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January 29, 2007

Hand Delivery

Ms. Carol Mitten, Chairperson
District of Columbia Zoning Commission
Office of Zoning
441 4th Street, NW, Room 210
Washington, DC 20001

**Re: Fort Lincoln/Gateway Village LLC (the "Applicant")
Consolidated PUD Application in Zoning Commission Case No. 06-08
Proposed Findings of Fact and Conclusions of Law**

Dear Chairperson Mitten and Members of the Commission:

Enclosed please find twenty copies of the Applicant's Proposed Findings of Fact and Conclusions of Law for the above-captioned PUD application. The Applicant looks forward to a decision on this case at the Commission's February 12, 2007, public meeting.

If you have any questions or comments regarding these materials, please feel free to contact the undersigned.

Sincerely yours,

Paul A. Tummonds, Jr.

Enclosure

ZONING COMMISSION
District of Columbia

CASE NO. Q6-08

EXHIBIT NO. 43

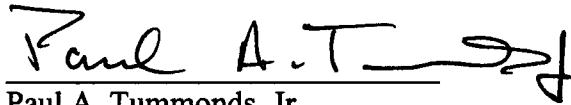
ZONING COMMISSION
District of Columbia
CASE NO.06-08
EXHIBIT NO.43

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the proposed Findings of Fact and Conclusions of Law were delivered by first class mail to the following on January 29, 2007.

Matt Jesick
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, DC 20001

Robert King
Commissioner, ANC 5A12
3102 Apple Road, NE
Washington, DC 20018


Paul A. Tummonds, Jr.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
Zoning Commission Order No. 06-08

Consolidated Planned Unit Development and Amendment to the Zoning Map for
Fort Lincoln/Gateway Village, LLC
_____, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 18, 2006, to consider an application for Fort Lincoln/Gateway Village, LLC, for the consolidated review and approval of a planned unit development for the property known as Parcel 173/145 in Square 4325, 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 _____, the Zoning Commission took proposed action by a vote of _____ 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 _____, found that the proposed PUD _____.

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

D.C. OFFICE OF ZONING
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A. FINDINGS OF FACT

PROCEDURAL HISTORY

1. The property that is the subject of this application is Parcel 173/145 in Square 4325 and is bounded by Fort Lincoln Drive, NE to the west and south, Fort Lincoln Drive North, NE to the east, and Commodore Joshua Barney Drive, NE to the north (the "Subject Property" or "Property"). The planned unit development ("PUD") is located in the Fort Lincoln Neighborhood in Ward 5. The Property consists of approximately 23 acres or 1,003,544 square feet. The Property is located in a R-5-D Zone District. (Exhibit 22, p. 1.)

2. Fort Lincoln/Gateway Village, LLC (the "Applicant") is a joint venture owned by Fort Lincoln New Town Corporation and the Concordia Group. (Exhibit 22, p.1.)

3. The Applicant seeks to construct a 357-unit townhome and townhome condominium development consisting of three sizes of single-family townhomes (16-foot, 20-foot, and 24-foot wide models) and "2 over 2" townhome condominiums. (Exhibit 22, p. 2.)

4. The Zoning Commission voted 3-1-1 to set the case down for a public hearing at its June 12, 2006 public meeting. At that meeting, the Commission members

requested the following plans and information: detailing grading and enhanced landscape plans (including more information and details on the proposed Community Green), a revised site plan, and more information regarding the relationship of this project to the proposed retail project across Fort Lincoln Drive. (Transcript from June 12, 2006 ZC Public Meeting, p. 16-22.)

5. In its pre-hearing statement, dated August 11, 2006, the Applicant addressed and submitted information on the above-mentioned questions from the June 12, 2006, public meeting. In addition, the Applicant included information on the previously approved PUD for the site (Z.C. Order No. 903) and an analysis of how the proposed PUD conforms to the Fort Lincoln Urban Renewal Plan ("FLURA"). (Exhibit 22.)

6. The Applicant filed a supplemental submission on November 28, 2006, which included: resumes of proposed expert witnesses, a description of the project and community amenities, updated zoning information, and a site context plan to show proposed traffic improvements for the area. (Exhibit 27.)

7. The Zoning Commission held a public hearing on the above-mentioned application on December 18, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022.

8. At the December 18, 2006 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted John Amatetti of Vika Incorporated as an expert in civil engineering; Trini Rodriguez of ParkerRodriguez as an expert in land planning and landscape architecture; and Jami Milanovich of Wells & Associates, LLC as an expert in traffic engineering. (Transcript from December 18, 2006 ZC Public Hearing, p.8.)

PUD SITE AND SURROUNDING AREA

9. The Property is composed of approximately 23 vacant acres or 1,003,544 square feet and is located between Fort Lincoln Drive, NE and Commodore Joshua Barney Drive, NE. (Exhibit 22, p.1.) It is located in Ward 5 and in the Fort Lincoln Urban Renewal Plan Area. (Exhibit 22, p.6.)

10. The subject site is part of the 360-acre residential neighborhood that was initially adopted in 1972 as a federally funded urban renewal community. Known as the Fort Lincoln Urban Renewal Area, the surrounding community, including the 22.97-acre site, is guided by the Fort Lincoln Urban Renewal Plan. The plan was most recently amended in 1994. (Exhibit 22, p. 6., Exhibit B.)

11. The Property has significant grade changes throughout the site and is currently overgrown with invasive, non-native tree and plant species. The site is bordered by thickly wooded and natural areas to the north and the west. (Exhibit 22, p.1., Exhibit C-2B; Exhibit 35.)

12. Further to the west of the site is the Theodore Hagans Cultural Center and the Fort Lincoln Recreational Center, which provide a number of recreational amenities to the neighborhood. (Exhibit 22, p.1-2.)

13. Fort Lincoln New Town Corporation is also developing a major retail project known as "Washington Gateway Shopping Center", located to the south of the Property. This project will consist of approximately 400,000 square feet of retail space on 42 acres of land. Washington Gateway will be anchored by a Costco store, Target store, and Shoppers Food Warehouse. (Exhibit 3, p. 2-3) This project was the result of Z.C. Order No. 02-33, which approved the rezoning of the 45 acre site to the C-2-B Zone District. (Exhibit 3, p.3.)

DESCRIPTION OF THE PUD PROJECT

14. The proposed 357-unit townhome and townhome condominium development will provide a variety of housing options for individuals and families seeking homeownership opportunities in Ward 5. The various unit types have been interspersed throughout the Property. The proposed FAR of the PUD project (0.753) is significantly lower than the matter-of-right FAR limitation (3.5) and the proposed building heights (40-43 feet and 54 feet) are also significantly lower than the maximum matter-of-right building height (90 feet) in the R-5-D District. (Exhibit 22, p. ix, 2-3.)

15. The 24-foot wide townhomes will include approximately 3,024 square feet of living area, which is comparable in size to typical single family detached homes located in a R-5-D Zone District. Each single family townhome will be three stories and the "2 over 2" townhome condominiums will be four stories tall. All of the single-family townhome units will have family rooms or studies and garages on the first floor, kitchens and living areas on the main floor, and two or three bedrooms on the third floor. All of the townhomes will have decks in the rear. The "2 over 2" townhome condominiums will include approximately 1,600 square feet in the lower level units and approximately 2,300 square feet in the upper level units. (Exhibit 22, p.2., Exhibit A.)

16. The Project will provide a significant amount of open and green space. Open space accounts for 180,486 square feet (4.14 acres) or 17.98% of the site area. The overall average lot occupancy (which does include decks) is 58.64%. (Exhibit 27, Exhibit C p.C-1 and C-6.)

17. The central open space provided in the project is a large Community Green. The Community Green, which includes a total of 1.18 acres, is intended for non-organized, passive and active recreational use. The lawn will have a slope of 2% - 3%. At the eastern and western corners of the Community Green, more formal entrances to the Green will be marked with stone and brick paving, and, at the western corner, include a pavilion. There will be a children's play area/tot lot just north of the Community Green. In addition, a rectangular Mews Green will be located at the western edge of the project site and will serve as the terminus of the long east west street that runs from the Community Green to the western edge of the site. A pocket park on the northern edge of

the property along Commodore Joshua Barney Drive provides additional green space and includes pedestrian connection from the project to the public street. (Exhibit 22, p.3-4 and Exhibit A, P. L-1.)

18. All of the buildings have entrances facing the Community Green, existing and proposed streets, or the proposed pocket park and Mews Green. The facades and sides of all the buildings will be predominantly brick. Side entrances to the townhomes will be provided for those that face the public street or the Community Green. (Exhibit 22, p.2-3.)

19. All units will have one or two garage parking spaces (the 16-foot wide units will have a single parking space in the garage and a tandem parking space in the driveway) accessed from the rear of the units via alleys as well as driveway space for additional parking. The "2 over 2" condominiums will have one garage parking space and one tandem parking space for each unit. In addition, 182 additional guest parking spaces will be made available throughout the site on the interior private street system. (Exhibit 22, p.3, 19.)

20. 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). This minor flexibility requested of the R-5-D District will have no impact on the surrounding R-5-D zoned properties. (Exhibit 22, p.13, Exhibit A, p. C-7 and C-7A.)

SATISFACTION OF PUD EVALUATION STANDARDS

21. 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.

22. The Applicant's representative, Michele Hagans, testified that the goal of this Project was to create high quality homeownership opportunities and an attractive community that would be an integral part of the larger Fort Lincoln neighborhood. The representative confirmed that this will not be a "gated community" but instead will allow for residents, guests and the Fort Lincoln Community as a whole, to enjoy the large Community Green, the tot lots, and Mews Green by offering safe and convenient connections to the surrounding neighborhood. In addition, Ms. Hagans noted that the amenities package had been thoroughly negotiated with the ANC-5A Single Member District Commissioner and the Applicant will continue to work with the ANC and community to achieve and satisfy their financial commitment. (December 18, 2006, Transcript p. 15-18)

23. The Applicant's landscape architect, Trini Rodriguez, admitted as an expert in urban planning and landscape design, testified that the project showed a very

strong sense of place and community orientation, taking into account streets, public spaces and alleys. Ms. Rodriguez noted the importance of open space in the project; the entrance monumentation; treatment of fences; and the landscaped median along Ft. Lincoln Drive. Ms. Rodriguez also discussed the pedestrian friendly entrance from the residential project to the neighboring retail development. (December 18, 2006, Transcript p. 19-28)

24. Urban Design and Architecture: The proposed townhomes and condominium townhomes are designed to complement and elevate the level of architectural quality and design in this area of the District. The proposed design connects the homes to the public streets, incorporates the entire development into the existing neighborhood, and enhances the walkability of the interior streets. The proposed detached garages for the 24-foot wide townhomes allow for additional green space on those lots that are more likely to have families with children. The appearance of the retaining walls has been reduced through the terracing of the retaining walls and the landscaping. The proposed landscape plan and treatment of the Community Green, the pocket park, Mews Green, and the children's play area/tot lot provide both active and passive recreation activities for residents of the project and their guests. The landscape plans include a variety of street trees and alley trees will be used to create a uniform setting along the interior streets and to help soften the visual impact of the proposed alleys. (Exhibit 22, p. 17, Exhibit A; and Exhibit 42.)

25. Site Planning: The site plan for the proposed project makes efficient use of a vacant site that sits in the center of a developing neighborhood. The design of the residential complex intersperses street-oriented, rear-loaded townhomes in an efficient and economical manner appropriate for the R-5-D zone district. The provided green spaces seamlessly tie into the existing and future fabric of the Fort Lincoln neighborhood. (Exhibit 3, p.13; Exhibit 22, p.18.)

26. Effective and Safe Vehicular and Pedestrian Access: The Project provides four means of vehicular access to Fort Lincoln Drive and Commodore Joshua Barney Drive. The connections to the surrounding street allow pedestrians and vehicular traffic to enter and exit the development safely and efficiently. The new internal road system allow for two way traffic. Safe and inviting sidewalks will be created along the surrounding public streets and throughout the site to encourage pedestrian activity and also mitigate any pedestrian/vehicular conflicts. The PUD will provide residents with 714 parking spaces and 182 spaces designated for guests. (Exhibit 22, p.18-19.)

27. The Applicant's traffic and parking expert provided written documentation and testimony that analyzes not just the Property at the Village of Washington Gateway but examined the proposed build-out of the Fort Lincoln area, a holistic approach that was recommended by the DC Department of Transportation ("DDOT"). These additional areas include Dakota Crossing, which is currently under construction and consists of 209 townhome units, the proposed Washington Gateway's retail component, which consists of 425,000 square feet of retail development, and the Wesley House development

(currently under construction) which consists of 127 active adult apartment units. (Exhibit 27, Exhibit D, Transcript from December 18, 2006, p.29-33.)

28. The private roadway improvements recommended by the traffic and parking expert and proposed by the Applicant include:

- Close the existing median break located along 33rd Place and constructing median improvements to provide additional storage for the left-turn lane onto South Dakota Avenue from 33rd Place;
- Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles coming out of Premium Driveway and Commodore Joshua Barney Drive;
- Install traffic calming devices such as speed humps, speed tables, and/or raised crosswalks along Fort Lincoln Drive, particularly in the vicinity of the proposed crosswalk between the Village at Washington Gateway and the Washington Gateway retail development;
- Construct Commodore Joshua Barney Drive/Fort Lincoln drive North/Premium Driveway as an all-way stop due to the unnatural configuration of the T-intersection (i.e. the major movement is not a through movement, it is a left-turn movement);
- Construct the Village at Washington Gateway westernmost (full access) site driveway on Fort Lincoln Drive as an all-way stop including a stamped-concrete, raised speed table in order to control pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway retail development; and
- Landscape the medians along Fort Lincoln Drive between 33rd Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln, pending DDOT approval. (Exhibit 35, Exhibit F.)

29. Housing: In addition to providing a significant amount of market rate housing units, the project will also set-aside 30 workforce affordable units. The National Capital Revitalization Corporation (“NCRC”) and the District of Columbia Public Schools (“DCPS”) offer a home ownership program targeting DCPS employees. The Applicant intends to utilize this NCRC/DCPS program in the proposed PUD by offering 30 residential units to qualified DCPS employees. The sale of the affordable units will be targeted to DCPS employees with annual household incomes (four (4) person family size) between \$54,180 and \$72,240 (60% to 80% of the Washington Metropolitan Area Median Income). The 30 workforce housing units offered will be the first and second floor units within the stacked (“2 over 2”) townhome condominium buildings. The gross floor area for this unit type is approximately 1,600 square feet and these homes contain

three bedrooms and two and a half bathrooms. Each unit has a one car garage and a tandem driveway space. The Affordable Housing Program will commence on the date that the building including the affordable units has received a certificate of occupancy and will run for ten years. Upon expiration of the ten year term, these units may be sold at market rates. (Exhibit 22, p.19, Exhibit 42 - Exhibit A.)

30. Revenue for the District: The addition of 357 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 3, p.15; Exhibit 22, p.20.)

31. 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 3, p.15; Exhibit 22, Exhibit K.)

32. 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 3, p.15; Exhibit 20, p.20.)

33. Environmental Benefits: The Applicant stated that is committed to a low impact development (“LID”) strategy for the Property. John Amatetti, admitted as an expert in civil engineering, testified on behalf of the Applicant and stated that the most important element of LID is to try and minimize impervious areas from the beginning. He testified that infiltration also provides ground water recharge and is a benefit not only to the water quality but to the environment as a whole. Mr. Amatetti also testified that the survey done on the Property found no jurisdictional wetlands. (December 18, 2006, Transcript p. 34-42)

34. Due to the highly variable nature of the soil, the large amount of uncontrolled fill and the highly plastic clays found on the Property, the Applicant’s water quality control for this project is primarily provided by two large underground storm filter facilities, located at the downstream end of the project. These filter systems have integral sediment traps and provide water filtration through multiple media filled cartridges. Treated water is then discharged into the storm water system. In addition to the storm filter facilities, the project will include multiple biorentention facilities. Bioretention facilities are planted areas in local depressions that are subject to temporary ponding of water during storm events. The biorentention facilities create a reduction in peak flow rate as the storm water filters through the various natural material layers. (Exhibit 42, Exhibit D.)

Water quantity control will be provided off-site in a proposed regional stormwater management pond. The regional stormwater management pond will provide peak reduction requirements to meet DC environmental regulations for this site as well as adjoining properties. (Exhibit 42, Exhibits C & D)

35. Uses of Special Value to the Neighborhood: The Applicant is providing the following public benefits and amenities. The total value of the community amenities package is: \$183,000:

- Thurgood Marshall School/Playground Construction – The Applicant will design and construct a playground facility at the Thurgood Marshall School located within the Fort Lincoln community. As a second phase to the pre-school playground, which is being constructed by Fort Lincoln New Town Corporation and The Concordia Group, the Applicant will work with the school administration to design a playground on the land area which is now occupied by an obsolete cycling facility. The cost of this playground is approximately \$50,000.
- Scoreboard for the Baseball Field within Fort Lincoln – The Applicant will purchase and install an electronic scoreboard for the baseball field located within the park at Fort Lincoln. The estimated cost is approximately \$40,000.
- Landscaping Package along Fort Lincoln Drive – The Applicant will contribute \$40,000 for planting and maintenance of a landscaping plan for the medians located along Fort Lincoln Drive and 31st Place, NE adjacent to the Village at Washington Gateway property. The applicant will agree to maintain this landscaping for a period of three years from the date of its installation. The Applicant will also provide for enhanced landscaping and maintenance of the area at the corner of Fort Lincoln Drive and 33rd Place.
- Trail Connection to the Adjacent Fort Lincoln Recreation Center – The Applicant will create an environmentally sensitive trail that connects the proposed development to the adjacent Fort Lincoln Recreation Center. The trail will be sited and constructed of materials that will minimize disruption to the wooded area between the project and the recreation center. The cost of this component of the amenity package is approximately \$12,000.
- Fort Lincoln Community Day – The Applicant will continue its sponsorship of the Fort Lincoln Community Day for an additional two years. The Fort Lincoln Community Day brings together residents of the greater Fort Lincoln neighborhood to celebrate their community and meet their neighbors. The Applicant will provide food, entertainment, and publicity for this event. The cost of this component of the amenity package is \$10,000 (\$5,000 per year).
- Fort Lincoln Resident Participation in the National Senior Olympics – The Applicant will continue to send eligible Fort Lincoln residents to the National Senior Olympics. The National Senior Olympics will be held in

Louisville, KY this year. The cost of this contribution is expected to be \$2,000.

- Publication of Community Newsletter – The Applicant will underwrite the publishing of a community newsletter prepared by ANC 5A. The newsletter will be published two times per year. The community newsletter will provide information to residents of the Fort Lincoln community on various matters that affect their community and their everyday lives. The cost of this component of the amenity package is \$4,000.
- Renovation and Upgrade of the Theodore Hagans Cultural Center The Applicant will make a financial contribution of \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community. These funds will be used to purchase and install exercise equipment, patio furniture and furnishings and Hi-Definition televisions for the cultural center.

All of the above referenced contributions shall be funded and the capital projects will be completed (except for the three year maintenance period for landscaped medians along Fort Lincoln Drive) within one year from the delivery of the first certificate of occupancy at the Village at Washington Gateway. (Exhibit 42).

36. Comprehensive Plan: The District of Columbia Generalized Land Use Map includes the Subject Property in the Medium Density Residential land use category. The Medium Density Residential land use category anticipates multiple-unit housing as well as row houses and other low and medium density housing options. Thus, the PUD is consistent with the Generalized Land Use Map designation for the Subject Property. (Exhibit 22, p.23.)

37. The proposed project is fully consistent with and fosters the goals and policies stated in the elements of the DC Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's Neighborhoods: The PUD will create a 357-unit townhome and townhome condominium development, which will help stabilize the Fort Lincoln neighborhood. (Exhibit 22, p.24.)
- Respecting and Improving the Physical Character of the District: The Project has been designed to be completely complementary to the surrounding neighborhood. All of the buildings are built up to the street and create an attractive and intrinsically walkable community that is oriented towards the surrounding neighborhood. The development also provides multiple areas of usable, secure green space that can be utilized for many forms of recreation. (Exhibit 22, p.25, Exhibit A.)

- Preserving and Ensuring Community Input: the Applicant met with community representatives and Advisory Neighborhood Commission (“ANC”) 5A on numerous occasions. The ANC adopted a unanimous resolution in support of the application. (Exhibit 32).
- Providing for Diversity and Overall Social Responsibilities: The Project will help further expand the range of housing options for the Fort Lincoln neighborhood. The inclusion of 30 workforce housing units targeted to DCPS employees will provide opportunities for couples and families to purchase new residential units in the neighborhood. (Exhibit 22, p.26; Exhibit 42, Exhibit A.)

38. The PUD is consistent with many Major Elements of the Comprehensive Plan, including; the Housing Element, the Transportation Element, Urban Design Element, Generalized Land Use Map, and portions of the Ward 5 Goals and Policies.

- Housing Element: The proposed development is consistent with the housing provisions of the Comprehensive Plan as it creates 357 new townhomes and condominium townhomes in an area that is identified on the District of Columbia Generalized Land Use Map to be a medium density residential area. The proposed project will create new homes in a community with significant for-sale housing needs on property that is currently vacant. The proposed high-quality residential community will serve as an anchor that strengthens and enhances the surrounding residential neighborhood.
- Transportation Element: The Applicant will enhance the existing road network of the District by creating an internal street system on the Subject Property that allows for two way traffic and several access and egress points to the proposed development. Furthermore, the sidewalks of the proposed development will be connected to the existing sidewalk system on Commodore Joshua Barney Drive and Fort Lincoln Drive. The sidewalks and streets will be designed and constructed to DDOT standards. 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. Finally, in the proposed development more than two parking spaces per dwelling unit are provided, which is well above the parking ratio that is required in the R-5-D District.
- 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. The townhomes are oriented towards the street at the front, yet also have auto access through the rear alleys.

The area between Fort Lincoln Drive and Commodore Joshua Barney Drive currently lacks “a strong, positive physical identity.” The addition of the proposed development to this area will strengthen the identity of this site. Attractive views of the side and front elevations of the townhomes as one walks or drives along either road will also provide passersby with a stronger sense of place than previously existed at this location.

- Generalized Land Use Map: The Comprehensive Plan Generalized Land Use Map includes the Subject Property in the Medium Density Residential land use category. The Medium Density Residential land use category envisions multiple-unit housing as well as low and moderate density housing such as row houses. The proposed project is entirely consistent with the Generalized Land Use Map designation of this site.
- Ward 5 Goals and Policies: Fort Lincoln New Town is designated as a Housing Opportunity Area by the Comprehensive Plan. The project will provide a high-quality residential development that also respects the physical aspects of the Subject Property. The site is surrounded by streets with existing infrastructure that can accommodate the proposed use and intensity of the development, and the location of this project fits the stated objectives of the Ward 5 Plan. The PUD will also preserve approximately 4.14 acres of open space on the site. Finally, the instant application will help connect existing and proposed housing, recreation and commercial projects into a cohesive and thriving Fort Lincoln community.

39. In response to issues raised by the Zoning Commission members at the December 18, 2006 public hearing, the Applicant filed a post-hearing submission (on January 22, 2007) which included the following information:

- The anticipated base price of the market rate units will range from \$375,000 - \$600,000 depending on unit size. Individuals and families with annual incomes of \$85,000 - \$120,000, which is roughly equivalent to 90% - 120% of AMI, will be able to afford these units.
- A revised summary of the Affordable Housing Program showing that the workforce affordable units will continue to be marketed to DCPS employees and the term of the program will be ten years;
- Updated community amenities package showing greater specificity with regard to the various components of the package and the increase in amenities to \$183,000;

- A revised stormwater management plan that incorporates various aspects of low impact design/development;
- Landscape plans showing additional details regarding the location of alley trees, the deck configuration on the rear units, and the landscape treatment for the traffic median on Fort Lincoln Drive;
- A memorandum specifying who is responsible for each transportation improvement; and
- Summary of architectural controls which includes a description of the duties of the Architectural Review Board for the Village at Washington Gateway Homeowners Association that will be created for this Project.

(Exhibit 42).

GOVERNMENT REPORTS

40. In its December 8, 2006 report, the Office of Planning (“OP”) recommended that the Zoning Commission support the project. The Office of Planning determined that the project is consistent with the goals and objectives of the Comprehensive Plan by stabilizing the neighborhood and increasing the range of housing options within Fort Lincoln. The Office of Planning noted that the proposal is largely consistent with zoning requirements and is, in fact, a less intense development than could be achieved as a matter-of-right. The development will include public – and some private – open space, parking well above ordinance requirements, and pedestrian amenities to link it to the future commercial development and the rest of the neighborhood. (Exhibit 28, p. 10.)

41. The December 8, 2006 report included the following conditions:

- Provide more details about the amenity package;
- The neighborhood will not be a gated community;
- Should commit to demarcation of the tree save area, prior to the clearing and grading, through the placement of adequately designed and installed fencing;
- Provide an executed First Source Agreement prior to final action;
- Install an automatic, underground watering system for retaining wall terrace areas at the time of retaining wall construction; and
- Work with the Department of Parks and Recreation on the alignment and design of the trail to the recreation center. (Exhibit 28, p. 1.)

42. In its December 14, 2006 report, the District Department of Transportation (“DDOT”), stated that it had no objection to the proposed PUD provided that all

proposed traffic improvements are implemented. (Exhibit 31 & 41.) These improvements include:

- Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles coming out of Premium Driveway and Commodore Joshua Barney Drive;
- Install traffic calming devices such as speed humps, speed tables, and/or raised crosswalks along Fort Lincoln Drive, particularly in the vicinity of the proposed crosswalk between the Village at Washington Gateway and the Washington Gateway retail development;
- Construct Commodore Joshua Barney Drive/Fort Lincoln Drive North/Premium Driveway as an all-way stop due to the unnatural configuration of the T-intersection (i.e. the major movement is not a through movement, it is a left-turn movement);
- Construct the Village at Washington Gateway middle (full access) site driveway on Fort Lincoln Drive as an all-way stop including a stamped-concrete, raised speed table in order to control pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway retail development; and
- Landscape the medians along Fort Lincoln Drive between 33rd Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln Drive North, pending DDOT approval.

43. In order to identify the limits of the Army Corps Clean Water Act jurisdiction for the Project, the U.S. Army Corps of Engineers conducted a field inspection of the Property and by letter dated, September 22, 2005, determined that there were “no Waters of the United States, including jurisdictional wetlands” within the area of review. (Exhibit 22, Exhibit G.)

44. The RLA Revitalization Corporation (“RLARC”), a subsidiary of the National Capital Revitalization Corporation, submitted a letter in support of the PUD, dated December 18, 2006. RLARC Board of Directors approved the Project at a public meeting on November 15, 2006. (Exhibit 33.)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

45. Based on the testimony Timothy Thomas, ANC Commissioner of 5A08 and Vice Chair for 5A, and by letter dated December 15, 2006, the ANC Commission 5A’s Committee on the Whole adopted a resolution to support the PUD on December 11, 2006. The resolution was adopted by a vote of 7-0. (Exhibit 32.) On October 25, 2006 at the annual community meeting hosted by ANC 5A12, the project was approved. (Transcript from December 18, 2006, p. 135.)

PARTIES AND PERSONS IN SUPPORT

46. Outgoing Ward 5 Councilmember Vincent Orange testified in support of the Project, adding that he was very familiar with the project as he has been working on it for quite some time. He looked forward to seeing both the proposed project and the retail development begin. (December 18, 2006, Transcript p. 9-11)

47. Incoming Ward 5 Councilmember Harry Thomas, Jr. testified in support of the Project praising the Applicant for looking at a complete snapshot of what needed to be done at the gateway of Washington D.C. In addition, he commented that the development in this area will account for 650 new jobs which the neighborhood needs. Furthermore, he found the housing to be second to none in the region and was impressed by both the Applicant's attention to detail and involvement with the community. (December 18, 2006, Transcript p. 66-69)

PARTIES AND PERSONS IN OPPOSITION

48. Robert E. Boone, President of the Anacostia Watershed Society, and James F. Connolly, Executive Director, both testified at the December 18, 2006 hearing that although they are not against the project, they believe the proposed storm water controls are obsolete technology. (Transcript from December 18, 2006, p.155-156.) They also would like to see a proposal which identifies temporary erosion and sediment control measures prior to the start of the project (Transcript p.161.) and making sure that the stormwater issues, in all of the nearby projects, are being considered for their cumulative effect on the Anacostia River. (Transcript p.164.)

49. Leroy Morgan, a resident of Ward 5, testified during the December 18, 2006 hearing. Though not opposed to the Project, Mr. Morgan expressed his concern regarding Global Warming and the need to consider the environment as the Project moves forward. (Transcript from December 18, 2006, p.166.)

50. David Hilmy, teacher, environmental educator and LID administrator, submitted a letter (Exhibit 30) outlining environmental concerns and suggesting policy recommendation for development. Mr. Hilmy also testified at the December 18, 2006 hearing regarding wetlands, open space, low-impact development, and the affordability of the homes for teachers. (Transcript from December 18, 2006, p.167-173.) In addition, he submitted into the record copies of an EPA pamphlet and US DOD low impact development handbook. (Exhibits 39 & 40.)

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 requirements and to allow more than one principal structure on a single lot 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 types, the large open recreational spaces, the pedestrian connections to the adjacent streets, the orientation of the residential units to front on adjacent public or private streets, mews or the Community Green, and the sensitive use of landscaped retaining walls are significant project amenities and exemplify superior features of urban design and architecture and site planning.

5. The Commission determines that the provision of 30 workforce affordable units made available to District of Columbia Public School employees is a significant project amenity. 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 believes that the landscape elements of the project and the proposed landscape treatment of the median along Fort Lincoln Drive add to the attractiveness of the immediate area and the comfort of the residents of the project and their guests and are therefore deemed to be another amenity of the project.

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 is not inconsistent with the Comprehensive Plan. The Commission finds that the project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the project furthers the themes of: stabilizing the Fort Lincoln neighborhood; respecting and improving the

physical character of the neighborhood; providing for diversity and overall social responsibilities and preserving and ensuring community input. The Commission also finds that the proposed PUD is also consistent with the Fort Lincoln Urban Renewal Area Plan.

8. The Commission agrees with the conclusions of the Applicant's traffic and parking expert and the District of Department of Transportation that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission believes that the proposed traffic calming measures along Fort Lincoln Drive and the raised pedestrian crosswalk to the retail shopping center are important features of the project. The Commission notes the transportation improvements in the area that the Applicant will be responsible for and those transportation improvements that the District will be responsible to construct.

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. ANC 5C did not submit a formal resolution in this case.

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.

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

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

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 application for Parcel 173/145 in Square 4325. 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 22, 35, and 42 of the record, as modified by the guidelines, conditions and standards of this Order.

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

- Thurgood Marshall School/Playground Construction – The Applicant will design and construct a playground facility at the Thurgood Marshall School located within the Fort Lincoln community. As a second phase to the pre-school playground, which is being constructed by Fort Lincoln New Town Corporation and The Concordia Group, the Applicant will work with the school administration to design a playground on the land area which is now occupied by an obsolete cycling facility. The cost of this playground is approximately \$50,000.
- Scoreboard for the Baseball Field within Fort Lincoln – The Applicant will purchase and install an electronic scoreboard for the baseball field located within the park at Fort Lincoln. The estimated cost is approximately \$40,000.
- Landscaping Package along Fort Lincoln Drive – The Applicant will contribute \$40,000 for planting and maintenance of a landscaping plan for the medians located along Fort Lincoln Drive and 31st Place, NE adjacent to the Village at Washington Gateway property. The applicant will agree to maintain this landscaping for a period of three years from the date of its installation. The Applicant will also provide for enhanced landscaping and maintenance of the area at the corner of Fort Lincoln Drive and 33rd Place.
- Trail Connection to the Adjacent Fort Lincoln Recreation Center – The Applicant will create an environmentally sensitive trail that connects the proposed development to the adjacent Fort Lincoln Recreation Center. The trail will be sited and constructed of materials that will minimize disruption to the wooded area between the project and the recreation center. The cost of the trail is approximately \$12,000.
- Fort Lincoln Community Day – The Applicant will continue its sponsorship of the Fort Lincoln Community Day for an additional two years. The Fort Lincoln Community Day brings together residents of the greater Fort Lincoln neighborhood to celebrate their community and meet their neighbors. The Applicant will provide food, entertainment, and publicity for this event. The cost of this component of the amenity package is \$10,000 (\$5,000 per year).
- Fort Lincoln Resident Participation in the National Senior Olympics – The Applicant will continue to send eligible Fort Lincoln residents to the National Senior Olympics. The National Senior Olympics will be held in Louisville, KY this year. The cost of this contribution is expected to be \$2,000.

- Publication of Community Newsletter – The Applicant will underwrite the publishing of a community newsletter prepared by ANC 5A. The newsletter will be published two times per year. The community newsletter will provide information to residents of the Fort Lincoln community on various matters that affect their community and their everyday lives. The cost of this contribution is expected to be \$4,000.
- Renovation and Upgrade of the Theodore Hagans Cultural Center The Applicant will make a financial contribution of \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community. These funds will be used to purchase and install exercise equipment, patio furniture and furnishings and Hi-Definition televisions for the cultural center.

All of the above referenced contributions shall be funded and the capital projects will be completed (except for the three year maintenance period for landscaped medians along Fort Lincoln Drive) within one year from the delivery of the first certificate of occupancy at the Village at Washington Gateway.

3. The Applicant agrees to offer 30 residential units to qualified DCPS employees through an established NCRC/DCPS program. The sale of the affordable units will be targeted to DCPS employees with annual household incomes (four (4) person family size) between \$54,180 and \$72,240 (60% to 80% of the Washington Metropolitan Area Median Income). The 30 workforce housing units offered will be the first and second floor units within the stacked ("2 over 2") townhome condominium buildings. The gross floor area for this unit type is approximately 1,600 square feet and these homes contain three bedrooms and two and a half bathrooms. Each unit has a one car garage and a tandem driveway space.

4. Landscaping of the medians in Fort Lincoln Drive shall be provided in accordance with the plans marked as Exhibit No. 42 of the Record.

5. The Applicant will make an initial capital contribution to the reserve fund for the Village at Washington Gateway Homeowners Association. This capital contribution will be \$250 per residential unit.

6. The Village at Washington Gateway 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.

7. All fences and embellishments located on private property between the entrance to the individual units and the adjacent public space shall be similar to the plans and materials filed as Exhibit 22 and Exhibit 35 in the record of this case.

8. The Project shall include the low-impact development features specified in Exhibit 42 of the record, including the following features:

- Two large underground storm filter facilities, located at the downstream end of this project, which will have integral sediment traps and provide water filtration through multiple media filled cartridges.
- Multiple bioretention facilities will be spread throughout the site, strategically situated where site grading, sufficient drainage and planting space allow.
- Water quantity control will be provided off-site in a proposed regional stormwater management pond. The regional stormwater management pond will provide peak reduction requirements to meet DC environmental regulations for this site as well as adjoining properties.

9. 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 K of Exhibit 22 of the record.

10. 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 K of Exhibit 22 of the record.

11. 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, mechanical rooms, elevators, and toilet rooms, 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 balcony enclosures, 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.

12. The following roadway improvements will be constructed by the Applicant by the issuance of the 100th Certificate of Occupancy for the PUD project.

- Close the existing median break located along 33rd Place and constructing median improvements to provide additional storage for the left-turn lane onto South Dakota Avenue from 33rd Place;
- Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles coming out of Premium Driveway and Commodore Joshua Barney Drive;
- Install traffic calming devices such as speed humps, speed tables, and/or raised crosswalks along Fort Lincoln Drive, particularly in the vicinity of the proposed crosswalk between the Village at Washington Gateway and the Washington Gateway retail development;
- Construct Commodore Joshua Barney Drive/Fort Lincoln drive North/Premium Driveway as an all-way stop due to the unnatural configuration of the T-intersection (i.e. the major movement is not a through movement, it is a left-turn movement);
- Construct the Village at Washington Gateway westernmost (full access) site driveway on Fort Lincoln Drive as an all-way stop including a stamped-concrete, raised speed table in order to control pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway retail development; and
- Landscape the medians along Fort Lincoln Drive between 33rd Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln, pending DDOT approval.

13. The PUD shall be valid for a period of two years from the effective date of Zoning Commission Order No. 06-08. 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.

14. 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 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.

15. 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