GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17192 of the National Capital Revitalization Corporation pursuant to 11 DCMR § 3104.1, for special exceptions pursuant to sections 353 (New Residential Development) and 2516 (Theoretical Lots), and pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio requirements under section 402, to construct two hundred nine (209) single-family row dwellings in an R-5-A District for property bounded by Fort Lincoln Drive, N.E., 31st Place, N.E., South Dakota Avenue, N.E. and 33rd Place, N.E. (Square 4325, Lots 38, 39, and 40).

HEARING DATES: July 20, 2004, October 19, 2004
DECISION DATE: November 2, 2004

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 5A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 5A. ANC 5A submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 2516 and 353, and a variance under 11 DCMR § 3103.2 from the strict application of the requirements of § 402.

No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning

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and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proof pursuant to 11 DCMR § 3104.1, for a special exception under sections 2516 and 353, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2 and 402, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. Accordingly, it is therefore **ORDERED** that the application is **GRANTED**, subject to the following **CONDITIONS**:

1. A private covenant shall be included in the title for each lot in the townhome community prohibiting the construction of additions to the individual townhomes other than the optional ten by ten feet (10x10 ft.) deck and optional ten by ten feet (10x10 ft.) rear three-story extension as depicted on the typical floor plans on Exhibit 43.

2. A covenant shall be included in the home association documents of the townhome development which prohibits the construction of a gate at the entrance to the community.

3. The Applicant shall provide the landscape buffer and screening depicted on Exhibit 43, along South Dakota Avenue and include the obligation to maintain the landscape buffer and screening along South Dakota Avenue in the homeowner association documents.

4. The tree preservation areas shall be carefully protected during the construction phase of the townhome community to minimize potential damage.

5. A covenant shall be included in the homeowner association documents which provides for the preservation of the tree preservation areas within the property in perpetuity.

6. Retaining walls shall be no greater than eight feet (8 ft.) in height with no retaining wall along a site boundary line greater than four feet (4 ft.) in height. Any retaining wall greater than four feet (4 ft.) in height shall not be located any closer than eight feet (8 ft.) from another retaining wall. All retaining walls facing a public street and within forty feet (40 ft.) of the site boundary shall be faced in stone.

7. All areas between a retaining wall and a public street or sidewalk shall be landscaped to minimize visual impacts of the retaining walls and maintained by the homeowners association with funding initially provided as a reserve account prior to the sale of individual townhomes. The landscaped areas between retaining walls shall have underground automatic watering systems installed during construction of the retaining walls.

VOTE: 3-1-1 (Ruthanne G. Miller, John A. Mann II, and Curtis L. Etherly, Jr. to approve, Geoffrey H. Griffis opposed to the motion and Anthony J. Hood not hearing the entire case, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 0 4 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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 THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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BZA APPLICATION NO. 17192

As Director of the Office of Zoning, I hereby certify and attest that on NOV 0 4 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning