condition) which are caused by and result from the construction activity on the 901 Monroe Street Property. Any damage to adjacent properties valued at less than $5,000 will be promptly paid (within three business days (Monday-Saturday)) to the damaged property owner by the Applicant. Should the Applicant become aware of any cracks that develop in improvements on the Surveyed Properties during construction, a program of crack monitoring administered by a qualified independent company shall be put in place immediately;

M. Monitoring Activities: The Applicant will monitor construction dewatering during excavation of the below-grade levels and the installation of building foundations and below-grade walls. The Applicant will monitor vibrations during installation of the excavation support system to confirm that potentially damaging vibrations do not extend into the adjacent residences, especially the six 10th Street row-houses abutting the site. Seismographs will be placed in accordance with the final support of excavation design and an additional set will be placed at the 200-foot limit;

N. Foundation Piles: All piles will be installed per the support of excavation design. Piles will be primarily drilled rather than hammered or vibrated during the construction process;

O. Noise (see also provision I): The Applicant will not permit any activity on the Applicant's property which generates sound levels in excess of 60 decibels (60 db.) or otherwise is likely to significantly disturb the adjacent residents prior to 7:00 a.m. on weekdays and prior to 8:00 a.m. on Saturdays or after 7:00 p.m. on weekdays and 4:00 p.m. on Saturdays. Additionally, all electrical generators and compressors will not be turned on before 7:00 a.m. on weekdays and 8:00 a.m. on Saturdays and will be turned off by 7:00 p.m. All exterior work and interior work at any hour shall not exceed 80 decibels (80 db.). At all times, workers will be prohibited from talking loudly or playing loud music on 9th, 10th, Lawrence, and Kearney Streets;

P. Permits. All plans and permits will be on-site as required under the DC Construction Code and available for inspection by the community;

Q. Tree Protection and Replacement. The Applicant agrees to implement a tree protection plan which will designate any trees proposed to be saved by the Applicant. These trees may be located on the 901 Monroe Street Property or abutting properties in Square 3829. The tree protection plan shall be prepared by a certified arborist or a horticultural professional with demonstrated expertise in tree protection techniques on urban sites and shall be submitted and approved by DDOT prior to the issuance of a clearing, grading or demolition permit;

R. Crane Swing Agreements. The Applicant shall enter into agreements with each property owner should there be crane swings above that property owner's adjacent property;

S. Maintenance Prior to Construction. The Applicant agrees to maintain the site in a clean, safe and well-maintained condition prior to the issuance of a clearing, grading or demolition permit; and.

T. Post-Completion Cleanup. The Applicant will work with the 200-Footers Group to determine the terms later.

B.9. Prior to the issuance of a certificate of occupancy for the residential portion of the project, the Applicant will provide evidence to the ZA and the Office of Zoning regarding the establishment of a transportation demand management ("TDM") program and loading management plan that includes the following:

A. The Applicant will provide initial residents in the building with SmarTrip cards pre-loaded with $5. The total value for each card will be $10 ($5 for the card itself and $5 of credit);

B. The Applicant will coordinate with Zipcar to determine the feasibility of locating Zipcars on site. The final determination on whether and how many Zipcars will be located at the site will be made by Zipcar;

C. Significant bicycle parking (66 bicycle parking spaces inside the building, with the ability to provide up to 20 bicycle parking spaces in the public space adjacent to the building) will be provided on-site for both retail employees and residents. Bicycle parking for the retail employees will be provided on the first floor. Bicycle parking for the residents will be provided on the garden level;

D. Shower and changing facilities will be provided on site for employees who wish to walk, jog, or bike to work;

E. A business center will be provided in the residential building for residents who telecommute;

F. The Applicant shall designate a Loading Coordinator for the site;

G. All tenants shall be required to use the loading dock for move-in/move-out activities, except when trucks greater than 45 feet are required;

H. All tenants shall be required to notify the Loading Coordinator of move-in/move-out dates;

I. When trucks greater than 45 feet are required for tenant move-in/move-out, the Loading Coordinator shall assist tenants in obtaining proper permits from DDOT;

J. All retail tenants and vendors shall be required to use the loading dock for deliveries;

K. The Applicant shall prohibit vendors to retail uses in the project from making deliveries in trucks larger than 45 feet;

L. No truck idling shall be permitted; and

M. The Applicant will include a provision in all leases (residential and commercial) that notes that the north/south alley in Square 3829 is not to

be used by residents and tenants of the project for unloading, loading, or as the primary entrance to the building.

B.10. The project shall be designed to satisfy LEED certification, but it shall not be required to be LEED certified.

B.11 Prior to the issuance of the building permit for the project, the Applicant will have executed a First Source Employment Agreement with the Department of Employment Services and will provide a copy of the executed agreement to the ZA and the Office of Zoning.

C. MISCELLANEOUS

C.1. The Applicant shall have flexibility with the design of the PUD in the following areas:

A. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators and toilet rooms provided that the variations do not change the exterior configuration of the structure;

B. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on the availability at the time of construction;

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

D. To vary actual retailer storefront designs.

C.2. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

C.3. The change of zoning from the C-1 and R-2 Zone Districts to the C-2-B Zone District shall be effective upon the recordation of the covenant discussed in Condition No. C.2, pursuant to 11 DCMR § 3028.9.

C.4. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application for a building permit must be filed as specified in 11 DCMR § 2409.1; the filing of the building permit application will vest this Order.

C.5. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On March 12, 2012, upon the motion of Vice Chairman Schlater, as seconded by Commissioner May, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve).

On April 30 2012, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on June 15, 2012.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 10-28

As Secretary to the Commission, I hereby certify that on JUN 8 2012 copies of this Z.C. Order No. 10-28 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ATTESTED BY: S. S. Schellin
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Secretary to the Zoning Commission
Office of Zoning