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January 18, 2006

Jerrily R. Kress, FAIA, Director
D.C. Office of Zoning
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

#04-04A

2006 JAN 18 PM 1:19

D.C. OFFICE OF ZONING

RECEIVED

Re: CONSENT CALENDAR
Minor Modification of a PUD (GW Carver Senior Apartments)
Zoning Commission Case No. 04-04

Dear Ms. Kress:

This memorandum requests a Minor Modification of a Planned Unit Development ("PUD") pursuant to the provisions of the Zoning Regulations at 11 DCMR §§ 2409.9 and 3030. The Applicant in Case 04-04 – the Carver 2000 Tenants Association, Inc. – requests one minor change from one of the Decision conditions in Zoning Commission Order No. 04-04, dated April 11, 2005. A copy of that order is attached as *Exhibit C*.¹

As the Commission will recall, this PUD approved a 104-unit, four-story apartment house for senior citizens. The project is described in summary form in Decision Condition No. 2, as follows:

2. *The development approved in this PUD shall be a new, 104-unit, four-story apartment building for senior citizens, including one apartment for the resident manager. All of the units shall be restricted to seniors earning less than sixty percent (60%) of the area median income for a period of not less than 40 years at rents that will not exceed thirty percent (30%) of the area median income. Approximately forty percent (40%) of the apartments shall serve households of seniors having thirty percent (30%) or less of the area median income, an additional forty percent (40%) of units shall serve those seniors with incomes of thirty percent (30%) to fifty percent (50%) of area median income and twenty percent (20%) shall serve those having fifty percent (50%) to eighty percent (80%) of area median income.*

¹ Submitted with this application is a check in the amount of \$400 made payable to the D.C. Treasurer for the filing fee.

ZONING COMMISSION
CASE No. 04-04A

EXHIBIT No. ZONING COMMISSION
Northern Virginia District of Columbia
CASE NO. 04-04A
EXHIBIT NO. 1

The modification to Zoning Commission Order No. 04-04 that is requested herein derives directly from the above-cited condition. The subject property is scheduled for closing in mid-February 2006 (postponed from early January 2006), and construction is required to begin in March 2006. In conducting due diligence in preparation for closing, the underwriters and financing entities identified the last sentence of Condition No. 2 above -- beginning with "Approximately" -- as a serious obstacle to financing and securing investors. They are comfortable with sentence two, requiring that all units be restricted to seniors earning less than 60 percent of Area Median Income ("AMI"), for a period of at least 40 years and with rents limited to no more than 30 percent of AMI.

The problem derives from the detailed breakdown of household incomes and units in the last sentence: 40 percent of apartments to serve households having 30 percent or less of AMI, 40 percent restricted to senior households having incomes of 30-50 percent of AMI and 20 percent of the units to serve households having 50-80 percent of AMI. The underwriters see this detailed restriction as a major "up-front" risk that they are not willing to take. This is primarily because achieving these detailed targets is dependent upon renewal of Housing Assistance Payment ("HAP") funding, which is not assured for a 40-year period. Funding for the HAP is subject to federal government appropriations, and the initial contract period is for 10 years, with renewals typically being for five year terms.

A more detailed statement of project financing and the risk factor is set forth in the memorandum from Mike Alexander of New Market Investors, Inc. to Nate Gross of Arnold & Porter LLP, dated January 6, 2006 and attached as *Exhibit A*.

Proposed Modification

The Applicant proposes that the last sentence of Condition No. 2 simply be deleted, as shown in strike-through in *Exhibit B*, attached. This would leave in place the requirement set forth in the second sentence, which states:

All of the units shall be restricted to seniors earning less than sixty percent (60%) of the area median income for a period of not less than 40 years at rents that will not exceed thirty percent (30%) of the area median income.

The Applicant submits that this is a very strong affordable housing package:

- 100 percent of the units
- 40-year time period
- 60 percent of AMI or less.

The Applicant assures the Zoning Commission that it is still the intent to achieve the low-income goals set forth in the last sentence of Condition No. 2. *Exhibit B*, in addition to the Applicant's proposed text, includes some examples of conditions from other recent PUD orders involving affordable housing, which indicate that, even as proposed to be amended, the GW Carver Senior Apartments will be a commendable affordable housing development for seniors.

The Applicant asks that the Commission approve the Minor Modification expeditiously so that closing can go forward in mid-February and construction can begin in March 2006.

Please contact the undersigned if additional information is needed. Thank you for your consideration of this request.

Sincerely,
ARNOLD & PORTER LLC



Cynthia A. Giordano



Nathan W. Gross, AICP

Attachments

cc: Advisory Neighborhood Commission 7C
(via facsimile on January 18, 2006)
Office of Planning (via facsimile on January 18, 2006)

Exhibit A: Statement of New Market Investors LLC



New Market Investors LLC

www.newmarketinvestors.com

8603 Westwood Center Drive, Suite 250 Vienna, VA 22182

MEMO

To: Nate Gross, Arnold & Porter
From: Mike Alexander, Project Manager, Carver Senior Apartments
Date: 1/18/2006
Re: Minor Modification to PUD
Carver Senior Apartments
Zoning Commission Order 04-04

Request for Assistance

Carver Senior Apartments Limited Partnership ("CSALP") has been working on the financial closing of an \$8,000,000 tax-exempt bond to be issued by the DC Housing Finance Agency (the "Bonds") and a \$6,000,000 low-income housing tax credit equity investment (the "Tax Credit Equity"). The Bonds and the Tax Credit Equity will be used to construct the Carver Senior Apartments (the "Property"), a 104-unit apartment building prescribed in the DC Zoning Commission Order 04-04, which has been recorded (the "Decision").

Your firm represented the Carver 2000 Tenants Association, Inc. (the "Tenant Association") and their ownership entity, CSALP. We need your immediate assistance in developing a resolution to an issue which was recently raised by the outside legal counsels to both GMAC (the Bond purchaser) and Paramount Financial Group (the Tax Credit Equity investor). Financial closing and construction start are scheduled for January 23rd and a resolution to their issue is a condition to further progress and has the potential to scuttle the entire development which the tenant association, DHCD, DCHA, DCHFA, local DC Councilmembers, the Mayor and many other local affordable housing advocates have worked over three years to bring together.

Background

During the PUD submission and testimony, representatives of the Tenants Association and CSALP provided detailed estimates to the Zoning Commission with respect to their expected income makeup of the Property once developed. The estimates provided were predicated upon the receipt, funding and renewal of a housing assistance payment contract administered by DC Housing Authority. These estimates were incorporated into paragraph #2 of the Decision. The financial partners in the proposed development financing have determined some of the very, very low income estimates provided in the Decision would not be feasible under certain

circumstances and have asked us to provide clarification through a modification of the existing PUD order.

The Issue

The outside legal counsels have raised an issue with the last sentence in paragraph #2 of the Decision, beginning with the word "Approximately". This sentence provides very specific detail on what CSALP and the Tenant Association expects to be the income ranges of the anticipated low-income seniors who will rent apartments once the property is built. The income ranges provided assume the continuation of a Housing Assistance Payment Contract CSALP has with the DC Housing Authority (HAP contract #0007-2003). The AHAP was awarded to CSALP following a competitive solicitation administered by the DC Housing Authority whereby rental subsidy payments would be provided to very low-income seniors. Without the AHAP, the low income rental standards will require that 100% of the apartments be rented to families earning less than 60% of the area median income for a period of not less than 40 years (which restrictions are required by DCHFA and will be recorded in a DCHFA land use restriction agreement at Bond closing). With the HAP, we will be able to reach a much lower income profile, which was demonstrated in the estimates noted in paragraph #2.

Here is the issue: funding for the HAP is subject to Federal government appropriations and the initial contract term is limited to ten years, following which initial terms the HAP is typically renewed at five year intervals. The counsels for the Bond purchaser and the Tax Credit Equity Investor have raised the issue of determining whether the Property would be in violation of the Decision if the HAP contract was, in the very, very unlikely event, not funded or renewed. They would be stuck with a 30-year mortgage or tax credit investment that would definitely not be financially feasible if required to maintain the income profiles approximated in the last sentence of paragraph #2 in the Decision. They have no problem with the long-term use restriction of 100% of the Property's tenants earning less than 60% of median income even with the loss of the HAP.

We would like to request a minor modification of the zoning order, with the easiest fix being the removal of the last sentence in paragraph #2. We would still have a Decision that restricts 100% of the apartments to households earning less than 60% of the median income, but provides CSALP, the Bond purchaser and the Tax Credit Equity Investor flexibility to react to a loss of Federal funding or a non-renewal of the HAP program.

If this first option is not acceptable, we may get the financial partners to agree to add, at the beginning of the last sentence of paragraph #2 language that stipulates "during any period that the housing assistance payments contract contemplated by the Agreement to Enter into Housing Assistance Payments Contract (#0007-2003) dated June 1, 2004 relating to the PUD is in effect, and only during such period, the following additional restrictions shall apply".

Timing

We hope to place this request in front of appropriate parties as soon as possible. The construction is scheduled to start immediately following closing of the Bonds and Tax Credit equity, which is scheduled for January 23, 2006. The development team needs direction as to the viability of the request as the financial participants will not settle unless the issue is resolved.

Exhibit B: Applicant's Proposed Text and Comparable Examples

1. Applicant's Proposed Modification of Decision Condition No. 2, Order No. 04-04 (GW Carver Senior Apartments):

"2. The development approved in this PUD shall be a new, 104-unit, four-story apartment building for senior citizens, including one apartment for the resident manager. All of the units shall be restricted to seniors earning less than sixty percent (60%) of the area median income for a period of not less than 40 years at rents that will not exceed thirty percent (30%) of the area median income. ~~Approximately forty percent (40%) of the apartments shall serve households of seniors having thirty percent (30%) or less of the area median income, an additional forty percent (40%) of units shall serve those seniors with incomes of thirty percent (30%) to fifty percent (50%) of area median income and twenty percent (20%) shall serve those having fifty percent (50%) to eighty percent (80%) of area median income.~~"

2. Examples of Comparable Conditions from Other Recent Affordable Housing PUDs:

04-37 (Eastgate Senior Residences)

#3. "The development approved in the PUD shall be a new, 100-unit, three- and four-story apartment building for senior citizens. Rents will be in the affordable range for low- and moderate-income households."

04-11 (611 Emerson Street, N.E.)

#5. "In coordination with OP and DHCD, the Applicant shall agree to make available and restrict the sale of two 18' X 36' townhouse units for a period of 20 years, as affordable housing to qualifying households not exceeding 85 percent of area median income."

04-24 (Rhode Island Avenue Metro)

#3. "Twenty percent (20%) of the apartments (54 units) shall be made available and restricted for a period of twenty (20) years as affordable housing for qualifying households having incomes not exceeding fifty percent (50%) of area median income ("AMI")."

04-13 (Logan Phase II)

#3. "The project shall provide a minimum of 63 residential units, of which five will be available for sale as affordable housing to persons with maximum annual incomes of 80% of [AMI] pursuant to eligibility requirements and enforcement mechanism to be developed in accordance with DHCD recommendations. The units to be reserved . . . [are listed below]."

Exhibit C: Zoning Commission Order No. 04-04

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



**ZONING COMMISSION ORDER NO. 04-04
Z.C. Case No. 04-04
(Consolidated PUD & Related Map Amendment – GW Carver Senior Apartments)
April 11, 2005**

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 7, 2004 to consider an application from the Carver 2000 Tenants Association, Inc., for consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment, pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 for contested cases.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On February 6, 2004, the Carver 2000 Tenants Association, Inc. (the "Applicant" or "Carver 2000") filed an application for consolidated review and approval of a PUD and related zoning map amendment for a site bounded by Central Avenue, East Capitol Street, 47th and 49th Streets, N.E. (the "PUD Site"). Carver 2000 is a nonprofit association, the members of which are residents or former residents of the existing George Washington Carver Apartments. Carver 2000 acquired the PUD Site under the District of Columbia's Right of First Purchase Program and has applied to the Internal Revenue Service to become a tax-exempt entity under IRS Section 501(c)(3). Carver 2000 will transfer its interest in the property into the GW Carver Senior Apartments LLC, an entity to be formed to carry out the development. Carver 2000 will be the sole managing member of the GW Carver Senior Apartments LLC, and the other member will be a low-income housing tax credit investor.
2. On April 12, 2004, the Zoning Commission decided to schedule a public hearing on the application. After proper notice, the Zoning Commission opened and completed the public hearing on October 7, 2004. The only party in the case in addition to the Applicant was Advisory Neighborhood Commission ("ANC") 7C, the boundaries of which include the PUD Site.
3. At its public meeting on March 14, 2005, the Zoning Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and plans presented at the public hearing.

4. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated March 31, 2005, found that the proposal would not adversely affect the federal interest or be inconsistent with the Comprehensive Plan for the National Capital.
5. The Zoning Commission took final action to approve the application on April 11, 2005.

The Site and the Area

6. The subject property consists of Lots 78 and 79 in Square 5140 and has a land area of 48,927.5 square feet. The site is currently zoned R-5-A, Low-Density Apartments/General Residential, which allows a maximum density of 0.9 FAR and a maximum building height of three stories and 40 feet as a matter of right and 1.0 FAR and 60 feet, respectively, with a PUD.
7. The PUD site is a slightly irregular rectangle in shape. It is long in the east-west direction between 47th and 49th Streets, N.E. and relatively narrow in the north-south dimension between East Capitol Street and Central Avenue. The former garden apartment buildings on the site were scheduled for demolition in the fall of 2004.
8. The Application requested a zone change from R-5-A to R-5-B as part of the application, because the proposed building exceeds the bulk limits of the R-5-A zone, although the proposed height of the building could be accomplished within the 60-foot height limit allowed in the R-5-A zone with a PUD.
9. The zoning and land use pattern of this neighborhood area may be summarized as follows. The PUD Site is within an irregularly-shaped R-5-A Zone District that extends a few blocks to the north of East Capitol Street and extends a large distance to the south of East Capitol Street to encompass a substantial part of Ward 7. To the immediate north, the predominant development pattern is semi-detached houses, with a fire station located directly across Central Avenue from the PUD Site. Immediately to the south of the PUD Site is a large, triangular-shaped area bounded by East Capitol, 47th, and 49th Streets, S.E., improved with a large garden apartment complex, which constitutes the larger part of the GW Carver apartment complex. The tenants' association plans to complete a total redevelopment of this site in the future.
10. The R-5-A-zoned areas to the north and south of East Capitol Street are developed with a wide range of housing types, including garden apartments and detached, semi-detached, and row dwellings. Several large areas zoned R-2 are developed with semi-detached houses. Institutions, public facilities, and commercial uses are scattered throughout the area, including the fire station, places of worship, small commercial strips, public schools, and parks. The public schools in the area are JC Nalle Elementary, Kelly Miller Junior High, and Woodson High School. There is a senior center at the Metropolitan Police Boys and Girls Club a few blocks away and numerous shops on East Capitol Street.

11. Public transportation serves the PUD Site well, with Metrobus stops in front of the building and the Benning Road Metrorail Station located three blocks to the west. The area surrounding the Metrorail Station is zoned C-3-A (Medium-Density Commercial), and existing development includes retail and service uses.

The PUD Project

12. The proposed apartment building will have 104 dwelling units, including 94 one-bedroom units and 10 two-bedroom units. The height of the proposed building is four stories and 58 feet. The gross floor area ("g.f.a.") as designed is 92,208 square feet, which equals a floor area ratio ("FAR") of 1.88 on the lot area of 48,927.5 square feet. Lot occupancy will be 48.5 percent.
13. Following the shape and dimensions of the PUD Site, the proposed building is relatively long and narrow -- narrow between East Capitol Street and Central Avenue and long in the east-west dimension. It is planned with two main entrances -- one on East Capitol Street and one on Central Avenue -- both leading into a secured lobby area.
14. No zoning flexibility was requested.
15. Approximately 80 percent of the exterior of the building will be brick in two different tones. The other exterior material will be an External Insulating and Finishing System ("EIFS"), which will provide added energy efficiency and accents for visual appeal. A freestanding brick sign using the same brick as the exterior will identify the apartment complex. The overall design of the apartment building will be contextual with the surrounding neighborhood in that it will be four stories high with a steeply pitched gable roof, traditional design, and predominantly brick exterior.
16. Mechanical units that are typically located on the roof and thus visually exposed will instead be enclosed within the pitched roof and will not be visible from any side of the building. Canopies at the entrances will provide a pleasant transition as well as shelter from direct sunlight and other elements for persons entering and leaving the building.
17. The apartments will have modern kitchens with dishwashers and microwave ovens, carpeting, window blinds, and cable television hookups. The building will incorporate special amenities for seniors, including congregate dining, a library, a quiet room, health care, computer access, and security. There will be two separate laundry facilities on the first floor, and four rooftop terraces totaling more than 1,800 square feet for residents to use.
18. A parking area will be situated at the eastern end of the site, with access from both Central Avenue and 49th Street. The provision of 23 spaces, including two handicapped spaces, complies with the parking requirement for affordable housing for seniors of one space for each six dwelling units. The parking area will be shielded from the Central Avenue and East Capitol Street views by dense shrubs and large shade trees in addition to the existing trees on site. East Capitol Street is at a somewhat lower elevation than the site, further hiding the parked cars from view. Both loading and trash pickup will be from the Central

Avenue side of the building, with significant landscape screening. Based on testimony at the public hearing and at the direction of the Zoning Commission, the number of parking spaces was increased from 20 to 23 spaces, and the dumpster was relocated to the southeast corner of the site to be more removed from the abutting pair of semi-detached houses.

19. Landscaping around the site will consist of a variety of plant materials with an emphasis on native and low-maintenance plant selections for hardiness and plant succession. Street and site canopy trees will be added for shade, ornamental flowering trees for focal points and entry interest, and a building-edge planting of evergreen and deciduous plant materials to provide a foundation. The landscaping is designed to visually soften the building mass, mitigate noise of the street traffic, and screen parking and dumpster storage and loading dock areas. Landscaping will provide relief from unshaded paved areas, and alleviate noise and lighting glare associated with roadways and parking areas.
20. On September 27, 2004, the Applicant submitted to the record a document setting forth details about the affordable housing income levels and regulatory controls. One hundred percent (100%) of the apartments will be reserved for low-income and very-low-income renters. Carver 2000 will enter into a 40-year land use restriction agreement with the D.C. Housing Finance Agency ("DCHFA"), which will restrict all of the units to seniors earning less than sixty percent (60%) of the area median income (\$40,860 at present) for a period of not less than 40 years at rents that will not exceed thirty percent (30%) of the area median income. The Applicant will also enter into a Rent Regulatory Agreement with the D.C. Department of Housing and Community Development ("DHCD"), which will specify that approximately 40 percent of the apartments will serve households having thirty percent (30%) or less of the area median income, an additional forty percent (40%) of units will serve those with incomes of thirty percent (30%) to fifty percent (50%) of area median income, and twenty percent (20%) will serve those having fifty percent (50%) to eighty percent (80%) of area median income.
21. The Applicant's economic feasibility and finance consultant, New Market Investors, Inc., testified that the project will generate substantial numbers of construction jobs, given the \$13,500,000 project cost. Requirements of the Memorandum of Understanding with the D.C. Office of Local Business Development, required pursuant to Condition 9 of this Order, include thirty-five percent (35%) of construction trade jobs to be filled by Local, Small and Disadvantaged Business Enterprises ("LSDBE"), fifty-one percent (51%) of jobs to be filled by D.C. residents, forty-two percent (42%) of the construction workforce to be minorities, twenty-five percent (25%) of the nonconstruction workforce to be minorities, and six and nine tenths percent (6.9%) of the construction jobs to be filled by women. This testimony also addressed the financing and subsidy structure of the project and indicated that a loss of one floor in the apartment house would jeopardize the financial viability of the project and reduce the public benefits provided.
22. In response to requests by the Zoning Commission at the public hearing, the Applicant submitted a Post-Hearing Submission on November 12, 2004 that addressed several issues. A revised Site Improvements Plan showed that the trash dumpster would be relocated away from the nearest residences to the southeast corner of the building. Second, the number of

parking spaces was increased from 20 to 23. Shadow and volumetric studies confirmed that the proposed building would not cast a shadow on adjacent residences and that the building's size was not disproportionate to the surrounding neighborhood. Cross sections were submitted showing that the building's proposed height would be mitigated by topography that increases in elevation to the north and the south. The height of the building was reduced by one foot. This submission also provided documentation of the Applicant's First Source Employment Agreement and related jobs commitments to D.C. agencies.

23. As addressed in the Applicant's Pre-Hearing Statement and in testimony at the public hearing, the following public benefits and project amenities will be created as a result of this project.
- a. **Housing and Affordable Housing.** The 104 new apartment units with affordable rents for occupancy by senior citizens will help to meet the overall housing goals of the District of Columbia, as expressed in the Housing Element and the Ward 7 Element of the Comprehensive Plan. Development of affordable housing for senior citizens is a high priority in Ward 7 and the District generally.
 - b. **Stabilizing and Improving the District's Neighborhoods.** One of the overarching themes of the Comprehensive Plan specified in §102 is the goal of "stabilizing and improving the District's neighborhoods." The proposed infill residential development will help accomplish this goal. A deteriorated and failed apartment complex will be demolished to make way for development of an attractively designed apartment house with affordable rents for senior citizens. The existing buildings have been a detriment to the surrounding neighborhood in recent years, and nearby residents are supportive of the proposed plans to remove the problem buildings and replace them with a handsome new building for senior occupancy. The project includes a comprehensive relocation plan and the tenants' association is the property owner and Applicant.
 - c. **Attractive architecture, urban design and landscaping.** The building is attractive for an affordable housing development, including traditional architecture with gabled roof, enclosure of mechanical elements, and a predominantly brick exterior using two tones of brick and EIFS paneling for accents. At four stories but only 1.88 FAR, the building will be compatible in scale and design with the surrounding neighborhood. The landscaping plan will enhance both the private and public open spaces of the property. The apartment building includes superior functional areas for the use of the future residents, including congregate dining, a library, a quiet room, health care, computer access, and security.
 - d. **Comprehensive Plan – Land Use Element.** The Generalized Land Use Map of the Comprehensive Plan designates the site for Moderate-Density Residential development. The requested R-5-B zoning with a PUD is considered "not inconsistent" with this land use classification. The Office of Planning testified that R-5-B is one of the zone districts that may be considered "not inconsistent" with the Moderate-Density Residential designation. The Applicant further notes that this proposed project does not utilize the

full 3.0 FAR allowed with a PUD in the R-5-B District, but is rather proposed to have a density of 1.88 FAR.

- e. **Minimal Transportation Impacts.** The proposed elderly housing development will generate a low level of automobile travel in and out of the site. The PUD Site is served by Metrobus routes along East Capitol Street and is within walking distance of the Benning Road Metrorail Station.

Office of Planning Report

- 24. By report dated October 7, 2004 and by testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Application. "OP finds that this proposal supports [specified Comprehensive Plan] goals by: replacing existing buildings in poor condition with new development; eliminating a potentially disruptive condition from a stable residential neighborhood; increasing the quality of housing stock in Ward 7 and the District; and increasing the affordable housing opportunities specifically for neighboring elderly residents. OP therefore concludes this PUD proposal is not inconsistent with the Comprehensive Plan and it supports more specific housing goals identified in the Comprehensive Plan."
- 25. OP noted that in response to comments from the Zoning Commission, "the Applicant changed exterior siding materials to two shades of brick and siding to relate more subtly with the existing neighborhood. Rendered elevations provided to OP by the Applicant indicate that the resulting design would be an attractive addition to the community. Overall, OP also thinks the parking arrangement, vehicular circulation pattern, access to service locations and site landscaping will greatly enhance the utility of the site."
- 26. OP noted that "the eastern and western ends of the building are shorter in height so that the building 'steps down' as it nears the side property lines," thereby helping create a transition to lower adjacent buildings to the east and west. Regarding the concerns of ANC 7C about the building's proposed height, "OP thinks the construction would not conflict with existing residential and nonresidential buildings in the community, or the Comprehensive Plan. The proposed R-5-B zone district, and the associated allowance for buildings up to 60 feet in height, is not inconsistent with the Moderate Density Residential land use in the Plan. . . . Views to the south across Central Avenue are currently dominated by 2-3 story buildings located on a hillside that reach and exceed the proposed building's elevation. In fact, the roof elevations of buildings along A Street, N.E. and the Carver buildings on the southern end of 47th Street are greater than the roof elevation of the proposed 58-foot tall apartment building."

Reports of Other Agencies

- 27. By report dated July 13, 2004 the D.C. Department of Transportation stated that "this project will have negligible impact on existing traffic volumes and will not create dangerous or objectionable traffic conditions."

28. The D.C. Fire and EMS Department indicated in a memorandum dated September 13, 2004 that it had no objection to construction of the proposed 104-unit apartment house.
29. The Department of Housing and Community Development ("DHCD") stated in a memorandum dated September 23, 2004, that DHCD is "a major party of interest and stakeholder in this proposed PUD project. DHCD is providing major funding. The developer will be required to provide a 40-year affordability period for all the DHCD subsidized units in the proposed building because DHCD is using Housing Production Trust Funds (HPTF) to fund this project." The report further stated that the proposed height will fit well into the neighborhood because the site is very narrow and surrounded by streets, the site is at a low point in the neighborhood, and the change in façade materials to a lighter color for the 4th floor will "establish a cornice line between the third and fourth floors and help integrate the fourth floor visually with the asphalt shingle roof."

Advisory Neighborhood Commission 7C

30. Advisory Neighborhood Commission 7C submitted a letter dated September 20, 2004, stating that, "while the ANC is not opposed to the subject venture, i.e., George Washington Carver Senior Housing, there are a number of very serious issues and concerns." The ANC's most significant concern was the size of the project at four stories and 104 apartment units. The letter also expressed concerns about the lack of 100 percent brick exterior construction, traffic volume, provisions for trash collection, handicapped access and security. The letter expressed appreciation to the Carver Tenants Association for complete discussions and information-sharing with the ANC.

Other Community Organizations

31. Letters in support of the PUD application were submitted to the record from the Far Northeast-Southeast Council, the Marshall Heights Community Development Organization, the Fort Dupont Civic Association, and the Northeast Boundary Civic Association.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.
2. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of

building types with more efficient and attractive overall planning and design not achievable under matter-of-right development.

4. The Zoning Commission has the authority under the Zoning Regulations to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may be exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, yards, or courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
5. The approval of this PUD is not inconsistent with the Comprehensive Plan.
6. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
7. The development of this PUD is compatible with citywide goals, plans, and programs and is sensitive to environmental considerations. The Commission also finds that the proposed PUD is not inconsistent with the Comprehensive Plan.
8. The impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is not unacceptable.
9. The public benefits of the PUD are adequate given the absence of development incentives being sought.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application persuasive.
11. Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission. The ANC expressed concern over the size of the project at four stories and 104 apartment units as well as the lack of 100 percent brick exterior construction, traffic volume, provisions for trash collection, handicapped access and security.
12. The proposed PUD can be approved with conditions that ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
13. The approval of the application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1997.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for consolidated review of a planned unit development for Lots 78 and 79 in Square 5140 and for a related Zoning Map Amendment from R-5-A to R-5-B. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by the architectural firm of Arel Architects, marked as Exhibits 7, 19, 21, 39, and 42, as modified by the guidelines, conditions, and standards of this Order.
2. The development approved in this PUD shall be a new, 104-unit, four-story apartment building for senior citizens, including one apartment for the resident manager. All of the units shall be restricted to seniors earning less than sixty percent (60%) of the area median income for a period of not less than 40 years at rents that will not exceed thirty percent (30%) of the area median income. Approximately forty percent (40%) of the apartments shall serve households of seniors having thirty percent (30%) or less of the area median income, an additional forty percent (40%) of units shall serve those seniors with incomes of thirty percent (30%) to fifty percent (50%) of area median income and twenty percent (20%) shall serve those having fifty percent (50%) to eighty percent (80%) of area median income.
3. The total density of the development shall not exceed 1.88 FAR and the maximum lot occupancy shall not exceed forty-nine percent (49%).
4. The height of the building shall not exceed fifty-eight (58) feet.
5. The development shall provide off-street parking for twenty-three (23) vehicles, as shown on the site plan.
6. Exterior materials shall include two tones of brick and a cementitious fiber type of siding, or "EIFS."
7. The applicant shall have the flexibility to:
 - a. Vary the location and design of all interior components of the building, provided that the variations do not change the exterior configuration of the building;
 - b. Make minor adjustments in the façade detailing and fenestration, and in the location and appearance of signage, provided that such signage shall be generally consistent with the approved plans; and
 - c. Vary the mix of apartment unit types by up to 15 percent.

8. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") prior to the issuance of a building permit.
9. The Applicant shall enter into a Memorandum of Understanding with the D.C. Office of Local Business Development prior to the issuance of a building permit.
10. No building permit shall be issued for this planned unit development and the PUD related map amendment shall not become effective until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). This covenant shall bind the Applicant and all successors in title to construct on and use the subject property in accordance with this Order or any amendment thereof.
11. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a certified copy of the covenant with the records of the Zoning Commission.
12. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application shall be filed for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.
13. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 14, 2005, the Commission voted to approve the application by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand to approve).

This Order was adopted by the Zoning Commission at its public meeting of April 11, 2005, by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Kevin L. Hildebrand to approve).

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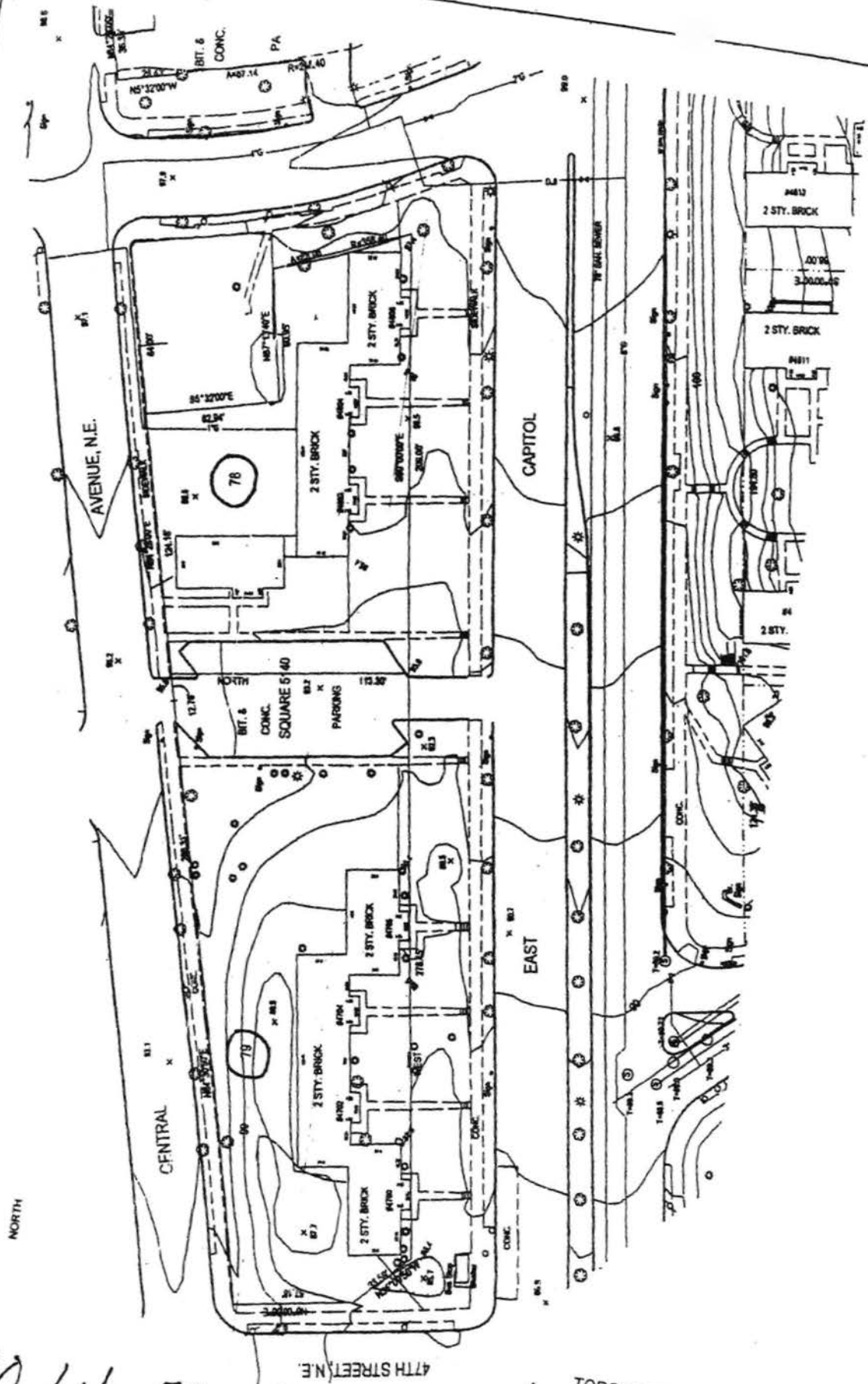
In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register, that is, on MAY 13 2005.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning



5g. 5140, Lots 78+79

Exhibit B

1. Proposed Modification of Decision Condition No. 2, Order No. 04-04 (GW Carver Senior Apartments):

“2. The development approved in this PUD shall be a new, 104-unit, four-story apartment building for senior citizens, including one apartment for the resident manager. All of the units shall be restricted to seniors earning less than sixty percent (60%) of the area median income for a period of not less than 40 years at rents that will not exceed thirty percent (30%) of the area median income. ~~Approximately forty percent (40%) of the apartments shall serve households of seniors having thirty percent (30%) or less of the area median income, an additional forty percent (40%) of units shall serve those seniors with incomes of thirty percent (30%) to fifty percent (50%) of area median income and twenty percent (20%) shall serve those having fifty percent (50%) to eighty percent (80%) of area median income.”~~

2. Examples of Comparable Conditions from Other Recent Affordable Housing PUDs:

04-37 (Eastgate Senior Residences)

#3. “The development approved in the PUD shall be a new, 100-unit, three- and four-story apartment building for senior citizens. Rents will be in the affordable range for low- and moderate-income households.”

04-11 (611 Emerson Street, N.E.)

#5. “In coordination with OP and DHCD, the Applicant shall agree to make available and restrict the sale of two 18’ X 36’ townhouse units for a period of 20 years, as affordable housing to qualifying households not exceeding 85 percent of area median income.”

04-24 (Rhode Island Avenue Metro)

#3. “Twenty percent (20%) of the apartments (54 units) shall be made available and restricted for a period of twenty (20) years as affordable housing for qualifying households having incomes not exceeding fifty percent (50%) of area median income (“AMI”).”

04-13 (Logan Phase II)

#3. “The project shall provide a minimum of 63 residential units, of which five will be available for sale as affordable housing to persons with maximum annual incomes of 80% of [AMI] pursuant to eligibility requirements and enforcement mechanism to be developed in accordance with DHCD recommendations. The units to be reserved . . . [are listed below].”