

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 855

CASE NO. 98-1M/97-9C

(PUD MODIFICATION, ZONING MAP AMENDMENT AND
UTILIZATION OF DISTRICT OF COLUMBIA AIRSPACE
AT 2200 M STREET, N.W.)

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on June 4, 1998. At the hearing, the Zoning Commission considered applications from Millennium Partners of Washington, D.C., Inc. to modify an approved planned unit development (PUD), amend the Zoning Map of the District of Columbia and utilize District of Columbia airspace for property at premises 2200 M Street, N.W., pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning and pursuant to the Public Space Utilization Act, D.C. Code Section 7-1031 et seq. (1995). The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. ANC 2A submitted a letter to the Office of Corporation Counsel, dated April 29, 1998, asking the Office of the Corporation Counsel to determine whether the Zoning Commission and the Office of Zoning properly allowed the applicant to file the proposed changes to the approved PUD as a modification of the approved PUD, or if the applicant should have been required to file a new PUD application. ANC 2A also asked the Office of Corporation Counsel to develop new regulations regarding the definition of and criteria for a modified PUD.
2. At the public hearing, Dorothy Miller, Chairperson of ANC 2A but appearing as an individual, requested that the public hearing not go forward and that the case be readvertised since changes were made to the project after it was advertised for a public hearing.
3. At the public hearing, a representative of the Office of the Corporation Counsel addressed whether the change in the application, as described in the advertisement compared to the application as proposed at the public hearing, would require readvertisement; and whether the proposed modification is a valid modification. The Office of Corporation Counsel determined that there would not be any degree of prejudice in proceeding with this proposed modification regardless of the degree of modification. The

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Zoning Commission determined that the Zoning Regulations have criteria for determining whether an application is appropriate as a modification, that the process followed and notice given for these applications was proper, and that proceeding with the proposed modification application as advertised would not cause any prejudice.

4. At the commencement of the public hearing, the Commission determined that the only parties in the case would be the applicant, the Carriage House Condominium, and ANC 2A.
5. Barbara Kahlow and James McLeod each sought party status. The Zoning Commission considered their testimony and their written submissions on this issue. Neither individual lives within 200 feet of the site. In response to a specific question asking for ways in which they were affected by the matter before the Commission that are different from members of the general public, Ms Kahlow and Mr. McLeod did not identify any interests which differentiated them from the general public. As a result, the Commission denied their requests for party status.
6. The current applications, which were filed on February 12, 1998, propose a modification to an approved PUD, a further amendment of the Zoning Map of the District of Columbia, and permission to use certain airspace above and below the alley system in Square 51. The property which is the subject of these applications is located at premises 2200 M Street, N.W., Lots 74, 76, 877 and 878 in Square 51.
7. The property before the Commission, Lots 74, 76, 877 and 878 in Square 51 and the airspace above and below the public alley in the square (the subject site), is comprised of approximately 104,458 square feet of land area. The subject square is bounded by 22nd Street and New Hampshire Avenue, N.W. to the east, L Street, N.W. to the south, 23rd Street, N.W. to the west and M Street, N.W. to the north. The subject site includes the entirety of the subject square except for the Carriage House which is located in the southeast corner of it.
8. The Generalized Land Use Map of the Comprehensive Plan designates Square 51 in a mixed-use, medium-density commercial and high density residential land use category.
9. Lots 74 and 878 contain approximately 28,474 square feet of land area and are located in a C-2-C zone district. Lot 877, contains approximately 7,556 square feet of land area

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and is located in a R-5-E zone district. Lot 76 contains approximately 61,539 square feet of land area and was approved for rezoning to the CR category as part of the previously approved PUD. The applicant requests an amendment to the Zoning Map to include all of the subject site in the CR zone district. CR-zoned property fronts the site across M Street. Buildings constructed to a height in excess of 100 feet in the area include 2311 M Street, N.W. and 1250 23rd Street, N.W.

10. The applicant requests permission to utilize District of Columbia airspace above and below the alley system in Square 51, pursuant to the Public Space Utilization Act, D.C. Code Section 7-1031 et seq. (1995).
11. The C-2-C zone district permits a mixture of residential and commercial uses. The C-2-C zone district permits matter-of-right development to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.0, of which no more than 2.0 FAR may be used for other than residential uses, and a maximum lot occupancy of 80 percent.
12. The R-5-E zone district is designed for all types of urban residential development and institutional and semi-public buildings that would be compatible with adjoining residential uses. The R-5-E zone district permits matter-of-right development to a height of 90 feet (with no limit on the number of stories), an FAR of 6.0 for apartment buildings, and a maximum lot occupancy of 75 percent.
13. The CR zone district is designed to encourage a mixture of compatible land uses, including residential, retail and recreational. Matter-of-right development in the CR zone district permits a maximum height of 90 feet, a maximum FAR of 6.0 (with a maximum of 3.0 FAR for commercial use), and a maximum lot occupancy of 75 percent for residential uses. The PUD regulations for CR permit development to a maximum height of 110 feet and a maximum total FAR of 8.0 (with a maximum FAR of 4.0 for commercial use).
14. Zoning Commission Order No. 833, dated January 12, 1998, approved the rezoning of Lot 76 from C-2-C to CR and approved a consolidated PUD. The approved PUD consists of an 11-story, mixed-use building with a total FAR of 7.46, a residential FAR of 5.40 and a retail FAR of 2.06. The approved PUD permits a height not to exceed 110 feet and a lot occupancy of 100 percent. Retail uses are located on

the below-grade and street-grade levels of the project. A health club is located on the second and third floors and apartment units occupy a portion of the second and third floors and all of floors four through eleven. The approved PUD requires the provision of 440-500 parking spaces in four below-grade levels of parking and four loading berths. The number of residential parking spaces shall be equal to the number of residential units in the project, while the commercial component of the project is required to have 200 parking spaces.

15. Zoning Commission Order No. 833 required the applicant to provide the following community amenities prior to the issuance of a certificate of occupancy for the property:
 - a. Improvements to Washington Circle, including the replacement of 64 benches, 20 trash receptacles, and the existing flagstone and mortar;
 - b. Landscaping of the three D.C. owned triangular shaped pieces of property west of Washington Circle;
 - c. A contribution of \$15,000 per year for three years to the Care-A-Van Program for feeding the homeless; and,
 - d. A donation of \$10,000 for the clean-up of public spaces in coordination with the Foggy Bottom Association.
16. Zoning Commission Order No. 833 required the applicant to enter into a First Source Employment Agreement with the Department of Employment Services (DOES) and to enter into a Memorandum of Understanding with the Local Business Opportunity Commission (LBOC) to utilize local business enterprises in the development of the project.
17. The current modified project proposed to be constructed on the PUD site adds a luxury hotel to the mix of uses included in the previously approved PUD. The total gross floor area of the modified PUD is 711,542 square feet, with a total FAR of 6.81, with 5.44 FAR of condominium/apartment residential and the residential space within the hotel, and 1.37 FAR of recreation/retail and commercial space within the hotel. The modified PUD has a maximum height of 110 feet and a lot occupancy of 99 percent at the commercial floors and 56-99 percent at the residential floors.
18. The retail portion of the modified PUD will be located primarily on the ground level on all street sides of the project and a portion of the second floor, and will occupy

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53,404 square feet. The health and sports club will have an entrance on the ground level on 22nd Street, will be located on the second and third floors and will occupy approximately 89,458 square feet of gross floor area.

19. The residential component of the modified PUD will consist of condominium apartments, will include two entrances on 23rd Street, and will occupy the second through eleventh floors of the project on the 23rd and M Street sides of the PUD site. The residential component of the modified PUD will occupy approximately 367,699 square feet of gross floor area and will include a range of 160-230 units.
20. The hotel, to be operated as part of the Ritz-Carlton chain, will have its entrance on the 22nd Street side of the PUD site and will have approximately 300 rooms. The hotel will occupy approximately 200,981 square feet of gross floor area for guest room and service areas, and an additional 80,400 square feet of space below grade for function rooms and hotel support purposes.
21. The modified PUD will provide underground parking consisting of approximately 700-770 parking spaces. One parking space will be provided for each residential unit with the remaining parking spaces being used for visitors, hotel guests, retail patrons, and those using the health club.
22. The modified PUD will occupy 15,980 square feet of District of Columbia airspace above the alley system on floors two through eleven. The utilization of the airspace allows the hotel to have a continuous presence along 22nd Street. The airspace above the alley will be used by the hotel and the health club with an FAR of 2.26. The modified PUD also occupies 31,572 square feet of District of Columbia airspace below the alley system. This space will be used for hotel function and support rooms and allows for the complete interconnection of the four levels of below-grade parking.
23. The modified PUD includes the following public benefits and project amenities:
 - a. An appropriate project with significant architectural features and a mixture of uses that returns a Ritz-Carlton hotel to the District and will encourage pedestrian traffic and enliven the neighborhood;
 - b. The creation of 160-230 residential units;

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- c. A major revenue source in terms of tax revenue and employment opportunities generating \$12.7-13.2 million per year in revenue to the District,
 - d. An amended First Source Employment Agreement with the Department of Employment Services; and,
 - e. An amended Memorandum of Understanding entered into with the Local Business Opportunity Commission.
24. In addition, the applicant has agreed to provide the following community amenities:
- a. Improvements to Washington Circle, including the replacement of park benches, trash receptacles, and flagstone and mortar at a cost to applicant of approximately \$686,000;
 - b. Landscaping the three D.C. owned triangular pieces of property west of Washington Circle at a cost to applicant of approximately \$25,000;
 - c. A contribution of \$25,000 per year for four years to the Care-A-Van Program for feeding the homeless for a total of \$100,000 (\$15,000 of which has already been advanced pursuant to the commitment made in the approved PUD);
 - d. A donation of \$10,000 for the clean-up of public spaces in coordination with the Foggy Bottom Association;
 - e. Improvements to the West End Public Library and the replacement of trees in the West End neighborhood north of Pennsylvania Avenue, N.W. at a cost to applicant of \$150,000; and,
 - f. Improvements to the streetscape lighting along M Street and Pennsylvania Avenue between 23rd and 26th Streets, N.W., pursuant to standards and approvals of the Department of Public Works.
25. Through the PUD modification process, the modified PUD includes amenities for the residents and occupants of the building which are superior to those otherwise available under the Zoning Regulations, including an expanded landscaped courtyard area, and the ability of residential owners to purchase health club memberships at reduced prices and utilize the concierge and room services of the Ritz-Carlton Hotel.

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26. This project will provide revenue for the District of approximately \$13 million annually. The construction of the project will create an estimated 822 full-time equivalent jobs and 197 spin-off jobs. Operation of the various uses in the project will create 667 full-time equivalent jobs. The modified PUD provides 221 more permanent jobs and \$6.8 million more in net annual D.C. tax revenues than the approved PUD.
27. Anthony Lanier, President of EastBanc, Inc., a partner of the applicant, testified as to the applicant's desire to bring positive change to the neighborhood through the creation of a project that helps to build communities by increasing pedestrian traffic, neighbor interaction and community input. Mr. Lanier stressed that the project's main amenity is the production of residential housing for the District in order to help stem the flow of residents from the city, bring back income tax generating residents to the city, and demonstrate that the District is a desirable place to live.
28. Phil Aarons, a principal of Millennium Partners, a partner of the applicant, testified as to the applicant's desire to have the modified PUD remain a primarily residential project while retaining the important retail and health club components of the approved PUD. The inclusion of the hotel helps ensure the success of this project by providing superior services to its patrons and also provides significant economic growth for the District.
29. Phil Keb, Vice President of Development for Ritz-Carlton, LLC, testified as to the synergy created by the different components of the project as an important factor that attracted Ritz-Carlton to the project. This synergy includes the ability of residents of the project to use room service, concierge service, and laundry/valet service of the Ritz-Carlton Hotel. In addition, the Ritz-Carlton will bring over 300 full-time equivalent jobs to the District and provide approximately \$3.5 million in new annual tax revenues.
30. Shalom Baranes, one of the project architects accepted by the Commission as an expert, testified as to the mixed-use character of the neighborhood and the design approach of the modified PUD to reinforce this mix of uses. He noted the location of the residential portion of the project on 23rd Street, N.W. with ground floor retail and residential uses on the upper floors directly across the street from other

residential uses such as the Gibson Condominium building and adjacent to the Carriage House Condominium building. The hotel portion of the project is to be located along 22nd Street, N.W. which is a more commercial in character. This design approach is completed by the M Street frontage of the project which includes retail, health club, residential and hotel uses which are more compatible with the busy and active atmosphere of M Street. The architectural plans depict the area above and below grade for which air rights approval is requested.

31. Gary Handel, one of the project architects accepted by the Commission as an expert, testified that the vehicular access to the residential portion of the parking garage off of 23rd Street has been relocated south of the mid-block alley. The vehicular access to the commercial portion of the parking garage off of 22nd Street now includes a porte cochere to facilitate loading and unloading of hotel guests. The larger site area of the modified PUD allows the creation of a larger interior courtyard that encompasses five levels. The large landscaped area includes multi-level terraces with mass plantings along the Carriage House side, a grove of trees, and a large fountain. The terrace acts as a screen and visual buffer to the loading area that is located below the terrace on the ground level.
32. As in the previously approved PUD, the modified PUD does not meet the strict requirements of the Zoning Regulations in some categories. The first involves the roof structure setbacks along the courtyard side of the project. The project meets the required setbacks along 22nd, 23rd and M Streets. However, in order to design the residential units and provide for the impressive courtyard, the width of the roof along the courtyard side of the project is not large enough to meet the one-to-one setback requirement. Second, the number of loading berths provided is less than the total required. This is due to the project's mixture of uses, each of which has individual loading berth requirements. Based on the implementation of a truck management plan and the report of the traffic engineer, a sufficient number of loading berths exist to service the project. Third, the residential recreation space is less than the specified requirement. Even so, the project provides a significant amount of residential recreation space and contains a large health club component as well as roof top terraces. The health club and roof top terraces fulfill many of the same functions as the residential recreation space requirement.

Fourth, as to lot occupancy, the project meets the maximum 75 percent lot occupancy requirement on most of the floors with the exception of some of the lower floors which include a mixture of health club and residential uses. Fifth, the CR zone requires that ten percent of the ground floor be devoted to public space. Buildings normally meet this requirement by providing the required space near the single main public entrance to the building. The modified PUD does not meet this requirement due to the large number of public entrances along 22nd, 23rd and M Streets. There is, however, public space in front of the main entrance to the hotel.

33. In testimony at the public hearing and in a traffic analysis submitted with the application, Louis Slade, the applicant's traffic engineer accepted by the Commission as an expert, stated that the traffic impacts of the project are negligible and do not create significant adverse conditions on traffic patterns and parking demand in the area. The design of the modified project creates a circulation, loading, and access plan that is safe, fully functional and constitutes an improvement over the previous access scheme.
34. In addition, Mr. Slade discussed estimates of traffic generated by the project, based on comparable developments in the District of Columbia and other urban areas, during the a.m. and p.m. peak hours and concluded that the proposed project would generate approximately 20 more trips during the a.m. peak hour and approximately ten additional trips during the p.m. peak hour more than a matter-of-right building on the PUD site would create.
35. Stephen Fuller, one of the applicant's economic consultants accepted by the Commission as an expert, testified as to the economic benefits of job creation and an increase in the District's housing stock which will result from the modified PUD. The testimony of Mr. Fuller and his report, as well as the report of BAE, demonstrate that the housing, hotel, and retail components of the project will strengthen the District's economic position in the metropolitan economy and will have important direct and indirect impacts on the West End and District economies.
36. James Gibson, the applicant's land use expert, testified as to the goals of the District's land planners, Zoning Commission, and citizens since the 1960s concerning the development of the West End. Mr. Gibson stated that the completion of this project would create the critical mass of residential units needed to attain the vibrant, in-town community which was one of the principal goals of the

District's land planning efforts for the West End. In addition, Mr. Gibson noted that the requested FAR and height, which are necessary to create the needed margin to support this project, are permitted within the requested CR zoning.

37. Steven Sher, the applicant's land planning expert, submitted written testimony and testified that the proposed project is not inconsistent with the Comprehensive Plan land use designation of the entire site as mixed-use, medium-density commercial and high-density residential. He further testified that CR zoning exists south on M Street at the site of the Westbridge building, the height and bulk of the building is compatible with the existing and expected character of the West End area, the increased height will not be intrusive nor will it cause a significant adverse effect on any nearby properties, the provision of the condominium units is the primary amenity of this project, the increased height and FAR make the project feasible, and the proposed use of District airspace is consistent with the regulations applicable to the abutting privately owned property.
38. The District of Columbia Office of Planning (OP), by memorandum dated May 20, 1998, and by testimony at the hearing, concluded that the proposed project is not inconsistent with the Comprehensive Plan and recommended that the Zoning Commission approve the modified project and the proposed utilization of airspace. The Office of Planning stated in the memorandum: "The addition of the hotel to the mixture of uses in the approved PUD reinforces the mixed-use character of the area which includes offices, hotels, apartments, retail, and public services."
39. The District of Columbia Department of Public Works (DPW), by letter dated June 2, 1998, stated that it had reviewed the applicant's request to utilize District of Columbia airspace. Based on numerous meetings with representatives of the applicant and the receipt of comments from other District agencies and utilities, DPW supports the granting by the Zoning Commission of the applicant's request to utilize District of Columbia airspace.
40. The District of Columbia Department of Public Works (DPW), by letter dated June 3, 1998, stated that it had reviewed the applications to modify the approved PUD, amend the Zoning Map, and utilize District of Columbia airspace and recommended approval of the applications. This recommendation was based on an analysis of the number of vehicular

trips generated by the project, the expected level of service at critical intersections in the area, the sufficiency of the project's parking and loading facilities, and access and circulation to the transportation system surrounding the site as a result of the construction of the project.

41. The Carriage House Condominium, a party to the proceeding, by written submission and statement at the public hearing, supports the modified PUD. This House support is based on numerous meetings between the applicant and the Carriage House at which concerns were addressed which included security, traffic, pedestrian and vehicular access, noise, construction problems, and architectural and aesthetic coordination.
42. Barbara Kahlow, by written submission and by testimony at the public hearing, supported the approved PUD and expressed her support for the modified PUD due to its effect on revitalizing the West End neighborhood, the increased safety the project will bring to the neighborhood, and the provision of amenities to the West End neighborhood.
43. The D.C. Central Kitchen, by testimony at the public hearing, testified in support of the project due to the applicant's continuing commitment to the Care-A-Van program.
44. Richard Price, the ANC 2A02 single member district Commissioner for the area which includes the PUD site, by written submission and testimony at the public hearing, supports the modified PUD. Mr. Price also requested the applicant to consider modifying a portion of the amenities package and that contact with the West End Branch of the D.C. Public Library be made in that regard.
45. Sara Maddux, ANC 2A06 Commissioner, by testimony at the public hearing, supports the project because of its residential nature and its ability to stop residential erosion by bringing residents to the area who pay taxes, vote and contribute to the vitality of the area.
46. Terry Lynch, by written submission and testimony at the public hearing, testified in support of the modified project due to the applicant's ability to create a vibrant urban center that is people-oriented rather than office-oriented.
47. James McLeod, by written submission and testimony at the public hearing, opposes the project because of the additional height of the project, the added burden that the

project will have on traffic in the area, and the general use of the project.

48. Dorothy Miller, testifying as an individual and ANC 2A05 Commissioner, by written submission and testimony at the public hearing, opposes the project based on the effects the project will have on traffic in the area, the inadequacy of the applicant's community amenity package, the modified PUD's failure to meet the standards of the Zoning Regulations, the extension of the CR zone district to L Street, N.W., and the modification of the project after it was advertised.
49. Katherine Eckles, by testimony at the public hearing, discussed the history of the West End neighborhood and CR zone Districts.
50. Advisory Neighborhood Commission (ANC) 2A had no official position on the applications.
51. Councilmember Jack Evans, District of Columbia Councilmember from Ward 2, submitted a letter, dated June 4, 1998, in support of the project, citing the project's addition of commercial activity and additional residences along the M Street corridor connecting Georgetown and Downtown and the return of the Ritz-Carlton name to the city. In addition, the letter stated that this is the type of project the District needs in an area already devoted to mixed uses with good transit access.
52. The National Park Service (NPS) submitted a letter to the Zoning Commission, dated May 29, 1998, describing the progress which has been made between the applicant and NPS regarding the improvements to Washington Circle proffered as an amenity to the approved PUD.
53. At the close of the public hearing, the record of the case was left open for five items to be submitted by June 19, 1998. The Commission permitted the introduction of the following materials into the record; (1) the submission of a traffic report from Dorothy Miller; (2) the written testimony of Richard Price; and (3) the corrected statement, with no substantive changes, of James McLeod. The Commission requested that the applicant submit: (1) a revised courtyard landscape plan; and (2) a description of the community amenity package including responses to any proposed suggestions of Mr. Richard Price. The applicant would also have the opportunity to respond to any posthearing submissions filed. These submissions were timely filed.

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54. The Commission finds that the applicant has met the intent and purpose of the Zoning Regulations, the PUD process, the approved PUD and the Public Space Utilization Act.
55. The Commission concurs with the recommendations of OP, DPW, and other letters and submissions received into the record including the letter of the Ward 2 Councilmember, that the modified PUD, map amendment and utilization of District of Columbia airspace applications should be approved.
56. The Commission finds that the proposed residential/hotel/recreation/retail uses are appropriate for the site and consistent with the objectives of the Comprehensive Plan of the District of Columbia.
57. The Commission finds that the proposed height and FAR of the project is consistent with existing buildings in the area and with the height, FAR and uses permitted in the area and will not adversely affect residents in the area.
58. The Commission finds that the proposed height of the building will have only a minimal impact on the amount of light which surrounding buildings receive and will not adversely affect the residents of those buildings.
59. The Commission finds that the proposed utilization of District of Columbia airspace in the modified project for hotel and health club uses is consistent with the Zoning Regulations that control use and development in the CR District, the proposed zoning district for the entire PUD site.
60. The Commission finds that the large apartment component of the project is a significant project amenity. The residential apartment component of the project will be a residential condominium with grade level commercial space. The apartments will be created as a condominium complex, meaning that the residents will be permanent residents, rather than transient residents.
61. The Commission finds that the mixture of uses in the modified project have a synergistic effect that makes the project a vibrant and exciting addition to the West End neighborhood. The modified PUD provides a sufficient amenities package to the surrounding community, the residents of the proposed project, and the District as a whole.

62. The Commission finds that the project will provide significant benefits to the West End neighborhood in the form of increased pedestrian traffic and vitality in the area as well as economic benefits to the city as a whole based on increased tax revenues of approximately \$13 million per year and the creation of a significant number of jobs during the construction of the project and operation of the hotel, health club, retail and residential components of the project. These substantial benefits dwarf the project's modest additional development rights, of 20 feet in height, an increase in FAR of only 14 percent more than would be permitted as a matter of right, and an additional 37,000 square feet of gross floor area.
63. Based on the similar conclusion of DPW, the Zoning Commission finds, in response to testimony at the public hearing and a traffic report filed as a posthearing submission, that the methodology used by the applicant's traffic engineer to estimate the number of expected trips that will be created by this project and the impact that the project will have on the traffic system in the area was valid and appropriate and concurs with the analysis and recommendations of DPW and Gorove/Slade.
64. Based on the findings of DPW and the applicant's traffic engineer, the Commission finds that the provision of five loading berths and approximately 700-770 parking spaces, used in conjunction with the applicant's truck management plan is sufficient to meet the expected parking and loading demands of the project, and the project will not adversely affect traffic patterns in the area.
65. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated September 10, 1998, found that the PUD proposal would not adversely affect the federal establishment or other federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.

2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned 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 and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The proposed use of District of Columbia airspace is consistent with the Zoning Regulations applicable to the abutting privately owned property.
5. The approval of this application is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.
6. The application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community but will enhance the neighborhood and assure neighborhood stability.
7. The approval of the 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.
8. ANC 2A had no official position in this application and submitted no issues and concerns for the Commission to address.
9. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 the modification of a planned unit development, amendments to the Zoning Map of the District of Columbia to change Lots 74, 76 and 878 from C-2-C to CR and Lot 877 from R-5-E to CR and establish regulations applicable to District of Columbia airspace for property at premises 2200 M Street, N.W., Lots 74, 76, 877 and 878 in Square 51. The approval of these applications and the development of the site is subject to the following guidelines, conditions and standards:

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1. The PUD shall be developed in accordance with the plans prepared by the architectural firms of Shalom Baranes Associates and Gary Handel and Associates, marked as Exhibit 65, as modified by the guidelines, conditions and standards of this order.
2. The project shall be a mixed-use development consisting of retail use on the street level and health club use on part of the first, second and third levels. Hotel use will occur on a mezzanine and below-grade level of the project, as well as the first and third through eleventh floors with its principal frontage on 22nd Street, N.W.. The residential condominium/apartment component of the project will occupy all floors of the project with its principal frontage on 23rd Street, N.W.
3. The use of District of Columbia airspace for hotel, health club and parking uses is consistent with the Zoning Regulations for the CR District.
4. The total floor area ratio (FAR) of the project shall not exceed 6.81. The FAR of the condominium/apartment residential area and the residential space within the hotel shall not exceed 5.44 and the FAR of the recreation/retail areas and the commercial space within the hotel shall not exceed 1.37, as shown on the plans marked as Exhibit 65.
5. The height of the project shall not exceed 110 feet, as shown on the plans marked as Exhibit 65.
6. The lot occupancy of the project shall be 100 percent.
7. The project shall provide below-grade parking with approximately 700-770 parking spaces. The number of residential parking spaces shall be equal to the number of residential units provided and the remaining parking spaces shall be available for the commercial component of the project on either a stacked or self-park basis or a combination of the two. The project shall also include five loading berths as shown on the plans marked as Exhibit 65.
8. The applicant shall implement the truck management plan submitted as Exhibit L to the Statement in Support of the Application, marked as Exhibit 8.
9. Consistent with the Commission's Order No. 833, the applicant in this modification request shall be granted flexibility as follows:

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- a. To vary the location and design of all interior components of the residential, hotel and recreation/retail components of the project (including partitions, structural slabs, doors, columns, stairways, and mechanical rooms) provided that the variations do not change the exterior configuration of the building, as necessary to comply with all applicable codes or as required to obtain a final building permit.
 - b. To make minor adjustments in the facade, window and cornice detailing of the project, including, but not limited to, the flexibility to shift the location of the doors to the retail uses and vary the appearance of the retail frontage in order to accommodate different retailer demands.
 - c. To vary the species of plant materials used in any landscaping on the subject site.
10. The applicant shall provide the following community amenities, as specified by the applicant in the record, prior to the issuance of a certificate of occupancy for the project, except for sub-paragraph c), which shall be provided annually on the effective date of this order:
- a. Improvements to Washington Circle including the replacement of park benches, trash receptacles and flagstone and mortar at a cost to applicant of approximately \$686,000;
 - b. Landscaping the three D.C. owned triangular pieces of property west of Washington Circle at a cost to applicant of approximately \$25,000;
 - c. A contribution of \$25,000 per year for four years to the Care-A-Van Program for feeding the homeless for a total of \$100,000 (\$15,000 of which has already been advanced pursuant to the commitment made in the approved PUD);
 - d. A donation of \$10,000 for the clean-up of public spaces in coordination with the Foggy Bottom Association;
 - e. Improvements to the West End Public Library and the replacement of trees in the West End neighborhood north of Pennsylvania Avenue, N.W. at a cost to applicant of \$150,000; and,

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- f. Improvements to the streetscape lighting along M Street and Pennsylvania Avenue between 23rd and 26th Streets, N.W. pursuant to standards and approvals of the Department of Public Works.
11. The applicant shall be required to file condominium association documents, approved by the Condominium and Cooperative Sales Branch of the Department of Consumer and Regulatory Affairs and filed in the District of Columbia Recorder of Deeds Office, for the residential component of the modified PUD prior to the issuance of a certificate of occupancy for the residential component of the project.
12. The applicant shall amend the First Source Employment Agreement with the Department of Employment Services which was entered into pursuant to the conditions of the approved PUD, to extend those provisions to the modified PUD.
13. The applicant shall amend the Memorandum of Understanding with the Local Business Opportunity Commission (LBOC) enterprises in the development of this project, which was entered into pursuant to the conditions of the approved PUD, to extend those provisions to the modified PUD.
14. The change of zoning from C-2-C to CR for Lots 74, 76 and 878 in Square 51 and the change of zoning from R-5-E to CR for Lot 877 in Square 51 shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3.
15. No building permit shall be issued for the site until the applicant has recorded a Notice of Modification in the land records of the District of Columbia. This Notice of Modification will modify the Covenant for Zoning Commission Order No. 833 which was approved by the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA). The Covenant and the Notice of Modification shall bind the owner and all successors in title to cause all construction on and use of the subject site in accordance with this order, and any amendment thereto of the Zoning Commission.
16. After recordation of said PUD Covenant and Notice of Modification, the applicant shall immediately file a certified copy of the PUD Covenant and Notice of Modification with the Office of Zoning for the records of the Zoning Commission.
17. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the

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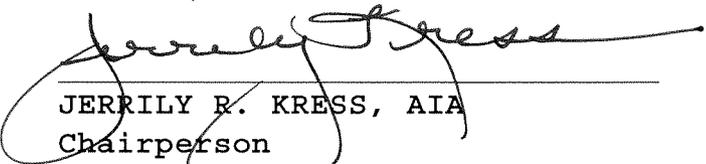
applicant has satisfied the conditions contained in paragraphs 14 and 15.

18. The modified 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 11 DCMR 2408.8 and 2409.1. Construction shall start within three years of the effective date of this order.
19. Pursuant to D.C. Code Section 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 of 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 its public meeting on July 13, 1998: 4-0 (John G. Parsons, Anthony J. Hood, Angel F. Clarens and Herbert M. Franklin to approve; Jerrily R. Kress, not voting, not having heard the case).

The order was adopted by the Zoning Commission at its public meeting on September 14, 1998: by a vote of 4-0 (John G. Parsons, Herbert M. Franklin, Angel F. Clarens and Anthony J. Hood, to approve as amended; Jerrily R. Kress, not voting, not having heard the case).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is on OCT 23 1998.



JERRILY R. KRESS, AIA
Chairperson
Zoning Commission



SHERI M. PRUITT-WILLIAMS
Interim Director
Office of Zoning