

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
Zoning Commission Order No. 05-35

Consolidated Planned Unit Development and Amendment to the Zoning Map for
Stanton Square, LLC
_____, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on May 24, 2007, to consider an application for Stanton Square, LLC, for the consolidated review and approval of a planned unit development for the property known as Lots 60, 61, 78, 832, 835, 853, 854, 855, 856, 857, 858, 873, 878, and 879 of Square 5877, and approval of an amendment to the Zoning Map of the District of Columbia 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.

At its public meeting on July 9, 2007, the Zoning Commission took proposed action by a vote of 5-0-0 to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to Section 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated July 26, 2007, found that the proposed PUD “would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any federal interests”.

The Commission took final action to approve the application on September 10, 2007 by a vote of _____.

A. FINDINGS OF FACT

1. On November 11, 2005, Horning Brothers (“Applicant”) filed an application for the consolidated review and one-step approval of a Planned Unit Development (“PUD”) and a corresponding amendment to the Zoning Map.

2. Stanton Square LLC is the current owner of the site. Horning Brothers and Stanton Square LLC have entered into a contract whereby Horning Brothers will act as fee developer for the site upon approval of this project by the Zoning Commission. (Exhibit 17, p. 1.)

3. The property that is the subject of this application is bounded by Stanton Road, Elvans Road, and Pomeroy Road, S.E. The property is made up of Lots 60, 61, 78, 832, 835, 853, 854, 855, 856, 857, 858, 873, 878, and 879 of Square 5877 (“Subject Property”) (the “Subject Property” or “Property”). The property is located in the Fort Stanton neighborhood in Ward 8. The Property consists of approximately 8.1 acres or

353,256 square feet. The Property is located in a R-3 Zone District. (Exhibit 17, p. 1.) The Applicant seeks to rezone the Subject Property to the R-5-A Zone District.

4. The Applicant seeks to construct 187 single-family townhomes, with 63 townhomes reserved for households making up to 60% or 80% of the Area Median Income ("AMI"). (Exhibit 17, p. 2.)

5. At its January 9, 2006, public meeting, the Zoning Commission took no action regarding setting down the initial project. The Zoning Commission requested that the Applicant look to increase the amount of greenspace on the project, reduce the amount of paved area, and re-examine the proposed treatment of the steeply sloped area of the Subject Property. In response to those comments, the Applicant submitted an updated plan to the Zoning Commission on February 1, 2007.

6. The Zoning Commission set-down the PUD for public hearing on February 12, 2007 requesting that the Applicant address the following issues: 1) increase the amount of green space in the project; 2) provide additional information regarding retaining water on the site (specifically involving low-impact development strategies); 3) reduce the asphalt coverage of the site; 4) provide information on the expected pricing of the market-rate units; and 5) provide details regarding the exterior treatment of the townhome units. (Exhibit 17, p. 1.)

7. The Zoning Commission held a public hearing on the above-mentioned application on May 24, 2007, which was conducted in accordance with the provisions of 11 DCMR § 3022. There were no requests for party status at the public hearing.

8. At the May 24, 2007 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted James McDonald of the Lessard Group Architects as an expert in architecture; Mary Ramsey of Edwards & Kelcey as an expert in civil engineering; and Joe Plumpe of Studio 39 as an expert in landscape architecture. (Transcript from May 24, 2007 ZC Public Hearing, p.9.)

PUD SITE AND SURROUNDING AREA

9. The Subject Property includes approximately 8.1 acres, or 353,256 square feet, and is located between the Hillsdale and Fort Stanton neighborhoods approximately one-half mile north of Suitland Parkway. The Subject Property is irregularly shaped and is bounded by Stanton Road to the west, Evans Road to the south and east, the Wilkinson Elementary School directly to the north, and Pomeroy Road to the northwest. (Exhibit 17, p.3.)

10. The Subject Property is currently undeveloped, has steep topography, and slopes generally to the west, with a sharp 30-foot drop effectively dividing the site into an

upper and a lower portion. Where the Subject Property borders Wilkinson Elementary School, there is a large concrete retaining wall. (Exhibit 17, p. 3.)

DESCRIPTION OF THE PUD PROJECT

11. In its pre-hearing statement, dated March 14, 2007, the Applicant presented revised plans and materials reflecting the comments and requests of the Zoning Commission. The Applicant noted that the success of the project (to be known as Stanton Square) remains the mix of 187 affordable and market rate townhomes in a cohesive development that includes a mix of unit types interspersed throughout the Subject Property, while creating an appropriate amount of green space for residents and their guests. In response to the comments of the Zoning Commissioners on February 12, 2007, the Applicant undertook a holistic approach to creating a project that has an increased amount of green space, a reduced amount of paved area, and includes significant low-impact development strategies that will significantly reduce the overall environmental impact of this project. (Exhibit 17, p. 1.)

12. The PUD project creates a new 187-unit townhome community that embraces and welcomes community interaction. With a mix of affordable and market rate homes, the Applicant has strived to create a cohesive community feel. The townhome architecture creates a mixture of texture and scale giving the community an image of an established neighborhood. (Exhibit 17, p. 3.)

13. A mixture of architectural styles and elements will eliminate any overpowering presence to the buildings. Two-story units, repetitive bay elements, and paired styled units are specifically located to break up the scale of the streetscape and building facades. The fronts of the townhomes have a mixture of Federal, Colonial, and Transitional Victorian architectural styles consistent with the architectural styles of the surrounding area and found throughout the District of Columbia. Detailed entries, front stoops and porticos embellish the street facades in addition to the full two and three-story projecting bay windows and the detail oriented window and door surrounds. (Exhibit 17, p. 4.)

14. The facades of the individual townhome units will include a mix of brick, siding, and trim to create a sense that the project was created over time. The Applicant anticipates that 84 units (45%) will have all-brick fronts, 88 units (47%) will have brick along the water table, and 15 units (8%) will not include brick. The affordable units will also have brick and masonry elements included in their façade. The roofs will be either architectural asphalt shingles or metal. (Exhibit 17, p. 4.)

15. The site plan provides a traditional street grid pattern, with a two-way "Main Street" on the lower portion of the site. The proposed internal street grid and the

townhomes are sited to work with the existing grade by creating “English basements”¹ (buried front levels) instead of retaining walls. The use of English basements also creates a reduced scale of the townhomes along the street. The street grid introduced to the site creates a pedestrian-friendly community as well as opens up green spaces for public access. (Exhibit 17, p. 4.)

16. Internally the streets focus on, and direct attention, to the public green spaces or pocket parks. Each street provides view corridors along tree lined streets toward open spaces and to the landscaped pedestrian link along the hill that separates the upper and lower portions of the site. The design and layout of the project emphasizes the green corridor at the front of each home by providing landscaping and tree planting areas in each lot within the community, as well as the landscaped front yards for the units facing the surrounding streets. (Exhibit 17, p. 5.)

17. The townhouse units will consist of models that are 14, 16, 18, and 20 feet wide. The majority of these units will be three stories tall with rear-loaded vehicular access provided from private alleys. In addition, in order to better relate to the existing topography of the site, 64 of the 187 units include English basements (partially buried ground floors). Twenty units have rear yards and front-loaded vehicular access, some units have side-loaded vehicular access, and some of the 14-foot wide units are two stories in height. All of the townhomes, except for the two-story units, will have cantilevered decks located on the rear of the unit. These decks will be approximately 12 feet wide and 4.5 feet deep. These decks will allow the opportunity for private space outdoors, in addition to the front yards, which could include outdoor seating and dining. Most units will have family rooms and garages on the first floor and kitchens and living areas on the main floor; between 35% and 65% will have at least three bedrooms (depending on the options selected by the purchasers). (Exhibit 17, p. 6.)

18. The upper portion of the site will include a tot lot and a series of open spaces that can be used by residents of the project and their guests for outdoor recreation. The lower portion of the site includes an open plaza at the intersection of Stanton and Pomeroy Roads that provides similar outdoor recreation space. In addition, the lower portion of the site also includes a series of green, open spaces. A series of short, landscaped retaining walls are provided in this area to provide the necessary stability to protect the steep slope, while also preventing the creation of a single large retaining wall. (Exhibit 17, p. 6.)

19. The internal street system includes both one-way and two-way streets. This combination allows the Applicant to reduce the amount of paved roadway area on the Subject Property, while creating a safe and pleasant co-existence between pedestrian and vehicular traffic. In total, approximately 32 on-street parking spaces will be provided for use by residents of the PUD project and their guests in the new internal street system.

¹

These English basements will not be separate rentable units from the single-family townhomes.

Additionally, a series of 16-foot-wide alleys will connect the residents' garages to the streets. (Exhibit 17, p. 7, Exhibit 30.)

20. The Applicant initially proposed to create public streets and alleys for this project. In order to create such public streets and alleys, the Applicant requested that DDOT provide flexibility from the strict requirements of the DDOT Design and Engineering Manual (the "Manual"). The majority of the flexibility requested was related to the right-of-way width required by the Manual. At the public hearing, and in its post-hearing submission, the Applicant testified and provided written statements that it was going to make the street and alley system private and therefore no relief from the Manual was necessary. The Applicant notes that truck tracking diagrams submitted to DDOT demonstrate that cars, trash trucks, and emergency vehicles will be able to access all the streets and alleys within the site. The Applicant will make an initial capital contribution to the reserve fund of the Stanton Square Homeowner's Association that can be used for repairs and maintenance of the private streets and alleys. (Exhibits 31, 35.)

21. The total gross floor area included in the PUD is 317,438 square feet which creates a total FAR of 0.90, below the 1.0 FAR guideline for a PUD in the R-5-A District. The total lot occupancy is approximately 31%, with green space of 114,078 square feet, and paved area of 90,070 square feet. (Exhibit 30.) The townhomes will have heights of 28 feet, 6 inches, measured to the ceiling of the top story, less than the 40-foot height permitted in the R-5-A District as a matter-of-right, and a total height of 40 feet, 3 inches. The R-5-A District requires one parking space for every dwelling unit. This PUD project will contain 267-287 parking spaces. (Exhibit 17, p. 7-8.)

22. The PUD project complies with the underlying zoning district requirements; however, pursuant to 11 DCMR Chapter 24, it requires relief from the front, rear and side requirements (§§2516.5(b), 404 and 405) and to allow more than one principal structure on a single lot (§2516.1). In addition, the Zoning Regulations require a minimum distance of 28 feet between driveways (11 DCMR §2117.8(d)). For the proposed front-loaded garage townhouse units, the project provides a distance of six feet – eight feet between the driveways that act as "safety zones". Satisfaction of the strict requirements of §2117.8(d) is not possible because the front-loaded garage townhome units are only 16-20 feet wide. These areas of flexibility requested of the R-5-A District will have no impact on the surrounding properties. (Exhibit 17, p. 8, Exhibit 35.)

SATISFACTION OF PUD EVALUATION STANDARDS

23. Through written submissions and testimony to the Zoning Commission, the Applicant and its representatives noted that the application will provide high quality residential development on the Subject Property with significant public benefits to the neighborhood and the District as a whole.

24. Urban Design and Architecture: The proposed townhomes are designed to complement and elevate the level of architectural quality and design in this area of the District. The impact of 187 new townhomes at this location will set a design standard for

this area, giving the Stanton Road thoroughfare an architectural significance that it has lacked in the past. Furthermore, the townhomes are built to the street, with yards at the front and the majority of the units having automobile entry and parking from rear alleys. The introduction of townhomes of varying size and height, as well as the 20 front-loaded townhomes with rear yards, also helps add to the architectural richness of the project. (Exhibit 17, p.13.)

25. There will be no gates or barriers preventing members of the public from gaining access to the site. The Applicant anticipates that the pocket parks at Stanton and Pomeroy Roads, and along Elvans Road will be utilized extensively by residents of the project and the surrounding community. The design connects the homes to the public streets, incorporates the entire development into the existing neighborhood, and enhances the walkability of the streets; it does not create a self-contained suburban-style village. (Exhibit 17, p.13-14.)

26. Site Planning: The Applicant noted that throughout the design review process it has sought to address the requests of the Zoning Commission and the Office of Planning to maximize greenspace and reduce paved area on this site. The proposed density of the project is entirely appropriate for the Subject Property. Green space occupies 32% of the Subject Property. The revised site plan continues to make efficient use of a site that poses many topographical challenges. While a steep 30-foot slope requires that the project be divided into two parts, the site plan seamlessly ties these two parts together, so that the project functions as a whole, through the creation of a walking path and stair system. (Exhibit 17, p.14.)

27. The layouts of townhomes, especially the units with English basements, allows for more natural street and site grading within the project to account for the 10-12 foot elevation change that occurs on the lower portion of the site. The introduction of a more traditional street grid system and the various open and green spaces provide an inviting and open environment for residents of the project, their guests and members of the surrounding community. Biorentention areas, rain gardens, and Filterra units have been incorporated into the site plan to create a true low impact development ("LID") strategy for this project. Pocket parks and mews have been developed to create linked pedestrian spaces. The central focus of the project becomes the open greenspace which separates the upper and lower portions of the Subject Property. The steep grade differential between the two parts of the project has evolved into cascading landscaped garden retaining walls. The internal private road system has been created to provide view corridors towards this open space, as well as the individual unit architecture. (Exhibit 17, p.14-15.)

28. Effective and Safe Vehicular and Pedestrian Access: The proposed one-way and two-way street systems will discourage excessive speeds and cut-through traffic. Safe and inviting sidewalks will be created along the surrounding public streets and throughout the site to encourage pedestrian activity and also mitigate and pedestrian/vehicular conflicts. The proposed development provides residents with approximately 267-287 parking spaces, depending on the number of units that will have

tandem parking spaces. Guest parking is provided in approximately 32 designated parallel parking spaces located along the interior roadway system, enhancing vehicular access to and from residents' homes. (Exhibit 17, p.15.) There are currently no parking restrictions along the Stanton Road frontage of the site, with the exception of a Metrobus stop adjacent to the intersection with Elvans Road. Approximately 42 ± parking spaces are available along the Stanton Road frontage of the site for residents and guests. The Elvans Road frontage is currently restricted by the two-hour Residential Parking Permit Program between the weekday hours of 7:00AM – 8:30PM. Approximately 70± parking spaces are available along the Elvans Road frontage of the site for residents and guests. (Exhibit 35.)

29. The Applicant's traffic and parking expert provided written documentation that the study area roadway network currently operates at an acceptable level of service during the morning and afternoon peak periods and will continue to do so after build-out of the project without the need for off-site roadway improvements. The proposed project will generate an average of 92 peak hour vehicle trips. These trips are anticipated to be well distributed and will result in minimal impacts on the study area intersections. The traffic and parking expert also concluded that the parking supplied in the project would adequately comply with District regulations. In conclusion, the traffic and parking expert noted that the project can be accommodated without any appreciable adverse traffic impacts on the local area. (Exhibit 24, Exhibit E p. 19.)

30. Housing: The proposed PUD project will add 187 new for-sale residential townhomes to the Hillsdale and Fort Stanton neighborhoods. The project will include 63 townhomes as workforce affordable housing units. 20 townhouses will be reserved for households making up to 60% of AMI and 43 townhouses will be reserved for households making up to 80% of AMI. The affordable models will consist of the 14 and 16 foot models, which include two bedrooms and two bedrooms with a den. The affordable townhomes will not constitute a majority of units in any particular area of the development. Based upon the results of a market study, the Applicant anticipates that the market rate for these units will range from \$280,000 - \$340,000 depending on the unit size. A three person household with an income of 80% of AMI will be able to pay approximately \$234,000 for a new home. Assuming an average market rate price of \$290,000, the three-person household at 80% of AMI will be achieving a discount of \$56,000 from the market rate price. (Exhibit 17, p.16.)

31. Revenue for the District: The addition of 187 new households will result in the generation of significant additional tax revenues in the form of property, income, sales, and employment taxes for the District. (Exhibit 17, p.16.)

32. First Source Employment Program: The Applicant will enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents during the development and construction process. (Exhibit 17, p.16-17, Exhibit H.)

33. Local, Small and Disadvantaged Businesses: The Applicant will enter into a Memorandum of Agreement ("MOU") with the Office of Local Business Development ("OLBD") to use the resources of the OLBD to utilize local business enterprises in the development of this project. (Exhibit 17, p.17, Exhibit H.)

34. Environmental Benefits: The LID strategy addresses both water quality control and water quantity control. A series of bioretention areas/rain gardens and Filterra units have been introduced into the project. The multiple bioretention/rain garden areas are strategically situated where site grading and sufficient drainage and planting space permit such uses. These areas create a reduction in peak flow rate of stormwater and also help treat the stormwater prior to it leaving the Subject Property. The bioretention/rain garden areas and their associated structures will be located in common areas and will be maintained by the homeowners association. The maintenance responsibility for these facilities is not expected to be overly cumbersome or expensive. The project also includes four Filterra units, which significantly reduce pollutants through filtration and absorption of storm water in a specially engineered media within the underground concrete box. These systems together reduce the burden on the storm water infrastructure of the site as well as of the District, in addition to improving water quality. (Exhibit 17, p.11-12.)

35. Uses of Special Value to the Neighborhood: The Applicant is providing the following public benefits and amenities.

- Workforce Affordable Housing
63 of the 187 townhomes will be reserved as workforce affordable housing units. 20 of these affordable units will be made available to households making up to 60% of AMI, and 43 of these units will be made available to households making up to 80% of AMI. (Exhibit 30.)
- Public Space Improvements in the Community
The Applicant will make a financial contribution of \$30,000 that will be used for the purchase and placement of 30 commercial trash receptacles (36 gallon size with steel slats), 30 decorative pole banners, and 30 decorative single pole brackets for placement in the surrounding neighborhoods. The Applicant and representatives of ANC 8A will coordinate with representatives of DDOT to determine location requirements and the ability of the District to remove the trash placed in the receptacles. (Exhibit 30.)
- Fort Stanton Recreation Center
The Applicant will make a financial contribution of \$30,000 to the Fort Stanton Civic Association that will be used for the purchase of computers (including service and technical support service contracts) for the Fort Stanton Recreation Center. (Exhibit 30.)
- Signage in the Fort Stanton and Hillsdale Neighborhoods
The Applicant will contribute \$15,000 for the creation and installation of three signs welcoming visitors to the Fort Stanton and Hillsdale

neighborhoods. Based on discussions with members of ANC 8A and the community, these signs are intended to be located at: Suitland Parkway and Stanton Road; Fort Place and Bruce Place (near the Smithsonian's Anacostia Community Museum); and Martin Luther King Boulevard and Howard Road. (Exhibit 30.)

- Low Impact Development/“Green” Design Strategies
The Applicant has maintained a significant amount of green space (32%) on the Property and has limited the amount of paved area (25%) on the Property. The site plan includes a tot lot and parks for residents of the project and the surrounding community. (Exhibit 30.)
- Homebuyers’ Program
The Applicant has entered into an agreement with MANNA, Inc. to create a dedicated chapter of MANNA’s Homebuyer Club for the Stanton Square project to help members of the surrounding community be financially prepared for homeownership. (Exhibit 35, Tr. of May 24, 2007 public hearing, p. 31-32.)
- Capital Contribution to Homeowner’s Association Reserves Fund
The Applicant will contribute \$46,750 (\$250 per townhome) to the Stanton Square Homeowner’s Association Capital Reserves fund. (Exhibit 30, Tr. of May 24, 2007 public hearing, p. 12.)

36. Comprehensive Plan: The project is fully consistent with and fosters the goals and policies stated in the elements of the DC Comprehensive Plan (the “Plan”). The District of Columbia Generalized Land Use Map recommends moderate density residential land use for the Subject Property. The moderate density category includes row houses and garden-style apartments as its predominant uses. Thus, the proposed rezoning of the Subject Property to R-5-A is consistent with the Generalized Land Use Map designation for the Property.

37. The project serves the goals of several of the citywide elements of the Comprehensive Plan:

- Consistency with the Framework Element

The Plan stresses the importance of preserving and including community input in the planning and development process. The Applicant met with representatives of ANC 8A, the Anacostia Coordinating Council, the East of the River Community Development Corporation, and other neighborhood organizations. In these meetings, the Applicant was told that the community wants to see a solely townhouse project on the Subject Property. ANC 8A adopted a resolution in support of the project. (Exhibit 17, p.19-20.)

- Consistency with the Land Use Element

The Plan cites the importance of infill development on vacant lots. The project will make good and valuable use of a well-located parcel of land now merely overgrown with vegetation and a crime nuisance to members of the community. The project has

been designed to be completely complementary to the surrounding neighborhood. The townhomes are built up to the street; this frontage, when combined with the front yards, front stoops, and projecting bays adorning each townhome and sidewalk system, creates an attractive and intrinsically walkable community. The project also provides a more usable, secure green space plan. (Exhibit 17, p. 20.)

The Plan also seeks to achieve “land use compatibility” – specifically, the enhancement and stabilization of the District’s neighborhoods by the protection of residential neighborhoods from non-residential and disruptive uses. The Applicant stated that development in the Hillsdale/Fort Stanton area of 187 new townhomes will help achieve that goal. The Subject Property is located in a primarily residential neighborhood. A new development of townhomes in this neighborhood will not be disruptive, and in fact provides a new type of residential opportunity for existing residents of the neighborhood. No displacement of residents will occur as a result of this application. The Applicant noted that these townhomes will provide residents with an interim housing opportunity from a rental apartment to a single-family home, or alternatively provide an attractive housing opportunity for someone who is looking to minimize the amount of work that is necessary to maintain a single-family home. (Exhibit 17, p. 20-21.)

- Consistency with the Transportation Element

The sidewalks of the proposed development will be connected to the existing sidewalk system on Elvans, Stanton, and Pomeroy Roads. The sidewalks on these streets will be safer and more user-friendly with the removal of overgrown vegetation as well as the integration of a complete pedestrian sidewalk system for the surrounding neighborhood. The building out of the townhomes to the sidewalk also enhances the appearance and walkability of the pedestrian streetscape. (Exhibit 17, p. 21.)

- Consistency with the Housing Element

The Plan notes that “[e]xpanding the housing supply is a key part of the District’s vision to create successful neighborhoods,” and especially seeks to achieve this via the private sector. The project will expand the housing supply by a considerable 187 high-quality units, and is being undertaken by a private-sector entity (the Applicant). Furthermore, the Plan emphasizes that “[r]egardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance.” The Applicant has followed this guidance carefully, the affordable units in the project will be visually indistinguishable from the neighboring market-rate units. The high-quality affordable community will serve as an anchor that strengthens and enhances the surrounding residential neighborhood. (Exhibit 17, p. 22-23.)

- Consistency with the Environmental Protection Element

The Plan seeks to encourage the planting of street trees and the “use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater

runoff, and create a stronger sense of character and identity.” The project features 32% of the site area as green space, with just 25% of the site area covered by pavement. In addition, an extensive landscape plan provides for abundant trees, and comprehensive and creative stormwater treatment. The LID strategy included in this project will both reduce stormwater runoff and help treat stormwater prior to it leaving the Subject Property. (Exhibit 17, p. 23.)

- Consistency with the Urban Design Element

The proposed development will reflect the beneficial architectural qualities of the surrounding residential neighborhoods. In site planning and architectural detailing, the project will emphasize and help strengthen a neighborhood identity for this area. The project proposes an appropriate number and density of residential units, while allowing for sufficient private and public open space for the residents. (Exhibit 17, p. 24.)

- Compliance with Area Element

The Plan also contains ten area elements, with the Subject Property located in the Far Southeast/Southwest Area Element. The project is consistent with this element of the Plan. The proposed project furthers the objectives and policies of several of these elements as follows:

- Nature of Housing Provided

The Far Southeast/Southwest Area Element lists “improved housing choices” as one of the four principal priorities for the area. The creation of 187 new townhomes will substantially improve the housing choices in an area of the city largely dominated by deteriorating garden apartments available only for rent. The Plan also notes that “Far Southeast/Southwest needs more housing suitable for families and young homeowners...Additional low to moderate density housing should be encouraged...In some areas, rezoning may be needed to promote the desired housing types,” which include “row house[s].” The project provides such housing, and the rezoning requested by the Applicant to provide it is consistent with that recognized as “needed” by the Comprehensive Plan. (Exhibit 17, p. 24-25.)

- Location of Housing Provided

The Plan seeks to “[c]oncentrate future housing development and employment growth in the Far Southeast/Southwest around the Congress Heights and Anacostia Metro Stations...provide improved transit and automobile access to these areas and improve their visual and urban design qualities.” The project will be developed close to both the Congress Heights and Anacostia Metro Stations and improve transit ridership on Metrorail and Metrobus in the immediate vicinity.

Second, the Plan sets out to “[e]ncourage compatible infill development on vacant and underutilized land within the Hillsdale and Fort Stanton neighborhoods, with an emphasis on low to moderate density housing designed for families. Special care should be taken to respect the area’s topography...” The project constitutes an infill development in the Fort Stanton neighborhood, will provide moderate density housing for families, and is sensitively designed to incorporate the existing topography of Subject Property into the site plan. (Exhibit 17, p. 25.)

38. In response to issues raised by the Zoning Commission members at the May 24, 2007 public hearing, the Applicant filed a post-hearing submission which included the following information:

- A letter from Manna, Inc. regarding the creation of a homebuyers club for the Stanton Square project.
- Responses to the issues raised in the May 23, 2007 DDOT report; and
- Summary of architectural controls which includes a description of the duties of the Architectural Review Board for the Stanton Square Homeowners Association that will be created for this Project.

(Exhibit 35).

39. The Applicant’s response to DDOT’s May 23, 2007 report included the following information:

DDOT RECOMMENDATION: Design and construct the proposed alleys to DDOT design standards and dedicate them for public use after DDOT has obtained the authority to approve right-of-ways less than 55 feet wide.

The Applicant will follow the alternative approach noted on the first page of the DDOT report and construct all of the streets and alleys as private streets and alleys. (Exhibit 35, Tr. of May 24, 2007 public hearing, p. 11.)

DDOT RECOMMENDATION: Modify the design of the new roadway across from Gainesville Street, SE by changing it to a one-way traffic pattern and connecting it with Elvans Road, SE.

The project architect and the Applicant’s traffic engineer reviewed this alternative during the site planning phase of the project. The conclusion of these professionals is that DDOT’s proposal would not be appropriate and would in fact be detrimental for the following reasons:

- a) The current design allows all traffic from the upper portion of the site to enter and exit at an all-way stop-controlled intersection. Accident data provided by DDOT shows the existing Elvans Road @ Gainesville Street intersection to be safe.
- b) DDOT’s suggested new roadway connection to Elvans Road would be along a section of a combined horizontal and vertical curve,

with restricted sight distances. The crest of the hill is approximately mid-way between the suggested exit onto Elvans Road and the Gainesville Street intersection. DDOT's proposal would have all traffic for the upper portion of the site exiting at the extended roadway, where it would not be feasible to provide an all-way stop-controlled intersection, as exists at the currently designed entrance at Gainesville Street, SE.

- c) Considering the design criteria of the American Association of State Highway and Transportation Officials ("AASHTO") Geometric Design Manual, the stopping sight distance and driveway corner sight distances approaching the suggested new exit onto Elvans Road would both be inadequate.

(Exhibit 35.)

DDOT RECOMMENDATION: Modify the proposed two-way roadway in the middle of the Stanton Road portion of the project to one-way heading out to Stanton Road, SE.

This alternative was considered during the site design phase, and discussed with DDOT's Traffic Services Administration staff. The proposal is not considered feasible or desirable for the following reasons:

- a) The middle access point along Stanton Road is separated from Pomeroy Road and Elvans Road by distances of 420 feet and 435 feet, respectively. This separation and the accompanying visibility/sight lines and stopping distance availability makes this the location most appropriate for significant access activity into and out of the site.
- b) This proposal would make the northernmost access (closest to Pomeroy Road) the only point through which vehicles could enter the site. This arrangement would be impractical, and create potential hazards along Stanton Road.
- c) This proposal would result in significant "redundancy of travel" within the site (i.e., residents would need to drive considerable extra distances to access a large number of the units.) This situation would violate "driver expectation" and encourage violations of the proposed one-way traffic circulation pattern.

(Exhibit 35.)

DDOT RECOMMENDATION: Connect the proposed alley SE that ends between Unit No. 1 and Unit No. 31, to the proposed north-south alley ending at Unit No. 32.

The Applicant reviewed DDOT's recommendation to connect these two alley systems and determined that the potential loss of green space and a residential unit is a significant detriment to the project. As noted above, the Applicant has created, and provided to DDOT, truck tracking diagrams that provide evidence that the proposed alley systems will be able to adequately serve cars, trash trucks

and emergency vehicles that may need to access the alley systems. Therefore, the Applicant does not agree to DDOT's recommendation to connect these alley systems. (Exhibit 35.)

DDOT RECOMMENDATION: Perform a signal warrants analysis at the intersections of Evans Road and Gainesville Street, SE and Evans Road and Stanton Road, SE.

The Applicant's traffic engineering firm prepared the requested signal warrants analyses and has determined that these intersections do not satisfy any of the warrants for the construction of a signalized intersection at these locations.

Moreover, in 2004, DDOT conducted a circulation and traffic calming study for the entire Cluster 37 area (the area in which the property is located) and did not identify the need for signalization at any of the local intersections. (Exhibit 35.)

DDOT RECOMMENDATION: Coordinate with appropriate DDOT staff in designing public space improvements, street markings and regulatory signage.

The Applicant agreed to undertake this coordination with DDOT staff. (Exhibit 35.)

DDOT RECOMMENDATION: Widen Sidewalks – The DDOT report recommended that the Applicant widen the proposed internal sidewalks from four feet to six feet in width and reduce the size of the proposed planting strips from six feet to four feet. The Applicant did not agree with this recommendation and desired to maintain the four foot sidewalks and six foot planting strips proposed in this project. The four foot sidewalks provide adequate space for pedestrian circulation throughout the site and the six foot planting strips are important in maximizing greenspace on the property. (Exhibit 35, Tr. of May 24, 2007 public hearing, p. 17-18.)

DDOT RECOMMENDATION: Redesign of L-shaped alley that services Units 169-177 and 178-182 - The DDOT report recommends that the Applicant redesign the L-shaped alley behind Units 169-177 and 178-182 on the upper portion of the property in order to provide a turn-around for vehicles where the alley currently dead-ends. The Applicant has conducted truck tracking diagrams that prove cars, trash trucks, and emergency vehicles can adequately access all of the alley systems. In addition, the creation of a paved turn-around area at this location will diminish the amount of greenspace and increase the amount of paved area on the site. The Applicant declined to incorporate this recommendation into the design of the project. (Exhibit 35.)

GOVERNMENT REPORTS

40. In its May 11, 2007 report, the Office of Planning ("OP") recommended approval of the project, subject to any conditions that may be specified by the District Department of Transportation ("DDOT"). The Office of Planning determined that the

proposal is consistent with the Comprehensive Plan, including the following Major Themes of the Comprehensive Plan:

- Stabilizing and Improving District Neighborhoods;
- Promoting Enhanced Public Safety; and
- Providing for Diversity and Overall Social Responsibilities.

OP also concluded that the proposal was consistent with the following policies of the Comprehensive Plan:

- Expanding Housing Supply;
- Balanced Growth;
- Housing Quality; and
- Mixed Income Housing.

OP noted that the Subject Property is located in the moderate density residential land use category on the Generalized Land Use Map. OP supported the PUD related rezoning request to the R-5-A Zone District to accommodate the moderate density residential uses proposed for the Subject Property. OP noted that the rezoning accommodates a more compact building design as an alternative to the more consumptive development pattern of the lower density residential land use. (Exhibit 26.)

41. OP concluded that the project satisfied the PUD evaluation standards. OP noted that, in addition to the one-third of the units that will be reserved for low to middle-income families, the market rate units will help ensure a diversity of income to the neighborhood. OP noted the site design of the project which focuses the homes towards the adjacent street frontages, which increases the residential character of the Stanton Road and provides public safety benefits. The provision of sidewalk areas that connect to the street system help create a pedestrian environment that is a key to smart growth according to OP. In addition, OP noted, the development would allow the vacant parcel to be integrated into a long-standing community, already served by infrastructure and the public transportation system. (Exhibit 26.)

42. In its May 23, 2007 report, DDOT concurred with the observations and conclusions of the Applicant's parking and traffic expert that the traffic expected to be generated from the project can be adequately accommodated by the existing road network and all key intersections in the project area currently operate at an acceptable level of service during both the AM and PM peak hours. (Exhibit 27.)

43. DDOT noted that it does not have the authority to approve public roadway designs that are inconsistent with existing DC Code requirements. DDOT recommended that the Applicant modify its plans to be consistent with existing DC Code requirements for public roadway designs, or in the alternative, the Applicant should construct the roadways as private streets. The DDOT report included the following recommendations.

- Design and construct the proposed alleys to DDOT design standards and dedicate them for public use after DDOT has obtained the authority to approve right-of-ways less than 55 feet wide.
- Modify the design of the new roadway across from Gainesville Street, SE by changing it to a one-way traffic pattern and connecting it with Evans Road, SE.
- Connect the proposed alley SE that ends between Unit No. 1 and Unit No. 31, to the proposed north-south alley ending at Unit No. 32.
- Perform a signal warrants analysis at the intersections of Evans Road and Gainesville Street, SE and Evans Road and Stanton Road, SE.
- Coordinate with appropriate DDOT staff in designing public space improvements, street markings and regulatory signage.
- Redesign of L-shaped alley that services Units 169-177 and 178-182. (Exhibit 27.)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

44. ANC 8A supported the PUD project and the proposed Zoning Map Amendment by letter dated May 3, 2007 and the testimony of Lendia Johnson, ANC Commissioner of 8A07, at the public hearing. The ANC's letter in support of the project noted the benefits that the 187 townhomes will bring to the community as a result of the fronting of the townhomes on surrounding streets, the mix of affordable and market-rate townhomes, and the project's environmentally sensitive design. The ANC also noted that the proposed number and type of residential units is appropriate for the Property and the surrounding neighborhood, and the ANC supported the proposed Zoning Map amendment. The ANC commended the Applicant for working with representatives of the community and the ANC to obtain feedback on the project. The ANC also concluded that the community benefits and amenities package of the PUD was created with significant comment and input from members of the ANC, local neighborhood organizations, and members of the community. The ANC determined that the community benefits and amenities provided in this project will provide benefits throughout the Hillsdale and Fort Stanton neighborhoods. (Exhibit 25.)

PARTIES AND PERSONS IN SUPPORT

45. Addie Cooke, a resident of 2407 18th Street, SE and the President of the Fort Stanton Civic Association, testified in support of the project. Ms. Cooke noted the dialogue and working relationship that occurred with the Applicant and its representatives for over two years. Ms. Cooke noted the importance of the Fort Stanton Recreation Center to the community and the benefit that the proposed computers and service contracts would have for both young and old residents of the surrounding neighborhood. (Tr. of May 24, 2007 public hearing, p. 55-59.)

46. Jamil Shoatz, a resident of Gainesville Street, directly across Elvans Road from the Subject Property testified in support of the project. (Tr. of May 24, 2007 public hearing, p. 60.)

PARTIES AND PERSONS IN OPPOSITION

47. Hannah Hawkins, a resident of Ward 8 approximately two blocks from the Property, testified in opposition to the project. Ms. Hawkins questioned whether adequate notice of the project was provided to the community. Ms. Hawkins also testified in opposition to the proposed rezoning of the Property and noted her desire for retaining single family home zoning on the Property. (Tr. of May 24, 2007 public hearing, p. 61-65.)

MATERIALS SUBMITTED SUBSEQUENT TO PROPOSED ACTION

48. Subsequent to the Zoning Commission taking proposed action to approve this PUD and Zoning Map Amendment application, DDOT filed a memo with the Zoning Commission on July 23, 2007 regarding the Applicant's Traffic Signal Warrant Analysis (Exhibit 40 of the record in this case.) In that memo, DDOT agreed with the findings of the Applicant's traffic and parking consultant that the intersections of Gainesville Street, SE and Elvans Road, SE, and Elvans Road, SE and Stanton Road, SE are not warranted for traffic signals. However, DDOT recommended that safety improvements be made at both intersections and that the Applicant be required to install new crosswalks and advanced pedestrian flashing beacons with appropriate signage to assist pedestrians crossing Elvans Road, SE.

49. By letter dated August 30, 2007, in accordance with 11 DCMR §3024.5, the Applicant made a motion to reopen the record in the above-mentioned case to accept the Applicant's response to DDOT's July 23, 2007 memo, which was filed after the record in this case had been closed.

50. In response to DDOT's July 23, 2007 memo, the Applicant arranged a meeting with DDOT representatives to address DDOT's further recommendations. On August 3, 2007, the Applicant filed materials with DDOT that included a memo from O. R. George & Associates that provided its analysis that flashing/warning pedestrian lights are not warranted along Elvans Road according to the Manual on Uniform Traffic Control Devices (MUTCD) criteria. However, the Applicant did agree to re-paint the crosswalks, in accordance with DDOT standards, at the intersections of Stanton and Elvans Roads, SE; Elvans Road and Gainesville Street, SE; and Pomeroy and Stanton Roads, SE.

51. DDOT filed an additional memo with the Zoning Commission dated August 29, 2007. In this memo, DDOT notes that it concurs with O.R. George & Associates' analysis that the two intersections do not meet the signal warrant analysis and flashing lights are not required. This memo noted that the Applicant and DDOT agreed

that the Applicant will re-paint the crosswalks, in accordance with DDOT standards, at the intersections of Stanton and Elvans Roads, SE; Elvans Road and Gainesville Street, SE; and Pomeroy and Stanton Roads, SE. The Applicant will construct sidewalks, to DDOT standards, in the public space surrounding the Property, and the Applicant will coordinate with DDOT to create a continuous and safe sidewalk system along Elvans Road, SE.

CONCLUSIONS OF LAW

1. 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.

2. Under the PUD process, the Zoning 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. In this application, the Commission finds that the requested relief from the front, rear and side yard requirements, the relief to allow more than one principal structure on a single lot, and the relief to allow driveways that are closer together than the Zoning Regulations allow, can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.

3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

4. The Commission agrees with the written submissions and testimony of the Applicant’s representatives that the project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right project on the Subject Property would provide. The Commission finds that the mix of residential unit sizes and varying heights, the introduction of the buried English basement units to utilize the Subject Property’s topography, the orientation of the townhomes to the adjacent public and private streets, the introduction of pocket parks and a tot lot, and the use of the terraced retaining walls to address the significant slope between the upper and lower portion of the Subject Property are significant project amenities and exemplify superior features of urban design and architecture, and site planning.

5. The Commission determines that the provision of 63 workforce affordable units, including 20 units reserved for families making up to 60% of AMI, is a significant project amenity. The Commission notes that the homebuyer’s club that the Applicant has proposed with a well-respected non-profit housing provider is also a significant project amenity that will help make homeownership a possibility for District residents. The

Commission finds that the Applicant's initial capital contribution to the reserve fund for the Stanton Square Homeowners Association is appropriate given the Applicant's decision to make the streets and alleys private. The Commission also concludes that the proposed community amenities package will provide appropriate benefits to members of the surrounding area and the District as a whole.

6. The Commission finds that the proposed low impact development strategy proposed by the Applicant is an environmentally sensitive approach to development on the Property and is a public benefit and project amenity. The Commission further finds that the Applicant has addressed the goals of maximizing greenspace and limiting the amount of paved area on the Property.

7. The Commission agrees with the written submissions of the Applicant as well as the recommendations of the Office of Planning that approval of the proposed project and the proposed amendment to the Zoning Map is not inconsistent with the Comprehensive Plan. The Commission finds that the PUD project and Zoning Map Amendment is consistent with and fosters the goals of several citywide elements of the Comprehensive Plan, including: the Framework Element; Land Use Element; Transportation Element; Housing Element; Environmental Protection Element; and Urban Design Element. The Commission also finds that the project and Zoning Map Amendment furthers numerous objectives and policies of the Far Southeast/Southwest Element, including the nature and location of housing provided.

8. The Commission agrees with the conclusions of the Applicant's traffic and parking expert that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission believes that the proposed private streets and alleys will provide a safe and functional vehicular circulation system that can adequately handle turning movements for cars, trucks, emergency vehicles and trash trucks. The Commission agrees with the arguments and materials provided by the Applicant and the Applicant's traffic and parking expert that it is not necessary or appropriate for the project to be revised to address the alternatives noted in the May 23, 2007 DDOT report. The Commission agrees with the Applicants desire to minimize the amount of paved area on the Subject Property and finds the Applicant's arguments persuasive that revising the circulation patterns on the Property and connecting alley systems are not appropriate. In regard to DDOT's alternative of adding an additional exit from the Property to Elvans Road, the Commission finds the Applicant's arguments persuasive that the location of such an exit does not provide sufficient sight distances. The Commission also agrees with the conclusion of the Applicant's traffic expert that the intersections of Elvans Road and Gainesville Street, and Elvans Road and Stanton Road do not satisfy the warrants for the construction of signalized intersections at these locations.

9. In regard to the materials that were submitted by DDOT and the Applicant after the Commission took proposed action in support of the PUD Project, the Commission agrees with the Applicant's traffic expert, and DDOT's April 29, 2007 memo, that flashing/warning pedestrian lights are not warranted along Elvans Road.

according to the Manual on Uniform Traffic Control Devices (MUTCD) criteria. However, the Commission does note that the Applicant has agreed to re-paint the crosswalks, in accordance with DDOT standards, at the intersections of Stanton and Elvans Roads, SE: Elvans Road and Gainesville Street, SE: and Pomeroy and Stanton Roads, SE.

10. 9.—In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission has carefully considered the ANC's recommendation for approval of the project and amendment to the Zoning Map and concurs in its recommendation.

11. 10.—Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

12. 11.—Notice of the public hearing was provided in accordance with the Zoning Regulations.

13. 12.—The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1.

14. 13.—The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Finding of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review of a Planned Unit Development and an Amendment to the Zoning Map application for Lots 60, 61, 78, 832, 835, 853, 854, 855, 856, 857, 858, 873, 878, and 879 of Square 5877. The approval of this PUD is subject to the following guidelines, conditions and standards of this order.

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 17, 17A, 24, and 30 of the record, as modified by the guidelines, conditions and standards of this Order. These plans include the low-impact development features of the project, as well as the tot lot and parks for residents of the project and the surrounding community.

2. The Applicant will make the following financial contributions as part of the PUD project:

- Public Space Improvements in the Community
The Applicant will ~~make a financial contribution~~~~purchase~~ (at a cost of \$30,000 that will be used for the purchase and placement of) 30 commercial trash receptacles (36 gallon size with steel slats), 30

decorative pole banners, and 30 decorative single pole brackets for placement in the surrounding neighborhoods. The ~~Applicant and representatives of ANC 8A will work with representatives of DDOT to determine location requirements and the ability of the District to remove the trash placed in the receptacles. In the event that DDOT does not agree to empty these trash receptacles, the Stanton Square Homeowner's Association will undertake the responsibility for emptying these~~ location of the trash receptacles in the surrounding community will be as indicated in Exhibit _____ of the record in this case. As noted in Exhibit _____ of the record, the Department of Public Works will be responsible for removing trash from 16 of the trash receptacles. The Stanton Square Homeowners Association's Bylaws will include a provision that it will be responsible for removing trash from the remaining 14 trash receptacles.

- Fort Stanton Recreation Center
The Applicant will make a financial contribution of \$30,000 to the Fort Stanton Civic Association that will be used for the purchase of computers (including service and technical support service contracts) for the Fort Stanton Recreation Center.
- Signage in the Fort Stanton and Hillsdale Neighborhoods
The Applicant will contribute \$15,000 for the creation and installation of three signs (at a cost of \$15,000) welcoming visitors to the Fort Stanton and Hillsdale neighborhoods. Based on discussions with members of ANC 8A and the community, these signs are intended to be located at: Suitland Parkway and Stanton Road; Fort Place and Bruce Place (near the Smithsonian's Anacostia Community Museum); and Martin Luther King Boulevard and Howard Road.

These financial contributions will be made prior to the issuance of a building permit for the construction of the PUD project.

3. At least 63 of the 187 townhomes will be reserved as workforce affordable housing units. At least 20 of these affordable units will be made available to households making up to 60% of AMI, and at least 43 of these units will be made available to households making up to 80% of AMI. The affordable models will consist of the 14 and 16 foot models, which include two bedrooms and two bedrooms with a den. The affordable townhomes will not constitute a majority of units in any particular area of the development. The eligibility requirements and enforcement mechanisms of the affordable housing program shall be consistent with the materials included in Exhibit B of Exhibit 24 of the record of this case. To the extent minor modifications are needed in the execution of this program to conform to District or Federal programs, the Applicant is afforded the necessary flexibility to make such changes.

4. The Applicant and the non-profit housing provider MANNA, Inc. will create a dedicated chapter of MANNA's Homebuyer's Club for the Stanton Square project to help members of the surrounding community be financially prepared for

homeownership. The Stanton Square MANNA Homebuyer's Club will be created prior to the issuance of a building permit for the construction of the PUD project.

5. The Applicant will make an initial capital contribution to the reserve fund for the Stanton Square Homeowners Association. This capital contribution will be \$250 per residential unit, for a total contribution of \$46,750. The Stanton Square Homeowners Association's Bylaws will include a provision that requires this capital contribution will be used solely for the maintenance and repair of the private street and alley system in the project.

6. The Stanton Square Homeowners Association's Bylaws will be required to include an Architectural Review Board. The Architectural Review Board shall regulate the external design and appearance of the PUD project in a manner so as to preserve and maintain the harmonious relationships among the structures on the Property and the Property's natural vegetation and topography. The bylaws will include the requirement that no fences or other embellishments shall be located on private property between the entrance to the individual units and the adjacent public space. The bylaws will also include a requirement that any and all construction and development on the Property will occur in accordance with the terms and conditions of this order.

7. The Applicant agrees to re-paint the crosswalks, in accordance with DDOT standards, at the intersections of Stanton and Elvans Roads, SE; Elvans Road and Gainesville Street, SE; and Pomeroy and Stanton Roads, SE. This will occur prior to the issuance of a building permit for the PUD project.

8. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit H of Exhibit 17 of the record. A fully executed Memorandum of Understanding shall be filed with the Office of Zoning and the Office of the Zoning Administrator prior to issuance of a building permit for the PUD project.

9. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit H of Exhibit 17 of the record. A fully executed First Source Agreement shall be filed with the Office of Zoning and the Office of the Zoning Administrator prior to issuance of a building permit for the PUD project.

10. 9.—The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, bathrooms, provided that the variations do not change the exterior configuration of the structures;

- 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 belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

11. 10. The consolidated PUD shall be valid for a period of two years from the effective date of Zoning Commission Order No. 05-35. Within such time, an application must be filed for a building permit ~~as specified in 11 DCMR § 2409.1, the filing of the building permit application will vest the Zoning Commission Order and construction of the project must start within three years of the effective date of this Order, pursuant to 11 DCMR §§ 2408.8 and 2408.9.~~

12. 11. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant 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). Such covenant shall bind the Applicant and all successors in title to constrict and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

13. 12. The change of zoning from the R-3 Zone District to the R-5-A Zone District for the Subject Property shall be effective upon the recordation of covenant discussed in Condition No. 11, pursuant to 11 DCMR § 3028.9.

14. 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, which 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

For these reasons above, the Commission concludes that the applicant has met the burden, it is thereby ORDERED that the application is GRANTED.

VOTE:

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

CAROL J. MITTEN
Chairman
Office of Zoning

JERRILY R. KRESS, FAIA
Director
Office of Zoning