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February 17, 2006

Sharon Schellin
Secretary to the Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Proposed Order
Zoning Commission Case No.04-04A
G.W. Carver Minor Modification

Dear Ms. Schellin:

Enclosed is the original and 20 copies of the proposed order in the above-cited case. Please call if there are any questions.

Sincerely,
ARNOLD & PORTER LLP

Nathan W. Gross
Nathan W. Gross, AICP

Enclosures

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ZONING COMMISSION ORDER NO. 03-03A/02-05

Case No. 04-04A

**Minor Modification to the Consolidated Planned Unit Development
for G.W. Carver Senior Apartments
February 13, 2006**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia was held on February 13, 2006. At the meeting, the Zoning Commission approved an application from the Carver 2000 Tenants Association, Inc. (the "Applicant") for a minor modification to an approved planned unit development ("PUD") for property identified as Lots 78 and 79 in Square 5140, bound by Central Avenue, East Capitol Street, 47th and 49th Streets, N.E. This PUD Modification is authorized pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. Because the modification was deemed minor, a public hearing was not conducted. The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

By Zoning Commission Order No. 04-04, dated April 11, 2005, the Commission approved a PUD for Lots 78 and 79 in Square 5140. The Order approved the construction of a 104-unit apartment house for senior citizens, including one apartment for the resident manager. All of the units will be for seniors having household incomes of less than 60 percent of Area Median Income ("AMI"). The PUD site was rezoned from R-5-A to R-5-B in conjunction with the PUD.

The Application requested a modification of Condition No. 2 of Order No. 04-04. That condition states 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.*

The Applicant's PUD Modification submission of January 18, 2006 requested that only the first two sentences of this condition be retained. The stated reason was that the underwriting and financing entities for the project were unwilling to assume the risk represented by 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.

More specifically, the indicated income ranges assume the continuation of a Housing Assistance Payment Contract the Applicant has with the DC Housing Authority (HAP contract #0007-2003). The AHAP was awarded to the Applicant 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 the D.C. Housing Finance Agency ("DCHFA") and will be recorded in a DCHFA land use restriction agreement at Bond closing. With the HAP, the project will be able to reach a much lower income profile as set forth in existing Condition No. 2 of Order No. 04-04.

The issue is that 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 Zoning Commission's Order 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 set forth in the last sentence of Condition No. 2 in the Decision. They have no problem with the long-term use restriction requiring that 100% of the Property's tenants have less than 60% of median income even if, at some future time, HAP funding were no longer available..

The Applicant proposed that the last sentence of Condition No. 2 simply be deleted, which would leave in place the affordability 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 Application stated that, even with the proposed change, G.W. Carver Senior Apartments delivers a very strong affordable housing package for the following reasons:

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1. One hundred percent (100%) of the units will be affordable, which exceeds the typical minor "component" of affordable units within an otherwise market-rate project;
 2. The dwelling units will be held affordable for a 40-year time period, which is much longer than the 20-year affordability period that often is proposed in PUDs;
 3. All of the units will be for senior households having 60 percent of AMI or less, so that this building will serve genuinely low- and moderate-income seniors; and
 4. The specific text to be retained in Condition No. 2 is a stronger requirement than most PUDs with an affordable housing component.

By report dated January 27, 2006, the Office of Planning ("OP") recommended approval of the requested Modification, noting that Condition No. 2 would continue to explicitly require 100 percent of the apartment units to be affordable to seniors having 60 percent or less of AMI for a period of not less than 40 years, "a significantly greater affordable housing contribution than is provided in any comparable planned unit development."

During its deliberations on February 13, 2006, the Zoning Commission decided to substitute a sentence for the deleted sentence that would retain the goal of the Applicant acquiring HAP funding and being able to achieve the indicated household income target.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Zoning Commission finds that the proposed modification is minor, consistent with the intent of the previously approved Zoning Commission Order No. 04-04 and that no public hearing is necessary. Further, the Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations. The approval of the modification is not inconsistent with the Comprehensive Plan.

The Zoning Commission finds that approving the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for a minor modification of an approved PUD. Condition No. 2 of Order No. 04-04 is hereby revised to read as follows:

2. *The development approved in this PUD shall be a new, 104-unit, four-story apartment building for senior citizens, including one unit 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. The Applicant shall seek renewal of its Housing Assistance Payment funding so that the program goals of forty percent (40%) of the units being for households having thirty percent (30%) or less of AMI, forty percent (40%) having household of thirty to fifty percent (30%-50%) of AMI and twenty percent (20%) having incomes of fifty to eighty percent (50%-80%) of AMI may be achieved.

This order was **adopted** by the Zoning Commission at its public meeting on February 13, 2006, by a vote of _____ () .

In accordance with the provisions of 11 DCMR § 3028.8, this order shall become final and effective upon publication in the D.C. Register; that is, on

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