

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 573A  
CASE NO. 87-18M/86-1C  
(PUDs @ Squares 35 and 24 - Boston Properties)  
February 13, 1989

Pursuant to notice, the Zoning Commission for the District of Columbia held a further public hearing on October 27, 1988 to consider the twice-revised application of Boston Properties. The application requested a modification to a previously approved Planned Unit Development (PUD) and consolidated review and approval of another PUD, pursuant to the provisions of Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022. The record in this case incorporates the record of Z.C. Cases No. 87-18C and 86-1C.

### FINDINGS OF FACT

1. By Z.C. Order No. 512, dated December 8, 1986, in Z.C. Case No. 86-1C, the Zoning Commission approved a mixed use PUD for Lot 802 in Square 35 @ 23rd and N Streets, N.W.
2. Application 86-1C, which was filed on February 6, 1986, requested consolidated review and approval of a PUD and related change of zoning for Lot 802 in Square 35 from R-5-B to CR.
3. Z.C. Order No. 512 approved a six (6) story mixed use residential and office building containing 45,626 square feet of office space, up to forty-four (44) dwelling units, and underground parking for ninety-nine (99) cars. The building had a maximum height of sixty-five (65) feet, a maximum floor area ratio (FAR) of 4.05 (1.87 FAR for office use and 2.18 for residential use), and a maximum lot occupancy of 74.9 percent.
4. In March, 1987, Boston Properties filed an application to develop an 8-story commercial office building on Lot 110 in Square 24 @ 25th and N Streets, N.W., with below-grade parking for 130 cars and an amenities package, including the establishment of a \$2.2 million fund for use by the People's Involvement Corporation

(PIC) for the production of low and moderate income housing in other areas of the District of Columbia and \$50,000 contribution to the D.C. Department of Recreation for improvements to Francis Recreation Center.

5. On September 10, 1987, the Zoning Commission held a public hearing on that application. The applicant and its witnesses testified that the Square 24 site is well-suited to offices, but not to residential development because of market conditions, site configuration and location. The Commission determined, before the conclusion of the hearing that it was not persuaded by the applicant's case. At the applicant's request, the Commission permitted the applicant to explore alternative proposals.
6. Subsequently, the applicant revised its proposal. The revision retained the request for consolidated PUD approval at 25th and N Streets, N.W. (Case No. 87-18C), but also included a modification to a previously approved PUD at 23rd and N Streets, N.W. and Z.C. Order No. 512 (Case No. 86-1C).
7. Subsequent to re-advertising a notice of public hearing on February 1, 1988 for the revised application, the Zoning Commission, by Z.C. Order No. 573 dated May 23, 1988, denied the application in Case No. 87-18M/86-1C. Z.C. Order No. 573 became effective on June 10, 1988.
8. Pursuant to 11 DCMR 3029, parties are allowed to file motions for reconsideration within ten (10) days after an order of the Zoning Commission becomes effective.
9. On June 20, 1988, the Zoning Commission received a motion for reconsideration from the applicant. The Zoning Commission considered the applicant's motion and a response thereto in opposition from Advisory Neighborhood Commission - 2A, at its regular monthly meeting on July 11, 1988. The Commission subsequently granted the applicant's request for reconsideration of Z.C. Order No 573.
10. By prehearing submission dated August 25, 1988, the applicant filed a second-revised proposal. That proposal, like the first-revised proposal, contained a modification to a previously approved PUD @ 23rd and N Streets, N.W. and consolidated PUD approval at 25th and N Streets, N.W. The prehearing submission also contained a request of the applicant for the Zoning Commission to grant a one year extension of the validity of Z.C. Order No. 512 in Case No. 86-1C.
11. The applicant proposed a mixed-use office/residential building on lot 110 in Square 24 located at 25th and N

Streets, N.W., and an all-residential building on lot 802 in Square 35 located at 23rd and N Streets, N.W. The two PUD sites are located in the West End area of the city, less than two blocks apart.

12. By covenant entered into on August 27, 1984, the owner of lot 110 (then designated as Area B of lot 107, Square 24) transferred all but 223.4 square feet of the potential non-residential gross floor area of lot 110 to the adjacent site. This is essentially 0.0 non-residential FAR remaining on the Square 24 site. Pursuant to 11 DCMR 2403.10, 1.0 non-residential FAR would be attainable pursuant to the development guidelines of the PUD process, as applicable to the CR District.
13. The R-5-B District permits matter-of-right development of general residential uses including single-family dwellings, flats, and apartments to a maximum lot occupancy of sixty percent (60), a maximum FAR of 1.8 and a maximum height of sixty feet.
14. The CR District permits matter-of-right residential, commercial, and certain light industrial development to a maximum height of ninety-feet, a maximum FAR of 6.0 for residential and 3.0 for all other permitted uses, and a maximum lot occupancy of seventy-five (75) percent for residential uses.
15. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD. The Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment (BZA).
16. The surrounding neighborhood, the West End, consists of a mix of office buildings, hotels, apartment buildings, and embassy, retail and service uses.
17. The area immediately surrounding the Square 24 site south of N Street, is commercial in character. An 8-story office building is adjacent to the site on the east. A 6-story office building is directly south of the site. The entire Square is comprised of commercial uses. Francis Junior High School is located to the north, across N Street. The Francis Recreation Center

and Rock Creek Park are located west of Square 24, across 25th Street.

18. The area immediately surrounding the Square 35 site north of N Street, is residential in character. The Francis Junior High School is located directly west of the Square 35 site. Rock Creek Park borders the site on the north. The area east of the site, across 23rd Street, is zoned R-5-B and contains residential apartment buildings and row dwellings.
19. The Square 24 site is located at the southeast corner of the intersection of 25th and N Streets, N.W. the site contains 24,534 square feet of land and is currently unimproved and used as a parking lot.
20. The Square 35 site is located at the northwest corner of the intersection of 23rd and N Streets, N.W. The site contains 24,460 square feet of land and portions of public alleys which have been closed by District of Columbia Law 7-53. It is currently unimproved and used as a parking lot.
21. The District of Columbia Generalized Land Use Element of the Comprehensive Plan for the National Capital includes the Square 24 PUD site in the high density residential/medium density commercial land use category; and the Square 35 PUD site in the Parks, Recreation and Open Space land use category.
22. The applicant's second-revised proposal is for a mixed-use office/residential building for lot 110 in Square 24 at the southeast corner of the intersection of 25th and N Streets, N.W. The proposed building includes a height of ninety (90) feet, a gross floor area of 138,400 square feet (108,300 sq. ft. office and 30,100 sq. ft. residential), an FAR of 5.64 (4.41 FAR office and 1.23 FAR residential), a maximum lot occupancy of seventy-seven (77) percent for office use and fifty-one (51) percent for residential use, 3,768 square feet of residential recreation space, and on-site parking to accommodate 127 cars. The proposed building will contain six (6) floors devoted to office use, and the top two (2) floors devoted to residential use, including twenty-four (24) dwelling units).
23. The applicant's second-revised proposal also includes, as proffered in the first-revised proposal, a request to modify a previously approved PUD in Z.C. Case No. 86-1C. The proposal seeks to modify Z.C. Order No. 512 in Z.C. Case No. 86-1C to provide for an "all residential" building, including 101 dwelling units with a gross floor area of 104,386 square feet, for lot 802 in Square 35 at 2301 N Street, N.W.

24. The applicant testified at the hearing that the new proposal, like all of the earlier proposals, is responsive to the housing needs of the community, the economic realities of development on the site and the goals and objectives of the Zoning Commission. It will provide (1) the largest stand-alone, multi-family residential complex in the West End in more than 10 years on the best housing site available, (2) the first and only housing units on Square 24, (3) a wide range of physical improvements and amenities, and (4) substantial tax revenues to the District. The applicant has presented alternative proposals in a spirit of cooperation, compromise and an effort to help the Zoning Commission achieve its goals for the West End. The revised proposal will yield a total of 125 housing units in the West End. The 24 units on the Square 24 site will have acceptable views over the Francis Junior High School and the BNA complex. This alternative is preferable over the existing use but its feasibility is marginal.
25. The applicant also testified that the revised proposal meets the goals and objectives of the Commission and the District, the applicant is aware that the Commission prefers that more housing be provided on the Square 24 site. Therefore, Boston Properties, with its architect and residential marketing consultant, studied in detail an alternative scheme with 5 floors of office space and 3 floors of apartments (36 units). The alternative scheme has a height of 90 feet and contains 134,650 gross square feet of space, with an FAR of 5.49. It provides underground parking for 127 cars and residential recreation space on the roof. It also retains all of the amenities and off-site improvements previously proposed.
26. The applicant further testified that the 5-story office/3-story residential alternative is even less economically feasible because a smaller office component will have to subsidize a larger residential component and that it has significant architectural and marketing problems. Residential units located on top of office space are inherently difficult to market. The obstruction of views from units on the sixth floor by the adjacent office buildings and the Francis Junior High School will increase the marketing disadvantages. In addition, with the 3 top floors devoted to residential use, the setback makes the building appear out of balance. This massing problem is ameliorated by a screen wall on the sixth floor, but the screen wall further obstructs views from the housing units. Thus, the applicant prefers the 6-story office/2-story residential alternative for economic, aesthetic and marketing reasons.

27. The applicant, through its expert in architecture and urban design, described the mixed-use building as being the fifth element of the six-phase U.S. News & World Report complex. The curved corner of the building defines the intersection of 25th and N Streets and reflects the curved corners of the other office buildings in the complex. The building's facade continues the tripartite architectural style and brick and precast concrete striping used throughout the complex. A setback at the seventh and eighth floors reflects the functional requirements of a double-loaded band of apartment units and provides an outdoor terrace for the residential units. An entrance loggia, located along N Street, will have benches and areas for the display of public art. The red brick sidewalk pavers, planters and landscaping also continue themes established for the complex, enhancing the pedestrian environment along the south side of N Street from 23rd to 25th and portions of 23rd, 24th and 25th Streets. An 18-foot wide driveway provides access to the garage from 25th Street. This garage entrance is deliberately angled to avoid the appearance from the street of a gaping garage entry. The service entrance is located to the south, off an existing alley, and screened from public view.
28. The architectural/urban design expert testified that the 6-story office/2-story residential proposal is the preferred architectural solution because of the following:
- a. Residential units on the seventh and eighth floors will have views over the adjacent BNA Building while units on the sixth floor would not;
  - b. Structural transfer beams located in the ceiling of the sixth floor will be shallower than those needed for the alternative; and
  - c. The alternative has an inherent massing problem which requires a contrived solution -- a screen wall along the perimeter of the sixth floor. The expert further testified that the height of the proposed building is consistent with the matter-of-right height limit for the CR Zone and complements surrounding structures.
29. The applicant, proposes the following amenities and benefits package:
- a. The extension of 24th Street along its present center line, terminating in a cul-de-sac at the

edge of the park with entrances to the school and the residential apartment building on Square 35 (valued at approximately \$77,000);

- b. Additional pathways and lighting, extensive grading and landscaping to the area within Rock Creek Park that is currently used as a gravel lot, construction of other improvements within the park and perpetual maintenance of a portion of the park (valued at approximately \$140,000);
- c. Resurfacing the two eastern most existing tennis courts, repaving the existing basketball court and installing new back-boards (valued at approximately \$15,000);
- d. Repaving the badly deteriorated Francis Junior High School parking lots and regrading and landscaping the area west of the school (valued at approximately \$64,000);
- e. An initial financial grant of \$10,000 and additional annual grants of \$5,000-\$10,000 to the D.C. Board of Education for education programs or physical improvements at Francis Junior High School (valued at approximately \$60,000);
- f. Lease payments to the D.C. Board of Education for the use of its property for the 24th Street extension (valued at approximately \$50,000);
- g. Replacement of existing cherry trees that will be affected by construction activities with new trees of the same caliper. The replacement trees will be located in the triangular parcel of land east of 23rd Street behind the existing residential buildings and, subject to National Park Service approval, in Rock Creek Park (valued at approximately \$10,000);
- h. Streetscape improvements along N, 22nd and 23rd Streets, including new sidewalks, installation of street trees, installation of an additional decorative light pole, repair of existing block paving and construction of architectural elements (valued at approximately \$35,000);
- i. Participation in a rideshare program;
- j. Participation in the District's First Source Employment Program;

- k. MBOC commitments with the goal of awarding 25-35% of construction and management contracts to minority businesses;
  - l. Off-hours use of the office garage parking facilities for local residents;
  - m. Addition of more off-street parking spaces than required by the Zoning Regulations;
  - n. Creation of approximately 385 permanent jobs and 100 temporary construction jobs;
  - o. Increased tax revenues for the District of Columbia of approximately \$2,000,000 annually; and
  - p. Creation of an outdoor sculpture garden at the entrance to the office building.
30. The applicant requests flexibility in the following areas in order to meet changing market and supply conditions and achieve Commission of Fine Arts approval of a final design as follows:
- a. Vary the location and design of all interior components, including partitions, doors, hallways, columns, stairway, location of elevator, parking spaces, electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building including the penthouse;
  - b. Make necessary adjustments in final design detailing to achieve Commission of Fine Arts approval, provided that the maximum residential or commercial FAR approved by the Zoning Commission is not increased;
  - c. Vary the species of plant materials within the District of Columbia guidelines for the public space surrounding the project;
  - d. Allow flexibility in the selection and placement of sculpture;
  - e. Vary the number of residential units from a minimum of 20 to a maximum of 26 (30 to 39 in the 5-story office/3-story residential alternative) to allow the applicant to adapt to market conditions as to unit size, provided that the total amount of residential FAR approved by the Zoning Commission is neither increased nor decreased;

- f. Modify or eliminate the screen wall on the sixth floor of the 5-story office/3-story residential alternative to allow the applicant to satisfy the Commission of Fine Arts and adjust to the demands of the housing market; and
  - g. Allow the flexibility permitted, pursuant to the Planned Unit Development provision of the Zoning Regulations contained in Chapter 24.
31. The second-revised proposal incorporated a traffic report dated March and November 1987. The report concluded that the projects will have no adverse impact on traffic operating conditions in the area, nor users of Francis Junior High School or the area recreational facilities. Adequate parking and loading facilities have been provided.
32. The District of Columbia Office of Planning (OP), by memorandum dated October 14, 1988, recommended that the application be approved, subject to the condition that three (3) floors be devoted to residential use and five (5) floors be devoted to office use at the Square 24 PUD site. OP stated the following:

"The Office of Planning is supportive of both of the mixed-use residential and office development options being proposed by the applicant for Square 24. However, as noted in the body of this report, the OP's position is that there should be as great a representation of residential units in the project as possible. Of the eight stories proposed, it is recommended that three stories should be dedicated to residential use as proposed in the applicant's development Alternative B. This would raise the total number of apartment units on Square 24 to 36 units.

OP is comfortable with the amenity package being offered by the applicant; particularly the modification to the Square 35 mixed use PUD which will make this an all residential project abutting Rock Creek Park. As noted, we have reviewed the project from an urban design point of view and believe it to be compatible in height, bulk and design with neighboring development. It is equally important to note the site's relationship to Rock Creek Park. In this context, we believe that the proposed eight-story building will not have any more of a visual impact than a six or seven-story building as viewed from park property. Conversely many of the future residents occupying the upper stories of the building will certainly consider the view of the park as a major amenity."

33. Advisory Neighborhood Commission 2A, within which boundaries the Square 24 site is located, by letter dated October 21, 1988, opposed the proposal. ANC - 2A expressed the following issues and concerns:
- a. The Square 24 site can be developed entirely for residential use;
  - b. The PUD disregards the Comprehensive Plan because it will result in a net loss of housing in the West End and contribute to the deterioration of the residential quality of the West End;
  - c. The increase in office space will add to parking and traffic problems and is contrary to the goals of the draft Ward 2 Plan because it will increase commercial development pressures;
  - d. The Square 24 site is appropriate for residential development as it is near a school, playing fields, a playground, tennis courts, and other existing or proposed residential developments.
  - e. The design difficulties presented by the site's proximity to office buildings are not insurmountable, as indicated by other residential developments in the West End which adjoin or are close to commercial structures and Boston Properties' earlier statement that designing attractive residential units was possible;
  - f. Boston Properties controlled the development of the U.S. News building and signed the covenant transferring the commercial FAR and leaving the Square 24 site with only residential development rights;
  - g. The proceeds of the sale of the U.S. News building are enough to subsidize the residential development of the Square 24 site;
  - h. Z.C. Case No. 85-5C, (PUD @ Mayfair House), in which the developer was ultimately able to develop a residential apartment building, is instructive; and
  - i. Any claimed "amenities" are merely window-dressing.
34. Advisory Neighborhood Commission 2B, within which boundaries the Square 35 site is located, did not file a report regarding the second-revised proposal. ANC - 2B, by letter dated January 22, 1988, opposed the

proposal (first-revised proposal) for the following reasons:

- a. The proposal violates a covenant entered into by the City with Boston Properties (and such covenants should be inviolate);
- b. It reduces the total residential stock previously agreed upon for the two lots at issue; and
- c. It threatens public use of Rock Creek Park and other public areas bordering the park.

ANC - 2B supported the position of ANC - 2A, and urged the applicant to construct the residential uses on the PUD sites before constructing commercial uses.

35. Justice for Janitors Organizing Committee (JFJ), by letters dated October 25 and December 5, 1988 and by testimony presented at the public hearing, opposed the application because it believed that the applicant was in violation of the Human Rights Act of the District of Columbia. JFJ alleged that the Apartment and Office Building Owners Association (AOBA) with the participation of Boston Properties, devised a discriminatory plan to ban members and affiliates of the JFJ Campaign from entering or visiting the premises of properties that are owned or managed by Boston Properties.
36. JFJ indicated that the Human Rights Act provides the Government of the District of Columbia the authority to revoke permits that were issued to an entity found in violation of the Act. JFJ further indicated that discrimination based on support for community-based campaign, source of income and/or place of business, and race violates the Act. JFJ requested the Zoning Commission to investigate the matter.
37. The Office of Corporation Counsel, by memorandum dated November 4, 1988, provided advice to the Zoning Commission and the Board of Zoning Adjustment (BZA) regarding how the Human Rights Act should apply to applicants who are granted zoning approval and are found to be in violation of the Act. The advice concludes that the Zoning Commission or BZA may proceed, under the Act, to take appropriate preliminary or final action on the basis of a preliminary or final judicial determination of a violation of the Act.
38. The Zoning Secretariat, by memorandum dated November 21, 1988, referred the matter to the Office of Human Rights and solicited comments from that office.

39. The Commission concurs with the position of the Office of Planning and believes that the mixed-use residential/office development on the Square 24 site with a three/five story use split is appropriate and reasonable. The Commission does not concur with the position of ANC-2A nor ANC-2B.
40. The Commission finds that the applicant has met the requirements of 11 DCMR Chapter 24 and has satisfied the intent and purpose thereof.
41. As to the concern of ANC - 2A and others regarding the loss of housing in the West End area, the Commission finds that, although the processing of this case has been protracted, the resulting decision of the Zoning Commission will net the West End community three floors of residential uses on the Square 24 site and 1.87 FAR of residential uses on the Square 35 site. This residential floor area gain would not have been achieved had this process not been carefully undertaken with reason and balance.
42. As to the concern of ANC - 2A and others regarding traffic and parking problems, the Commission concurs with the applicant and finds that the provided parking, as further conditioned by this order, is adequate and that the proposal would not adversely affect the surrounding street system.
43. As to the concern of ANC - 2A and others regarding the previous transfer of commercial FAR from the Square 24 site and how that action conflicts with the applicant's PUD proposal, the Commission finds that, pursuant to memorandum dated June 4, 1987 from the Office of Corporation Counsel, parties to a covenant may modify or discharge the covenant. The Commission finds that the applicant has made a good faith effort to develop or to find a residential developer for the Square 24 site. However, because of market conditions, the cost of constructing stand-alone housing downtown and site conditions, the development of stand-alone housing on the Square 24 site is infeasible. The second-revised proposal will increase the amount of housing produced on the two PUD sites and the total amount of housing in the West End. The Commission believes that the processing of this application is appropriate in that the Commission can condition the terms of approval for what is in the best interest of the District of Columbia. The Commission, therefore, believes that release of the covenant is in the public interest.
44. As to the concerns of ANC - 2A and others regarding the lack of substantive amenities, the Commission finds to

the contrary and believes that its decision adequately addresses that concern.

45. As to the concern regarding violations of the Human Rights Act, the Commission finds that it is appropriate that the requirements of the Act apply to this process, and believes that it has adequately addressed the matter in its decision.
46. As to the concern regarding the proposal threatening the public use of Rock Creek Park and other public areas bordering the park, the Commission does not concur. The Commission finds that the public amenities proffered by the applicant will improve the affected public facilities in the area.
47. 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. NCPC, by report dated February 2, 1989, found that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interest in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

#### CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the sites in a manner consistent with the best interests of the neighborhood and the District of Columbia.
2. The development of the project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned residential, 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 the project is compatible with District-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 for the National Capital because it will produce needed housing, strengthen the distinguishing physical qualities of the West End and increase employment opportunities.

5. The approval of the application is consistent with the purposes of the Zoning Act and the Zoning Map of the District of Columbia, which include stabilizing land values and improving residential and mixed use areas.
6. The application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community or the District. The project will enhance and promote the mixed-use character of the neighborhood.
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 of Columbia.
8. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
9. The Zoning Commission has accorded ANC-2A the "great weight" to which it is entitled. Although ANC - 2B did not file a report on the subject proposal, the Zoning Commission believes that it adequately considered the concerns of ANC - 2B.

#### DECISION

In consideration of the foregoing Findings of Fact and Conclusions of Law, the Zoning Commission hereby orders that this application for consolidated review of a PUD for Lot 110 in Square 24 and modification to an approved PUD for Lot 802 in Square 35 is APPROVED. Approval of this second-revised application is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development (PUD) sites shall be developed in accordance with the plans prepared by the architectural firms of Lockman Associates/Architects PC, marked as Exhibit No. 61-B of the record, and Skidmore, Owings and Merrill, marked as Exhibit No. 103 of the record, as modified by the guidelines, conditions and standards of this Order.
2. The PUD site at 23rd & N Streets, N.W., that is, Square 35 - lot 802, shall be subject to the following:
  - a. The site shall only be developed as a residential apartment building, with 104,386 square feet devoted to not less than 101 dwelling units.
  - b. The height of the apartment building shall not exceed 65 feet, excluding roof structure.

- c. The floor area ratio (FAR) of the apartment building shall not exceed 4.3, excluding roof structures.
  - d. The lot occupancy shall not exceed 72 percent.
  - e. The building shall include a minimum of 101 below-grade parking spaces.
  - f. Loading areas, driveways and walkways shall be as shown on Exhibit No. 61-B of the record.
  - g. The design of the penthouse shall be subject to the final approval of the Commission. The applicant shall submit architectural elevations of the penthouse to the Commission to approve the design, but nothing in this condition prohibits the applicant from obtaining other necessary District of Columbia approvals, including but not limited to, subdivision or the like, or from filing a building permit application in order to begin the review process.
  - h. Landscaping shall be provided as shown on sheet Z-7 of Exhibit No. 61-B of the record.
  - i. The change of zoning from R-5-B to C-R, approved by Order No. 512, shall be effective upon recordation of a covenant as required by Sub-section 2407.3 of the Zoning Regulations.
  - j. All other applicable conditions, guidelines, and standards of Z.C. Order No. 512 that are not superceded by conditions, guidelines and standards of this order shall apply.
3. The PUD site at 25th and N Streets, N.W., that is, Square 24 - lot 110, shall be subject to the following:
- a. The site shall be developed as mixed-use office and apartment building.
  - b. The height of the building shall not exceed 90 feet/eight stories, excluding roof structures.
  - c. The floor area ratio (FAR) of the building shall not exceed 5.64, excluding roof structures.
  - d. The lower five (5) stories of the building shall be devoted to office uses, and the upper three (3) stories of the building shall be devoted to residential (apartment) use.

- e. The applicant shall construct 36 to 39 dwelling units.
  - f. The lot occupancy shall not exceed 77 percent.
  - g. The building shall include not less than 127 parking spaces. The applicants shall make the use of the spaces allotted to the offices available to the community during off-hours, at least from 7:00 P.M. to 7:00 A.M. weekdays and all day on weekends. There shall be at least one residential space available for each apartment and access to the residential parking spaces shall be controlled as shown on the revised plans marked as Exhibit No. 123 of the record.
  - h. Loading areas, driveways and walkways shall be located on the site as shown on Exhibit No. 123 of the record.
  - i. Landscaping shall be as shown on Exhibit No. 103 of the record.
  - j. Boston Properties shall create an outdoor sculpture garden at the entrance to the office building component as shown on Exhibit No. 103 of the record.
  - k. The applicant shall present for the review and approval of the Commission of Fine Arts both screened and unscreened versions of the exterior facade of one of the upper floors of the building.
  - l. The materials that are used to construct the trash dumpster enclosure shall be the same materials used to construct the building. The gate of the trash dumpster enclosure shall be fully screened or opaque.
- 4. Antennas shall be permitted on the roofs of the building subject to the regulations in effect at the time the antennas are to be erected.
  - 5. The materials for the facades of the buildings shall be brick and precast concrete similar to the materials used in the 2300 and 2400 N Street office buildings.
  - 6. All final materials and color selections shall be subject to the approval of the Commission of Fine Arts.
  - 7. Boston Properties shall extend 24th Street along its present center line, terminating in a cul-de-sac at the edge of the park.

8. Boston Properties shall participate in a rideshare program, in conjunction with other subject programs, and coordinate with the D.C. Rideshare Coordinator in order to minimize the on-site parking demand and to encourage ridesharing among the employees of the project.
9. Prior to the issuance of a building permit, the applicant shall establish an interest-bearing escrow account, or post a letter of credit for not less than \$50,000.00 to be used for improvements to the National Park Service property located to the north of the Square 35 site.
10. The applicant shall pay for all ongoing operating and maintenance costs for the new lights proposed to be installed on public property in connection with the project.
11. Prior to issuance of the certificate of occupancy for the mixed-use building at 25th and N Streets, the applicant shall have completed the following or shall post a bond or a letter of credit for an amount equal to the value of the improvements not yet completed to the benefit of the entity or entities on whose property the improvements will be made.
  - a. The applicant shall, at its sole cost and expenses, create and maintain a terminus cul-de-sac for 24th Street, north of N Street, subject to the approval of the Board of Education and National Park Service;
  - b. Several existing large cherry trees will be replaced with new cherry trees of total equivalent caliper, located in the triangular parcel of land east of 23rd Street behind the existing residential buildings or in another nearby location, subject to the National Park Service approval;
  - c. The two existing eastern most tennis courts will be resurfaced. The existing basketball court will be repaved and new backboards installed subject to the approval of the D.C. Department of Recreation;
  - d. The existing parking lots behind the school will be repaved and the area adjacent to the western end of the school will be regraded and landscaped subject to the approval of the Board of Education;
  - e. The D.C. Board of Education shall be given an initial grant for use at Francis Junior High School of \$10,000.00; and

- f. After the first year, the applicant will provide an annual grant of \$5,000 - \$10,000 to the Board of Education for use at Francis Junior High School for physical improvements or for educational programs. The grant shall be for no less than thirty (30) years, or until the demise of the school or the PUD, whichever comes first.
12. Subject to the approval of the appropriate District of Columbia agencies, the applicant shall apply for a permit to construct and will construct if said permit is issued the following improvements east of 23rd Street, N.W., in the immediate neighborhood of the subject sites:
  - a. Construction of a new sidewalk on the east side of 23rd Street from the corner of N Street north to the end of the apartment building;
  - b. Installation of one street tree in the empty tree pit on N Street between 22nd and 23rd Streets;
  - c. Installation of one additional decorative light pole on N Street east of 23rd Street;
  - d. Replacement of existing sidewalk on the west side of 22nd Street from the corner of N Street north to the new apartment building;
  - e. Installation of two street trees in the empty tree pits on 22nd Street near the corner of N Street;
  - f. Repair of existing brick paving on N Street between 22nd and 23rd Streets; and
  - g. Construction of yet-to-be-determined architectural elements, such as piers, walls, and fences on the corners of 22nd Street, 23rd Streets, and along N Street, which would create a visual architectural continuity from the project into the neighborhood.
13. Prior to the issuance of a building permit, the applicant shall implement a program with the Department of Employment Services and the Minority Business Opportunity Commission to provide first-source jobs hiring for the District residents, and to involve minority individuals and businesses with a goal to award twenty-five (25) to thirty-five (35) percent of the construction and management contracts.
14. The applicant is granted flexibility in the final detailing of the buildings with respect to the following matters:

- a. Varying the location and design of all interior components, including partitions, structural glass, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building, including the penthouse;
  - b. Varying the design and arrangement of components with the enclosure of the penthouse;
  - c. Varying the arrangement of the parking spaces and modification to the below grade space to provide the opportunity for storage and other space to serve the proposed users of the building, subject to applicable provisions of Conditions No. 2 and 3 of this order; and
  - d. Allowing the flexibility permitted, pursuant to the provision of 11 DCMR 2407.6.
14. The final selection and placement of sculpture as well as the location and type of exterior lighting fixtures and species of plant material for the building shall be subject to the final approval of the Commission. The applicant shall submit samples of the above-mentioned items to the Commission for approval prior to installation and prior to applying for a certificate of occupancy. No certification of occupancy shall be issued until the Commission has approved the above-mentioned. 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.
16. No building permit shall be issued for the sites 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 (DCRA), which covenant shall bind applicant and its successors in title to construct on and use this property in accordance with this order, or amendments thereto, of the Zoning Commission.
17. No certificate of occupancy shall be issued for the mixed-use building at 25th and N Streets until construction of the residential building at 23rd and & Streets is at least two-thirds completed.
18. The applicant shall include in the PUD covenant a mechanism for implementing and a means of assuring continuing compliance with the contribution to the

Board of Education, as set forth in Condition No. 11 of this order.

19. The Zoning Secretariat shall not release the records of this case to the Zoning Regulations Divisions of DCRA, until the applicant has filed a certified copy of said PUD covenant with the records of the Zoning Commission.
20. The covenant entered into by Square 24 Office Joint Venture, the Madana Realty Company and the District of Columbia on August 27, 1984, shall be released by the District of Columbia when the applicant has filed a certified copy of the PUD covenant in the Land Records of the District of Columbia and with the Zoning Commission.
21. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of the order. Within such time, application must be filed for a building permit as specified in Section 2407.1 of the Zoning Regulations. Construction shall start within three years of the effective date of this order.
22. Pursuant to D.C. Code sec. 1-2531 (1987), section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting of December 12, 1988: 3-0 (Lindsley Williams, John G. Parsons and Maybelle Taylor Bennett, to approve with conditions - Elliott Carroll, not voting having recused himself and Lloyd D. Smith, not voting not having participated in the case).

The proposed guidelines, conditions and standards were approved by the Zoning Commission at the public meeting of January 9, 1989.

This order was adopted by the Zoning Commission at the public meeting held on February 13, 1989 by a vote of 3-0 (Lindsley Williams, John G. Parsons, and Maybelle Taylor Bennett, to adopt as amended - Elliott Carroll, not voting having recused himself and Lloyd D. Smith, not voting not having participated in the case).

