TESTIMONY OF
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ANN HAAS, SMD 3D 09
BOARD OF ZONING ADJUSTMENT
APPLICATION # 17276
FEBRUARY 22, 2005

On the evening of February 1, the night before ANC 3D's monthly meeting, a new application was delivered to the doors of ANC 3D Commission members. Twenty-four hours is insufficient time to fully review a new application but based on the development team of MB Visnic, Inc. and Vanze Barnes Architects with whom we had met at two previous meetings, the commission embraced this application with conditions. The Visnic-led team offered integrity, a level of sensitivity and reputable assurance that the community would have a development that reflects the quality workmanship of surrounding areas -- Wesley Heights, Spring Valley and Colony Hill.

Missing from two lengthy applications or the three presentations before the commission were a Grading Plan, a Stormwater Management Plan and a Construction Management Plan. On Tuesday, February 15, 2005, still new material was distributed and presented to the Board which may be a function of the evolving nature of the project and its evolving partners. Mr. Pryor spoke publicly for the first time. There was no mention of Ted Visnic. New consulting members were introduced and, we learned that Messrs. Barnes, Linn and Pitchford do not have signed contracts. Still, the Board was assured that all is well because a peer review process has been put in place.

The subject property is located along Foxhall Road and is surrounded on two sides by Federal parkland -- Glover Archbold Park and Whitehaven Park. As you have heard, it is an unusual property, with 16 acres of steep slopes, rolling hills, wooded areas, wetlands and a dramatic view of Glover Archbold Park 120 feet below. The height at Foxhall Road is 280 feet above sea level, so you get an idea of the steepness. Mindful that this parcel is one of two large desirable tracts of land in the city, the commission conditioned approval of this application on assurance that its future development is directed, determined and destined by more than a zoning change. Therefore, the final Order issued by the Board of Zoning Adjustment for Application 17276 must ensure guidance supported by enforceable conditions.

Traffic

On Sunday, I walked up to the site of the proposed new access drive into Dunmarlin. I stood at the edge of Foxhall Road and imagined that I was in a car attempting to exit the property. Directly ahead of me is a residential dormitory belonging to GW/Mt. Vernon. To my right, looking north, I could see the traffic light at Field School and the steeply sloping hill that curves in front of the school's entrance. To the south I could only see an earthen berm, a number of trees and utility poles. I could not see the oncoming traffic nor could it see me until I leaned forward into the road. Moving the new drive 50 feet

Case No. 17276
Exhibit No. 45

Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
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further north would provide a line of site greater than the current 250 feet and provide less impact to the trees lining Foxhall Road.

Construction Management

The current absence of a builder/developer, who can address the overall timeframe, phasing and management of this development project, places a special responsibility on the Board and requires measures to be put in place to ensure that impacts to the immediate neighbors, especially Chandra. Hardy, the only adjoining residential neighbor, and to the Dunmarlin property are kept to a minimum.

The proposed new entrance is not an acceptable location for construction vehicles. In earlier conversations between the ANC and Mr. Visnic, his vision was to begin staging from the existing entrance to 2101 Foxhall Road where there is an established road and a spacious open field area for parking and construction vehicles. There is sufficient space to store equipment and building materials. This is the site of the former Phillips home and the proper place for the project to begin its operations. A surrounding canvas covered chain link fence would hide the site from view of residents on W Street and not require the immediate removal of interior trees that would be required further south on the property. It would also permit utility poles on Foxhall Road to remain in place. A George Washington University residential building is immediately opposite the proposed new access drive. Residents would be separated from noise, dirt, construction equipment, workmen and their parked vehicles. Establishment of the construction entrance at 2101 Foxhall Road – the current entrance to the property -- is a necessary condition.

A construction management plan, thoroughly reviewed and monitored by DDOT, must be a condition of approval.

The gate of the project opens at seven AM and closes at five PM during week days and no permits issued for weekend work will be issued. Hours of operation need to be noted and conditioned.

A twenty-four hour hotline needs to be implemented and conditioned.

A DDOT approved heavy construction truck protocol and route needs to be established, implemented and conditioned.

The Board heard that Foxhall Road is slated to be improved and resurfaced beginning this spring. Given its current condition, Foxhall Road cannot wait to be resurfaced until this development is complete. Foxhall Road must be returned to the same condition or better when project related utility work is complete.

Phasing of the project needs to be established and conditioned and must include a contingency plan should the current owners not complete the entire development project. It would include directives on how any unfinished work and open land will be addressed.

A condition needs to be put in place to ensure that trees are properly safeguarded and that drip lines are not intruded upon during construction. Tree maintenance, protection of specimen trees and replacement requirements need to be overseen by a registered arborist and conditioned to ensure that all provisions of the Urban Preservation Act of 2002 (Tree Bill) are implemented if not exceeded. The Board was informed by Mr. Pitchford that it can take years for a tree to die. The condition should include a timeframe for specimen trees especially addressed in the Tree Bill.

Throughout the construction phase and beyond, the wetlands that lies at the low point on the property will need special monitoring by all appropriate agencies, (Army Corps, National Park Service and DC Health). Harmful chemicals – road salts and herbicides - must not be used during the construction phase or thereafter. The continued life and health of the wetlands area must be guaranteed as a condition of approval.

Monthly meetings between the contractor/builder, the immediate neighbors, interested parties and a representative of the ANC at the Palisades Library must be a condition of approval.

Stormwater Management

A representative of the National Park Service has termed the stormwater management plan for the Field School the "standard" for large projects, including this one. He said that he has been assured that the Dunmarlin proponents will exceed the Field School's measures. Immediate neighbors of Field School and those who live downstream on Hutchins Place might not concur with the choice of the Park Service. One immediate neighbor of the Field School has spent $40,000 on attorney's fees and still has a front yard with standing water. Another neighbor has had a constantly damp basement since the school was built. Water cascading down Foxhall Road has eroded its boundaries and now cascades down Whitehaven Parkway and ends in the yards of residents on Hutchins Place one block below MacArthur Boulevard.

The Park Service staff member also commented that his agency participates in conservation easements with private landowners and organizations such as The Nature Conservancy and the Potomac Conservancy. A look at the site plan for Dunmarlin shows that several houses at the low end of the lot are very close to the wetlands that are only protected by a 25 foot wide buffer. Increasing the buffer from the minimum requirement of 25 feet to100 feet to prevent the urbanization of this now vegetated property needs to be a condition of approval.

The plan now is for catch basins to collect water, filter it through sand, and discharge it into the wetlands for further processing! The wetlands drain into Glover Archbold Park's Foundry Branch and then go on to the Potomac River and the Chesapeake Bay. Mr. Linn addressed some innovative on-site water treatments that characterize low impact development. Placing "rain gardens" on every property appears to meet that goal but the plan is only one week old and its implementation remains an unknown. It would be

easier and less expensive to treat water on-site than "let someone else" do it by moving the problem downstream. That approach also speaks to responsibility. Water that is captured for on-site irrigation treats water as a resource.

Grading Plan

A biologist, Julie Moore, who toured the site in January, commented:

> The interesting existing attributes of the property have been largely ignored in planning the residential development. The natural topographic variation will be reshaped if the current plan is followed, whereas it may be feasible to keep the "terrace" effect of the contours, at least in the northwestern sector on the steep slopes south of the old mansion site. Plans show that existing cover of many mature trees will be removed, and scattered individual trees retained. Most of the existing trees are species that are susceptible to impact if care is not taken to maintain their root systems. They currently function as a stand rather than as individual trees and thus will be susceptible to wind-throw if they are reduced to isolated representatives.
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> A considerable amount of earth-moving will be needed if the property is reshaped to follow current development plans. The high, nearly level ridge at the corner of Foxhall Road and W Street will be cut down and material pushed south to make the site more level for homes. Considerable erosion is probable, and sediment will quickly impact the wetlands and probably move through the drain into the adjacent parkland. The wetlands will be impacted by both the earth-moving and by the proposed road system.
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> Julie Moore Recommended:
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> Minimizing the topographic alterations by using a road layout that does not require considerable cut and fill. Remove roads from steep slopes.
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> Protecting wetlands and use them as an amenity for the development. Protect the steep slope at head of drainage north of Whitehaven Parkway. Springs may originate there at the old cistern. Buffer the wetlands with water-tolerant species such as sweet bay magnolia.
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> Maintaining groups or groves of trees such as the ones on the southwest facing slopes in the eastern sector—rather than trying to select specimen trees that are easily damaged during construction and are susceptible to wind-throw if isolated as individual trees after having been part of a forest or grove. Retain stands of trees as wooded areas that give character to the site and prevent the need for lawns with their maintenance requirements and runoff issues.

Conclusion

In its February 4, 2005 letter, ANC 3D submitted a number of conditions based on information that was available at the time of its vote. These conditions were met with approval by those representing the development team and its attorney I have included them in this testimony and will read them into the record.

Applicant agrees to: Relinquish all rights/claims to the undeveloped portion of 44th Street (paper road) that abuts the property at 2101 Foxhall Road; remove the concrete slabs and other remnants of the old road bed and, work in collaboration with the National Park Service to ensure that the District of Columbia transfers jurisdiction of that portion of 44th Street to the National Park Service.

Applicant agrees to place covenants on the Deeds of Sale of properties that border on federal parkland that prohibit the placement of structures within the rear yard setback.

Applicant agrees to require that all swimming pools are constructed within the allowable lot footprint.

Applicant agrees to require the Dunmarlin Homeowners Association to institute a policy that would prohibit the use of harmful chemicals/pesticides on properties within the development to ensure further protection of the natural wetlands.

Applicant agrees to work with DDOT to maintain or improve the natural earthen berm fronting on 2001 Foxhall Road and ensure that it is minimally disturbed if Foxhall Road is reconfigured for the purpose of installing traffic improvements including a traffic signal, an additional traffic lane and a sidewalk.

Applicant agrees not to recommend to DDOT a right turn only policy from the east side of W Street.

Applicant agrees not to request that DDOT fully signalize the traffic light on Foxhall Road at Field School. (See BZA Order No. 16559.)

Applicant agrees to work closely with DDOT and to assume all costs related to the installation of a new "on demand" traffic light at the proposed new Dunmarlin entrance on Foxhall Road. (The warrants for the nearby W Street intersection were done by DDOT in connection with the 2002 Palisades Traffic Study.)

Given the complexity of this ever changing application, a bench decision is inappropriate. When conditions are written, ANC 3D requests that their submissions be given the "great weight" to which they are entitled under DC Law. Further ANC 3D will work cooperatively with the developer in a peer review of final submissions and with the Board in drafting the final conditions for this order.