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February 1, 2005

D.C. OFFICE OF ZONING
2005 FEB -1 PM 4:16

BY HAND
Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

Re: BZA Application No. 17276
2101 Foxhall Road, N.W.; Square 1346, Lot 822

Dear Mr. Griffis:

On behalf the Applicant, JBG/Rockwood 1101 K, L.L.C, enclosed you will find the original and twenty (20) copies of the Pre-Hearing Statement of the Applicant.

Thank you for your attention to this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad

Enclosures (as stated)
cc: Mr. Felipe Paraud (by hand; w/encl.)
ANC 3D Commissioners (by hand; w/encl.)
Office of Planning, Joel Lawson (by hand; w/encl.)

Word 45667839.1

BZA
Case No. 17276
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
EXHIBIT NO. 22A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of: Phillips Park LLC successor to First Capital Trust, LLC

BZA Application No.: 17276
Hearing Date: February 15, 2005

PREHEARING STATEMENT OF THE APPLICANT

I.
Introduction

This is a self-certified application (*see Exhibit 2*)[1] brought by Phillips Park LLC, a Delaware limited liability company and successor contract purchaser to First Capital Trust, LLC, as contract purchaser (the "Applicant"), pursuant to 11 D.C.M.R. § 3104, for a special exception from section 2516 of the zoning regulations to allow the construction of a theoretical lot subdivision for thirty-four (34) single family homes in the R-1-A zone district at 2101 Foxhall Road, N.W., Square 1346, Lot 822 (the "Property"). The Applicant is the contract purchaser of the Property. The Applicant submits that it meets the criteria for the requested special exception.

As demonstrated herein, since the filing of the application in the instant matter, the Applicant has continued its efforts of working closely with government officials, Advisory Neighborhood Commission 3D (the "ANC"), and its neighbors. As a result of these efforts, the following significant changes have been made to the plans for the proposed development:

1. One theoretical lot to the south of the natural wetlands area has been eliminated;
2. One of the entrances onto W Street has been eliminated and the remaining entrance has been brought into alignment with Foxboro Place to the north;
3. In order to foster the preservation of an old growth tree located near the

[1] The attached self-certification form is amended from the original form submitted to accurately reflect the maximum lot occupancy.

intersection of Foxhall Road and W Street, N.W., a portion of the property surrounding the tree will be set aside as open space with a foot path leading from the corner of the intersection into the property; and

4. Lot lines have been re-drawn to protect additional trees.

Exhibit 3.

II.
Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 D.C.M.R. §§ 3104.1 and 2516.

III.
Background Information

A. The Applicant.

1. Phillips Park LLC.

As mentioned above, Phillips Park LLC is the contract purchaser of the Property. Phillips Park LLC is comprised of an executive team whose wide-ranging expertise provides considerable insight in almost all aspects of the real estate industry, including the intricacies of land assembly and entitlement, the value enhancement of residential and commercial properties, and the development of selected investment opportunities.

B. Property and Surrounding Neighborhood.

1. The Property.

The Property is located at the intersection of W Street, N.W. and Foxhall Road, N.W. It is the former site of "Dunmarlin", constructed in 1949 for Duncan and Marjorie Phillips, the founders of the Phillips Collection museum near Dupont Circle. Dunmarlin was razed in approximately 1988, and the Property has stood vacant since that time.

The Property is quite large, containing 713,016 square feet, or just over sixteen (16) acres. *Application Exhibit A.*[2] It is a sloping site with a mixture of open areas and some tree stands. *See Appication Exhibits F & G.* The Property is bordered by W Street, N.W. to the north, a portion of 44th Street, N.W. to the east, Federal Park land, known as the Glover Archbold Park to the east and south, and Foxhall Road, N.W. to the west. The Property is irregularly shaped, as Lot 818 is carved out of the southwest corner. There is 781.56 feet of frontage on W Street, N.W., 476.73 feet of frontage along Foxhall Road, N.W., and 566.09 feet along 44th Street, N.W. *See Application Exhibit A.* Although this portion of 44th Street, N.W. is a platted, dedicated street, which contains a District of Columbia Water and Sewer Authority ("WASA") maintained sanitary sewer main, it is unpaved.[3] *Id.*

Because the Property has stood vacant for some time, as explained in greater detail below, it has grown fallow, overrun with many species of weed vegetation. Due to this overrun of non-native and weed-species, many of the native trees are either dead, dying or in poor condition. Further evidence of neglect can be found in presence of an artificial wetland on the Property caused by a water main break that went undetected for approximately seventeen (17) years.

In addition to the artificial wetlands, the Property contains 36,633 square feet of natural wetlands area. These natural wetlands are comprised of 14,975 square feet of wetlands and 21,658 square feet of a wetlands buffer (collectively referred to as the "wetlands preserve area"). These figures have been confirmed by a formal nontidal wetlands jurisdictional determination

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[2] Exhibits filed with the Application are lettered. Numbered Exhibits refer to those filed with this prehearing statement.

[3] The Applicant is in discussions with the National Park Service about having this paper street closed and deeded to the Park Service.

performed by the US Army Corps of Engineers (the "Corps").[4] *Exhibit 4.* The Corps agreed with the wetland delineation and report prepared by ESA, Inc., one of the Applicant's consultants, that wetlands/waters are limited to a natural stream system in the southern portion of the tract. The remains of a water pumping and storage system that was historically used to provide well water to the Phillips Estate, and which is associated with the natural, cold groundwater seep, occurs in the head of the natural stream system. The Applicant, in working with the Corps and the National Park Service ("NPS"), is proposing to set aside 37,708 square feet for open space and parks within the Property for the preservation of the natural habitat and for storm water management. Approximately 16,500 square feet of this open space is located adjacent to the wetlands preserve area. *See Exhibit 4.* Thus, the total natural area including both the wetlands preserve area and the adjoining park area is 53,133 square feet or approximately 1.2 acres.

2. The Surrounding Neighborhood.

The area surrounding the Property consists of institutional uses and residential neighborhoods. Additionally, as indicated above, the Glover-Archbold Park abuts the Property on portions to the east and to the south. This park setting provides a home for many species of wildlife, including the whitetail deer and several piebald deer. Deer migrate through the riparian corridors of the Potomac Valley, C&O Canal, and Rock Creek, Battery Kemble, Fulton/Edmunds, Whitehaven, Dumbarton Oaks and Glover Archbold Parks. Piebald deer are colored white and brown, similar to a pinto pony and may sometimes appear entirely white. A genetic variation (defect) produces the piebald condition in white-tailed deer. In addition to the white coloration, some piebald deer have additional conditions, including bowing of the nose

[4] The Corps has likewise verified that the other wetland area on the Property is, indeed, artificial and caused by a water main break.

(Roman nose), short legs, arching spine (scoliosis) and short lower jaws.

With regard to the institutional uses surrounding the Property, Mt. Vernon College, now owned by George Washington University, is located to the west of the Property in Square 1374 and directly across Foxhall Road. The Belgium chancery, which is located on a twenty (20) acre parcel of property, is also located across Foxhall Road in Square 1378, just north of the intersection of Foxhall Road and W Street, N.W. To the south of the Mt. Vernon College site, in Square 1372, is St. Patrick's Episcopal Church and Day School (grades pre-kindergarten through 8), which has a premises address of 4700 Whitehaven Parkway. To the west of St. Patrick's is the Lab School of Washington, which fronts on both Whitehaven Parkway, N.W. and McArthur Boulevard, N.W. Further south along Foxhall Road, in the D/R-1-B zone district, is the German Embassy. The embassy has frontage on both Reservoir Road, N.W. and Foxhall Road, N.W., with driveway access off of Foxhall Road, N.W.

The "Friends of St. Patrick's" recently purchased the property to the immediate south of the Property – 1801 Foxhall Road, N.W.[5] – reportedly to be used for either an expanded middle school or a high school. The Field School is located to the north of the Property in Square 1341.

Surrounding residential neighborhoods include the Foxhall Crescents development to the northwest, as well as Wesley Heights and Spring Valley.

C. The Proposed Development.

1. Prior Uses and Approvals for the Property.

As already stated, the Property is the former site of "Dunmarlin", constructed in 1949 for Duncan and Marjorie Phillips, the founders of the Phillips Collection museum near Dupont

[5] This property to the south was previous selected for the mayor's residence.

Circle. Dunmarlin was razed in approximately 1988, and the Property has stood vacant since that time.

In 1981, Laughlin, Jennifer, his wife, and Mrs. Duncan Phillips filed an application with the Zoning Commission for approval of a planned unit development (Zoning Commission Case No. 81-1P)(the "Phillips PUD") on former Lots 806, 812, 815, 817 and a portion of 816. The land subject to the Phillips PUD included 13.67 acres of the Property, excluding the Dunmarlin site, which contained approximately 2.7 acres. At the time, the site was split zoned, with 12.37 acres in the northern portion zoned R-1-A and 1/3 acre in the southern portion zoned R-1-B. The Phillips PUD originally proposed a mixture of seventy (70) detached, semi-detached and row, single-family dwellings, with space for a swimming pool and two tennis courts. *See Exhibit 13.* Zoning Commission Order No. 351, which was extended by Z.C. Order No. 374, approved the Phillips PUD with sixty-three (63) single-family residential units, including forty-two (42) attached units (to be located in the center of the site) and twenty-one (21) detached units (to be located on the periphery of the site) on 13.67 acres. *See Exhibit 13.*

The Phillips PUD was abandoned, and, in 1988, the then-owner of the Property proposed a new project that was reviewed under the Large Tract Review procedures of the Office of Planning. That proposal provided for twenty-four (24) single family detached dwelling, two tennis courts, and maintained Dunmarlin and the surrounding site as a separate 3-acre lot. That proposal was never pursued, as the current owner of the Property did not pursue the development upon his purchase of the Property.

2. Current Proposal.

The Applicant is proposing a theoretical lot subdivision to divide the interior Property (i.e. those portions of the Property that do not abut a street, as defined by the zoning regulations)

into thirty-four (34) assessment and taxation lots. Additionally, the Applicants will build twelve (12) matter-of-right homes along Foxhall Road and W Street, N.W. The matter-of-right houses will include eight (8) along W Street, N.W. and four (4) along Foxhall Road. The development will be named Dunmarlin At Phillips Park ("Dunmarlin").

There will be two entrances into the Property – one onto W Street, N.W. and the second onto Foxhall Road, N.W. The entrance onto W Street, N.W. will align with Foxboro Place to the north, thus connecting the new development with the existing residential neighborhood to the north. The entrance onto Foxhall Road will be located towards the southern border of the Property, with one of the matter of right lots to be located to the south of the road. This new road will have both a left and right turn lane. *See Exhibit 7.* Additionally, the Applicant is working with the District of Columbia Department of Transportation ("DDOT") to implement its redesign of Foxhall Road in this area. The Applicant is proposing to create a merge lane, out of the Applicant's own property, for traffic turning out of the Property north onto Foxhall Road, as well as a left turn lane on Foxhall Road for traffic turning into the Property from the north. *Id.* The required widening of Foxhall Road will be accomplished by using a portion of the Applicant's property. *Id.*

Sidewalks will be incorporated on at least one side of every street in the Property. *See Exhibit 7.* Additionally, the Applicant will construct sidewalks along the perimeter of the Property along W Streets and Foxhall Road. *Exhibit 3.* Covenants will require that both the roads within the Property, as well as the sidewalks, remain open to the general public, although they will be maintained by the homeowners association to be created by the Applicant.

a. <u>The Proposal is the Product of Strong Design</u>.

As demonstrated herein, it has been the Applicant's intention to set new standards for

infill urban opportunities with this development by going beyond established forestry guidelines and storm water management, and securing the legacy of the finest possible architecture. To further this intention, the proposal is the product of much study and consultation with neighboring property owners and District and Federal officials, so as to be sensitive to the surrounding neighborhood, as well as the resources on the site. This study and consultation has continued since the filing of the Application, resulting in several amendments to the plans. From the outset, the formulation of Dunmarlin has been guided by a number of strong design principles, as well as taking cues from some of the nearby overlay zones adopted by the Zoning Commission.

i. Compatibility with Surrounding Neighborhoods.

In initiating the design process, the Applicant looked into surrounding communities for guidance on developing the Property, particularly looking to those neighborhoods that share the sloping features of the Property, such as Wesley Heights, Spring Valley and Colony Hill. Through careful study, several principals were developed. One was that the goal should be to connect the development to the surrounding community. To accomplish this goal, it was determined that the use of cul-de-sacs and dead-end streets should be avoided. More importantly, it was determined that this would not be a gated community but, instead, roads into and sidewalks throughout the development would be available for all to use. So as to create a sense of continuity with the existing neighborhood to the north, two (2) entrances onto W Street were initially planned. However, upon meeting with the W Street neighbors and hearing their concerns, one entrance was eliminated and the remaining entrance was brought into alignment with Foxboro Place to the north. Concern has been raised regarding the possibility that the homeowners' association may, in the future, elect to close off the development from outside

traffic. However, it is the Applicant's intention to protect the evolutionary nature of this community by way of regulations, controls and compatible design guidelines to prevent such an occurrence.

With regard to the internal roads, it was also determined that continuing the Washington street grid throughout the project would not be possible within the Property, given the steep slopes and desire to do as little grading as feasible while at the same time preserving as many mature, healthy trees as possible. Therefore, using the Wesley Heights and Spring Valley neighborhood as an example, it was determined that the internal roads should follow the natural topography. This approach allows the stepping down of houses, similar to that found in Wesley Heights and Spring Valley. Two teardrop shaped green islands have been incorporated on the road perpendicular to the main entry to create a grand boulevard feel to the entrance of the development. These islands are similar to those found on Rockwood Parkway in Spring Valley. These islands also serve to create a greenway connection through the development down into the wetlands preserve area and parkland below.

ii. Creation of Larger Lots.

In recognition of the special nature of the Property and surrounding area, another design principal that emerged was the desire to create larger lots than required by the zoning regulations. The result is that the Applicant has opted to forgo over forty-percent (40%) of the full development potential of the Property. The full development potential for the Property is seventy-three (73) homes, consisting of twelve (12) matter of right homes and sixty-one (61)

theoretical homes, which is calculated as follows:

Gross Lot Area:	713,016 square feet
Roads & Circulation:	84,000 square feet
Natural Wetlands:	36,633 square feet
Open Space/Parks:	37,708 square feet
Net Developable Area:	554,683 square feet

554,683 ÷ Min. Lot Size of 7,500 square feet = 73 Lots

However, given the desire that Dunmarlin be compatible with the surrounding neighborhood, as well as the focus on the environmental aspects of the development, the Applicant is proposing to forgo forty-four percent (total forgone is 44.2%) of the potential theoretical lots. In order to ensure that the development is environmentally sensitive, in addition to the land set-aside for open space, parkland and protected wetlands, the Applicant has created large lots with restricted development areas. The average lot size in Dunmarlin will be 11,016 square feet, well above the required 7,500 square feet and larger than the average lot in the surrounding residential neighborhoods.

b. Tree Preservation and Reforestation.

For the purposes of complying with the D.C. Tree Ordinance, a survey of all trees 17.5-inches in diameter and larger has been prepared by one of the Applicant's engineering firm. The ordinance requires financial and/or mitigation planting compensation for the removal of these "special" trees. Since the language of the ordinance does not fully articulate factors of relative health, weedy and non-native species, the development team has, therefore, refined the tree survey to consider the arboricultural and silvicultural degree of health on a scale of good, fair, poor and dead, consistent with standards of the International Society of Arboriculture. Dead and dying trees and trees that are ailing and failing (ranked as poor, based on crown spread, terminal dieback, lean, vine intrusion and rot) are not included in mapping and calculations for ordinance

compliance.

An altogether separate survey of "specimen" trees was also performed. The purposes of this survey was to document and field-locate all trees of any size, but primarily large, healthy, open grown hardwoods, which would become amenities to land development when saved as individuals or in groupings, groves or clusters. This plan documented a total of 60-trees, which land planners will attempt to save where and as possible, through the site plan process. Because of the sensitivity of the Applicant to environmental issues, a peer-review was performed by Keith Pitchford, ISA Certified Arborist, Pitchford Associates. Mr. Pitchford reviewed the tree surveys generated by both ESA, Inc. and Marcris, Hendricks & Glascock, P.A. and, additionally, conducted his own survey based upon several visits to the Property. Mr. Pitchford recommended the preservation of an additional fifteen (15) mature trees, as well as the concentration of preserving clumps of trees, rather than individual trees – recommendations the Applicant has taken into account in revising its plans. *See Exhibits 3 and 10.* Based on his reviews and meetings with the Applicant, Mr. Pitchford concluded that:

> In summary, although I am fairly new to this project, *I am already extremely encouraged by the owner's commitment to protect as many mature trees as possible.* I truly believe that through my survey, and those of ESA and MHG, that we have chosen the best preservation candidates on this site. And, *given the owner's level of commitment to integrating mature trees into the final site plans, I am confident that this project will be regarded as a model for tree preservation and housing development in Washington, D.C.*

Exhibit 10 (emphasis added).

The only woodlot that occurs on the property is confined to the east boundary of the tract (an area of dry side-slopes, shallow soils and occasional rock outcroppings), abutting Glover Archbold Park and the 44th Street right-of-way. This approximate 4-acre woodlot contains an estimated 230 trees per acre. The dominant tree species is white oak, with typically 7 per acre,

averaging 29-inches diameter. Observed over story species included white oak, tulip poplar, hickory, northern red oak, American beech and black oak. Under story and secondary tree and shrub layer included black locust, sassafras, black gum, Norway maple, boxelder, white ash, red maple, black cherry, spicebush, viburnum and privet. Groundcovers included greenbrier, poison ivy, mile-a-minute, wineberry, Virginia jumpseed, Virginia creeper, English ivy, pokeweed, Asiatic dayflower, garlic mustard, gill-over-the-ground and mugwort.

As a result of these studies, the Applicant has devised a preliminary plan to preserve the forested nature of the Property by maintaining and protecting the most desirable trees on the Property and planting a large amount of new, indigenous trees. The findings of the tree surveys revealed invasive outgrowth of non-endemic species, as well as considerable neglect. Despite these findings, care has been exercised in setting aside areas that will be preserved in order to maintain an established and mature landscape setting for the neighborhood. Of the approximately 107 trees on the Property in good condition, seventy-four (74) are now slated for preservation. Additionally, approximately 356 new, native trees will be planted, resulting in a total of 430 trees, well above the existing number of healthy trees.[6] The Applicant intends to make every reasonable effort to save the existing trees slated for preservation and has agreed to retain an ISA certified arborist to oversee the grading and construction phases of the development to ensure that necessary precautions are undertaken for this goal.

c. Traffic Studies.

The Applicant has retained the firm of Gorove-Slade to perform a traffic study of the impact of Dunmarlin, as proposed. Prior to conducting the preliminary study, Gorove-Slade met with the D.C. Department of Transportation ("DDOT") in order to determine DDOT's concerns

[6] Trees to be planted will be of a significant caliper.

for the traffic impact. A result of the preliminary study dated October 7, 2004, was that traffic generated by Dunmarlin will only increase Foxhall Road traffic adjacent to the site by less than three percent (3%) during the AM and PM rush hours. *See Exhibit 6, Appendix A.*

Again, because of the size of the project and in an effort to allay any potential concerns of neighboring property owners or the ANC, the Applicant retained Stephen Petersen of Street Studies, Ltd., to perform a peer-review of the Gorove-Slade traffic report. *Exhibit 9.* As revealed by Gorove-Slade's responses to Mr. Petersen's comments, the Applicant's approach to the traffic study has actually produced more conservative results than may have otherwise resulted. *See Exhibit 6*, Appendix C # 6. Additionally, the new report based on the comments from Mr. Petersen and meetings with neighbors and the ANC adds the following:

a. Traffic counts for the Field School traffic signal;

b. An additional traffic count spanning five (5) days; and

c. Analyses both the effect of the entire development (*ie* both the twelve matter-of-right homes, as well as the thirty-four (34) theoretical lot homes), as well as just the twelve (12) matter-of-right homes;

A significant finding of the revised report is that:

> The total future conditions, including traffic generated by the full build-out of Dunmarlin and the new driveway on Foxhall Road, show an improvement over future background conditions. *The capacity analysis show improved traffic conditions in the study area with the Dunmarlin development compared to without.* This is due to the use of the new access driveway on Foxhall Road, which the capacity analysis show would operate at acceptable levels of service and would be an improvement over the use of W Street as an access drive.

Exhibit 6 at p. 14 (emphasis added).

d. Storm Water Management.

From the outset, the Applicant has recognized the special environmental qualities of the

Property and surrounding area. As noted above, the Applicant has agreed to set aside 37,708 square feet as open space and parkland; thus bringing into the development similar elements of the neighboring park surroundings. In addition to this effort, in coordination with the U.S. Army Corps of Engineers and the National Park Service, the Applicant's shall design a storm water management system that considerably mitigates the current impact of the proposed development on the adjoining parkland and surrounding neighborhood, in accordance with District of Columbia Regulations. The storm water management preliminary design objective is to create no more impact on the surrounding area than the current natural status of the Property. That is, it is the intent of the Applicant to neutralize any impact of the property development.

As set forth in a letter dated January 5, 2005, to ANC Commissioner Alma Gates, the design intent of the development is "not to have an adverse impact on the downstream properties . . ." *Exhibit 14*. To achieve this objective, the storm water management design concept will include the following components:

> (1) Preservation of the existing on-site non-tidal wetlands and the associated buffers,
> (2) An underground water quality structure, in accordance with the District of Columbia best management practices (BMP's) for water quality control,
> (3) An underground water quantity structure, in accordance with the District of Columbia requirements, and
> (4) A storm drain conveyance system in accordance with the District of Columbia requirements.

Exhibit 14. The storm water structure will include:

> (1) An underground structural sand filter to provide water quality controls in accordance with the District of Columbia, Stormwater Management requirements (best management practices), including managing the first 0.5 inches of runoff from vehicular paved surfaces and managing the first 0.3 inches of runoff from roofs and pedestrian paved surfaces
> (2) An underground larger diameter (60-inch) storage array to

provide quantity control for the 2-year stormwater event;

(3) A storm drain system designed to convey the 15-year storm event.

See Exhibits 14 and Application Exhibit M. Discharge from the Stormwater management facility will be directed into the existing wetlands, where additional filtering by natural process will take place before the flows leave the subject site and enter the drainage system within the Archibald Glover Park. *Id.* This concept is similar to the storm water management system successfully constructed at the nearby Field School. The surface area above these underground storm water management facilities will be used for community open space, maintained in a "village green" like setting overlooking the natural wetland area.

The Applicant has discovered that, as a result of a long-standing leaky municipal water line, the site's ecosystem has been artificially modified, resulting in over three (3) acres of non-natural wetlands. These wetlands are being fed by water containing high levels of chlorine and fluoride. The Applicant has already initiated actions, in consultation with the U.S. Army Corps of Engineers, the National Park Service, the District of Columbia Water and Sewer Authority ("WASA") and the District of Columbia government, to correct this situation at its source. Once the water main break is isolated and repaired, the area of artificial wetlands will begin to dry out and revert back to uplands.

All of the proposed homes will be served by public water lines and sanitary sewers extended from the existing infrastructure in Foxhall Road, W and 44th Streets, N.W. These new utilities will be designed to meet WASA's requirements and once completed will be maintained by WASA.

D. The Applicant has Adopted a Principal of Open Communication with Adjoining Property Owners.

As indicated above, the Applicant and its representatives have fostered open communications with neighboring property owners, as well as the ANC. Meetings to date with neighbors include:

Date	Event
October 22, 2004	Efforts initiated to meet with ANC Single Member District (SMD) commissioner Ann Heuer, as well as the ANC chairperson, Alma Gates and Ann Haas
October 26, 2004	Meeting with neighbor Chandra Hardy (2001 Foxhall Road)
November 10, 2004	Meeting with Ann Heuer, Alma Gates and Ann Haas
November 18, 2004	Meetings with small groups of neighbors (3:30 p.m., 5:30 p.m. and 6:00 p.m.)
November 18, 2004	File BZA Application
November 19, 2004	Meeting with small group of neighbors
Late November , 2004	Meeting with Senator Stevens
December 1, 2004	Introduction of project to ANC[7]
December 9, 2004	Meeting with W Street neighbors
December 11, 2004	Site tour with neighbors
December 13, 2004	Meeting with W Street neighbors (at a neighbor's house)
December 15,2004	Meeting with the Office of Planning
January 5, 2004	Formal presentation to the ANC

[7] At this meeting, it was learned that the ANC had received notice that the hearing was scheduled for February 1, 2005. In order to allow an additional occasion to appear before the ANC, counsel for the Applicant contacted the Office of Zoning and asked that the hearing be scheduled for February 15, 2005, so as to allow time for the ANC to submit a report.

January 13, 2004	Meeting with Chandra Hardy (only adjoining residential neighbor)
January 26, 2005	Meeting with Friends of Whitehaven Park
January 28, 2004	Meeting with Friends of Whitehaven Park to show new plan in response to their comments
January 31, 2005	Telephone conferences with lawyer for Chandra Hardy and with Friends of Whitehaven Parkway; telephone conferences with Alma Gates, ANC 3D
February 1, 2005	Telephone conference with Ann Haas, ANC 3D
February 3, 2005	ANC presentation

Major changes that have resulted from these meetings includes the elimination of one lot to the south of the wetlands area, as well as the elimination of one of the entrances along W Street, N.W. The remaining entrance along W Street, N.W. has been brought into alignment with Foxboro Place to the north of the new entrance. Other small changes have been implemented into the development, construction and design of the proposed project. For example, the Applicant has agreed to eliminate any front yard fences and to further restrict even the height of vegetation, such as hedges that can be planted in front yards. This change will foster the creation of a feeling of openness within the community. Additionally, the Applicant has changed the planting design of new trees along W Street and, rather than using a typical linear streetscape planting, the Applicant will plant new trees in a more organic fashion, so as to maintain the "country-lane" feel to W Street. In response to the W Street neighbors' request, given that underground conduit will be installed for utilities into the Property, the Applicant has agreed to extend this benefit to the W Street neighbors. Finally, with regard to the W Street matter-of-right houses, the applicant has resited the houses so that they form a staggered relationship, allowing the existing residences to the north of W Street to look out in between the

new houses, rather than directly at the houses.

In addition to these changes, the Applicant has agreed to relocate the construction entrance from W Street, N.W. to Foxhall Road. Additionally, the Applicant has agreed to relocate the construction staging area away from W Street and to complete the matter-of-right houses along W Street as the first stage of construction, so as to minimize the impact of construction on the W Street neighbors.

IV.

Special Exception Considerations

A. Criteria for Special Exceptions.

As for the criteria for a special exception, 11 D.C.M.R. § 3104.1 permits the Board to grant special exceptions, pursuant to the following:

> Pursuant to authority contained in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, the Board is authorized to grant special exceptions, as provided in this title where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title...

In short, the Board is empowered to grant a special exception where it finds

(1) The proposed use is in harmony with the Zone Plan and Zone Maps; and
(2) The proposed use is not likely to adversely affect the use of neighboring property.

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether the Applicant has complied with requirements of the section. If the Applicant meets this burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698

(D.C. 1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

1. Criteria Under 2516.

Section 2516.3 requires that an application for a theoretical lot subdivision include site plans for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with approximate building footprint, as well as final landscaping and grading plans and two (2) sets of typical floor plans and elevations. The latter may either be filed with the application or at a later time. In compliance with this requirement, included with this application are preliminary site plans showing: (1) existing conditions; (2) proposed conditions; (3) proposed Site Plan; (4) preliminary landscape plan; (5) typical house plans samples; (6) lot planting schematic; (7) landscape design guidelines; (8) storm water management design; (9) water and sewer connections; (10) street cross sections; and a preliminary traffic study.

The requirements for a theoretical lot subdivision are set forth in sections 2516.6 through 2516.11 of the zoning regulations. As outlined below, the application meets these requirements:

2516.4 The number of principal buildings permitted by this section shall not be limited; provided, that the applicant for a permit to build submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to § 2507), and §§ 3202.2 and 3202.3 are met.

As noted above, the Applicants have forgone forty-four percent (44%) of the potential theoretical lots in the development. This has been accomplished, in part, by creating larger lots than required. Thus, homes will easily meet the open space requirements for each lot, as illustrated on the site plan (*Exhibit 3*). On the site plan, the doted line denotes the theoretical lot lines. Solid lines denote the streets, with the area between the street and property lines to be devoted to sidewalks. As depicted, there will be sidewalks along at least one side of each of the

internal roads, as well as along W Street and Foxhall Road. The white areas of the theoretical lots indicates the buildable area (*ie*, lot area with required side, front and rear yards). Each house will be constructed within this buildable area with a maximum of forty percent (40%) lot occupancy and, as such, will not take up the entire buildable area. Examples of house sitings are given on six of the lots on the site plan.

With regard to other zoning requirements, each house will meet the height, setback and bulk requirements of the zoning regulations for property in an R-1-A district. Driveways will have a maximum grade of not more than twelve percent (12%) and shall have a width of at least seven feet (7'). 11 D.C.M.R. 2118.8(a) & (b).

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:

(a) The front of the building shall be the side upon which the principal entrance is located;

The building sites have been designed in compliance with this requirement. However, in sensitivity to the surrounding neighborhood, although the matter-of-right houses will front Foxhall Road and W Street, they will have driveway access from the internal roads of the Property.

(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the zone district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;

Front yards of at least twenty-five feet (25') are being provided for each lot. These front yards are used to create a feeling of openness and spaciousness throughout the development.

Although not required for the twelve (12) matter of right lots, these properties will also have front yards of at least twenty-five feet (25'). The effect of this front yard set back along

with the driveway access from within the Property for the houses along W Street was designed to lessen the impact of the new development along this street, which is viewed by the W Street neighbors as a "country road".

(c) A rear yard shall be required; and

Rear yards of at least twenty-five feet (25'), and more, are being provided for each lot.

(d) If any part of the boundary of a theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

The rear yards for proposed lots A28 through A35 comply with this requirement (*Exhibit 3*).

2516.6 In providing for net density pursuant to § 2516.11, the Board shall require at least the following:

(a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;

As depicted on the site plan, roadways are not included in the theoretical lots. Moreover, care will be taken in drafting the governing documents for the development to ensure that this will remain an open development. That is, covenants will be drafted so that the roads into the development, as well as the internal roads and sidewalk, will remain open for use by the general public.

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five feet (25 ft.) in width, but need not be paved for its entire width;

As depicted on the site plan, all dedicated right-of-ways (*ie., private* roadways plus sidewalks) are at least twenty-five feet (25') wide.[8]

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[8] Exhibit N of the Application erroneously refers to the internal street that runs behind the matter-of-right houses along Foxhall Road and W Street as "alleys". Section A on the plans submitted in Exhibit N to the

(c) If there are not at least two (2) entrances or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.); and

As originally presented in the application, there were three (3) entrances into the proposed project: two (2) on W Street, N.W. and one on Foxhall Road. The plans, as presented through this statement, include two (2) entrances: one onto W Street and one onto Foxhall Road. The elimination of one of the W Street entrances results from meetings with the W Street neighbors, during which these neighbors expressed concern regarding the two (2) entrances onto W Street. Accordingly, the Applicant has eliminated one of the entrances and aligned the remaining entrance with the angle of Foxboro Place, N.W.

(d) The requirements of paragraphs (a) and (c) of this subsection may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided, that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.

No modifications are required.

2516.7 Where not in conflict with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (2001) (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), the height of a building governed by the provisions of this section, in all zone districts, shall be measured from the finished grade at the middle of the front of the building.

All homes proposed for the development will comply with the height requirements of the zoning regulations. Again, it is the intent of the Applicant to create a neighborhood that is compatible with the surrounding community.

Application has been updated so that the paved road way is twenty-two feet (22') with a four foot (4') unpaved buffer and a four foot (4') sidewalk on one side. Thus, all roadways are, in fact, streets that will comply with the requirements of section 2516.6 of the zoning regulations.

2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of § 410, relating to a group of one-family dwellings, flats, or apartment houses, or a combination of such buildings.

This provision is not applicable, as the development is in the R-1-A district and not in the R-4 or R-5 districts.

2516.9 The proposed development shall comply with the substantive provisions of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood.

The development complies with all applicable provisions of the zoning regulations. As illustrated herein, great care has been taken by the Applicant to ensure that the development will not have an adverse effect on the surrounding neighborhood, whether in terms of storm water management, density, traffic, landscaping or otherwise. With regard to the present character of the neighborhood, great care has been taken to ensure the new development is compatible with this character. For example, the community will be an open community with all roads being through streets, as opposed to cul-de-sacs. Additionally, the style of houses will match that of the older houses in the surrounding existing neighborhoods. The siting of houses on the lots will be consistent with the surrounding neighborhood and the Applicant has created larger lots than required by the zoning regulations, again consistent with the neighboring properties. Finally, the Applicant has incorporated a large amount of open space within the development so as to draw the park like setting of the surrounding area into the Property.

Each dwelling unit will provide off-street parking for at least one car, which will be located in a garage, carport or other permitted location on the lot. Additional parking will be available in the individual driveways.

As to the development's effect on future development of the neighborhood, there will be no adverse impact on any such future development. First, there will be no significant additional

demand for City services created by the project. Storm water management will be handled entirely within the Property. Internal roadways will be designed and constructed to DDOT specifications and will be open to the public and maintained by the homeowners' association for the Property. Second, all construction activity will take place within the Property and, as such, it will not affect the ability of surrounding property owners to develop their properties.

2516.10 Before taking final action on an application under this section, the Board shall refer the application to the D.C. Office of Planning for coordination, review, and report, including:

(a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:

(1) Public safety relating to police and fire concerns;

(2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;

(3) Public education;

(4) Recreation;

(5) Parking, loading, and traffic;

(6) Urban design; and

(7) As appropriate, historic preservation and visual impacts on adjacent parkland;

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design, and screening of structures;

(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

(d) The impact of the proposed development on neighboring properties; and

(e) The findings, considerations, and recommendations of other District government agencies.

The Office if Zoning is responsible for forwarding the application to the Office of

Planning. However, during the initial planning stages the Applicants have consulted and worked closely with the Office of Planning, as well as with DDOT, including the Forestry Administration of DDOT, and the National Park Service.

2516.11 The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

Not applicable at this time. Indeed, as indicated in *Exhibit 11*, the Applicants have created a set of guidelines that will stringent conditions for the use and enjoyment of the Property in a manner which is sensitive to the landscape, the adjacent properties and Park and other property owners. Furthermore, although not a part of this application, the Applicant has included the matter-of-right lots in its drawings and submissions. The same principals that have been applied to the lots that are the subject of this application have been applied to these matter-of-right lots. Furthermore, with regard to the matter-of-right lots, although not required to do so, the Applicant has resituated the houses on the W Street lots so that the residents of the homes on the north side of W Street will look between, rather than into, the new houses.

In short, the Applicant believes that it has adequately addressed all issues relating to theoretical lot approval for the Property. As illustrated on *Exhibit* __, additional trees in excess of the number originally proposed will be planted along the borders of the Property abutting parkland. Additionally, a fence will be installed around this area to prevent the encroachment of the development into the parkland. Individual lots will be landscaped in accordance with the guidelines provided. *Exhibit 11*.

The density, height and location of proposed dwelling has been carefully designed to comply with the requirements of the R-1-A zone district. In fact, the proposed lot sizes are larger than that required by the regulations.

Although the proposed plans and guidelines are consistent with the zoning regulations, to ensure that the development is constructed in accordance with those plans, the following conditions are appropriate:

1. The property shall be subdivided as shown on the plans marked as Exhibit No. ___ of the Record. Minor adjustments shall be permitted to accommodate tree preservation and/or grading.

2. The proposed dwellings shall be constructed accordance with the typical floor plans and elevations marked as Exhibit No. ____ of Record, provided that the Applicant shall have flexibility to modify plans-to make the houses the dimensions, configuration and final grades of the lots shown on the approved site plan. The Applicant is granted the further flexibility to vary the architectural details of the elevations, including but not limited to the type and location of windows and doors, balconies, fireplaces, porches and other projections and final selection of materials. The brick, natural stone, stucco, painted trim and other building materials used shall be earth-toned and natural colors. Bright white and bright or primary colors which contrast with the landscape shall be avoided. Modifications may be made to the plans without further Board approval subject to the following restrictions:

a. "Modifications" shall include, but not be limited to, room additions, construction of decks and porches, changes in facade, design treatment, roof design and pitch, fence design and treatment (except as expressed in condition no. __) and materials generally consistent with the plans submitted in the Record of this case.

b. All construction, including modifications, shall be incompliance with the applicable Zoning Regulations.

c. No such modification shall involve and/or result in the reconfiguration of any of the theoretical lots or reduction in lot area or width.

d. A minimum of two off-street parking spaces for each house shall be maintained at all times.

3. The proposed dwellings shall be constructed behind the building setback line shown on the plan filed as Exhibit __ of the Record. Between the building setback line and the individual lot lines, patios at grade and decks at or below the main floor shall be permitted.

4. The Applicant shall establish a tree preservation and screening area adjacent to the national parklands in accordance with Exhibit __ of the Record. The following conditions shall apply:

a. As required by NPS, a three foot (3') high wrought iron fence designed to serve as a physical barrier shall be erected on the eastern and southern borders of the Property. This fence shall not cross the wetland area;

b. Within the area, prior to commencing construction of any houses, the Applicant and the Superintendent, National Park Service shall enter into an agreement with respect to appropriate number, quality and spacing of trees within the area. This agreement shall be submitted to the Zoning Administrator prior to the issuance of a building permit for any of the proposed dwellings and shall indicate which existing trees will be maintained, which existing trees will be removed, if any, and the location and type of new trees to be planted. The general

configuration of the area shall be as shown on the typical plans and sections dated January 5, 2005, included in the plans as Exhibit 3 to the Applicant's prehearing statement, marked as Exhibit No. ___ of the Record.

5. The construction entrance to the Property shall be located on Foxhall Road. Construction of the matter of right houses along W Street, N.W. shall be completed first. During construction, the applicant shall erect a permanent construction fence on a line ten feet south of the building setback line, and shall take all other measures necessary to prevent heavy construction activity from extending more than ten feet (10') past the building setback line. In no case shall the construction fence extend past the tree preservation line. Any grading or work past the ten-foot area shall be required to be performed by hand. No construction storage shall occur south of the building setback line. The construction fence shall not be removed until after completion of the construction of the proposed dwelling on each individual lot.

6. Individual lot landscaping shall be as shown on the on the typical plans and sections dated January 5, 2005, included in the plans as Exhibit 3 to the Applicant's prehearing statement, marked as Exhibit No. ___ of the Record and shall be in accordance with the Revised Landscape Guidelines set forth in Exhibit 11 of the Applicant's prehearing statement, marked as Exhibit No. __ of the Record.

7. A storm water drainage system shall be constructed in accordance with Exhibit __ of the Record.

8. The entry-ways (vehicular and pedestrian) to the Property shall remain open to the public in perpetuity.

B. The Special Exceptions Will Be in Harmony with the General Purpose and Intent of the Zone Plan and Maps and The Relief Will Not Adversely Affect the Neighborhood.

1. The Special Exception is in Harmony with the General Purpose and Intent of the Zone Plan and Maps.

The proposed development is in harmony with the intent of the zoning regulations, which, in accordance with section 2516, is to allow the construction of two (2) or more principal buildings on a single, subdivided lot, provided that the articulated requirements are met and the development does not adversely impact the surrounding neighborhood. As illustrated by this statement, the application and the testimony to be presented at the hearing on this matter, those requirements are met, if not exceeded, by this application. As indicated above, the Applicant's intent in developing the plans for this proposal was to set a new standard in urban in-fill development. Such intent is clearly evident in the plans and guidelines submitted with this statement, as well as by the care and time the Applicant has taken in meeting with government officials and adjoining neighbors. The end result is a high-quality proposal that will enhance the surrounding neighborhood.

2. The Requested Relief will Not Adversely Affect the Use of Neighboring Property.

a. Environmental Factors.

The Applicant has performed an environmental assessment of the 16-acre Phillips Estate through the month of September 2004. *Application Exhibit P.* Based on the field and document review, the site appears to be fundamentally free of natural resource threats, concerns or hazards, less the following issues, and a few unknowns.

Several historic aerial photographs and topographic mapping suggest that the site has not

been modified or graded, and remains structurally similar to mapping dating back to the 1870's. Concerns that have been observed are currently being addressed. Evident on the Property is the remains of a circular road bed, fill dirt for road bedding and culvert occur within the tract and show on historic mapping. The majority of this road was never formalized (paved) and may have been used to service the pump-works of the well pump house.

As indicated above, the Property contains an artificial wetland area. Based on water main pressure tests, it appears that the problem of this artificial wetlands may be an issue of internal water service lines that may have not been properly documented and turned off, allowing for upwards of 17-years (since the time that the home was razed, in 1986-1987) of subterranean flow and the subsequent creation of artificial wetlands. With regard to the natural wetlands, water testing has been performed in wetlands, wet soils and streams to evaluate the threat of fecal contamination from failed or failing septic fields of the former Phillips Estate or the septic field in active use by an adjacent home located immediately south, on Foxhall Road. It is assumed that the Phillips Estate septic field (where ever it may occur) is off-line and non functional and that the Foxhall residence septic field is functioning properly (although not currently known where the septic field is located).

The Applicant's land planners are aware of natural resource amenity versus constraints issues of wetlands/waters, spring seeps, stream valley buffers, steep slopes, highly erodible soils, rock outcrops, specimen trees, and are attempting to prepare designs that are sensitive to preserving the best of the natural areas, as and where possible. The land development team is committed to various forms of ecological restoration to enhance all areas proposed for retention and preservation, including, but not limited to invasive plant management on-site and within portions of parklands, if allowed.

The Applicant has worked closely with the NPS in planning for the development of the Property. At the request of the NPS, the perimeter of the Property abutting the Glover Archibald Park to the east and the parkland to the south with be fenced with a three foot (3') wrought iron fence to prevent any encroachment upon parkland. Further, NPS has expressed is approval of the loop road at the southern portion of the Property. Specifically, NPS was pleased with this road, as it was viewed as preferable to NPS than having rear yards of lots abut the park. With regard to the lots along the eastern edge of the Property. Those lots abut the 44th Street right of way, rather than parkland. Regardless, a perimeter fence will be installed to prevent owners from encroaching beyond their property lines.

With regard to the two (2) lots (lots A33 and A34) that do abut parkland, again, the fencing will prevent any encroachment onto parkland. Additionally, building restrictions will prevent any adverse impact on the parkland. First, there is the twenty-five foot (25') rear yard set back. Second, with regard to "height controls", all homes within the development will comply with the zoning regulations, which restricts the height of houses in the R-1-A to forty feet (40'). Finally, as depicted on *Exhibit 3*, in addition to the fencing requested by NPS, the Applicant is proposing sufficient planting and tree preservation to adequately screen the park boundaries.

As a consequence of the foregoing, there will be no adverse impact on the surrounding parkland or the environment.

b. <u>There Will be No Adverse Affect on Surrounding Wildlife Populations</u>.

As mentioned above, the Property is adjacent to one of the migratory corridors of the white-tailed deer. Concern has been expressed over the piebald deer that have been observed in the surrounding area. Because of its current vacant state and proximity to the park, deer do

wander onto the Property. However, it has been determined by the Applicant that the proposed development of the Property is insignificant in comparison to the acreage available to deer on adjacent and nearby parklands, which are managed as natural areas in perpetuity. Thus, the development will not adversely affect any wildlife populations in the surrounding area.

With regard to claims that the Property is along a migratory bird flight path, the migratory birds in question are water fowl. As such, the proposed development will not have any adverse effect on migratory bird flight paths.

c. Traffic Conditions in the Area Will Improve with the Development.

The traffic analysis for the proposed development, which has been reviewed and approved by DDOT, as well as having undergone peer-review and approval, illustrates that traffic conditions in the surrounding area will improve as a result of the full development of the Property. This improvement is attributed to "the proposed new driveway to Dunmarlin on Foxhall Road and the interconnectivity between Dunmarlin and the existing residential houses on W Street." *Exhibit 6*, at p. 15.

The intersection at W Street and Foxhall Roads is currently presented with several potentially hazardous factors. First, for traffic turning from the east side of W Street onto Foxhall Road, there are minimal sight lines in either direction due to the curve of the road to the north and hill to the south. Second, with regard to traffic coming from the north turning east onto W Street, because of the curve in the road, lack of a left-turn land and the high speed at which vehicles travel on Foxhall Road, there is the risk of accident. The new entrance into the development will present a better alternative for ingress and egress onto Foxhall Road not only into the development, but onto W Street, as well. The proposed new access point will have several benefits over the existing intersection at W Street and Foxhall Road. First, a left turn

lane will be created for traffic traveling south on Foxhall Road turning into the development. Because the new development will be connected to W Street, this will provide a saver alternative for the W Street neighbors and their guests. This left turn lane will be created by widening Foxhall Road using a portion of the Property. *See Exhibit 7.* A second added safety feature is the increased sight lines over those available from W Street for vehicles exiting the development onto Foxhall Road. Because the new development will be connected to W Street, this will provide a safer alternative for the W Street neighbors and their guests. Third, a merge lane will be created using a portion of the Property for vehicle turning from the development north onto Foxhall Road. *Exhibit 7.*

The eastbound approach of W Street to Foxhall Road currently operates at a failing level of service. *Exhibit 6,* Table 4. Even with the new intersection, it will continue to operate at a failing level of service. It is for this reason that it is expected that the W Street residents and their guests will opt to utilize the new entrance into the development, which will connect with W Street. Furthermore, in an effort to improve conditions at this intersection in the immediate future, Gorove-Slade identified two improvements to this intersection that could alleviate some of the problems:

1. The addition of short turn lanes to the W Street approaches to Foxhall Road to separate left and right turns; and
2. 'Tweaking' the signal timings at the two traffic signals in the study area (Whitehaven Parkway and Field School) to provide more gaps in traffic that could be used at the unsignalized intersection of W Street and Foxhall Road.

Exhibit 6 at p. 15. The Applicant has brought the latter possibility to the attention of DDOT. Additionally, the Applicant has offered its assistance to the ANC in getting this improvement instituted.

Finally, in accordance with Gorove-Slade's findings, there will be no impact on the

intersection of Whitehaven Parkway and Foxhall Road (or, consequently, St. Patrick's Episcopal Day School) or the level of service at the Field School entrance. *Exhibit 6 at* pp. 15-16.

Clearly, the development of this project will not adversely affect traffic in the surrounding community. To the contrary, the new entry into the development will provide a safer alternative to the residents of W Street to their current use of the intersection of W Street and Foxhall Road.

V.
Witnesses

1. Representative of Applicant
2. Representative of Barnes Vanze Architects Inc.
3. Representative of Greenhorne & O'Mara, Inc.
4. Representative of Gorove/Slade Associates
5. Stephen G. Petersen, Street Traffic Studies, Ltd,
6. Keith Pitchford, ISA Certified Arborist, Pitchford Associates

VI.
Exhibits In Support of the Application

1. Agent Authorization to Phillips Park LLC
2. Revised page 2 of Self-Certification
3. Revised site plan dated January 5, 2005
4. Department of the Army, Baltimore District, U.S. Army Corps of Engineers wetlands delineation report dated October 15,2 004
5. Summary of Traffic Report by Gorove/Slade Associates, Inc.
6. Revised Traffic Impact Analysis of Gorove/Slade Associates, Inc. dated January 13, 2005

7. Diagram of proposed new intersection into Dunmarlin[9]

8. Resume and outline of testimony of traffic consultant

9. Memorandum dated January 31, 2005 from Stephen G. Peteresen, P.E., of Street Traffic Studies, Ltd. & Resume of Mr. Petersen

10. Memorandum dated January 31, 2005 of Keith Pitchford, ISA Certified Arborist of Pitchford associates & resume of Mr. Pitchford and outline of testimony

11. Revised Landscape Guidelines

12. Resumes of Beverly Tew, AICP, and Frank C. Lin, P.E., Greenhorne & O'Mara, Inc. & outline of testimony

13. Zoning Commission Order Nos. 351 and 374 and plans approved in Z.C. Case No. 81-1P

14. Letter to Alma Gates dated January 5, 2005 regarding storm-water management

15. Resumes and outline of testimony of Architects

[9] Final design of this intersection is subject to the approval of DDOT.

VII.
Conclusion

For the above reasons, the Applicant respectfully requests that the Board grant the relief sought. Given the lack of adverse impact on the surrounding area, the Applicant requests a bench decision and summary order, if the Board feels such a decision is justified.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler by JR
Richard B. Nettler

Jeannine Rustad

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Suite 1200
Washington, D.C. 20006
(202) 775-0725

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RAHA III, INC.

c/o 7501 Wisconsin Avenue
Suite 720
Bethesda, MD 20814

TELEPHONE: 301-652-4682 ***FAX: 301-652-4686***

February 1, 2005

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

Re: BZA Application No. 17276
2102 Foxhall Rd., NW; Lot 822, Square 1346 (the "Property")

Dear Mr. Griffis:

This letter, on behalf of Raha III, Inc. ("Raha"), the owner of the above-referenced Property, is to authorize Phillips Park LLC ("Phillips"), a Delaware limited liability company and successor contract purchaser to First Capital Trust, LLC, to continue the prosecution of BZA Application No. 17276 for the Property. This letter shall further authorize the law firm of Robins, Kaplan, Miller & Ciresi LLP to act as land use counsel regarding this application. Phillips shall be solely responsible for any representations and/or indemnifications required by the filing of the BZA Application. As such, Raha hereby authorizes Phillips to execute any documents necessary for the filing and prosecuting of a BZA application for the Property.

Sincerely,

Raha III, Inc.

By:_____
Rafic A. Bizri

Its: President

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Side 2

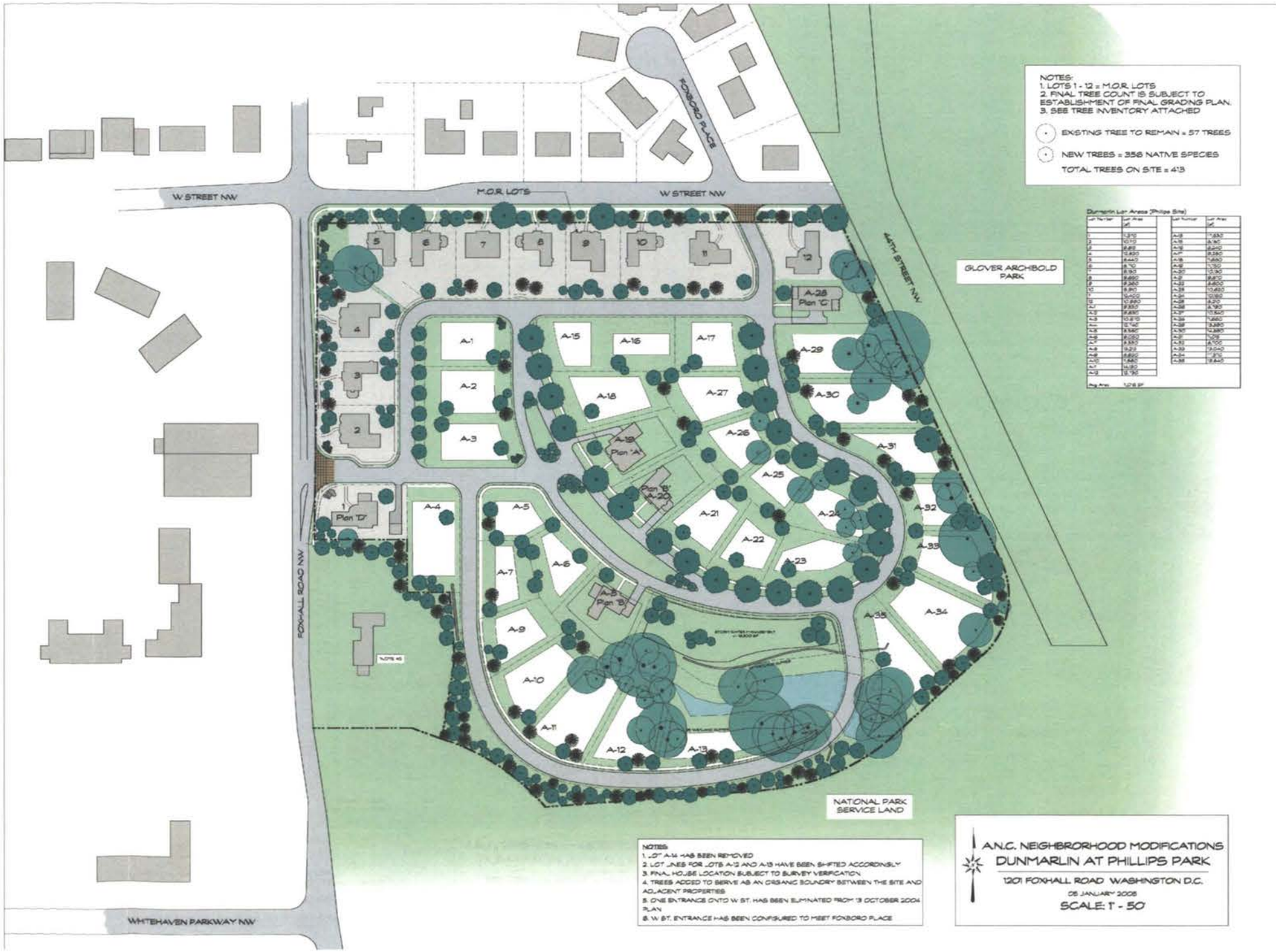
INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on Form 135. All certification forms must be completely filled out (front **and** back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of paper to complete this form.
2. Complete one self-certification form for each application filed. Present this form with the Form 120 Application to the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	706,231	7,500	N/P	Average area 10,960 (See attached)	None
Lot Width (ft. to the tenth)	781.56' (measured along W Street, N.W.)	75	N/P	Varies from 75' to 180' (See attached)	None
Lot Occupancy (building area/lot area)	None (vacant property)	N/P	40%	40% or less	None
Floor Area Ratio (FAR) (floor area/lot area)	None (vacant property)	N/P	N/P	N/A	None
Parking Spaces (number)	None (vacant property)	1/dwelling unit	N/P	Min. 1/dwelling	None
Loading Berths (number and size in ft.)	None (vacant property)	N/P	N/P	N/A	None
Front Yard (ft. to the tenth)	None (vacant property)	25'	N/P	25'	None
Rear Yard (ft. to the tenth)	None (vacant property)	25'	N/P	Min. 25'	None
Side Yard (ft. to the tenth)	None (vacant property)	8'	N/P	Min. 8'	None
Court, Open (width by depth in ft.)	None (vacant property)	N/A	N/A	None	None
Court, Closed (width by depth in ft.)	None (vacant property)	N/A	N/A	None	None
Height (ft. to the tenth)	None (vacant property)	N/P	40'	Max. 40'	None

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NOTES:
1. LOTS 1 - 12 = M.O.R. LOTS
2. FINAL TREE COUNT IS SUBJECT TO ESTABLISHMENT OF FINAL GRADING PLAN.
3. SEE TREE INVENTORY ATTACHED
EXISTING TREE TO REMAIN = 57 TREES
NEW TREES = 356 NATIVE SPECIES
TOTAL TREES ON SITE = 413
Dunmarlin Lot Areas (Phillips Site)
FONBORO PLACE
W STREET NW
M.O.R. LOTS
W STREET NW
44TH STREET NW
GLOVER ARCHBOLD PARK
FOXHALL ROAD NW
WHITEHAVEN PARKWAY NW
NATIONAL PARK SERVICE LAND
A-28 Plan 'C'
A-19 Plan 'A'
A-20 Plan 'B'
A-14 Plan 'D'
A-8 Plan 'B'
NOTES:
1. LOT A-14 HAS BEEN REMOVED
2. LOT LINES FOR LOTS A-13 AND A-15 HAVE BEEN SHIFTED ACCORDINGLY
3. FINAL HOUSE LOCATION SUBJECT TO SURVEY VERIFICATION
4. TREES ADDED TO SERVE AS AN ORGANIC BOUNDRY BETWEEN THE SITE AND ADJACENT PROPERTIES
5. ONE ENTRANCE ONTO W ST. HAS BEEN ELIMINATED FROM 13 OCTOBER 2004 PLAN
6. W ST. ENTRANCE HAS BEEN CONFIGURED TO MEET FONBORO PLACE
A.N.C. NEIGHBRORHOOD MODIFICATIONS
DUNMARLIN AT PHILLIPS PARK
1201 FOXHALL ROAD WASHINGTON D.C.
05 JANUARY 2005
SCALE: 1" - 50'

Dunmarlin Lot Areas (Phillips Site)

Lot Number	Lot Area (sf)
1	11,270
2	10,110
3	9,815
4	12,820
5	8,440
6	8,710
7	9,130
8	9,650
9	9,260
10	9,910
11	12,400
12	10,990
A-1	9,530
A-2	9,630
A-3	10,670
A-4	12,740
A-5	8,560
A-6	9,050
A-7	8,330
A-8	13,215
A-9	8,920
A-10	11,560
A-11	14,130
A-12	12,730
A-13	17,630
A-15	8,180
A-16	8,240
A-17	9,280
A-18	11,680
A-19	11,750
A-20	10,130
A-21	9,870
A-22	8,600
A-23	10,620
A-24	10,160
A-25	8,210
A-26	8,790
A-27	10,540
A-28	11,660
A-29	13,890
A-30	14,890
A-31	11,015
A-32	8,700
A-33	13,040
A-34	17,370
A-35	19,840
Avg Area	11,016 SF

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DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

REPLY TO
ATTENTION OF

October 15, 2004

Operations Division

Visnic, Inc.
c/o Environmental Systems Analysis, Inc.
Attn: Mark Burchick
48 Maryland Avenue, Suite 400
Annaopllis, Maryland 21401

Dear Mr. Burchick:

This is in reference to your letter, dated September 2, 2004, regarding application CENAB-OP-RMS(PHILLIP'S ESTATE/JD)05-00059-11, requesting a jurisdictional determination (JD) and verification of the delineation of Waters of the United States within the Potomac River watrshed, including jurisdictional wetlands, on property located on the southeastern portion of the intersection of W Street and Foxhall, Washington, D.C..

A field inspection was conducted by George Harrison of this office on September 28, 2004, with you in attendance. This inspection indicated that the delineation of Waters of the United States, within the "Area of Review" including jurisdictional wetlands on the enclosed drawing dated October 15, 2004, is accurate. Those areas indicated as Waters of the United States, including non-tidal wetlands are regulated by this office pursuant to Section 404 of the Clean Water Act. Enclosed is a document that outlines the basis of our determination of jurisdiction over these areas.

Please note that on March 28, 2000, an administrative appeals process was established for JDs. Enclosed is a JD appeals form that can be used if you believe the JD you received warrants further review. You may accept this JD, submit new information seeking reconsideration of the JD or appeal the JD. If you accept the JD, you do not need to notify the Corps. A JD will be reconsidered if you submit new information or data to the Baltimore District Engineer (DE) within 60 days from the date of this letter. If you decide to appeal the approved JD, please submit the attached form within 60 days from the date of this letter to our Regulatory Appeals Review Officer at the following address:

James W. Haggerty
Regulatory Appeals Review Officer
North Atlantic Division, US Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Bldg 301

Brooklyn, NY 11252-6700

If we do not hear from you within 60 days, we will consider this JD accepted by you. This approved JD is valid for five years from the date of issuance unless new information warrants a revision before the expiration date.

You are reminded that any grading or filling of Waters of the United States, including jurisdictional wetlands, is subject to Department of the Army authorization. State and local authorizations may also be required to conduct activities in the locations. In addition, the Interstate Land Sales Full Disclosure Act may require that prospective buyers be made aware, by the seller, of the Federal authority over any waters of the United States, including jurisdictional wetlands, being purchased.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA (United States Department of Agriculture) program participants, or anticipate participation in USDA programs, you should request a certified wetland delineation from the local office of the Natural Resources Conservation Service prior to starting work.

If you have any questions concerning this matter, please call George Harrison of this office at (410) 962-6002

Sincerely,

for George Harrison

Walter Washington, Jr.
Chief, Maryland Section Southern

JURISDICTIONAL DETERMINATION Revised 8/13/04
U.S. Army Corps of Engineers

DISTRICT OFFICE: Baltimore
FILE NUMBER: JD-200500059-11 15Oct04

PROJECT LOCATION INFORMATION:
State: District of Columbia
County: District of Columbia
Center coordinates of site (latitude/longitude): 38° 55' 08"/77° 05' 17"
Approximate size of area (parcel) reviewed, including uplands: 16 acres.
Name of nearest waterway: Potomac River
Name of watershed: Potomac River

JURISDICTIONAL DETERMINATION
Completed: Desktop determination ☐ Date:
Site visit(s) ☒ Date(s): September 28, 2004

Jurisdictional Determination (JD):

☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☒ Approved JD -- An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: _____

☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.5 acre

☐ *There are "isolated, non-navigable, intra-state* waters or wetlands" within the reviewed area.
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:
A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":
☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":
☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
☐ (2) The presence of interstate waters including interstate wetlands[1]
☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes
☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
☐ (4) Impoundments of waters otherwise defined as waters of the US.
☒ (5) The presence of a tributary to a water identified in (1) - (4) above
☐ (6) The presence of territorial seas.
☒ (7) The presence of wetlands adjacent[2] to other waters of the US, except for those wetlands adjacent to other wetlands.

[85] This is an unnamed tributary of the Potomac River, an interstate, navigable waterway.

[07] All jurisdictional wetlands meet the 3 parameters, as established in the 1987 Corps wetland delineation manual, and are contiguous with the tributary in 85.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mitchell, Best & Visnic, Inc.	File Number: 200500059	Date: October 15, 2004
Attached is:		See Section Below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Sandy Zelen
Regulatory Branch Baltimore District
P.O. Box 1715
Baltimore, MD 21203-1715
(410) 962-6028 or 3670

If you only have questions regarding the appeal process you may also contact:
James W. Haggerty
Regulatory Appeals Review Officer
North Atlantic Division, US Army Corps of Engineers
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700
(718) 765-7089

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of applicant or agent.		

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
- ☐ the presence of litter and debris
- ☒ changes in the character of soil
- ☐ destruction of terrestrial vegetation
- ☒ shelving
- ☐ other:

☒ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gages
- ☐ other:

☒ Mean High Water Mark Indicated by:
☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types.

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: Environmental Systems Analysis, Inc.

Basis For Not Asserting Jurisdiction:

☒ The reviewed area consists entirely of uplands.
☒ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
☒ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
☒ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
- ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- ☐ Other (explain):

DATA REVIEWED FOR JURSIDICTIONAL DETERMINATION (mark all that apply):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
☒ Data sheets prepared/submitted by or on behalf of the applicant.
- ☒ This office concurs with the delineation report, dated September 2, 2004, prepared by Environmental Systems Analysis, Inc.:
- ☐ This office does not concur with the delineation report, dated _____, prepared by (company):

☒ Data sheets prepared by the Corps.
☒ Corps' navigable waters' studies:
☒ U.S. Geological Survey Hydrologic Atlas:
☒ U.S. Geological Survey 7.5 Minute Topographic maps:
☒ U.S. Geological Survey 7.5 Minute Historic quadrangles.
☒ U.S. Geological Survey 15 Minute Historic quadrangles:
☒ USDA Natural Resources Conservation Service Soil Survey:
☒ National wetlands inventory maps.
☒ State/Local wetland inventory maps:
☒ FEMA/FIRM maps (Map Name & Date):
☒ 100-year Floodplain Elevation is: (NGVD)
☒ Aerial Photographs (Name & Date): MD DNR DOQQ infrared aerial photography, March 1994, B&W historical aerials (1973 & 1948)
☒ Other photographs (Date): ground photos by applicant, 2004
☒ Advanced Identification Wetland maps:
☒ Site visit/determination conducted on: September 28, 2004
☒ Applicable/supporting case law:
☒ Other information (please specify): 1892 USC&GS map of DC

Page Hensons 15 Oct 2004

[1]Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

[2]The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

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DUNMARLIN TRAFFIC STUDY SUMMARY

- STUDY SCOPE
  - Study area includes Foxhall Road between and including intersections at Whitehaven Parkway, W Street. and the Field School Entrance.
  - Operations at St. Patrick's on Whitehaven.
  - Accounts for existing traffic, background growth in traffic (without Dunmarlin) , and Dunmarlin traffic.
  - Addresses overall operations along this section of Foxhall Road.
  - Level of Service (estimates of average delay) at intersections.
  - Specific impacts on traffic movements at the W Street intersection with Foxhall Road.
  - Safety considerations.
- TRAFFIC SURVEYS CONDUCTED FOR THIS STUDY
  - General observations
  - Turning movement counts at intersections on Thursdays – September 9 and December 16, 2004
  - Five day, 24 hour machine counts from Wednesday 12/15 to Sunday 12/19
- GENERAL DESCRIPTION OF EXISTING TRAFFIC OPERATIONS
  - Foxhall Road carries high volume of commuter traffic passing through the area; peak hour traffic is approximately equal in the NB and SB directions.
  - Signal controls traffic turning at the Field School and at Whitehaven Parkway.
  - Stop sign control on W Street approaches to Foxhall Road.
  - Priority is given to through traffic on Foxhall Road.
  - This results in delays on "minor" cross street approaches, especially at W Street.
  - Through traffic speeds on Foxhall Road exceed legal limits.
- FORECAST OF FUTURE TRAFFIC VOLUMES
  - Background traffic without Dunmarlin
    - Existing traffic on Foxhall was assumed to grow at rate of one percent per year for three years.
    - Matter-of-right traffic for 12 homes on Dunmarlin site.
  - Dunmarlin traffic for balance of 34 homes.
- ANALYSIS OF MORNING PEAK HOUR CONDITIONS
  - Existing Conditions
    - NB and SB traffic flow on Foxhall Road operates with minor delays (LOS "A")
    - Minor approach traffic at Whitehaven and Field School operates with moderate delays (LOS "B" and "C")
    - Minor approach traffic at W Street operates with significant to major delays (LOS "D" and "F")
  - Future Background Conditions Without Dunmarlin
    - Same as existing for Foxhall Road, Whitehaven Pkwy. and Field School: minor to moderate delays

        - Delays on W Street will increase significantly.
    - Future conditions with Dunmarlin Traffic and modified access to east side of Foxhall Road
        - Same as existing for Foxhall Road, Whitehaven Pkwy. and Field School: minor to moderate delays
        - East side access change provides second alternative access for W Street traffic; this would improve access conditions at W Street and reduce delays to minor approach traffic at that intersection.
        - Delays at new Foxhall Road entrance at Dunmarlin will be moderate (LOS "C").
        - Access conditions at the Dunmarlin entrance on Foxhall Road will be much better than at W Street. Therefore, W Street residents will find it more convenient to use this new alternative.
    - Summary of Impacts
        - Background traffic growth without Dunmarlin will increase delays at W Street.
        - Dunmarlin adds small volume of traffic in corridor, but provides improved access conditions that benefit W Street intersection by providing alternative access. Dunmarlin traffic will have no noticeable impact on traffic conditions on Foxhall Road, or for the Field School and St. Patrick's.
        - Dunmarlin entrance on Foxhall will provide alternative access opportunity for residents on W Street that will enable them to enter and leave Foxhall Road with less delay than at W Street.
        - Dunmarlin entrance on Foxhall will be a safer alternative access than W Street because left turn lane can be provided, and sight distance is better.
- OPPORTUNITY TO IMPROVE TRAFFIC OPERATIONS AND SAFETY ON FOXHALL
    - Existing traffic signals at Whitehaven Parkway and the Field School can be coordinated, operated and timed to:
        - Reduce speeds on Foxhall Road
        - Increase the availability of safe gaps in the Foxhall Road traffic stream so traffic movements on minor approaches at W Street and Dunmarlin entrance can be made more easily and more safely.