

## **AGENDA**

ANC 6A Economic Development & Zoning Committee  
Thursday December 19, 2012, 7-9:00 PM  
Sherwood Recreation Center (640 10<sup>th</sup> St, NE)  
2<sup>nd</sup> Floor Community Room

7:00 pm **Call to order**

7:01 **Community Comments**

7:05 **New Business**

1. ZC #10-19 (901 H St NE). The developer behind the H Street Connection redevelopment PUD is asking for a two year extension to the Zoning order (20 minutes)
2. BZA #18491 (1425 N. Carolina Ave NE). The owner is variance from lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404 and a variance from the nonconforming structure provisions under subsection 2001.3, to allow a rear addition to an existing one-family row dwelling in the R-4 District. (20 minutes)

8:45 **Additional Community Comment (time permitting)**

Everyone is welcome! Call Drew Ronneberg with questions at 202 431-4305.

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Visit our website at <http://www.anc6a.org/>



**BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA**



**FORM 107 - APPLICATION FOR PLANNED UNIT DEVELOPMENT (PUD) TIME EXTENSION**

Before completing this form, please review the instructions on the reverse side.  
Print or type all information unless otherwise indicated.

In accordance with the provisions of §2408.10 of Title 11 DCMR – Zoning Regulations, request is hereby made for a time extension to a previously approved PUD, details of which are as follows:

1.	Zoning Commission Order No(s):	10-03		
2.	PUD Location – Square(s):	912		
	PUD Location – Lot(s):	55		
3.	PUD Location – Address:	Square 912, Lot 55		
4.	Conditions of Approval	Zoning:	C-2-B	FAR: 5.0
	Height: 90	Parking: 405	Lot Occupancy: 70%	
5.	Description of the PUD:	The approved PUD is a mixed-use development composed of retail and residential uses.		
	The overall project will have a density of 5.0 FAR, less than the maximum permitted density of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 384 units plus or minus 10%, and approximately 51,420 square feet of retail uses.			
	The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet. A total of 405 off-street parking spaces will be provided in a below-grade parking garage, with approximately 340 spaces for the residential use and 65 spaces for the commercial use.			
6.	Length of extension requested:	2 years		
7.	Effective date of the original order:	January 14, 2011	Expiration date:	January 14, 2013
8.	No. of times extended:	0	Expiration date of last extension:	N/A
9.	Has Building Permit been applied for:	No		
10.	Explanation of "good cause" for extension pursuant to §2408.11 (see instruction 6A on the back of this form)			

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.  
(D.C. Official Code § 22 2405)

Owner's Signature:		Date:	11/30/12
Owner's Name:	Parcel Seven Associates, LLC; By: Gary D. Rappaport, its Managing Member		
Person(s) to be notified of all actions:			
Name:	Kyrus L. Freeman, Esq.		
Address:	800 17th Street, NW Suite 1100		
Zip Code:	20006	Phone No(s):	202-862-5978
		E-Mail:	kyrus.freeman@hklaw.com

**ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.**

# Holland & Knight

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KYRUS L. FREEMAN  
202-862-5978  
kyrus.freeman@hklaw.com

December 4, 2012

## **VIA HAND DELIVERY**

Zoning Commission of the  
District of Columbia  
441 4<sup>th</sup> Street, N.W.  
Suite 210-S  
Washington, DC 20001

**Re: Request for Extension of Time to File Building Permit For Consolidated Planned Unit Development at Square 912, Lot 55, Zoning Commission Order No. 10-03**

Dear Members of the Zoning Commission:

On behalf of Parcel Seven Associates, LLC (the "Applicant"), the owner of Lot 55 in Square 912, this letter serves as a request for a two-year extension of the time period in which to file a building permit for the construction of a mixed-use development composed of retail and residential uses, which was approved in Zoning Commission Order No. 10-03 ("Order No. 10-03"). This request, if approved, would require that an application for a building permit for the approved building must be filed no later than January 14, 2015, and construction must be started no later than January 14, 2016. A copy of Order No. 10-03 is attached as Exhibit A.

This request is filed pursuant to Section 2408.10 of the Zoning Regulations for good cause shown as described in this application. A completed application form and a check in the amount of \$520.00 made payable to the D.C. Treasurer for the requisite filing fee pursuant to Section 3040.5 of the Zoning Regulations are also enclosed.

## **I. INTRODUCTION**

### **A. Factual Background**

On February 25, 2010, the Applicant filed an application seeking preliminary and consolidated approval of a planned unit development ("PUD") for Lot 55 in Square 912. The property is presently zoned C-2-B and is located within the H Street Northeast Commercial Overlay District. The property has a land area of approximately 87,053 square feet, which is approximately two acres, and is located in the northeast quadrant of the District. The property is located on the south side of H Street, between 8<sup>th</sup> and 10<sup>th</sup> Streets, N.E., and is presently improved with the one-story "H Street Connection" strip retail development, which has a gross floor area of approximately 37,992 square feet.

The project will be a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 floor area ratio ("FAR"), less than the maximum permitted of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 284 units plus or minus 10% and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%. A total of 405 off-street parking spaces will be provided in a below-grade parking garage, with approximately 340 spaces for residential use and 65 spaces for commercial use.

Pursuant to Order No. 10-03, the Zoning Commission granted consolidated PUD approval for the construction of a mixed-used development composed of retail and residential uses on the property. The Order became effective upon publication in the *D.C. Register* on January 14, 2011. The Order requires the Applicant to file a building permit application for the first phase of the development no later than January 14, 2013. Construction of the first phase must begin no later than January 14, 2014. As discussed in more detail below, the Applicant is requesting a two-year time extension based upon unexpected delays beyond the Applicant's control.

#### **B. Jurisdiction of the Zoning Commission**

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods set forth in Section 2408.8 (two year requirement to file a building permit application) and Section 2408.9 (three year requirement to begin construction), provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

The sole substantive criterion for determining whether a PUD should be extended is whether there exists "good cause shown." The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following:

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;

(b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

## **II. THIS EXTENSION REQUEST WAS SERVED ON ALL PARTIES**

Other than the Applicant, the only party to this case was Advisory Neighborhood Commission 6A ("ANC 6A"). As indicated on the Proof of Service attached hereto, the Applicant has served this request for an extension of time on ANC 6A.

## **III. THERE IS GOOD CAUSE FOR EXTENSION OF THE PUD VALIDITY**

### **A. The Project Has Experienced Delay Beyond Applicant's Control**

Section 2408.11(a) authorizes the grant of an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. The Applicant has taken many steps to move forward with the development which is the subject of this application, as set forth in the Affidavit of Applicant in Support of Two-Year Extension of Time, by Gary Rappaport, Chief Executive Officer of The Rappaport Companies, and principal of Parcel Seven Associates, LLC, attached as Exhibit B. The steps taken by the Applicant include the following:

- Working diligently with various existing retailers currently in operation at the property to renegotiate their existing leases in a manner feasible to all parties that will enable development of the site. The Applicant has reached agreements with Marvelous Pizza, Ann's Nails, Dana Jewelry, Game Stop, McDonalds, and Tony Pham Pizza, and is continuing its efforts with the remaining tenants, including, for example, 7-Eleven;
- Engaged in discussions with numerous potential lenders to finance the project and brokers to market the project. For example, CBRE has provided market research that the Applicant presented to potential development partners, lenders, and private equity groups;
- Sought funding from a number of institutional lenders and capital sources indirectly through Walker & Dunlop, LLC and The Ackman-Ziff Real Estate Group, both of which have worked with the Applicant on other projects;

- Engaged in discussions with a number experienced residential developers, including William C. Smith + Co., Archstone, The Bozzuto Group, and ROSS Development & Investment, to determine their interest in partnering to develop the project; and
- Spent approximately \$890,000 in preparing the necessary plans and securing PUD approval.

Despite these substantial efforts, and as the Zoning Commission has recognized in approving recent extension requests, the real estate market has been subject to, and continues to suffer from, severe financing, construction, and leasing impediments. As set forth in the letter attached as Exhibit C, the Applicant has worked with Walker & Dunlap, LLC, one of the leading commercial real estate finance companies in the United States, with a primary focus on multi-family lending, in an attempt to secure financing for the project. As indicated in the letter, Walker & Dunlap has worked on a number of projects for The Rappaport Companies and has secured financing for a number of the company's projects. Walker & Dunlap has been involved in seeking financing for the development of the approved residential building at the property. However, due to continuing economic conditions, those efforts have been unsuccessful. Although a number of projects have been able to secure financing, the multi-family sector has continued to be sluggish and uncertain due to a number of factors, including political and economic uncertainties, depressed leasing activity, increased vacancy rates, and slow new hiring.

Thus, the approved mixed-use development cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Indeed, no segment of the real estate market has escaped the frozen credit markets, including retail and residential projects. Moreover, although a number of projects have been able to progress, development of new buildings in emerging neighborhoods in the Washington, DC area has stalled. In addition, a number of potential investors have expressed concern with the potential over-supply of the residential market given the impending delivery of hundreds of new residential units over the next 12-18 months in the same neighborhood. Nevertheless, the recovery is expected to continue, with the District among the leading markets in the country. Therefore, this request for extension satisfies the sole criterion for good cause shown as set forth in Section 2408.11(a) of the Zoning Regulations.

**B. No Substantial Changes to Approved PUD**

In addition to requiring the demonstration of "good cause," §2408.10 of the Zoning Regulations requires the following:

- (b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD ...

The extension is requested in order to enable the Applicant to continue its diligent efforts to secure the necessary project financing and tenants. Moreover, there has been no substantial change in any of the material facts upon which the Zoning Commission based its approval of the project, and the Applicant remains committed to moving forward with the project and fully complying with the conditions and obligations imposed as part of the PUD approval.

**C. No Hearing is Necessary**

Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

A hearing is not necessary for this request since there are no material factual conflicts generated concerning any of the criteria set forth in §2408.11. There is no dispute that: (1) the Applicant has been unable to secure the necessary project financing for the project at this time, and (2) there are significant impediments in the market place to proceeding with the project at this time. Thus, there cannot be any material factual conflicts generated concerning any of the criteria by which the Zoning Commission is required to consider this request.

**IV. CONCLUSION**

In light of this demonstration of good cause and for the reasons stated herein, the Applicant respectfully requests that the Commission approve a two-year extension of time to file a building permit for the first phase of the development, such that an application must be filed for a building permit no later than January 14, 2015, and construction must begin on the first phase no later than January 14, 2016. No hearing is necessary as there are no material factual issues in question.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman

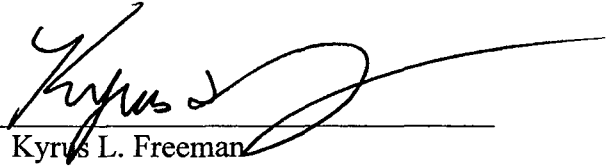
Attachments

cc: Jennifer Steingasser, Office of Planning (Via Hand Delivery; w/attachments)

**PROOF OF SERVICE**

I hereby certify that on December 4, 2012, a copy of the foregoing Applicant's Request for Extension of Time was served by first class mail on the following at the address stated below:

Advisory Neighborhood Commission 6A  
PO Box 71115  
Washington, DC 20013



Kyrus L. Freeman





Exhibit A



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 10-03**

**Z.C. Case No. 10-03**

**Parcel Seven Associates, LLC**

**(Consolidated Planned Unit Development @ Square 912, Lot 55)**

**November 8, 2010**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 19, 2010, to consider an application from Parcel Seven Associates, LLC (the "Applicant"), owner of Lot 55 in Square 912, for the consolidated review and approval of a planned unit development ("PUD") for the subject property. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearing**

1. On February 25, 2010, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD for Lot 55 in Square 912 (the "Subject Property"). The Subject Property is presently zoned C-2-B and is located within the H Street Northeast Commercial Overlay District. The Applicant is not seeking a zoning map amendment in connection with this application.
2. The Subject Property has a land area of approximately 87,053 square feet, which is approximately two acres, and is located in the northeast quadrant of the District. The Subject Property is located on the south side of H Street, between 8<sup>th</sup> and 10<sup>th</sup> Streets, N.E., and is presently improved with the one-story "H Street Connection" strip retail development, which has a gross floor area of approximately 37,992 square feet.
3. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 floor area ratio ("FAR"), less than the maximum permitted of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 384 units plus or minus 10%, and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height

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441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcozi@dc.gov](mailto:dcozi@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%.

4. The Applicant is providing a total of 405 off-street parking spaces, with approximately 340 spaces for residential use and 65 spaces for commercial use. At the request of Advisory Neighborhood Commission ("ANC") 6A and the Deputy Mayor for Planning and Economic Development, and in order to maximize available parking for retail use at the site and generally along H Street, the Applicant initially submitted alternative parking plans seeking flexibility to provide either 405 (340 residential + 65 retail) parking spaces, or 505 (340 residential + 165 retail) parking spaces in the event that the District provided a funding mechanism for the construction of the additional 100 retail parking spaces and funding for any mitigation measures deemed necessary to provide the additional 100 spaces. The Applicant's submission, dated June 30, 2010, proposes to provide 405 parking spaces.
5. At its public meeting held on April 12, 2010, the Commission voted to schedule a public hearing on the application.
6. On May 10, 2010, the Applicant submitted a Prehearing Statement. (Exhibit 18.) The Prehearing Statement included revised plan sheets showing the proposed building's setbacks and roof structures; additional information regarding the amount of proposed parking; citations to prior Commission orders finding that the construction of housing, and affordable housing, are important public benefits and amenities for the District; and additional materials required pursuant to § 3013 of the Zoning Regulations.
7. On June 30, 2010, the Applicant submitted a Supplemental Prehearing Statement and Final Architectural Plans and Elevations. (Exhibits 28 and 29.) The plans included new street views of the project, updated parking plans, enlarged partial elevations showing details of materials, an updated sheet showing the ground floor set-backs, an alley view from 8<sup>th</sup> Street, N.E., and an updated roof plan. As noted above, the Applicant also withdrew its initial request for parking flexibility.
8. After proper notice, the Commission held a public hearing on the application on July 19, 2010.
9. The parties to the case were the Applicant and ANC 6A (the ANC within which the Subject Property is located).
10. Five principal witnesses testified on behalf of the Applicant at the public hearing, including Gary D. Rappaport, on behalf of Parcel Seven Associates, LLC; Sarah Alexander, on behalf of Torti Gallas Partners, as an expert in architecture and design; Erwin N. Andres, on behalf of Gorove/Slade Associates, Inc., as an expert in

transportation planning and analysis; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Ms. Alexander, Mr. Andres, and Mr. Sher were qualified by the Commission as experts in their respective fields.

11. The Office of Planning ("OP") and the District Department of Transportation ("DDOT") testified in support of the project at the public hearing.
12. At the hearing, the Applicant submitted updated plan sheets which included a revised garage entry which revised the two curb cuts providing access on 8<sup>th</sup> Street in response to DDOT's report; a copy of the Applicant's PowerPoint presentation; and a copy of the report prepared by the Applicant's expert in land use and zoning. (Exhibits 36-38.)
13. ANC 6A submitted a letter in support of the application. (Exhibit 14.) ANC 6A's letter of support indicated that at a duly noticed public meeting on March 11, 2010, at which notice was properly given and a quorum was present, ANC 6A voted unanimously to support the application and proposed development. ANC 6A indicated that for the last two years, ANC 6A has worked closely with the Applicant to shape the building's massing and design to fit into the historic fabric of H Street N.E., while meeting the need for enough retail and residential density to make the development feasible. ANC 6A also noted that the Applicant has agreed to implement substantial measures to reduce traffic congestion, promote alternative transportation options, and reduce parking pressures on the surrounding residential area, resulting in a "win-win solution" for the community and the Applicant. ANC 6A also indicated that this development will accelerate the development of H Street as a vibrant retail corridor as outlined in the H Street NE Strategic Development Plan. The ANC concluded by requesting that the Commission view this project and the collaborative community process undertaken in this case as a model for future PUD proposals across the city.
14. ANC 6A submitted an additional letter, dated July 12, 2010, indicating that at a regularly scheduled and properly noticed meeting on July 8, 2010, ANC 6A voted 5-2-1 to support the inclusion of 100 additional city-owned parking spaces as part of the PUD for the H Street Connection redevelopment, and ANC 6A urged the Commission to grant the Applicant flexibility to include these additional parking spaces if the District secures the necessary financing. (Exhibit 33.)
15. Two further correspondences from the ANC were received that will be discussed in the portion of this order that concerns post-hearing submissions.
16. ANC 6C also submitted a letter in support of the application. (Exhibit 13.) ANC 6C's letter of support indicated that at a duly noticed public meeting on February 11, 2009, at

which notice was properly given and a quorum was present, ANC 6C voted unanimously to support the proposed development.

17. Councilmember Tommy Wells also submitted a letter dated July 19, 2010, in support of the project. (Exhibit 35.) Councilmember Wells indicated that the project is an important step in developing the H Street corridor and will provide numerous benefits to the District, including a number of public space improvements; accommodating all service and loading needs within the building; inclusion of a number of important sustainable design features; and the provision of housing and affordable housing, with eight percent of the gross residential floor area being devoted to affordable units, amounting to approximately 30-33 units. Councilmember Wells concluded by indicating that he looks forward to the Commission's approval of this project, and he requested that such approval be processed as expeditiously as possible.
18. Anwar Saleem, Executive Director of H Street Main Street, Inc, testified in support of the application and submitted his written testimony. (Exhibit 42.) Mr. Saleem testified that his organization supports the proposed development since it will provide new jobs, much needed employment, and a strong amenities package. Mr. Saleem also indicated that the design of the project will encourage other property owners to upgrade their storefronts and will complement the existing historic storefronts. Mr. Saleem requested that the Commission approve 100 additional parking spaces on the Subject Property if the District provides a funding mechanism for the additional spaces.
19. Three individuals testified in support of the application at the public hearing, including: Phil Toomajian, who resides at 631 10th Street, N.E.; Margaret Holwill, who resides at 145 11th Street, N.E.; and Jen DeMayo, who resides at 11<sup>th</sup> and G Streets, N.E., and works for the Atlas Performing Arts Center located at 1333 H Street, N.E. Each individual requested that the Commission approve the project, and also requested that the Commission include in its approval flexibility for 100 additional parking spaces to be located on the Subject Property to support parking along the corridor if additional financing is provided to support the additional spaces.
20. Randall and Gretchen Brandt (the "Brandts"), who reside at 719 8<sup>th</sup> Street, N.E., which is located to the immediate southwest of the Subject Property, submitted an untimely Request for Party Status to participate in opposition to the application. (Exhibit 31.) At the public hearing, the Commission informed the Brandts that they could appear and participate at the hearing and express their concerns regarding the project as persons in opposition. Thereafter, the Commission voted to deny the Request for Party Status.
21. At its public meeting held on September 27, 2010, the Commission took proposed action to approve the application and plans, but requested additional information that will be discussed later in this Order.

22. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on September 28, 2010, under the terms of the District of Columbia Home Rule Act. (Exhibit 48.) NCPC, by action dated September, 30 2010, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 53.)
23. As will be described in greater detail later in this Order, the Commission took final action to approve the application on November 8, 2010 after reviewing the submissions it requested and resolving the remaining issues before it.

#### **The PUD Project**

24. The Subject Property is situated in Ward 6 and consists of Lot 55 in Square 912. The Subject Property has a land area of approximately 87,053 square feet. The Subject Property is presently zoned C-2-B and is located within the H Street Northeast Commercial Overlay District.
25. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 FAR, less than the maximum permitted density of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 384 units plus or minus 10%, and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%. A total of 405 off-street parking spaces will be provided in a below-grade parking garage, with approximately 340 spaces for the residential use and 65 spaces for the commercial use.

#### **Development Under Existing Zoning**

26. The Subject Property is currently zoned HS/C-2-B. The Applicant is not seeking a zoning map amendment in connection with this application. The C-2-B Zone District is designed to serve commercial and residential functions, with residential and mixed uses. (11 DCMR §720.8.) The C-2-B Zone Districts are compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) Buildings may be entirely residential or a mixture of residential and commercial uses in the C-2-B Zone District. (11 DCMR § 720.8.) The C-2-B Zone District includes the following development requirements:
  - A maximum matter-of-right height of 65 feet with no limit on the number of stories (§ 770.1), and a maximum height of 90 feet under the PUD requirements (§ 2405.1);



- A maximum matter-of-right density of 3.5 FAR, and 4.2 FAR utilizing the Inclusionary Zoning bonus, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses (§ 771.2), and a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 FAR of which may be devoted to non-residential uses under the PUD requirements (§ 2405.2);
  - A maximum lot occupancy of 80% (§ 772.1);
  - A minimum rear yard depth of 15 feet (§ 774.1);
  - If provided, a side yard at least two inches wide per foot of building height, but not less than six feet (§ 775.5);
  - If provided, a minimum court width of four inches per foot of height, but not less than 15 feet (§ 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (§ 776.4);
  - For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 750 square feet of gross floor area and cellar floor area (§ 2101.1);
  - For an apartment house or multiple dwelling with 50 or more units, one off-street parking space for each three dwelling units (§ 2101.1);
  - For a retail establishment with 30,000 to 100,000 square feet of gross floor area, one loading berth at 30 feet deep, one loading berth at 55 feet deep, one loading platform at 100 square feet, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (§ 2201.1); and
  - For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. (§ 2201.1.)
27. The Subject Property is located in the Retail-Sub-District (HS-R) of the H Street Northeast Commercial Overlay District. (§ 1320.1(b).) The H Street Northeast Commercial Overlay District includes the following development requirements:
- Buildings must be designed and built so that not less than 75% of the streetwall(s) to a height of not less than 25 feet shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots must be constructed to both property lines abutting public streets (§ 1324.2);

- New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses (§1324.3);
- In C-2 Zone Districts within the HS Overlay District, a 70% residential lot occupancy is permitted (§ 1324.4);
- For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin (§ 1324.5);
- For the purposes of § 1324.5, "residential uses" include single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities (§ 1324.6);
- Parking structures with frontage on H Street, N.E. must provide not less than 65% of the ground level frontage as commercial space (§ 1324.7);
- Each new building on a lot that fronts on H Street, N.E. must devote not less than 50% of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building (§ 1324.8);
- Security grilles must have no less than 70% transparency (§ 1324.9);
- Each commercial use with frontage on H Street, N.E. must have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings must have at least one primary entrance on H Street directly accessible from the sidewalk (§ 1324.10);
- Buildings must be designed so as not to preclude an entrance every 40 feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby (§ 1324.11);
- The ground-floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of 14 feet (§ 1324.12);
- Buildings subject to § 1324.12 shall be permitted an additional five feet of building height over that permitted in the underlying zone (§ 1324.13);

- Projection signs shall have a minimum clearance of eight feet above a sidewalk and 14 feet above a driveway, project no more than three feet, six inches from the face of the building, and end a minimum of one foot behind the curblineline or extension of the curblineline (§ 1324.14);
- Façade panel signs cannot be placed so as to interrupt windows or doors and shall project no more than 12 inches from the face of the building (§ 1324.15); and
- Roof signs are prohibited. (§ 1324.16.)

#### **Development Incentives and Flexibility**

28. The Applicant requested the following areas of flexibility from the Zoning Regulations:

- Flexibility from Streetwall Requirements.* Section 1324.2 of the Zoning Regulations provides that buildings in the HS Overlay District must be designed and built such that not less than 75% of the streetwall(s) to a height of not less than 25 feet must be constructed to the property line abutting the street right-of-way, and that buildings on corner lots must be constructed to both property lines abutting public streets. The site has approximately 570 linear feet of frontage on H Street, and thus approximately 427 linear feet of the proposed streetwall is required to be constructed to the property line. However, only approximately 140 feet, or 25%, of the H Street frontage will be constructed to the property line. The Commission finds that nearly 304 feet, or 53%, of frontage along H Street will be constructed to within one-to-two feet of the property line, and the building will extend for the entire length of the square to 8<sup>th</sup> and 10<sup>th</sup> Streets. The Commission further finds that the Applicant has designed the building to include setbacks along H and 8<sup>th</sup> Streets in order to provide vertical articulation and the appropriate massing along H Street, given the size of the site, and to create a more pedestrian-friendly environment at the corner of 8<sup>th</sup> and H Streets, which is a major bus stop area with a fairly narrow sidewalk width on H Street, N.E. Therefore, the Commission finds that flexibility from the streetwall requirement of § 1324.2 of the Zoning Regulations is appropriate in this case.
- Flexibility from Roof Structure Requirements.* The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because there will be multiple roof structures (§§ 411.3 and 770.6(a)), and the roof structure containing the elevator tower cannot be set back from all exterior walls a distance equal its height above the roof (§§ 411.2 and 770.6(b)). The Commission finds that each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof.

Moreover, each roof structure meets the setback requirement from all street frontages and flexibility is requested only from the wall of the court in the center of the building. The location and number of mechanical units on the roof is driven by the layout and design of the residential units within the building. In addition, the Applicant is providing the greatest setbacks possible given the size of the roofs and the internal configuration of the proposed buildings. In addition, all of the penthouses have similar horizontal banding and detailing which allows them to both respect the design of the elevation in which they are located above as well as each other. The three larger penthouses in the center of the block are all the same blond brick to further unify these structures. The two end penthouses (far east and west) are the same color as the elevation below them so that they look appropriate for the rare instance they can be seen from the ground. Brick detailing and metal louvers add further architectural interest to the penthouse design. The Commission further finds that the requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

- c. *Phasing of Building.* The Applicant is seeking flexibility to construct the proposed building in either one or two phases, in order to respond to market conditions. If the building were to be phased, the first phase would include the western portion of the building and the second phase would include the eastern portion of the building.
- d. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
  - (1) To be able to provide a range in the number of residential units of plus or minus 10% from the 384 depicted on the plans;
  - (2) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - (3) To vary the garage layout and the number, location, and arrangement of the parking spaces, provided that the total number of parking spaces is not reduced below the minimum level required. This includes the flexibility to add an additional 100 commercial parking spaces within the building, should the District meet the Applicant's requirement that the District identify an acceptable funding mechanism; and

- (4) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

**Public Benefits and Amenities**

29. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

- a. *Urban Design, Architecture, Landscaping, and Open Space.* The building's H Street façade has been carefully designed and articulated to be consistent with the character and fabric of the H Street corridor. The façade of the building abutting H Street contains two distinct pieces – a lower and well-articulated portion immediately on the street and a taller mass of varying heights recessed back from the street approximately 20 feet. The H Street façade is divided into seven distinct pieces, each with its own massing, façade character, and material colors. The rhythms, window patterns, and storefront character of these facades are all different, reinforcing the notion of these as separate entities. The portion of the building at the corner of 8<sup>th</sup> and H Street has a distinctive curve and is articulated with a more modern vocabulary. Moreover, with respect to site planning and efficient and economical land utilization, the Applicant's proposal to replace the existing surface parking on the site with a new building constructed to the property line constitutes a significant benefit. The project will also help to implement the design guidelines of the *H Street NE Strategic Development Plan* and bring more activity to H Street, and the Applicant's design provides opportunities for additional outdoor seating areas along H Street, N.E.
- b. *Transportation Features.* During operation of the building, the Applicant will implement the following On-Site Vehicle Parking Measures and Transportation Demand Management Measures:
  - (1) Off-street parking spaces accessory to the residential uses shall be leased or sold separately from the rental or purchase fees;
  - (2) Each residential lease and purchase agreement shall contain a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit Program;

- (3) Providing one on-site parking space dedicated for a car-sharing service for so long as such services are reasonably and practically available to the public;
  - (4) Providing at least five designated guest parking spaces in the retail portion of the garage during any three-hour period on weekdays. The Applicant shall have the right to charge a fee for use of these spaces;
  - (5) Locating any garage ticketing kiosks for the parking garage at the base of the entry ramp, and providing a reversible middle retail parking entrance lane that can be used to implement a second ticket kiosk entrance as needed;
  - (6) Providing links to goDCgo.com and CommuterConnections.com on its developer and property management websites;
  - (7) Providing a \$20 SmarTrip card to all initial building residents upon move-in, and a one-time \$30 SmarTrip card for each initial employee of the retail businesses. This total commitment will be capped at \$15,000;
  - (8) Providing a one-time, one-year car-share membership (which shall include the cost for any application fees) for the initial occupant(s) of each residential unit, capped at a total commitment of \$19,000;
  - (9) Providing a carpool and mass transit coordinator and participation in the Guaranteed Ride Home Program;
  - (10) Providing 25 bike parking spaces for retail visitors and 50 bike parking spaces for use by residents in the parking garage;
  - (11) The Applicant will fund the development of a bike-sharing station at a cost not to exceed \$45,000, with the location of such bike-sharing station to be determined by DDOT; and
  - (12) The project will include showers and changing areas in the building for employees who wish to bike to work, as reflected on the Plans.
- c. *First Source Employment Agreement.* The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. Execution and implementation of this agreement will help to expand employment

opportunities for residents of the District in connection with construction of the project.

- d. *Historic Preservation.* At the request of representatives of the ANC, the Applicant has agreed to support any future application filed by the ANC for the designation of appropriate sites along the H Street corridor within a historic district.
- e. *Housing and Affordable Housing.* The single greatest benefit to the area, and the District as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The proposed PUD will contain approximately 380,560 square feet of gross floor area dedicated to residential uses.
- f. *Environmental Benefits.* The Applicant will therefore submit with its building permit application a LEED checklist indicating that the project includes sustainable design features such that the building would be able to meet the standards for certification as a LEED-Silver building, although the Applicant is not required to seek LEED-Silver certification for the building.
- g. *Additional Benefits and Amenities.* In working with the community and the District, the Applicant believes that the following items are additional important project amenities:
  - The provision of ground floor, neighborhood-serving retail space;
  - The provision of a substantial set back at the corner of 8<sup>th</sup> and H Streets, and the inclusion of materials upgrades on public and private space at a cost of approximately \$250,000;
  - The provision of space for a potential arts display to be coordinated with the D.C. Commission on the Arts and Humanities;
  - An agreement to auger the soldier beams instead of pile driving the beams at a cost of \$125,000 to \$185,000 subject to site conditions; and
  - Agreement to participate in a clean-and-safe program for H Street if one is created by the District.

**Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006  
(D.C. Law 16-300, effective March 8, 2007)**

30. The District of Columbia Comprehensive Plan Future Land Use Map designates the Subject Property in the mixed-use, medium-density residential and medium-density commercial land use category. The medium-density residential designation is used to define neighborhoods or areas where mid-rise apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The medium-density residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. (The R-5-B and R-5-C Zone Districts are generally consistent with the Medium Density designation, although other Zones may apply.) The medium-density commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate-density commercial areas but generally do not exceed eight stories in height. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply.
31. The Commission finds that the Applicant's proposal to construct a mixed-used development that includes residential and retail uses on the Subject Property is consistent with the Future Land Use Map's designation of the Subject Property. The Subject Property is located within the H Street Overlay, and is presently zoned C-2-B. The Applicant is not requesting any amendments to the existing zoning classification.
32. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:
  - a. *Managing Growth and Change.* The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The project is fully consistent with a number of the goals set forth in this element. Specifically, the project will help to attract a diverse population with the inclusion of a mix of housing types for households of different incomes. (§§ 217.2 and 217.3.) The Applicant's proposal to develop a significant amount of residential and retail use is also consistent with the Comprehensive Plan's acknowledgement that the growth of both residential and non-residential uses is critical, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§ 217.4.) In addition, the proposed development also helps connect the Subject Property to the rest of the neighborhood and the overall



urban fabric by developing a mixed-use development on H Street, N.E. (§§ 217.5 and 217.6.)

- b. *Creating Successful Neighborhoods.* The guiding principles for creating successful neighborhoods include both improving the residential character of neighborhoods and encouraging commercial uses that contribute to the neighborhood's character and make communities more livable. (§§ 218.1 and 218.2.) In addition, the production of new affordable housing is essential to the success of neighborhoods. (§ 218.3) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 218.8.) The proposed development furthers each of these guiding principles with the construction of market-rate and affordable housing, as well as commercial uses that will create additional housing, retail, and employment opportunities. In addition, as part of the PUD process, the Applicant has worked with the ANC and local community groups to ensure that the development provides a positive impact to the immediate neighborhood.
- c. *Increasing Access to Education and Employment.* The Increasing Access to Education and Employment element includes a number of policy goals focused on increasing economic activity in the District, including increasing access to jobs by District residents (§ 219.1); encouraging a broad spectrum of private and public growth (§ 219.2); supporting land development policies that create job opportunities for District residents with varied job skills (§ 219.6); and increasing the amount of shopping and services for many District neighborhoods. (§ 219.9.) The project is fully consistent with these goals since the proposed retail area will help to attract new jobs to the District, as well as to this specific neighborhood.
- d. *Connecting the City.* The proposed development will help to implement a number of the guiding principles of this element. The project includes streetscape improvements to provide improved mobility and circulation through the project, as well as the overall neighborhood. (§ 220.2.) In addition, the access points for the required parking and loading facilities have been designed to appropriately balance the needs of pedestrians, bicyclists, transit users, autos, and delivery trucks as well as the needs of residents and others to move around and through the city. Moreover, the proposed redevelopment and streetscape improvements along H Street will also help to reinforce and improve one of the "great streets" of the city. (§ 220.3.)
- e. *Building Green and Healthy Communities.* The proposed development is fully consistent with the guiding principles of the building green and healthy communities element since the project's proposed landscaping plan will help to

increase the District's tree cover, and the proposed development will minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§§ 221.2 and 221.3.) In addition, the project, which includes LEED elements, will also help to facilitate pedestrian and bicycle travel. The existing site consists of significant areas of surface parking immediately adjacent to H Street, the removal of which will be of significant benefit from an urban design and environmental standpoint.

33. The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the report and testimony of the Applicant's land use and zoning expert and the OP report.

#### **OP Report**

34. By report dated April 2, 2010, OP stated that it supports the application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Exhibit 15.)
35. By report dated July 9, 2010, OP recommended final approval of the application. (Exhibit 32.) OP stated that redevelopment of the site would provide additional residential and retail uses, which would highlight the on-going revival of the H Street corridor. OP also reported that the Applicant has integrated recommendations in the design and architecture of the proposal for an improved building, which conforms to the H Street Overlay provisions, anticipates the advent of the H Street streetcar line, and would improve pedestrian activity along the H Street frontage. The façade and architectural details of the mixed-use building is a result of extensive staff and community input. OP found that the proposal is not inconsistent with the 2006 Comprehensive Plan Future Land Use and Generalized Policy maps, and furthers many important policies for the Capitol Hill Area. OP also found that the Applicant's requests for minor relief from two zoning requirements and flexibility to construct the development in two phases based on market considerations should be granted as proposed.

#### **DDOT Report**

36. DDOT submitted a memorandum dated July 15, 2010, indicating that DDOT is supportive of the Applicant's choice of land uses, elements of urban design incorporated into the public space, and the high quality level of design utilized in the project. (Exhibit 34.) However, DDOT noted some potential concerns regarding possible increased traffic delays, potential increased bus delays, and the size of the curb cut initially proposed on 8<sup>th</sup> Street, N.E.

37. At the public hearing on July 19, 2010, DDOT testified that it supports this project. DDOT indicated that its initial report highlighted some of DDOT's concerns, but that DDOT subsequently met with the Applicant to resolve the concerns raised in DDOT's report. DDOT also testified that the application has many merits including creating a highly walkable environment, having very active uses on the ground floor which will increase interest in walking and pedestrian safety, and the inclusion of bicycle facilities. DDOT concluded its testimony by reiterating that DDOT fully supports the project as presented at the public hearing and recognized the development team for accommodating DDOT's requests to address the curb cut concerns and the circulation at 8<sup>th</sup> and H Streets. (Public Hearing Transcript, pp. 125-128.)

**Persons in Opposition**

38. The Brandts testified that their property has been damaged on several occasions by trucks servicing the current H Street Connection property. In addition, the Brandts indicated that the proposed eight-story building is inconsistent with the H Street master plan, is inconsistent with the scale of existing homes on 8<sup>th</sup> and 10<sup>th</sup> Streets, and is too close to their home. The Brandts also opposed the project based upon the anticipated amount of traffic that would impact 8<sup>th</sup> and 10<sup>th</sup> Streets, particularly the intersection of 8<sup>th</sup> and H Streets. The Brandts requested that the garage entrance be located on H Street, N.E. The Brandts also opposed the inclusion of 100 additional parking spaces to be provided if funded by the District.
39. At the conclusion of its public hearing, the Commission asked the Applicant for additional information concerning the project, and requested that the Applicant consider making further adjustments to limit the potential adverse impacts of the project on the Brandt's property, specifically asking the project architect to consider themselves to be the owner of that home.
40. Although not a party, the Brandts were permitted, without objection by the Applicant, to respond to any proposed solutions to their concerns.

**Post Hearing Submissions**

41. On September 3, 2010, the Applicant submitted a post-hearing submission. (Exhibit 45.) The post-hearing submission included perspectives showing the revised façade of the building in relation to the row dwellings on 8<sup>th</sup> Street; additional information and a proposed condition regarding the phasing of the project; additional information regarding the Applicant's proposed amenities package; and an updated design for the roof structures; and a revised trellis at the corner of 10<sup>th</sup> and H Streets.

42. The Applicant included with its post-hearing submission a number of solutions to address the concerns raised by the Brandts. The first proposed solution, identified as "Option 1," includes a revised garage layout to include a separate parking garage entrance and a separate exit for the retail patrons in Phase I of the development. This would result in a one-way circulation pattern and the garage entry ramp has been significantly narrowed. The garage entrance is located in the same place as presented during the public hearing. However, the exit ramp has been located at approximately the mid-point of the building, and would connect to the service drive east of the Brandts' house, across from a parking lot to the south of the subject property. In addition, Option 1 includes installing a five-foot green buffer adjacent to the Brandts' home, installing a six-inch curb at the edge of the green buffer, and installing four bollards along the curb of the proposed green buffer. The proposed bollards will be concrete-filled, with steel pipes, and will have a six-inch diameter and measure three feet, six inches in height. The bollards will be spaced evenly apart along the property line adjacent to the buffer. Moreover, the overall distance between the building's southern façade to the property line adjacent to the Brandts' home has been increased from 22 feet to 25 feet. Option 1 also improves truck turn movements by increasing the existing curb cut width to 24 feet and increasing the curb-to-curb distance in the private alley from the existing 15'-2" to 18'-6". These changes result in significant improvements to truck turn movements into the private alley as shown on the insert prepared by Gorove/Slade Associates, Inc. and included on Sheet A07.
43. The Applicant also submitted an alternative plan, identified as "Option 2," which provides for a retail/residential entrance accessed from a 10-foot entrance directly off 8<sup>th</sup> Street, N.E., and a separate entrance for service trucks accessed from an 18'-6" entrance. Both of these entrances would be accessed from 8<sup>th</sup> Street, N.E. The entrances will be separated by a six-foot safety island which will be flush to the sidewalk. A curb cut having an overall width of 34'-6" would be necessary to accommodate the separate entrances, while also providing adequate space to allow for truck turn movements into the private alley. Option 2 also improves truck turn movements into the private alley, as compared to the existing condition. Option 2 also maintains the proposed separate entrance and exit for the retail parking ramp. In addition, this option includes creating the same five-foot green buffer adjacent to the Brandts' home, installing a six-inch curb at the edge of the green buffer, and installing four bollards along the curb of the proposed green buffer. Option 2 also increases the distance between the building's southern façade to the property line adjacent to the Brandts' home from 22 feet to 25 feet, and increases the existing curb-to-curb distance in the private alley from the existing 15'-2" to 18'-6". The Applicant requested that the Commission approve either or both Options.
44. On September 8, 2010, the Brandts filed a response expressing their support for what they characterized as "Option #3," which would have all vehicular ingress and occur off the south side of H Street. (Exhibit 46.) The Brandts further indicated that Option 2 is

“significantly better than” Option 1 and that they could support Option 2 if “Option #3 were not a significantly better alternative and current practice for the Commercial site.”

45. By letter dated September 9, 2010, ANC Commissioner Drew Ronneberg indicated that at a regularly scheduled and properly noticed meeting held that same day, ANC 6A voted to support either Option 1 or Option 2. (Exhibit 47.) The ANC further reiterated its support for the proposed design of the penthouse structures and the proposed amenities package, which the ANC viewed as substantial.

**Proposed Action**

46. During its deliberations on proposed action, the Commission indicated their support for allowing the Applicant to proceed with either Option 1 or Option 2.
47. The Commission then turned its attention to the following three areas of concern:
- Whether anything further could be done to reduce potential impacts on adjacent residential properties;
  - Whether the amenities package justified the zoning flexibility sought, particularly in view of the fact that the affordable housing being proffered was no more than that required by Chapter 26 of the Zoning Regulations; and
  - Whether, both ingress and egress to the retail uses could be constructed further down the alley, since the Applicant has demonstrated that an entrance ramp within the alley was feasible.
48. The Commission requested that the Applicant address the three issues and later, by letter dated October 4, 2007 (Exhibit 51), asked the Applicant to submit an alternative roof structure design that better unifies the roof structures and to also explain why it is necessary to have two elevator banks that extend to the roof. The ANC was sent a copy of the letter.
49. The Applicant provided its responses in a letter dated October 19, 2010 and the attachments thereto. (Exhibit 55.)
50. As to the first issue of protecting adjacent properties, the Applicant offered to install in place of the bollards a cast-in-place, concrete planter with brick facing on the exposed walls of the planter. The walls will measure approximately three feet, six inches in height, and will have an overall width of approximately five feet as measured from the property line to a six-inch curb to be installed. The north side of the wall adjacent to the private alley will measure approximately one foot wide, and the south side of the wall adjacent to the neighboring property line will measure approximately eight inches wide.

51. As to having both the ingress and egress to the garage from the private alley in the middle of the site, the Applicant indicates that it considered this scenario, but did not think it was the best solution principally because it would not decrease the number of trips in the private alley, but might in fact increase them due to cars traveling past the loading area.
52. In terms of the amenities proposed, the Applicant noted that the public benefits offered were the result of years of negotiation with the affected ANC. The Applicant indicated that the affected ANC and Councilmember Wells both viewed the project as being critically important to the development of the area and submitted a letter from the Office of the Deputy Mayor for Planning and Economic Development detailing the positive financial impact that will result from the project
53. In addition, the Applicant asserted that new housing of any kind is one of the public benefits recognized in the PUD regulation and asserted that a decision to develop housing in place of commercial uses has been recognized as a particular form of public benefit. Although the affordable housing being offered is no greater than that required by the Zoning Regulations, the Applicant cited a recent Commission order that recognized the provision of required housing as a public benefit. Lastly, the Applicant suggested that the level of public benefits offered by the project are comparable to those found sufficient in previously approved PUDs.
54. The Applicant's submission included a redesign of the roof top structures. Brick piers with masonry caps form an arcade which joins the individually enclosed roof structures into one unified structure. As to the elevator banks, the Applicant contended that two banks were essential to the project to allow accessible access to the roof terrace for each phase and potential separate financing of the project.
55. By letter dated October 25, 2010, ANC 6A Commissioner Ronneberg indicated that he reviewed the Applicant's submission, indicated that the Community eagerly anticipated development on the site, and urged the Commission to approve the revised application. (Exhibit 56.)

#### **Disposition of Remaining Issues**

56. At its regularly scheduled public meeting held November 8, 2010, the Commission accepted into the record a consolidated set of plans, and took final action to approve the Application after making the following determinations. (Exhibit 58.)
57. The Applicant may either install the bollards or the concrete planter with brick facing in the private alley. However, because of the possibility of drainage problems with the planter, the Commission would want the Applicant to obtain the support of the Brandts to proceed with that option.

58. The proffer of affordable housing is not a public benefit because it does no more than meet the minimum required under Chapter 26 of Title 11, Inclusionary Zoning ("IZ"). The one instance cited by the Applicant in which the Commission found a benefit in this circumstance involved a map amendment from CM-1 to C-2-B. Since CM properties are not subject to IZ, but C-2-B properties are, the map amendment resulted in a net increase in affordable housing in the District. That is not the case here.
59. Notwithstanding the unexceptional amenities package being offered, the Commission nevertheless concludes that the development incentives being granted are warranted in view of the benefits flowing from the project itself. The Applicant's October 19<sup>th</sup> submission, together with the supporting letters from the ANC, Councilmember Wells, and the Office of the Deputy Mayor for Planning and Economic Development, amply demonstrate the significance of this project to its neighborhood. The Applicant will be building a project on an underutilized site that is currently without housing or fronting retail. If built, the project will go a long way towards the revitalization of H Street and bring the east side and west sides of H Street together.
60. The Commission agrees with the Applicant that mid-alley vehicular access to the retail uses is not achievable for the reasons stated in the submission.
61. The Applicant's explanation of the need for two elevator banks is reasonable.
62. The redesign of the roof tops structures achieved the unified characteristic sought by the Commission.

#### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The project will not result in any adverse traffic impacts. Based upon the February, 2010 Traffic Impact Study ("TIS"), prepared by Gorove Slade and included in the initial PUD submission, the testimony of the Applicant's expert in transportation analysis and planning, and DDOT's testimony at the public hearing, the Commission finds that once the project is built-out, the surrounding intersections studied by the Applicant and DDOT would continue to operate at levels similar to existing conditions, and that the stop-controlled intersections would not experience any change in level of service or delay. Thus, the project will not result in any fundamental changes to travel demand at the intersection of 8<sup>th</sup> Street and H Street, N.E. The Commission further notes that the proposed project would have less of an impact on the roadway network than a matter-of-right project.
8. The site is currently zoned C-2-B and has a land area of approximately 87,053 square feet. Thus, the site could be developed as a matter of right to include 130,579 square feet of gross floor area devoted to office and/or retail use, plus 235,043 square feet of residential gross floor area. However, given that the project only includes 51,420 square feet of retail square footage, the amount of commercial or office traffic that would otherwise be generated is substantially reduced. Indeed, as described in more detail on pages 36-37 of the TIS, a matter-of-right development on the site would have an overall greater impact on the area roadway network as compared to the proposed project, particularly at the H Street/8<sup>th</sup> Street intersection in terms of trip generation and average delay.
9. The Applicant's redesign of the private alley to create a one-way traffic circulation results in significant improvements to truck turn movements into the private alley and the five foot green buffer with either bollards or a planter will protect the Brandts' property to the maximum extent possible.



10. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
11. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Subject Property 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.
12. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2006 Repl.) to give great weight to the affected ANC's recommendation. In this case, ANC 6A and 6C voted unanimously to support the project and recommended that the Commission approve the application. (Exhibits 13 and 33.) The Commission has given ANC 6A's and 6C's recommendations great weight in approving this application.
13. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the consolidated review and approval of a planned unit development ("PUD") for Lot 55 in Square 912 subject to the following guidelines, conditions and standards: For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text.

#### **A. PROJECT DEVELOPMENT**

1. The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners, Inc., dated November 8, 2010, marked as Exhibit 58 in the record (the "Approved Plans") and as further modified by the guidelines, conditions, and standards herein.

2. The PUD shall have a maximum density of 5.0 FAR and a gross floor area of 435,265 square feet.
3. The maximum height of the building shall be 90 feet.
4. The project shall include 405 striped off-street parking spaces in the garage with the Applicant having the flexibility to reduce the ratio of residential parking spaces to 0.7 per residential unit, subject to the flexibility granted pursuant to Condition No. 13c.
5. The Applicant is granted flexibility from the streetwall (§ 1324.2), and roof structure number and setback requirements (§§ 411 and 770), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicant is granted the flexibility to proceed with:
  - a. Either Option 1 or Option 2 for the ground floor of the building as shown on the Approved Plans; and
  - b. Either with the installation of bollards or a cast-in-place, concrete planter within five-foot green buffer in the private alley as also shown on the Approved Plans.
7. If the project is developed in phases, the Applicant will landscape and maintain any space not otherwise improved with buildings, access points, hardscape, other structures, or the private alley.
8. The plans included with the building permit application for the project shall include the retail space as shown on the Approved Plans.
9. The plans included with the building permit application for the project shall include a set back at the corner of 8<sup>th</sup> and H Streets and the building materials as specified on the Approved Plans, which materials as specified on the plans amount to an additional cost of between \$200,000 and \$250,000 over the materials specified in the H Street construction materials plan issued by DDOT.
10. The plans included with the building permit for the application shall show that any proposed soldier beams are being augered, and not pile driven.

11. The plans included with the building permit application shall show the installation of security cameras connected to the rear of the building and capable of viewing the private alley area.
12. The plans included with any application for a demolition permit shall include a pest control plan.
13. The Applicant shall also have flexibility with the design of the PUD in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10% from the 384 depicted on the plans;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - c. To vary the garage layout, the number, location, and arrangement of the parking spaces, and the distribution of spaces between the phases, provided that the total number of parking spaces is not reduced below the minimum level required by Condition 4. The Applicant shall have the flexibility to add an additional 100 commercial parking spaces within the building, it being understood that the Applicant has stated for the record that it will not construct the additional spaces unless the District of Columbia and the Applicant agree that the District of Columbia has provided complete funding or an acceptable funding mechanism for both the total cost of constructing the additional 100 parking spaces, and for the cost for any mitigation measures required by DDOT to provide the additional 100 parking spaces, and that the District has presented the mutually agreeable funding or funding mechanism to the Applicant prior to the Applicant starting its civil and architectural drawings for the PUD or starting its civil and architectural drawings for the first phase of the PUD if the PUD is to be phased; and
  - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to

comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

**B. PUBLIC BENEFITS**

1. **The Applicant shall submit with its building permit application** a LEED checklist indicating that the project includes sustainable design features such that the building would be able to meet the standards for certification as a LEED-Silver building, although the Applicant is not required to seek LEED-Silver certification for the building.
2. **Prior to the issuance of a building permit for the project**, the Applicant shall submit to DCRA a fully executed First Source Employment Agreement with the Department of Employment Services.
3. **Prior to the issuance of a Certificate of Occupancy for the project**, the Applicant shall submit to the Historic Preservation Office, with a copy to DCRA, a letter indicating that the Applicant supports any application filed or to be filed by ANC 6A for the designation of appropriate sites along the H Street corridor within a historic district.
4. **Prior to the issuance of a Certificate of Occupancy for the project**, the Applicant shall submit to DCRA proof that the Applicant has registered to participate in a clean-and-safe program for H Street, if a clean-and-safe program has been created by the District for H Street by such time.
5. **For so long as the project exists**, the project shall dedicate a minimum of eight percent of the residential gross floor area for affordable residential units. The affordable units shall be affordable to households earning up to 80% of the area median income. The affordable units shall be distributed vertically and horizontally throughout the residential portion of the building and shall not be overly concentrated on any floor of a project.
6. **During operation of the building**, the Applicant shall implement the following On-Site Vehicle Parking Measures and the Transportation Demand Management Measures:
  - a. Off-street parking spaces accessory to the residential uses shall be leased or sold separately from the rental or purchase fees;

- b. Each residential lease and purchase agreement shall contain a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit Program;
- c. Providing one on-site parking space dedicated for a car-sharing service for so long as such services are reasonably and practically available to the public;
- d. Providing at least five designated guest parking spaces in the retail portion of the garage during any three-hour period on weekdays. The Applicant shall have the right to charge a fee for use of these spaces.
- e. Locating any garage ticketing kiosks for the parking garage at the base of the entry ramp, and providing a reversible middle retail parking entrance lane that can be used to implement a second ticket kiosk entrance as needed;
- f. Providing links to [goDCgo.com](http://goDCgo.com) and [CommuterConnections.com](http://CommuterConnections.com) on its developer and property management websites;
- g. Providing a \$20 SmarTrip card to all initial building residents upon move-in, and a one-time \$30 SmarTrip card for each initial employee of the retail businesses. This total commitment will be capped at \$15,000;
- h. Providing a one-time, one-year car-share membership (which shall include the cost for any application fees) for the initial occupant(s) of each residential unit, capped at a total commitment of \$19,000;
- i. Providing a carpool and mass transit coordinator and participation in the Guaranteed Ride Home Program;
- j. Providing 25 bike parking spaces for retail visitors and 50 bike parking spaces for use by residents in the parking garage;
- k. The Applicant will fund the development of a bike-sharing station at a cost not to exceed \$45,000, with the location of such bike-sharing station to be determined by DDOT; and
- l. The project will include showers and changing areas in the building for employees who wish to bike to work, as reflected on the Plans.

### C. MISCELLANEOUS

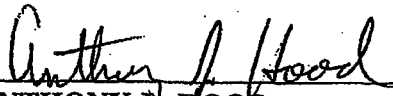
1. Prior to the issuance of the first building permit for the project the Applicant shall record a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to the construct on and use the Subject Property in accordance with this Order or any amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.
2. The Applicant is authorized to construct the approved building in two phases, with the parameters of the phases as shown Sheet A-25 of the Approved Plans. An application must be filed for a building permit for the first phase of the development within two years from the effective date of this Order as specified in 11 DCMR § 2409.1. Construction of the first phase shall begin within three years of the effective date of this Order. An application must be filed for a building permit for the second phase of the development within two years after the completion of the first phase of the building as evidenced by the issuance of the certificate of occupancy for the residential portion of the building. Construction of the second phase shall begin within one year after the building permit is issued.
3. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* (act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.


On September 27, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot; Greg M. Selfridge, not having participated, not voting).

On November 8, 2010, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting, by a

vote of 4-0-1 (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt; Greg M. Selfridge, not having participated, not voting.).

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 January 14, 2011.

  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
JAMISON L. WEINBAUM  
DIRECTOR  
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 10-03

JAN 14 2011

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 10-03 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |  |  |
|--|--|
| 1. D.C. Register   | 6. Commissioner Tony Richardson<br>ANC 6C05<br>921 2 <sup>nd</sup> Street, N.E.<br>Washington, D.C. 20002        |
| 2. Norman Glasgow, Jr.<br>Holland & Knight<br>2099 Pennsylvania Ave., NW.<br>Suite 100<br>Washington, D.C. 20006 | 7. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                             |
| 3. ANC 6A<br>P.O. Box 75115<br>Washington, DC 20013  | 8. Councilmember Tommy Wells   |
| 4. Commissioner Drew Ronneberg<br>ANC/SMD 6A02<br>646 11 <sup>th</sup> St., N.E.<br>Washington, DC 20002         | 9. DDOT (Karina Ricks)   |
| 5. ANC 6C<br>P.O. Box 77876<br>Washington, D.C. 20013-7787   | 10. Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, DC 20024 |
|  | 11. Office of the Attorney General (Alan Bergstein)  |

ATTESTED BY:

Sharon S. Schellin  
Secretary to the Zoning Commission  
Office of Zoning





Exhibit B



**Request for Extension of Time, Zoning Commission Order No. 10-03  
(Consolidated Planned Unit Development – Parcel Seven Associates, LLC –  
Square 912, Lot 55)**

**Affidavit of Applicant in Support of Two-Year Extension of Time**

I, Gary D. Rappaport, being duly sworn, depose and state as follows:

1. I am Chief Executive Officer of The Rappaport Companies, and I am also a principal of Parcel Seven Associates, LLC, which is the owner of Lot 55 in Square 912 (the "Property"). The Property is subject to Zoning Commission Order No. 10-03 granting consolidated PUD approval for the construction of a mixed-use development composed of retail and residential uses. The overall project will have an FAR of 5.0, and will include approximately 380,560 square feet of residential uses, comprising 384 units plus or minus 10 percent, and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70 percent.
2. The Rappaport Companies owns and develops shopping centers and provides retail leasing, tenant representation, property management, construction management and development services for shopping center and mixed-use properties. In my capacity as Chief Executive Officer of The Rappaport Companies and as a principal of Parcel Seven Associates, LLC, I have been responsible for obtaining land entitlements and coordinating financing for the building approved pursuant to Order No. 10-03, as well as numerous other development projects.
3. The Property is currently subject to 19 complex leases with various existing retailers currently in operation at the Property. Since the project was initially approved, we have diligently been working with these retailers to renegotiate their existing leases in a manner feasible to all parties that will enable us to move forward with development of the site. For example, we have reached agreements with Marvelous Pizza, Ann's Nails, Dana Jewelry, Game Stop, McDonalds, and Tony Pham Pizza, and we are continuing our

efforts with the remaining tenants. For example, we have been in negotiations with 7-Eleven to restructure their current lease which currently runs until 2020.

4. In addition to these efforts, we have also sought to market and finance the site for development. However, the country has continued to experience a stagnant economy and challenges with moving forward with new construction projects, especially in emerging neighborhoods. Prior to us successfully underwriting the deal and finding a development partner, the cost of borrowing money increased dramatically while the available sources of loans became scarce.
5. Notwithstanding the bleak economic conditions, my company, along with the aide of brokers and financial consultants, has contacted numerous potential lenders to finance this project and brokers to market the project. For example, CBRE has provided market research that we have presented to potential development partners, lenders, and private equity groups.
6. Over the last two years, we sought money from a number of institutional lenders and capital sources indirectly through Walker & Dunlop and The Ackman-Ziff Real Estate Group, both of which have worked with us on other projects and have financed projects for my company before.
7. Unfortunately, the lenders and capital sources that we contacted were not willing to fund major land development proposals. The rejections were typical of the situations facing most developers through the last few years.
8. In addition, we have had discussions with a number of experienced residential developers, such as William C. Smith + Co., Archstone, The Bozzuto Group, and ROSS Development & Investment, to gauge their interest in partnering to develop the project. However, none of these potential partners have been willing to move forward with joint development of the Property thus far at reasonable terms, particularly given the delays in

operation of the H Street trolley service, which will be a substantial driver to attracting new residents and retailers to this portion of H Street.

9. To date, we have invested approximately \$890,000 in securing the PUD approval. Thus, there is no financial advantage to Parcel Seven Associates, LLC to not have the Property redeveloped, and we have every incentive to develop the Property as soon as feasible.
10. We continue to monitor the financial markets closely in order to secure the necessary financing for this project, to work with potential development partners, and to renegotiate existing leases on the Property, all of which are necessary to enable the project to move forward. Accordingly, the requested two-year extension is necessary to provide sufficient time for us to continue pursuing these endeavors.

I solemnly affirm under the penalty of perjury that the contents of this Affidavit are true and correct to the best of my personal knowledge.

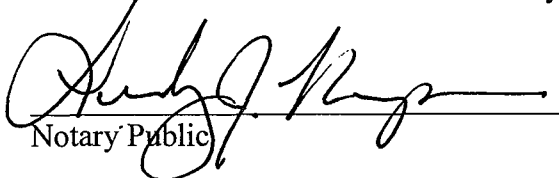
Parcel Seven Associates, LLC

By:



Name: Gary D. Rappaport  
Title: Managing Member

Sworn and subscribed to me this 30<sup>th</sup> day of November, 2012.



Notary Public

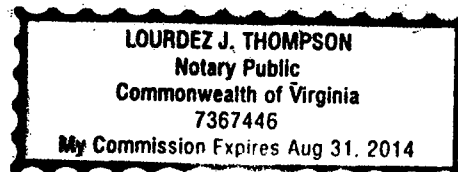




Exhibit C





# **Walker & Dunlop**

7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814-6531  
Phone: 301/215-5500  
Fax: 301/634-2150  
Direct Dial: 301/215-5538

November 28, 2012

## **VIA HAND DELIVERY**

D.C. Zoning Commission  
441 4<sup>th</sup> Street, N.W., Suite 210  
Washington, DC 20001

RE: **Extension for Zoning Commission Case No. 10-03**

Dear Members of the Commission:

This letter is in support of the request from Parcel Seven Associates LLC to extend the PUD approval for the construction of a new residential building to be located at Square 912, Lot 55.

I am a Vice President of Walker & Dunlop, LLC, which is one of the leading commercial real estate finance companies in the United States, with a primary focus on multifamily lending. As a Fannie Mae DUS, Freddie Mac Program Plus and MAP- and LEAN-approved FHA lender, the Multifamily and FHA Finance groups of Walker & Dunlop are focused on lending to property owners, investors, and developers of multifamily properties across the country. The Capital Markets group specializes in financing commercial real estate for owners and investors across the United States. Capital for this financing comes from large institutions such as life insurance companies, commercial banks, CMBS lenders, pension funds, and specialty finance companies. In 2011, Walker & Dunlop originated \$4.0 billion in commercial real estate financing, and as of September 30, 2012, the company has originated \$4.2 billion in financing and services \$33.9 billion of commercial mortgages and asset manages over 4,800 properties across the country. The firm's professionals are experts at structuring and executing on everything from a \$3 million retail shopping center loan to a \$220 million structured credit facility on fifteen multifamily assets in multiple states.

We have worked on a number of projects for The Rappaport Companies, and we have secured financing for a number of the company's developments. We have also been involved in seeking financing for their development of the approved residential building at Square 912, Lot 55. However, due to a number of economic difficulties, efforts to secure financing for the property have been unsuccessful. The financial and credit markets have experienced a dramatic overhaul since 2008 and no segment of the real estate market – including the multifamily sector

– is without major financing challenges. Although a number of development projects have been able to secure financing in the Washington, DC area, the multi-family sector has continued to face uncertainty due to a number of factors. The Washington DC market has been hit with a major influx of supply coming on-line over the next 12-18 months and a number of Lenders have expressed concern over the effects the new developments will have on overall vacancy rates and added concessions within the marketplace. Coupled with the economic and political uncertainty the nation is facing, the Lending community has indicated a desire to monitor the absorption of the new units before committing funds to new projects, especially in emerging neighborhoods in the Washington, DC market.

Based upon our experience, the residential real estate recovery is expected to continue, with the District of Columbia among the leading markets in the country. In order to make this project a viable investment for Lenders, we believe it is necessary to extend the validity of the PUD order an additional two years to provide additional time to continue searching for a conventional or creative financing solution.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Paul Wallace". The signature is fluid and cursive, with the first name "W." and last name "Wallace" clearly distinguishable.

W. Paul Wallace  
Vice President, Capital Markets  
Walker & Dunlop, LLC



BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA



FORM 120 - APPLICATION FOR VARIANCE/SPECIAL EXCEPTION

Before completing this form, please review the instructions on the reverse side.  
Print or type all information unless otherwise indicated. All information must be completely filled out.

Pursuant to §3103.2 - Area/Use Variance and/or §3104.1 - Special Exception of Title 11 DCMR - Zoning Regulations,  
an application is hereby made, the details of which are as follows:

Address(es)	Square	Lot No(s).	Zone District(s)	Type of Relief Being Sought	
				Area Variance Use Variance Special Exception	Section(s) of Title 11 DCMR - Zoning Regulations from which relief is being sought
1425 NORTH CAROLINA AVE. N.E.	1056	0094	R4	34% AREA INCREASE LOT OCCUPANCY	2001.3 403.2
"	"	"	"	17 VARIANCE TO REAR YARD	223.1 404.1

Present use(s) of Property: SINGLE FAMILY DWELLING

Proposed use(s) of Property: SINGLE FAMILY DWELLING

Owner of Property: JANET KATOWITZ

Telephone No: 301 221 0410

Address of Owner: 1425 NORTH CAROLINA AVE. N.E. WASH., D.C. 20002

Single-Member Advisory Neighborhood Commission District(s): SMD 02 6A04 ANG 6A

Written paragraph specifically stating the "who, what, and where of the proposed action(s)". This will serve as the Public Hearing Notice:

PROPOSED REAR DECK AND STAIRS WITH PERGOLA ADDITION TO AN EXISTING  
NON CONFORMING, SINGLE FAMILY ROW DWELLING

EXPEDITED REVIEW REQUEST (If interested, please select the appropriate category)

I waive my right to a hearing, agree to the terms in Form 128 - Waiver of Hearing for Expedited Review, and hereby request that this case be placed on the Expedited Review Calendar, pursuant to §3118.2 (CHOOSE ONE):

- ☐ A park, playground, swimming pool, or athletic field pursuant to §209.1, or  
☐ An addition to a one-family dwelling or flat or new or enlarged accessory structures pursuant to §223

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22 2405)

Date: 10-22-12

Signature\*: Bern T. Guay AGENT AND ARCHITECT

To be notified of hearing and decision (Owner or Authorized Agent\*):

Name: BERNARD T. GUAY

E-Mail: bernquaye@gmail.com

Address: 3908 COMMANDER DRIVE, HYATTSVILLE, MD. 20782

Phone No(s): 301 221 0410

Fax No.: N/A

\* To be signed by the Owner of the Property for which this application is filed or his/her authorized agent. In the event an authorized agent files this application on behalf of the Owner, a letter signed by the Owner authorizing the agent to act on his/her behalf shall accompany this application.

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

FOR OFFICIAL USE ONLY

Exhibit No. 1

Case No. 18491



BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA



FORM 126 – BOARD OF ZONING ADJUSTMENT FEE CALCULATOR

Per §3180 of the Zoning Regulations, at the time of the filing of an application or an appeal with the Board of Zoning Adjustment, the applicant or appellant shall pay a filing fee in accordance the fee calculator below. In the case of an application combining two (2) or more actions, or for an application requesting consideration of more than one alternative, the fee shall be the total of the amounts for each action or alternative computed separately. However, for applications involving owner-occupied, one-family dwellings or flats, regardless of the number of variances, special exceptions, or alternatives requested, the fee is three hundred and twenty-five dollars (\$325.00). A department, office, or agency of the Government of the District of Columbia shall not be required to pay a filing fee where the property is owned by the agency and the property is to be occupied for a government building or use.

APPLICATION OR APPEAL TYPE: FEE UNIT TOTAL  
VARIANCE:

Owner-Occupied Dwelling	\$325	2	\$650
All Other Variances Per Section Requested	\$1,040		
TOTAL FOR VARIANCES:			\$650

SPECIAL EXCEPTION:

Parking Lot/Garage/Accessory Parking (per space)	\$104		
Child Development Center (per student)	\$33		
Private School (per student)	\$33		
Residential Under §353	\$520		
CBRF (per person)	\$104		
Office Use in SP (per 100 square feet)	\$52		
Roof Structures	\$2,600		
Hotel or Inn in SP (per room or suite)	\$104		
Gasoline Service Station	\$5,200		
Repair Garage	\$1,560		
Home Occupation	\$1,560		
Accessory Apartment Under §202	\$325		
Theoretical Lot Under §2516	\$1,560		
Additional Theoretical Lot Under §2516	\$520		
Recycling Facility Under §802	\$5,200		
Antenna Under §211	\$2,600		
Any Other Special Exception	\$1,560		
Chancery (per 100 square feet)	\$65		
Owner-Occupied Special Exception	\$325		
Time Extension/Modification – Owner Occupied	\$130		
Time Extension/Modification – All other (percentage of filing fee)	26%		
TOTAL FOR SPECIAL EXCEPTIONS:			0

APPEAL:

NCPC/ANCs/Citizens Association/Civic Association/Not-for-Profits	\$0		
All other organizations, groups or persons	\$1,040		

TOTAL FOR APPEALS: 0

GRAND TOTAL: \$650

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22 2405)

Name:

BERNARD T. GUAY, AGENT

Signature:

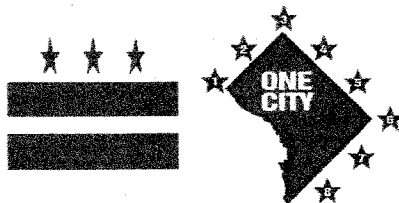
Bernard T. Guay

Exhibit No. \_\_\_\_\_

Last Revised (10/18/10)

Case No. \_\_\_\_\_

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR**



July 31, 2012

**MEMORANDUM**

TO: Board of Zoning Adjustment

FROM: Matthew Le Grant *MLG*  
Zoning Administrator *MD*

SUBJECT: Proposed Rear Deck and stairs with Pergola addition to an existing nonconforming, single family row dwelling.  
The structure is located at:  
1425 North Carolina Avenue, NE  
Lot 0094 in Square 1056  
Zoned R-4  
DCRA File Job #B1211646  
DCRA BZA Case #FY-12-50-Z

Review of the plans for the subject property referenced above indicates that Board of Zoning Adjustment approval is required as follows:

1. Variance pursuant to § 2001.3 to permit a rear deck and stairs with pergola addition to an existing nonconforming SFD row structure that does not comply with the maximum lot occupancy of § 403.2 in the R-4 residential zone district. (§ 3103.2).
2. Variance pursuant to § 223.1 to permit a rear deck and stairs with pergola addition to an existing nonconforming SFD row structure that does not comply with the minimum rear yard requirement of § 404.1 in the R-4 residential zone district (§ 3103.2).

Note: All applicants must provide the Office of the Zoning Administrator with submission verification, in the form of a formal receipt from the BZA, within 30 days of the date of this memo.

DISTRICT OF COLUMBIA GOVERNMENT  
OFFICE OF THE SURVEYOR

Washington, D.C., July 2, 2012

Plat for Building Permit of: SQUARE 1056 LOT 94

Scale: 1 inch = 10 feet Recorded in Book 206 Page 108

Receipt No. 12-04750

Furnished to: DORIS MINOR

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

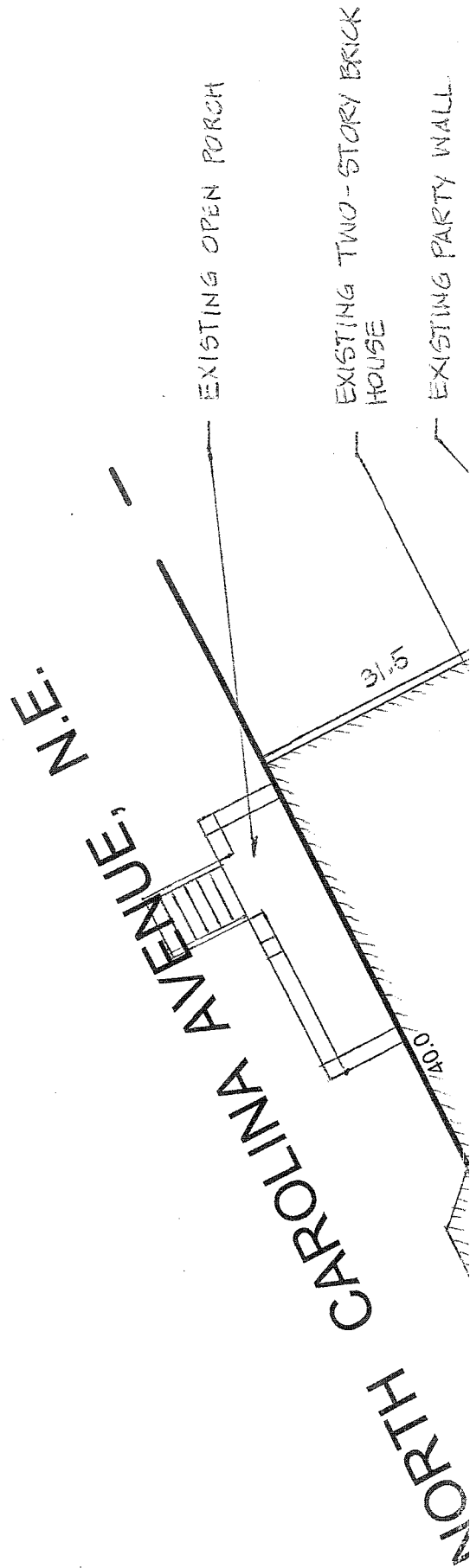
Date:

*[Signature]*  
(Signature of owner or his authorized agent)

*[Signature]*  
Surveyor, D.C.

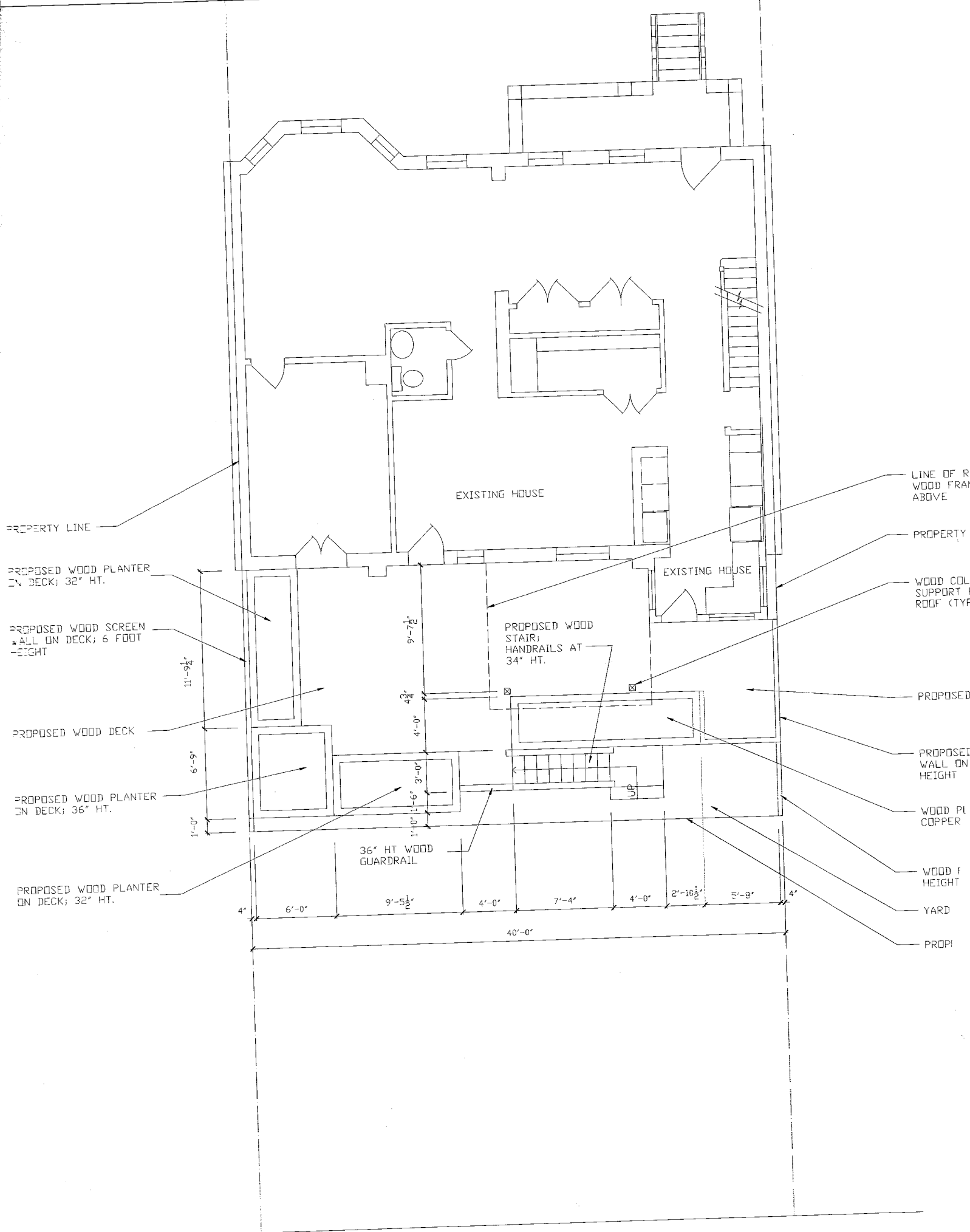
By: A.S. *[Signature]*

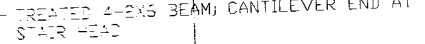
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.













**BERNARD THOMAS GUAY, ARCHITECT**  
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October 22, 2012

**Board of Zoning Adjustment Application Information**

**Detailed Statement of Existing and Intended Use of the Structure**

Project/subject:  
1425 North Carolina Avenue NE  
Lot 0094 in Square 1056  
Zoned R-4  
DCRA File Job #B1211646  
DCRA BZA Case #FY-12-50-Z

The existing use of a single family dwelling shall remain. The proposed deck at the rear yard shall be an extension of the same use.

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October 22, 2012

**Board of Zoning Adjustment Application Information**

**Detailed Statement of Burden of Proof**

Project/subject:  
1425 North Carolina Avenue NE  
Lot 0094 in Square 1056  
Zoned R-4  
DCRA File Job #B1211646  
DCRA BZA Case #FY-12-50-Z

The propose design of the deck in the rear yard should be allowed by reason that an exceptional situation. A significant number of neighboring properties enjoy the nonconformities of large lot occupancies and greatly reduced rear yards where the subject property is burdened as follows:

1. Equity: The owner of the subject property should be allowed to enjoy a similar large lot occupancy and a shallow rear yard as the neighboring properties do.
2. Privacy and air flow: The properties to the south (across a narrow alley) have elevated deck structures that overlook the rear yard of the subject property creating a visual intrusion on the yard that cannot be blocked with a conforming fence. A similar raised deck is will maintain visual privacy and air flow.
3. Relief from the required lot occupancy and rear yard setback would not create a substantial detriment to the public good.

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**Board of Zoning Adjustment Application Information**

**Color Images of Back of House and Alley**

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**Back of house at alley. View  
looking northeast.**



**Alley adjacent to house with neighbor house to the right with 100% lot occupancy.**



**Back of house at alley. View looking northwest.**