Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 538
Case No. 86-32C
(26th & L Streets - PUD)
July 23, 1987

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on April 9 & 16, 1987. At those hearing sessions, the Zoning Commission considered applications from the 26th & L Limited Partnership for consolidated review and approval of a Planned Unit Development (PUD) and related map amendment, pursuant to Sections 2400 and 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Chapter 30 of that title.

FINDINGS OF FACT

1. The original application, which was filed on December 15, 1986, requested consolidated review and approval of a PUD for Lots 811, 810, 809, 35 and 36 in Square 15 and related change of zoning for lots 810, 809, 35 and 36 from R-5-D to C-2-C. Lot 811 is presently zoned C-2-C.

2. The original application contained a plan develop a ten-story (10) predominantly reside building containing up to seventy (70) apartr approximately 3700 square feet of retail spa underground parking forty-six (46) cars.

3 Subsequent to various meetings with Adviso Neighborhood Commission 2A (ANC 2A), othe community groups, the District of Columbia O of Planning (OP) and other government agenc the applicant submitted a revised applicatic the April 9, 1987 hearing. The revised appl is for a ten-story (10) building with up sixty-two (62) large-sized rental apartmer limited non-residential space on the top flo retail space with an en

4 The PUD site is located in the Foggy Bottom area of the city at the southeast corner of the intersection of 26th and L Streets, N.W. The site contains 11,296 square feet of land and has no improvements. Approximately 5400 square feet of the PUD site is in the C-2-C Zone District and approximately 5896 square feet is in the R-5-D Zone District.

5. The immediate neighborhood consists of a mix of a apartment buildings, hotels, office buildings, restaurants and shops. Within Square 15, there are a number of restaurants, an office building leased by George Washington University and the ten-story (10) Guest Quarters Hotel along the south side of the 2500 block of L Street, N.W.

6 Abutting the site to the south is the Potowmac Overlook Condominium, a nine-story (9) building. South and southeast of the site within Square 15 are a number of high-rise apartment buildings, including The Shoremede, The Bader, K Street Apartments, and The Swarthmore Apartments.

7. To the west of the site is open space owned by the District of Columbia. U.S. Reservation (No. 23) is located across L Street, immediately north of the site. This park is under the jurisdiction of the National Park Service. Further north, across Pennsylvania Avenue, is the Westbridge Condominium, a mixed-use development of residential and commercial uses, including a number of restaurants.

8. The site is four blocks west of the Foggy Bottom Metrorail station located at 23rd and I Streets, N.W. The site is served by various Metrobus routes.

9 The C-2-C Zone District permits high-density development as a matter-of-right, including housing, office, retail, and mixed uses to a height of ninety (90) feet, a floor area ratio (FAR) of 6.0, with non-residential uses limited to 2.0, and a maximum lot occupancy of eighty (80) percent.

10. The R-5-D District permits high-density development as a matter-of-right for residential uses, including single-family dwellings, flats, and apartments. Medical clinics are permitted as a matter-of-right in the R-5-D Zone District. The permitted building height in the R-5-D Zone is ninety (90) feet. An FAR of 6.0 for residential

uses is permitted. A 5.0 FAR for non-residential uses is allowed. The permitted lot occupancy is seventy-five (75) percent.

11. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed or may be less than the matter-of-right standards identified above. The Zoning Commission may also approve uses that are permitted as a special exception by the Board of Zoning Adjustment (BZA) or approve development variances that are permitted by the BZA.

12. The District of Columbia Generalized Land Use Element of the Comprehensive Plan for the National Capital includes the PUD site in the medium density residential land-use category.

13. The site area is less than the 15,000 square foot minimum area requirement for PUDs in commercial zones (Zoning Regulations § 2401.1). The Zoning Commission may grant a waiver of this requirement for predominantly residential projects of exceptional merit that are in the best interest of the city or country. The applicant indicates that the project meets this standard because it is a predominantly residential mixed use development (84.79 percent of the gross floor area is devoted to apartments), has superior planning and design, and contains sixty-two (62) parking spaces (more than three times the matter-of-right requirement).

14 The applicant, through its revised application, proposes to construct a sixty-two (62) unit multi-family structure with some retail commercial uses on the ground floor and some limited office uses and studio space on the top floor.

15. The project is 94.75 feet and ten stories in height, has an FAR of 7.89, a lot occupancy of 82.5 percent, parkin to accommodate sixty-two (62) cars and one thirty-foot (30) deep loading berth.

16. The apartment building will include one-bedroom, one-bedroom with den, and two-bedroom units. The units will range from approximately 700 to 1,400 square feet in size. The majority of the apartments will front on 26th Street, with views of Georgetown and the Potomac River. The high ceilings, ranging from 8 feet 6 inches to 8 feet 10 inches, will create a sense of space in the apartments.

17. The applicant proposes a single-loaded corridor at the rear of the building with glass block along the east facade adjacent to the alley system. The glass block will allow natural light into the hallways while ensuring privacy for nearby residents. The location of the corridor and the elevators at the rear of the building will allow the apartments to be large and deep, with windows on the frontages with views. Moreover, the basic rectangular shape of the building supports relatively large and attractive units facing west and north. This feature is a major reason for elimination of the rear yard; another reason is the shallow depth of the lot.

18. The project will include passive recreation areas, an exercise room and a roof deck. The total recreation space is 6,055 square feet or 8.6 percent of the gross floor area including the roof area which will be accessible by a stair. The recreation space accessible to handicapped persons who are unable to climb the stairs is 1.6 percent of the gross floor area.

19. There will be sixty-two (62) parking spaces on two levels, including the use of vault space, as approved by the District. Bicycle and storage spaces will be provided. Access to the lower level parking will be from an entrance along 26th Street, The entrance to the parking at the entry level, as well as to the loading and service area, will be from the north-south public alley system to the east of the site. Of the sixty-two (62) spaces, fifty-eight (58) will be reserved for the building's residential occupants. The remaining four (4) spaces will be allocated to the office occupants of the 10th floor.

20. The entry level will include 2,947 square feet of neighborhood-serving retail uses. The applicant, by letter dated April 16, 1987, submitted a list of uses that it proposes for the retail space. The applicant also submitted a preferred list which includes uses that would otherwise be permitted as a matter-of-right in the C-2-C Zone District.

21. The revised application changed the uses to be located on the 10th floor. Mixed uses are preferred for the 10th floor because the revised application contains a mansard roof with setbacks, making the 10th floor smaller in floor area and more difficult for efficient residential units

than the levels below. Accordingly, up to 4,000 square feet of the 10th floor will be used by applicant for his firm's office. The applicant proposes that the permitted uses for the remaining portion of the top floor include artist and design studios, residential use, and offices for residents of the apartments.

22. The applicant indicated his intention to market the project as rental units and target two-income families desiring to live in the District near work, recreation and cultural facilities. The applicant, however, will register the project as a condominium regime so that units may be sold individually, if the rental market is not strong enough to support rental apartments.

23. The applicant proposes a public amenities and project benefit package that includes the following:

a. Up to sixty-two (62) new, large-sized rental apartments;

b. Parking that is more than three times the matter-of-right requirement;

c. The availability of loft space for artist/ design studios on the top floor of the building;

d An agreement with the National Park Service to improve and maintain the Federal park north of the site;

e. An agreement to improve the District property west of the site;

f. A covenant proffered to the community restricting uses on the site;

g. A Minority Business Opportunity Commission Memorandum of Understanding regarding minority contracting opportunities;

h A Department of Employment Services Agreement regarding job opportunities; and

i. Street lighting and landscaping along 26th and L Streets.

24. The applicant testified that approximately 265 jobs will be created during the construction of the proposed development; eighty (80%) percent of these jobs are expected to be filled by District

of Columbia residents. These jobs will generate approximately $250,000 in personal income tax revenues for the District annually. Approximately twenty-five (25) permanent jobs will be created from the management and operation of the residential units, the ground level retail facilities, and the 10th floor mixed use facilities. Eighty (80%) percent of these jobs are anticipated to be filled by District of Columbia residents.

25. The project will generate $6 million in property taxes over forty (40) years.

26. The applicant entered into a First Source Agreement with the District of Columbia Department of Employment Services, dated April 1, 1987 thereby ensuring that District residents will have an opportunity to fill the jobs created by the development. The applicant signed a District of Columbia Minority Business Opportunity Commission Memorandum of Understanding, dated April 9, 1987, by which the applicant must use best efforts to target up to thirty-five (35%) percent of the contracts for minorities, both during construction and after completion of the project.

27. The applicant indicated that the site could be developed as a matter-of-right with up to 61,880 square feet of commercial and medical clinic uses, with no housing required. Development of the project with approximately eighty-five (85%) percent apartment use in this case will preclude substantial non-residential matter-of-right development of the site.

28. The applicant indicated that the police, fire and emergency services for the vicinity of the PUD site are adequate to serve the residential project. Residents of the project can receive health care from nearby George Washington University Hospital and the Columbia Hospital for Women Medical Center.

29, The applicant further indicated that the project will have no adverse impact on the surrounding land uses. The apartment building will provide needed housing in the city and in the Foggy Bottom neighborhood. The approval of the proposal will re-enforce the residential character of the neighborhood, which has experienced hotel conversions and expanding commercial, medical clinic and institutional development.

30. The applicant testified that the project will have minimal impact on traffic in the immediate vicinity of the site. It will not generate excessive traffic, noise or any other activity which impacts negatively on the neighborhood. The project will not change the level of service at any intersection studied. All intersections in the vicinity of the site would remain at "D" or better levels of service.

31. The District of Columbia Office of Planning (OP), by memorandum dated April 6, 1987 and by testimony presented at the public hearing, recommended that the application be approved with modifications and conditions. The OP indicated that some of the relevant land use policies as stated on the Comprehensive Plan are as follows:

a. Land use policies shall insure that all neighborhoods have adequate access to commercial services within the District and sufficient housing opportunities to accommodate a range of needs. Adequate recreational opportunities and access to cultural and educational facilities are also necessary ingredients of neighborhood vitality;

b Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives; recognize the importance of the lending industry in stiumulating development; identify sites for new housing is to be encouraged; and, in selected cases, provide incentives for desired development;

c. Promote the conservation, enhancement and revitalization of the residential neighborhoods of the District for housing and neighborhood-related uses; and

d Encourage the rentention and expansion of residential uses in mixed use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary.

32. The Office of Planning believes that the proposed mixed use development with its prime emphasis on residential use is generally consistent with the goals of the Comprehensive Plan, as previously referenced, and capable of being approved with

covenant restrictions. The proposed housing is important in expanding housing supply and variety, and in providing a residential concentration and character along 26th Street. The covenant being worked-out with the community to assure, to the extent feasible, long-term residency in the building is a very positive feature of a development in this neighborhood with its history of apartment-to-hotel conversions and apartment-hotel construction. The covenant restrictions can be incorporated in the PUD as conditions.

33 The District of Columbia Department of Public Works (DPW), by memorandum dated April 6, 1987, reported that the proposed sixty-two (62) parking spaces appear to be adequate, supported the proposed thirty-foot (30) loading berth and service delivery area, and indicated that water supply for the site was available but sewer and storm water services were inadequate. DPW recommended that the applicant revise the parking plans to provide for a twenty-foot (20) aisle, in lieu of a seventeen-foot (17) aisle. DPW also recommended that the applicant coordinate with the Water/Sewer Division of the DPW regarding the sewer/storm water matter.

34. The District of Columbia Metropolitan Police Department (MPD), by memorandum dated March 30, 1987, did not oppose the project and indicated that the project would not impact adversely upon any current or planned operations by the MPD or the Second District Headquarters. MPD is hopeful that the applicant will consider its concerns regarding effective lighting in the parking areas.

35. The District of Columbia Department of Recreation (DOR), by memorandum dated March 26, 1987, indicated that the project had no provision for play areas for small children. DOR suggested that the developer provide play equipment for small children and a meeting room for the building residents.

36. The District of Columbia Department of Finance and Revenue (DFR), by memorandum dated March 24, 1987, indicated that the developer's projected real property tax revenue appeared conservative, and that the projected individual income tax for the residents of the building appeared inflated and may not represent "new revenues" to the city.

37. The District of Columbia Department of Housing and Community Development (DHCD), by memorandum dated

May 29, 1987, encouraged the provision of rental housing in the city. DHCD suggested that the developer consider making a number of dwelling units available to lower income households by utilizing the DHCD housing assistance program.

38. Advisory Neighborhood Commission (ANC) 2A, by resolution dated March 10, 1987, by letter dated March 25, 1987 and by testimony presented at the public hearing, opposed the application. ANC - 2A believed that the proposed structure is too high and bulky, provides insufficient parking, has too few public space areas and amenities, has a misconceived urban design, and is not in keeping with the character of the neighborhood.

39. ANC-2A believed that the height, FAR bonuses, and usage requested far outweigh the potential benefits to the community. The proposal does not sufficiently demonstrate that the structure's residential portion will be used exclusively for genuine, long-term residential purposes. The proposal, moreover, sets a poor precedent for future development and use of the PUD process.

40 The City Councilmember from Ward 2, by statement dated April 9, 1987 and by testimony presented at the public hearing, opposed the application because there were too few public amenities, the proposed building was too high and bulky, and the developer's initial goal to provide short-term transient housing was not consistent with the area's need for long-term housing.

41. There were no letters included in the record of the case from persons in support nor testimony at the hearing from persons in support of the application.

42. The parties in this proceeding include the Foggy Bottom Association (FBA), the Board of Directors of the Potowmac Overlook Condominium (POC), the Westbridge Condominium Association (WCA), and the Bader Condominium Association (BCA). These parties, by testimony presented at the public hearing, and the FBA, by Exhibits No. 31 and 53; the POC, by Exhibits No. 32 and 54; the WCA, by Exhibits No. 33 and 55; and the BCA, by Exhibits No. 34 and 56, opposed the application for reasons that are similar to those of ANC-2A.

43. Additional objections to the application by the parties, include the location of the project entrance, adverse affect on the value of a neighboring property, the use of office space

above the ground floor, and the anticipated light and view obstructions caused by the proposed project height.

44. There were two letters received in opposition and no additional testimony in opposition presented at the public hearing.

45 The Commission concurs with the recommendation of the Office of Planning and the position the Department of Public Works and the Metropolitan Police Department.

46. The Commission believes that the concerns of the DPW regarding water/sewer issues will be addressed by the applicant through the normal course of processing permits, and that the proposed aisle width in the the parking area is adequate for this project.

47. The Commission believes that the concerns of the Department of Recreation regarding a play area for small children and a meeting room for the residents of the project are matters that the applicant could address subject to the ability or lack thereof to market the project. The Commission has addressed the issue of residential recreational space in its decision.

48. The Commission further believes that the concerns of the Department of Housing and Community Development regarding the availability of housing to low-income residents is also a matter that could be addressed by the applicant through the DHCD housing assistance program. The Commission does not believe that it is appropriate to require the applicant to participate in that program, but in its decision, encourages the applicant to do so.

49 The Commission takes note of the comments made by the Department of Finance and Revenue.

50. The Commission does not concur with the position of ANC-2A and others regarding the proposed use of the site, the height, FAR, parking, design, neighborhood compatibility, public space and amenities, length of tenancy and precedence for future development in the area.

51. As to the concerns of ANC-2A and others regarding uses, the Commission finds that a mixed-use development including residential is appropriate for the site.

52. As to the concern of ANC-2A and others regarding the proposed height, the Commission finds the height is only 4.75 feet above matter-of-right development and that that difference would have no measureable adverse affect on neighboring properties. The apparent height of the building is diminished by the double-mansard roof which begins to setback at the cornice which is seventy-six (76) feet above the building height measuring point.

53 As to the concern ANC-2A and others regarding the proposed FAR, the Commission finds that the additional 1.89 FAR would help ensure the development of genuine residential uses on the site through this added incentive.

54. As to the concern of ANC-2A and others regarding parking, the Commission finds that the proposed parking exceeds the requirements of the Zoning Regulations, and believes that it will help alleviate parking problems in the area.

55. As to the concerns of ANC-2A and others regarding building design and urban design, the Commission finds the building design and the urban design to be aesthetically pleasing, compatible with the design of other buildings in the area, and consistent with the existing urban ambience of the neighborhood.

56. As to the concern of ANC-2A and others regarding neighborhood compatibility, the Commission finds that the scale, design and exterior treatment of the project are compatible with the neighborhood.

57. As to the concern of ANC-2A and others regarding public space and amenities, the Commission finds that the amenities provided are of significant benefit to the area and the city, and meet the requirements of a PUD.

58. As to the concern of ANC-2A and others regarding the transiency issue, the Commission finds that it has addressed this matter in an appropriate and reasonable manner in its decision.

59. As to the concern of ANC-2A and others regarding precedence for future development in the area, the Commission does not find that a precedent is set. The Commission notes that, through the PUD process, it has the opportunity to condition the development of the site, contrary to matter-of-right development of a ninety-foot high and 6.0 FAR residential project.

60. As to the concerns of the parties that were not previously addressed, the Commission finds that it has carefully considered all of those concerns and issues and, in its decision, has addressed or not concurred with those parties for reasons related to inappropriateness, not being persuaded to do otherwise, or being outside the jurisdiction of the Zoning Commission to decide.

61. Pursuant to Title 11 DCMR, subsections 2401.1 and 2401.2, the Zoning Commission waives the 15,000 square foot minimum area requirement. The Commission finds that the development is of exceptional merit and in the best interest of the city, and finds that at least eighty (80%) percent of the gross floor area of the development is used exclusively for dwelling units and uses accessory thereto.

62. The Commission finds that the rezoning lots 810, 809, 36, and 35 in Square 15 from R-5-D to C-2-C is appropriate.

63. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by report dated July 2, 1987, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

64. On July 23, 1987, the Zoning Commission considered a letter dated July 17, 1987 from counsel for the applicant regarding a typographic error in the percentage of residential recreation space that was proffered in the proposed order of the applicant. The letter stated that the correct amount should be "7.6" percent, in lieu of "8.6" percent. The Commission so finds.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site pl%XI> .is essential to ensure compatibility with the neighborhood.

2. The development of this PUD carries out the purposes of Article 75 to encourage the development of well-planned residential, institutional, commercial and mixed use developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.

4 The approval of this application is not inconsistent with the Comprehensive Plan of the District of Columbia.

5 The approval of this application is consistent with the purposes of the Zoning Act.

6. The proposed application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.

7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District.

8. The Zoning Commission has accorded to the Advisory Neighborhood Commission (ANC) 2A the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a Planned Unit Development for lots 811, 810, 809, 36 and 35 in Square 15 and change of zoning from R-5-D to C-2-C for lots 810, 809, 36 and 35 in Square 15 located at the southeast corner of the intersection of 26th and L Streets, N.W. The approval of this PUD and change of zoning are subject to the following guidelines, conditions and standards:

1. The Planned Unit Development (PUD) shall be developed in accordance with the plans prepared by the architectural firm of Hugh Newell Jacobsen, FAIA, marked as

Exhibits No. 47, 48B and 57B of the record, and as modified by the guidelines, conditions and standards of this order.

2 The PUD site shall be developed as an apartment building with some limited permitted commercial uses on the first and tenth floors.

3. The floor area ratio for the building shall not exceed 7.89, excluding roof structures.

4 The height of the building shall not exceed 94.75 feet, excluding roof structures.

5. The lot occupancy of the project shall not exceed 82.5 percent.

6 The project shall be developed with sixty-two (62) apartments on floors 2-9.

a. No more than 4000 square feet of floor area on the tenth floor shall be used for the offices of Richard A Bennett, Jr., general managing partner of the applicant, or the offices of any subsequent owner of the building.

8 There shall be no more than ten employees in the office portion of the tenth floor.

9. The remainder of the tenth floor shall be used for apartments, artist/design studios, or art galleries.

10. No more than 2,947 square feet of the first floor shall be used for commercial uses. That area shall be devoted to any permitted use in the C-1 zone district, except restaurant, liquor store, or service commercial uses.

11. An exercise room shall be permitted on the second floor,

12. There shall be parking spaces for sixty-two automobiles.

13, Recreation space shall be provided on the roof of the building.

14. The applicant is permitted to provide uses related to the operation of an apartment house including, but not limited to, a lobby and manager's office.

15. The applicant may register the proposed development from its inception as a condominium regime and may sell the apartments.

16. The applicant may combine space in the units of the proposed development to create larger apartments in response to market conditions.

17. The applicant or owner of the building shall provide for all residential leases to be for a minimum term of 12 months.

18. The applicant or owner shall not furnish any apartments.

19. The applicant or owner shall not provide maid or other cleaning services for individual apartments, nor shall the applicant or owner provide any service deliveries to the building.

20. The penthouse structure shall be as shown in Exhibit 57B of the record.

21. Antennas shall be permitted on the roof of the building subject to the regulations in effect at the time that the antennas are to be erected.

22. The project shall have sixty-two (62) parking spaces on two levels, including the use of vault space, if and as approved by the District and as shown in Exhibit 47 of the record. Eight (8) spaces will be located in the vault space which is to be rented from the District. All but four (4) of the spaces shall be reserved for the apartment residents. These four (4) spaces shall be reserved for the occupants of the 10th floor.

23. a. The selection of limestone or precast material for the building shall be subject to the final approval of the Commission. The applicant shall submit samples of each to the Commission for approval prior to the installation of the limestone or precast material and prior to applying for a certificate of occupancy. The applicant may propose, for consideration by the Commission, to use an alternative material for the east elevation, in lieu of glass block, at the time it files for approval of the limestone or precast material.

    b No certificate of occupancy shall be issued until the Commission has approved the limestone or precast material. This will not delay the applicant in obtaining the necessary District of Columbia approvals, including, but not limited to, subdivision, building permits, or the like, or from beginning construction of the building.

24. There shall be two entrances to the project as shown on Exhibit 48B of the record.

25. The primary materials for the east facade will be stucco with reveals to replicate the L Street facade. The south facade material shall be stucco. All facades shall have a mansard roof.

26. Loading areas, driveways, and walkways shall be located on the site, as shown on Exhibit 47 of the record. One loading/service area, measuring 14 x 30 feet shall be provided as shown on Exhibit 47 of the record.

27. No less than 1.6 percent of the gross floor area shall be devoted to residential recreation space accessible to the handicapped who cannot climb stairs. The total residential recreation space shall be 7.6 percent of the gross floor area.

28. The trash dumpster shall be located inside the apartment building as shown on Exhibit 47.

29. The hours of construction shall be limited to from 7:00 a.m. to 7:00 p.m., excluding Saturdays, Sundays, or holidays.

30. The hours of trash collection shall be limited to 9:00 a.m. to 4:00 p.m. Monday to Friday, excluding holidays.

31. Landscaping and street-level lighting shall be provided as shown on Exhibit 48B of the record.

32. The applicant shall improve and maintain U.S. Reservation No. 23, the Federal property located to the north of the subject site across L Street, in accordance with the terms and conditions established by the National Park Service.

33. The applicant shall improve and maintain the District of Columbia property located to the west of the subject site along 26th Street, in accordance with an agreement between the applicant and the District of Columbia Department of Administrative Services, dated April 9, 1987.

34. The applicant shall implement the Department of Employment Services Agreement, dated April 1, 1987, in connection with the development of the site.

35. The applicant shall implement the Minority Business Opportunity Commission Memorandum of Understanding, dated April 9, 1987, in connection with the development of the site.

36. The applicant shall document its communications with DHCD and make a good-faith effort to implement a housing assistance program for low income residents. The applicant shall file its documentation and the results of its good-faith effort with the Zoning Commission for review and consideration prior to applying for a certificate of occupancy. The applicant shall not be responsible for the burden of response from DHCD.

37. The change of zoning from R-5-D to C-2-C for lots 809, 810, 35 and 36 in Square 15 shall be effective upon recordation of a covenant as required by subsection 2407.3 of DCMR Title 11.

38 No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, and satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs. The covenant shall bind the owner and all successors in title to construct on and use the property in accordance with this order, and amendments thereto, of the Zoning Commission.

39. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division/DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.

40 The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in subsection 2407.1 DCMR Title 11. Construction shall start within three years of the effective date of this order.

Vote of the Zoning Commission taken at the public meeting on June 8, 1987: 3-2 (Patricia N. Mathews and Maybelle T. Bennett, to approve with conditions and George M. White, to approve by absentee vote - John G. Parsons and Lindsley Williams, opposed).

This order was adopted by the Zoning Commission at the special meeting on July 23, 1987, by a vote of 4-1 (Patricia N. Mathews, George M. White and Lindsley Williams, to adopt as amended and Maybelle T. Bennett, to adopt as amended by absentee vote - John G. Parsons, opposed).

In accordance with Title 11 DCMR, Section 3028, this order is final and effective upon publication in the D.C. Register; that is on 28 AUG 1987.

LINDSLEY WILLIAMS
Chairman
Zoning Commission

EDWARD L. CURRY
Acting Executive Director
Zoning Secretariat

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