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March 28, 2005

BY HAND

RECEIVED
D.C. OFFICE OF ZONING
2005 MAR 28 PM 3:47

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 and members of the Board:

On behalf of our client, Phillips Park LLC, pursuant to the Board's request at the conclusion of the March 8, 2005 hearing, enclosed you will find the Applicant's proposed findings of fact and conclusions of law. Attached as Exhibit A to the proposed order is our justification for the proposed conditions, as well as responses to proposed conditions of the parties. Attached as Exhibit B of the Order you will find a revised outline for Architectural Guidelines to respond to the concerns of the Board.

With regard to the Board's request for an update on the status of entering into a construction agreement with the parties, we made further attempts to first enter into an agreement with Ms. Chandra Hardy. Immediately after the hearing, we sent Ms. Hardy's attorney a draft construction management agreement. Hearing nothing and with today's deadline approaching, we tried, unsuccessfully to contact Ms. Hardy's attorney to ascertain the status of the draft agreement. Receiving no response, we informed the Advisory Neighborhood Commission that we would be providing to it and other parties a draft agreement. This was delayed by the illness of Mr. Nettler last week. In any event, on Friday, we were informed that Ms. Hardy, who had been out of town since the last BZA hearing had joined Alma Gates and the Certain Residents in preparing a unilateral "construction management agreement." Nevertheless, we were also informed over the weekend, that Ms. Hardy would be willing to sign the draft we sent her almost two weeks ago if we deleted any mention of the site plan we submitted to the Board and agreed to install a permanent fence on the Applicant's property adjacent to Ms. Hardy's property, within fifteen months of construction, regardless of whether construction was completed.

No attempts were made to negotiate the terms of the "Agreement" submitted by other parties with the Applicant prior to submission to the Board. Given the Board's acknowledged lack of

BZA
Case No. 17276
Exhibit No. 60

Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
EXHIBIT NO. 60A1

jurisdiction over such agreements, we have focused our time and attention on drafting adequate conditions to the proposed order to protect the surrounding area from adverse impacts of the proposed development. With regard to the proposed construction management agreement, we have addressed those terms in Exhibit A to the Order. Also, we are attaching a Construction Commitment containing terms that the Applicant will adhere to during construction of the project, including a phasing plan for its construction.

Thank you for your attention to this matter.

Sincerely,

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

Richard B. Nettler
Jeannine Rustad

cc: Mr. Felipe Paraud
Advisory Neighborhood Commission 3D
Office of Planning, Joel Lawson
Certain Residents of W Street, etc
Ms. Chandra Hardy
William Snape, III, Esquire

Exhibit #60

CONSTRUCTION MANAGEMENT COMMITMENT

This COMMITMENT, made as of this 28th day of March, 2005, by PHILLIPS PARK, LLC, a Delaware limited liability company, ("PHILLIPS") .

WITNESSETH

WHEREAS, PHILLIPS is the contract purchaser of a certain parcel of land known as Lot 822 in Square 1346 in the District of Columbia and more commonly referred to as the PHILLIPS ESTATE, with a street address of 2101 Foxhall Road, N.W., Washington, D.C. ("LAND") and the improvements located thereon ("HOUSE"), the LAND and HOUSE hereinafter collectively referred to as the "PHILLIPS PROPERTY"; and

WHEREAS, PHILLIPS, in BZA Application No. 17276 ("BZA 17276"), has applied with the District of Columbia Board of Zoning Adjustment for a special exception so that it may subdivide the PHILLIPS PROPERTY and to construct a new housing development on the PHILLIPS PROPERTY into matter-of-right lots and theoretical lots, and the scope and extent of that work is hereinafter referred to as the "PROJECT"; and

WHEREAS, the PROJECT is the subject of this AGREEMENT; and

WHEREAS, the parties in opposition to BZA 17276 expressed concerns about construction related to the proposed PROJECT; and

WHEREAS, PHILLIPS is committed to the following conditions to address the concerns of the parties to BZA 17276 regarding the construction of the PROJECT:

1. PHILLIPS shall construct, at its own expense, within 90 days after all clearing and re-grading work is complete, and after any construction of houses

immediately adjacent to the property owned by Chandra Hardy at 2001 Foxhall Road, N.W. (HARDY PROPERTY) is completed, a permanent perimeter fence, on the common east and north boundaries of the PHILLIPS PROPERTY and HARDY PROPERTY, whether or not such a fence is constructed (replacing the existing fence) between the PHILLIPS PROPERTY and the property owned by the National Park Service. PHILLIPS will landscape the area within the PHILLIPS PROPERTY adjacent to the HARDY PROPERTY common fence (per attached site plan dated February 28, 2005) with appropriate planting materials reasonably selected and approved by the project landscape architect and arborist in order to provide privacy and security. The upkeep and maintenance of this permanent fence shall be the sole responsibility of PHILLIPS.

2. PHILLIPS shall engage Pitchford Associates to further conduct an additional detailed study/survey of the condition of the major trees near the boundary between the PHILLIPS PROPERTY and the HARDY PROPERTY prior to engaging in any construction activity. Based on the recommendations by Pitchford, PHILLIPS will provide a tree preservation and care program for such identified major trees during construction as shown in the Tree Preservation Plan (dated February 28, 2005). PHILLIPS and its successors and assigns, including any homeowners association, shall continue to maintain the health of the major trees identified using the best management practices ("BMP") in the study/survey during construction and after completion of the project. THE BMP shall include the assignment of a critical root zone

("CRZ") for each major tree, consistent with the sensitivity of the species. The CRZ shall be protected during the rough grading process. Any incursion into a CRZ after the rough grading process shall be done under the supervision of an arborist. PHILLIPS shall be responsible, at its expense, for the removal and replacement of all such major trees identified by the study/survey to have been adversely impacted by direct construction activities.

3. PHILLIPS has attached hereto a Construction Schedule that shows the phasing of construction on the PROJECT. The Construction Schedule shall provide, to the extent reasonably practicable and feasible, or allowed by the marketplace, for the portion of the PROJECT immediately adjacent to the HARDY PROPERTY to be completed toward the latter phase of the PROJECT. PHILLIPS shall maintain the area on its PROPERTY, below the house on the HARDY PROPERTY during construction in an orderly condition as is reasonably feasible, which may include sediment controls and hydroseeding after grading is done and planting a green buffer on the portion of the PHILLIPS PROPERTY immediately adjacent to the HARDY PROPERTY as soon after grading operations are completed as is reasonably feasible. PHILLIPS reserves the right to make changes or modifications to the schedule.

4. PHILLIPS has attached hereto a copy of the Construction Management Plan for the PROJECT, which provides as follows:

    a. During construction of the PROJECT, PHILLIPS will use its best efforts to ensure that the construction staging areas for the PROJECT shall

be located on the PHILLIPS PROPERTY in such a manner as is practical that it minimizes its visibility from the house located on the HARDY PROPERTY;

b. All construction vehicles and vehicles utilized by construction personnel shall, when not being utilized for construction related activity, be parked in such a manner as is practical to minimize its visibility from the house located on the HARDY PROPERTY;

c. The location of all construction roads for the PROJECT;

d. Work on the PROJECT shall take place between the hours of 7:00 a.m. and 7:00 p.m., and 8:00 a.m. and 5:00 p.m. on Saturday, or those hours and days authorized under District of Columbia Building Code regulations, during the regular work week, with no construction activities on Sundays or official District of Columbia holidays;

e. Vehicular traffic to and from the PROJECT shall, to the extent reasonably practicable and feasible, utilize an entrance on Foxhall Road to the PHILLIPS PROPERTY;

f. Safety Standards for construction vehicles. See attached "Cooper Rules."

g. PHILLIPS and/or its general contractor shall provide a twenty four hour hotline to address concerns of others neighboring the PHILLIPS PROPERTY during the construction of the PROJECT, shall maintain a website updated to show construction progress, and shall make a report to the Advisory Neighborhood Commission at least every three months to

A

EXHIBIT A
Construction Schedule

Dunmarlin at Phillips Park
Construction Phasing On-Site
March 28, 2005



This Phasing Plan is general in nature, and may be revised as design development or site conditions demand. Roughly speaking, however, the plan is as follows:

Phase I

- Investigate/install off site work (e.g. Foxhall Rd. pipe, 44th Street culvert stabilization)

Phase II

- Rough grade, seed and mulch
- Build houses MOR 4-13

Phase III

- Build houses A-15 – A-27

Phase IV

- Build houses A-29 – A-35; A-5 – A-9

Phase V

- Build houses A-10 – A-13; MOR 1-3; A-1 – A-4; remove construction staging.

Note:

- Sediment and erosion control will be on-going to accommodate construction phasing.
- Storm Water Management and Storm Drain installation is flexible because no run off is permitted to enter the SWM until the site is stabilized, regardless of sequence of construction.
- Tree preservation measures will be on-going through all five Phases.
- Construction staging will necessarily move around the site as phasing progresses, however, the majority of the staging is anticipated close to the new Foxhall access Rd.
- In all cases, yards for the houses built out in a particular phase will have established grass prior to the begin of subsequent phase construction.

B

EXHIBIT B
"Cooper Rules"

Safety Standards for Construction Vehicles

1. Before a trucking company starts a project, the excavation company must require documentation of:

   - All necessary licenses and permits
   - Any accidents or citations involving trucks or on-duty drivers for the prior year
   - The last required federal inspection
   - Adequate liability insurance
   - Current federal safety report
   - A pledge not to pay speeding tickets for drivers

2. If any of the above information changes or expires during the project, the trucking firm must update its records.

3. Before work starts, the excavation company shall certify that the trucking company has complied. The certification shall be placed on the truck's windshield, with a list of each driver authorized to drive the truck.

4. Before any driver starts work on a project, the excavation company must inspect the driver's commercial license to make sure it is current and appropriate for the job.

5. The excavation company must identify routes for drivers that minimize the use of streets through residential areas.

6. The excavation company must not require or recommend that drivers take any other routes.

7. If the excavation company uses how long a trip takes to measure a trucker's performance, the standard shall be the "reasonable" time it takes to drive the recommended route.

8. The excavation company must not load any truck with more weight than the maximum allowed in any jurisdiction in which the truck is driven.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 17276 of Phillips Park, LLC, 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").

HEARING DATES: February 15 & 22, 2005, and March 8, 2005
DECISION DATE: April 5, 2005

DECISION AND ORDER

Preliminary and Procedural Matters.

Applicant. The application was filed on November 18, 2004 on behalf of First Capital Trust, LLC, the contract purchaser for the property that is the subject of this application. In was noted in the prehearing statement filed on February 1, 2005 that Phillips Park LLC (the "Applicant") was the successor to First Capital Trust, LLC, although comprising the same principals.

Application. The application requests a special exception under 11 DCMR § 3104.1, to allow a theoretical lot subdivision pursuant to 11 DCMR § 2516 in an R-1-A zone district at the premises 2101 Foxhall Road, N.W. (Square 1346, Lot 822) (the "Property"). The zoning relief requested in this application is self certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated _____, 2004, the Office of Zoning gave notice of the application to the D.C. Office of Planning, the Zoning Administrator, the Councilmember for Ward 3, the D. C. Department of Transportation, and Advisory Neighborhood Commission ("ANC") 3D, the ANC for the area within which the Property is located.

The Board scheduled a public hearing on the application for February 15, 2005. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the District of Columbia Register, and on _____, 2004, mailed notice of the hearing to the Applicant, the owners of all property within 200 feet of the Property, and ANC 3D.

The Applicant's affidavit of posting and maintenance indicate that two (2) zoning posters were placed at the Property's two street frontages - on Foxhall Road, N.W. and W Street, N. W. - beginning on January 31, 2005, in plain view of the public.

Requests for Party Status. The Board received three (3) requests for party status. The Board granted party status to the Chandra Hardy, owner of 2001 Foxhall Road and the only adjacent residential property owner; the Friends of Whitehaven ("FOW"), a District of Columbia non-profit association created in 2002 for the protection of the Whitehaven National Parkland located to the south of the

Property; and "Certain Residents of W Street, etc" ("Certain Residents") a group ten (10) of nearby property owners located to the immediate north of the Property. Although all parties were granted status in opposition to the application, all indicated that they were not necessarily opposed to the application but, rather, had concerns.

Applicant's Case. The Applicant presented testimony and evidence from William Pryor, the managing member of Phillips Park, LLC; Anthony "Ankie" Barnes of Barnes Vance Associates, an expert in architecture; Louis Slade of Gorove/Slade Associates, an expert traffic operations engineer; Keith Pitchford of Pitchford Associates, an expert arborist; and Cheng-Ho "Frank" Lin, P.E. of Greenhorne & O'Mara, Inc., an expert in civil engineering. The Applicant presented rebuttal testimony and evidence from Roy H. Gauzza, R.L.A., Greenhorne & O'Mara, Inc., an expert in landscape architecture; Mary K. Sears, Greenhorne & O'Mara, Inc., an expert in civil engineering and storm water management; James R. Ingram, Greenhorne & O'Mara, Inc., an expert environmental scientist; and Stephen Petersen, P.E. of Street Traffic Studies, Ltd., an expert in traffic engineering.

Office of Planning ("OP") Report. OP reviewed the application with respect to the criteria of section 2516 of the zoning regulations. By its report dated February 8, 2005, OP indicated it was generally in support of the application (with conditions) but that OP needed additional time to review the recently modified site plan, which was modified to reflect neighborhood preferences. By its report dated March __, 2005, OP recommended approval of the application, with conditions.

Department of Transportation ("DDOT"). DDOT submitted a memorandum in support of the proposed development to the Office of Zoning dated January 31, 2005. DDOT concurred with the Applicant's traffic management plan and based its support on its finding that the project will not affect the existing level of service of the surrounding street systems and that, from a transportation standpoint, the proposed development would not have an adverse impact on the surrounding area. At the hearing, DDOT indicated its support of a traffic light at the proposed entrance to the development on Foxhall Road.

Metropolitan Police Department ("MPD"). The Metropolitan Police Department submitted a letter dated January 17, 2005 to OP. MPD noted the heavy rush hour traffic on Foxhall Road from 7:30 a.m. to 10:30 a.m. and 4:00 p.m. to 6:30 p.m., as well as incidents of speeding along Foxhall Road. MPD stated that the proposed development would increase the number of calls to the two (2) police officers assigned to patrolling the surrounding area. Additionally, although not within MPD jurisdiction, MPD opined that the proposed development would have an impact on wildlife and recommended that the Environmental Protection Agency, the National Wildlife Federation and The Nature Conservancy be contacted regarding the proposed development. By testimony dated February 15, 2005, MPD again commented on average speeds on Foxhall Road in the area surrounding the Property.

Department of Housing and Community Development ("DHCD"). By memorandum dated January 6, 2005, to OP, DHCD indicated its support for the application.

DC Department of Parks and Recreation ("DPR"). In its report, OP indicated it had heard from DPR regarding the project via email. OP reported that DPR had several questions/concerns regarding the maintenance of the park space at the corner of W Street and Foxhall Road, the interior boulevards and buffer spaces and whether the general public will access to the open spaces within the proposed development. DPR also encouraged the use of native plants. These concerns have been addressed by the Applicant and the conditions of this order.

National Park Service. David Murphy, representing the National Park Service, testified regarding his concerns with storm water management both on and off site, which concerns have been addressed by the Applicant and the conditions of this Order. Mr. Murphy testified that NPS would not agree to allow Whitehaven Park to be used for vehicular access but, rather, NPS intends to preserve Whitehaven Park as national parkland.

ANC Report. ANC 3D submitted a letter dated February 4, 2005, supporting the application, with conditions. By letter dated March 2, 2005, citing its belief that the Applicant had significantly changed the plans previously approved by the ANC, the ANC requested that the BZA remand the matter to the ANC for *de novo* review. In the alternative, the ANC provided additional conditions. Where appropriate, the Board has adopted the proposed conditions of the ANC.

Parties in Opposition to the Application. The Certain Residents, although granted party status in opposition, stated that it did not oppose, in principle, the proposed development. Instead, it had three (3) concerns, which were: (1) traffic safety; (2) preserving the character of the neighborhood; and (3) the density of the development. Although the Certain Residents enumerated these three (3) concerns, both written and oral testimony revealed that their primary concern was traffic safety and they testified that they had no problem with the proposed density. The Certain Residents advocated for the use of the Whitehaven Parkland as the appropriate point of ingress/egress to the Property. Certain Residents also expressed opposition for the addition of a ninth matter of right house on W Street, as well as concern regarding the departure of one of the builders of fifteen (15) of the proposed houses from the application. However, neither the matter of right houses nor the identity of one of the builders is within the Board's jurisdiction.

Ms. Hardy's opposition was based primarily on construction activities, which are outside the Board's purview. Ms. Hardy was also concerned with the adverse impact of the development on the mature trees on the property line between her property and the subject Property. Although Ms. Hardy claimed to have met with an arborist regarding the potential adverse impact on these trees, she failed to produce any reports or other evidence showing that the trees would be negatively impacted.

The FOW applied for party status both as a proponent and opponent of the application and explained that they could support the application with reasonable conditions. The FOW was concerned with the impact of the proposed development on the environment of the surrounding area, as well as on the Property. The Friends produced several alternative developments, arguing for the protection both of the natural wetlands, as well as artificial wetlands, located on the Property. FOW acknowledged that its alternatives did not take into account the impact of complying with all setback requirements of the zoning regulations and that the alternatives required a significant reduction in lot sizes and the development area to protect wetlands deemed outside of the jurisdiction of the Corps of Engineers because they were artificially created. In addition, FOW's plans provided for use of the unpaved 44th Street as a means of access to the development. However, the 44th Street right-of-way acts as a buffer between Glover Archbold Park and the subject property and the ANC has asked the Applicant to maintain the right-of-way in its current, undeveloped state. Finally, the FOW incorrectly alleged that the proposed development does not follow the contours of the Property and advocated for the conservation of an artificial wetland that is the result of a water main break on the Property and, as such, is made of chlorinated water. This chlorinated water is currently polluting the natural wetland.

Closing of the Record. The record was closed at the end of the hearing, except for the submission of proposed findings of facts on orders, including explanations of any proposed conditions, requested by the Board.

Decision Meeting. The Board scheduled its decision meeting for April 5, 2005. At that meeting, the Board, voting _____, granted the requested special exception, subject to conditions proposed by the Applicant.

SUMMARY OF EVIDENCE.

The Subject Property and Surrounding Area

1. The property that is the subject of this application consists of approximately 713,016 square feet, or just over sixteen (16) acres, located in an R-1-A District at 2101 Foxhall Road, N.W. (Square 1346, Lot 822). It is a sloping site with a mixture of open areas and some tree stands. 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, Whitehaven Park to the south, and Foxhall Road, N.W. to the west. The Property is irregularly shaped, as Lot 818, owned by Ms. Hardy, 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. Although the portion of 44th Street, N.W. to the east of the Property is a platted, dedicated street, which contains a District of Columbia Water and Sewer Authority ("WASA") maintained sanitary sewer main, it is unpaved.

2. The Property contains 36,541 square feet of natural wetland area, including both the wetland and the twenty-five foot (25') wetland buffer, located at the southeast section of the Property. These figures have been confirmed by a formal nontidal wetlands jurisdictional determination performed by the US Army Corps of Engineers (the "Corps"), which was submitted into the Record. In addition to this natural wetland, there is an artificial wetland on the Property caused by a water main break that went undetected for approximately seventeen (17) years.

3. The Property is the former site of "Dunmarlin", constructed in 1949 for Duncan and Marjorie Phillips, the founders of the Phillips Collection, a museum near Dupont Circle. Dunmarlin was razed in approximately 1988, and the Property has stood vacant since that time. As a result this vacancy, the Property 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. There are only 107 specimen trees remaining on the Property, of which sixty-four (64) (or approximately 60%), are slated for preservation.

4. The Property is located in the Ward 3 neighborhood of Wesley Heights. The area surrounding the Property consists of both institutional and residential uses, as well as the Glover-Archbold Park to the east and to the south, as well as the Whitehaven Park to the south of the Property. Surrounding residential neighborhoods include the approximately eleven (11) houses to the immediate north of the Property on the north side of W Street and on Foxboro Place, Foxhall Crescents development to the northwest, as well as Wesley Heights and Spring Valley.

5. Institutional uses surrounding the Property include: the Mt. Vernon campus of George Washington University, located to the west of the Property directly across Foxhall Road; the Belgium chancery, located across Foxhall Road in Square 1378, just north of the intersection of Foxhall Road and W Street, N.W.; St. Patrick's Episcopal Church and Day School (grades pre-kindergarten through 8), which has a premises address of 4700 Whitehaven Parkway and is located to the south of the Mt. Vernon campus site; the Lab School of Washington, which is to the west of St. Patrick's, fronting on both Whitehaven Parkway, N.W. and McArthur Boulevard, N.W.; the Field School, which is located to the north of the Property; and the German Embassy, located further south along Foxhall Road, in the D/R-1-B zone district. To the immediate south of the Property across Whitehaven Park at 1801 Foxhall Road, N.W. is the former Casey estate, which was recently purchased by the "Friends of St. Patrick's", reportedly to be used for either an expanded middle school or a high school.

Previous Proposals for the Development of the Property.

6. 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. 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.

7. 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 dwellings and two tennis courts on a portion of the estate, and maintained Dunmarlin and the surrounding site as a separate 3-acre lot. This proposal included lots on the natural wetland area. The proposal was never pursued, as the current owner of the Property did not pursue the development upon his purchase of the Property.

The Current Proposal.

8. 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-three (33) Assessment and Taxation lots. Additionally, although not subject to this application, the Applicant will build thirteen (13) matter-of-right homes along Foxhall Road and W Street, N.W.[1] The matter-of-right houses will include nine (9) along W Street, N.W. and four (4) along Foxhall Road. The development will be named Dunmarlin At Phillips Park ("Dunmarlin"). The original application had proposed twelve (12) matter of right homes with thirty-five (35) theoretical lots. However, one theoretical lot adjacent to the natural wetland area was eliminated in response to concerns of the various parties to the application. The addition of the thirteenth matter of right house (and the corresponding elimination of one theoretical lot) resulted from peer review of the tree preservation plan. The shifting of the lot lines on the eastern portion of the Property will allow for the preservation of clusters of trees in this area. Additional changes were made to the plans as a result of numerous meetings with, and in response to concerns of, adjacent neighbors, the ANC and NPS.

9. Mr. William Pryor, the managing member of the Applicant testified regarding his experience of twenty-two (22) years in developing residential projects throughout the country. Mr. Pryor testified that his experience includes planned urban developments and land improvement projects, as well as the build out of large residential projects.

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[1] Although not under the Board's jurisdiction, the Applicant did include the thirteen (13) matter of right lots in its plans to illustrate how the project would work together.

10. The Applicant has submitted illustrative plans showing houses on the subject site. These plans illustrate two-story (with basement), single-family, detached dwellings, which are allowed as a matter of right in an R-1-A zone district. The Applicant has also provided illustrations showing the respective locations of houses on many of the proposed lots, as well as the buildable area for all proposed lots.

11. There will be two (2) 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. 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, and a right turn lane into the Property for traffic entering from the south. At the ANC's recommendation, the Applicant has agreed to have an on-demand traffic light installed at this intersection and will bear the costs for such installation. The required widening of Foxhall Road will be accomplished by using a portion of the Applicant's property.

12. Each of the proposed thirty-three (33) theoretical lots will have direct access from the proposed internal roads. Additionally, the matter of right lots will have driveway access onto the internal roads, rather than Foxhall Road or W Street, N.W. The widths of the internal right-of-ways are a minimum of thirty feet (30'). All houses that do not front either W Street or Foxhall Road will front on these internal roads. To the extent possible, as testified by Mr. Ankie Barnes, the project architect, garages will not face any streets.

13. Sidewalks will be incorporated on at least one side of every street in the Property. Additionally, the Applicant will construct sidewalks along the perimeter of the Property along W Street and Foxhall Road. These sidewalks will be created by suing a portion of the Property. 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.

14. The proposed development will include 97,132 square feet of open public green space, consisting of: (a) a 3,819 square foot park at the corner of W Street and Foxhall Road, including a path leading from this green space into the interior portion of the Property; (b) two (2) tear drop islands along the interior road of 2,560 and 7,940 square feet, respectively; (c) the natural wetland and wetland buffer, for a total of 36,541 square feet; (d) an additional 29,752 square feet of open space surrounding the wetland; and (e) 16,700 square feet of open space above the storm water

management facility located to the immediate north of the wetland. In addition to this public open space, there will be a thirty to forty foot (30-40') non-disturbance buffer area for lots abutting parkland and/or 44th Street,[2] for a total homeowners' green space of 39,147 square feet. The corner park, along with the tear drop islands also serve to create a greenway connection through the development down into the wetlands preserve area and parkland below.

15. The Applicant's expert architect, Ankie Barnes of Barnes Vance Associates, testified as to the site planning for the Property. Mr. Barnes explained that, from the outset, it was the goal of the Applicant that the proposed development be compatible with the surrounding neighborhoods. To further this goal, the Applicant looked into surrounding communities for guidance, including the Wesley Heights, Spring Valley and Colony Hill neighborhoods. Neighborhoods studied had similar terrain to that found at the Property. Mr. Barnes explained that Wesley Heights and Spring Valley were of particular interest in the way that those developments followed the contours of the properties, allowing the benefits of both saving additional trees and cutting the costs in development, resulting in more attractive neighborhoods.

16. Similar to Spring Valley and Wesley Heights, Mr. Barnes's testimony illustrated how the proposed development was designed so that the roads follow the contours, thus deviating from the Washington street grid. Mr. Barnes explained that following the natural contours of the Property will allow the stepping down of houses, similar to that found in Wesley Heights and Spring Valley. Additionally, so as to connect the development to the surrounding community, the use of cul-de-sacs and dead-end streets was avoided. To foster 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. Two (2) 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. Covenants to be placed on the Property will require that the roads and sidewalks within the development remain open to the public, although they will be privately maintained.

17. Mr. Barnes further testified that, 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 lots. The theoretical lots in the proposed development are an average of 11,000 square feet in size.

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[2] As illustrated on exhibit 6 of the Applicant's March 2, 2005 filing, lots A-10, A11 and A29-A30 will have a thirty foot (30') non-disturbance buffer area and lots A12, A13, A34 and A35 will have a forty foot (40') non-disturbance buffer area.

18. To address the concerns of NPS and others, including the FOW, Mr. Barnes testified that, rather than simply complying with the twenty-five foot (25') rear yard set back required by the zoning regulations, lots abutting parkland and/or 44th Street would have either a thirty to forty foot (30'-40') non-disturbance buffer area within which there could be no construction. According to Mr. Barnes and the proposed architectural and landscape guidelines submitted by the Applicant, this buffer area may only be planted with trees and shrubs listed on the "approved species" plant list. Weed, insect and disease infestation species within these areas may only be controlled using environmentally "friendly" weed, insect or disease control products. Mr. Barnes testified that to ensure these standards are upheld, the homeowners association will have these areas monitored on a bi-annual basis and, furthermore, that these areas will be protected by a covenant.

19. With regard to the zoning requirements, Mr. Barnes explained that the theoretical lots are all over the minimum lot area of 7,500 square feet and have lot widths greater than the required seventy-five feet (75'). Lots will have a maximum of a forty percent (40%) lot occupancy, although Mr. Barnes testified that it is the goal of the development to be less than forty percent (40%). To this end, the architectural guidelines provide that for houses that are 1½ floors or less above grade, lot coverage may be a maximum of forty percent (40%). For houses that are larger than 1½ stories above grade, coverage is reduced to thirty-five percent (35%) of the lot. In the event that a person purchases two (2) lots, the maximum lot occupancy for the combined lots will be thirty percent (30%) and in the event a person purchases three (3) or more lots, the maximum lot occupancy will be twenty-five percent (25%). Mr. Barnes further testified that the new residences will comply with the height requirements of the zoning regulations. Both Mr. Barnes testimony, as well as the site plans submitted, illustrate that setback requirements will be met, in that each lot will have a minimum of a twenty-five foot (25') rear yard and eight foot (8') side yards. With regard to front yards, there will be a minimum of a twenty-five (25') front yard and, to ensure uniformity in the streetscape, houses will be constructed within three feet (3') of the front yard setback. Where a small (maximum six foot) porch is used, this may be extended to seven feet (7').

20. To further ensure continuity with the surrounding neighborhood, an additional building restrictions proposed by the Applicant in its architectural guidelines is that:

> The allowable maximum FAR for any improvements is to be forty percent (40%) of the lot area plus 2,000 square feet. All finished or finish-able areas within the structures above grade with ceiling heights of seven foot (7') clear or more and five (5) times the area of fenestration in the basement, cellar or below-grade area will be counted to establish the measured FAR.

Additionally, swimming pools may only be built within a building zoning footprint prescribed for each lot and any accessory structures will also be limited to this area and limited in size.

21. On rebuttal, Mr. Barnes testified that, while the architectural guidelines submitted to the Board were meant only as a outline for the ultimate guidelines to be filed with the land records prior to the sale of any lot, the full guidelines would probably be more restrictive than the outline submitted to the Board. In addition, although outside the jurisdiction of the Board, the Applicant submitted into the record an extensive construction management commitment and schedule, which it stated it was willing to be bound by.

Traffic.

22. Mr. Louis Slade of Gorove-Slade associates was accepted by the Board as an expert in traffic engineering on behalf of the Applicant.

23. Mr. Slade testified that, during the initial stages of the planning for the Property, he met with DDOT to determine the parameters for a traffic study for the area. An initial study was performed to look at all of the alternatives possible for access to the Property both onto W Street and onto Foxhall Road or onto just one or the other street. It was determined that the best traffic situation possible for the Property, as well as for the W Street neighbors, was to have access from both W Street and Foxhall Road. Mr. Slade explained that DDOT was very involved in this process and that the development team also met with the neighbors on at least one occasion. Additionally, Mr. Slade testified, the traffic plans were subject to a peer review by Stephen Petersen, P.E., of Street Traffic Studies, Ltd., and the proposal and study was modified in response to this peer review.

24. Mr. Slade testified that the studies found, and DDOT concurred, that the development will have negligible impact on traffic on Foxhall Road. With regard to W Street, Mr. Slade explained that the proposed project will have a positive impact for the W Street neighbors, as the project will create a new and safer means of access to and from Foxhall Road for the existing W Street residents. With regard to the W Street residents' willingness to use the new entrance, Mr. Slade explained that the eastbound approach of W Street to Foxhall Road currently operates at a failing level of service and that 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.

25. Mr. Slade explained that the intersection at W Street and Foxhall Roads is currently presented with several potentially hazardous factors, none of which are a consequence of any development on this site or adversely affected by development on this site. 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. In contrast, according to Mr. Slade, the proposed new access point will have several benefits over the existing intersection at W Street and Foxhall Road, including the creation of a left turn lane will for

traffic traveling south on Foxhall Road turning into the development, and a merge lane for vehicles turning from the development north onto Foxhall Road, as well as increased site lines over those available from W Street for vehicles exiting the development. It was explained that the left turn and merge lanes will be created by widening Foxhall Road using a portion of the Property. Another advantage of the new access is that it does not face an opposing street.

26. With regard to 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, Mr. Slade testified that there will be no impact on these areas as a result of the proposed development.

27. According to Mr. Slade, the development of the thirteen (13) matter of right houses without the proposed theoretical lots (and, consequently, without the internal roads), would result in worsened traffic conditions on W Street, as those houses would have driveways onto W Street, rather than onto the internal roads, as proposed in the development plan.

28. Mr. Slade testified that the development would 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.

29. The ANC recommended the installation of a light at the proposed entrance to Dunmarlin, and the Applicant has agreed to pay for the cost of the light's installation.

30. DDOT testified in support of the application. It was explained that DDOT began working with the Applicant's consultants in October 2004. It was DDOT"s testimony that the proposed plan was the best they had seen for the Property, as it did not overburden one adjacent street over the other.

Tree Preservation.

31. Mr. Barnes testified that approximately sixty-four (64) of the 107 trees determined by the Applicant's arborists to be in good condition were slated for preservation, or about sixty percent (60%) of the healthy trees. Additionally, according to Mr. Barnes's testimony, 356 new, native trees of significant caliber will be planted. The end result will be a total of 400 healthy, indigenous tress on the Property, which is more than the existing number of healthy trees on the Property today.

32. According to the testimony of Mr. Barnes, as well as the architectural and landscape guidelines submitted by the Applicant, a certified arborist will be retained to oversee the grading and the construction of the Property to insure the health of the trees slated for preservation. Additionally, the architectural guidelines require that a certified arborist be a member of the architectural committee to be established pursuant to the architectural guidelines.

33. Keith Pitchford was accepted as an expert arborist. Mr. Pitchford testified that, prior to his tree survey, which he conducted in November 2004, two (2) other tree surveys had been conducted by other foresters and/or arborists. The previous surveys had identified 107 specimen trees, of which fifty-five to sixty (55-60) were slated for preservation. Mr. Pitchford explained that his survey eliminated a few of these trees that were not good candidates for preservation, while adding others, for a total number of sixty-four (64) slated for preservation.

34. Mr. Pitchford testified that the Property contains two (2) major areas of big trees – one on the eastern part of the Property and the other on the southern part. These areas are in the "sub-climax" or "climax" stage of forest succession. Mr. Pitchford explained that, in determining which trees should be slated for preservation, he looked at two (2) zones around the tree(s). The first is the minimum clearance zone ("MCZ"), which is the zone that's equal to half a foot away from the tree, on all sides, for every inch of tree diameter. Mr. Pitchford explained that the MCZ is the area surrounding the tree that you can't disturb. The second area that Mr. Pitchford examined was the critical root zone ("CRZ"), which encompasses the feeder roots that are important for feeding the tree with water and nutrients. Mr. Pitchford explained that the CRZ has flexibility and need not always be a perfect circle around the tree, as with the MCZ. What is necessary is to keep a minimum volume of the CRZ.

35. Mr. Pitchford illustrated in his testimony how lot lines along the eastern portion of the Property had been shifted since the original filing so as to allow the preservation of additional groups of trees. Mr. Pitchford explained that the benefits of saving groups of trees includes: the ability to save more trees with the same critical root zone, so you get more trees in the same protection effort; reduction of soil erosion; and advantages for wildlife.

36. Mr. Pitchford explained the landscape guidelines submitted by the Applicant and testified that he would continue to work with NPS to refine the lists of acceptable and prohibited plant species.

Storm Water Management.

37. Frank Lin was accepted as an expert in civil engineering and testified as to storm water management and grading.

38. With regard to storm water management onsite, Mr. Lin explained that, in addition to the proposed storm water management plan submitted with the application, the Applicant was proposing to add additional measures of water quality management, including the addition of rain gardens where feasible. The combined storm water management ("SWM") feateures would allow the Applicant to management both quality and quantity. Water would be captured at a fifteen (15) year back to two (2) year rate.

39. With regard to off-site storm water management on Foxhall Road, Mr. Linn testified that storm water between W Street and the entrance into the proposed development would be captured and diverted in underground pipes to the storm drain system at Whitehaven Parkway.

40. As to sewer management, Mr. Linn testified that the Applicant had sent a crew out to study the existing sewer line in 44th Street. In the event that the sewer line has a leak, the Applicant had been insured by WASA that WASA would repair the pipe.

41. Mary Sears testified on rebuttal regarding the proposed SWM plans. Ms. Sears explained that the design of the SWM system for the project would provide both quality and quantity control and would incorporate innovative, multiple-source water-filtering collection points and a Baysaver separator. It was Ms. Sears's testimony that, consistent with this innovate, low-impact storm water management philosophy, other opportunities for water filtration and bio-retention in private yards will be incorporated where possible, which will further augment the core system, but are not critical to its performance.

42. With regard to quality, Ms. Sears testified that the best management practices ("BMP") would be employed through the use of: (1) filteras, which are stand-alone filtering devices and work like a bioretention filtration system within a curb inlet, to be located in streets and planted with small trees and shrubs so as to supplement the streetscape; (2) bioretention systems, which are stand-alone filtering devices and surface treatments, to be located in flat areas such as the tiered grass areas within the tear drop islands in the boulevard and, where possible, in rear yards; and (3) a Baysaver system, which is a hydrodynamic separator that separates out coarse sediment and solid debris, fine sediment and oil. Ms. Sears explained that the filteras filters the water through to the SWM system and prevents ponding on the Property. Additionally, the use of the filteras and bioretention systems allows the collection of water throughout the Property, not just at the downstream point. The maintenance of the filteras is performed by removing the top grate to clean it and the Baysaver is maintained by annual vacuum, through an attachment accessible in public space, that removes waste. Ms. Sears explained that when you purchase the Baysaver system, you enter into a maintenance agreement for that system by the supplier. Combined with its volume-management system of underground storage pipes, the Baysaver ensures that only clean water at controlled flow rates will be returned to the wetland. Ms. Sears explained that water flows into the underground pipe system where it is released through a small opening that allows water to be released at a slower rate and, therefore, does not encourage silt buildup or erosion of the wetlands, as there is a rip-rap device (stone) to prevent erosion at the point of release and to protect the wetlands.

43. With regard to water quantity, Ms. Sears testified that water would be captured at the fifteen (15) year post development rate and released at the two (2) year predevelopment rate, which is over and above the District of Columbia Department of Health (DOH) requirements. DOH regulations require capture at the two (2) year post and release at the two (2) year predevelopment, as well as the capture at the fifteen (15) year post development and released at the fifteen (15) year

predevelopment. Ms. Sears explained that the fifteen (15) year rainfall is 6.79 inches and the two (2) year release rate is 2.17 inches in a twenty-four (24) hour period. As a result of the proposed SWM system, the wetlands, according to Ms. Sears, would be enhanced.

44. With regard to concerns expressed about how a twenty-five (25) year storm would be handled by the SWM system, Ms. Sears explained that a twenty-five (25) year storm produces 8.35 inches of rainfall in a twenty-four (24) hour period. As the SWM system captures and manages the fifteen (15) year rainfall of 6.79 inches, only 1.56 inches of run off would overflow the system. Ms. Sears further testified that between 2000 to the present, there have only been five (5) months with a greater than two (2) year storm event.

45. Ms. Sears explained that water quantity control to be provided by an underground SWM pipe system (72" Diameter). Ms. Sears explained that the previous studies assumed site impervious area of fifty percent (50%) of the 6.4 acres total. The actual site impervious area will be thirty-nine percent (39%) of the total site. Thus the preliminary design based on total site area while the final design will be based on actual drainage area of 12.64 acres. As to the effect of impervious surfaces on the SWM system, if soils are infiltratable, a perforated CMP (corrugated metal pipe) in gravel bed will be used. The gravel bedding will allow groundwater to recharge via infiltration. In the event the soils are not infiltratable, according to Ms. Sears, a solid CMP will be used.

46. Ms. Sears explained the difference between the proposed SWM and the Field School SWM system. According to Ms. Sears, the Field School system only treats the quality of water at the downstream point. Furthermore, according to Ms. Sears, the Field School system only meets the District DOH capture and release requirements. In contrast, the proposed system treats water throughout the project, rather than at a single point and the proposed system well exceeds the District's standards. Finally, Ms. Sears explained that the problems with the Field School system were construction related, due to failure to properly compact soils, which has led to erosion.

47. Ms. Sears testified that, as to off-site SWM, the Applicant would not be touching the storm drains on W Street. On Foxhall Road, a new pipe would be introduced to capture the water along that street and deliver it to a storm water drain already on the Whitehaven Parkway.

Grading.

48. In the Applicant's case-in-chief, Mr. Linn testified briefly as to grading. According to Mr. Linn, all proposed roads meet the District standards of having no more than a twelve percent (12%) grade.

49. On rebuttal, Roy Gauzza, R.L.A., testified in depth about the grading plans. Mr. Gauzza explained that, since the last thing a developer wants to do is move soil, to minimize grading on the Property, in many instances, the houses would act as retaining walls, which is typical for sites with steep slopes such as the Property.

50. Mr. Gauzza testified that the existing topography of the Property area is fairly steep and rolling in nature and that the proposed grading of the site is designed to preserve the existing "bowl" shape found on site but at gentler slopes than exist now. Mr. Gauzza explained that this is accomplished by lowering the raised rim of the "bowl" and some filling of its center. The fill proposed in the middle of the Property, according to Mr. Gauzza, is necessary to balance the needs of the development, access to the site, traffic safety issues and protection of the surrounding parkland and interior natural wetlands. The road layout follows the nature of the Washington street grid in the northwest corner of the site and then curves down through the rest of the site to follow the topography. That is, the road follows the ridge of the bowl, which, in addition to minimizing the necessary grading, has the added benefit of preserving trees. According to Mr. Barnes, the character and extent of the grading emulates that found in nearby neighborhoods like Colony Hills, Wesley Heights and Spring Valley.

51. In response to the ANC's concern about wind throw, it was Mr. Gauzza's testimony that this is not considered a major issue, as the grading has allowed for the retention of clusters of existing trees, rather than single trees, which would be most susceptible to "wind throw."

52. With regard to the natural wetland, Mr. Gauzza testified that there would be no grading or construction of retaining walls of any kind in the wetland, wetland buffer, parkland buffers or Ms. Hardy's property. As to retaining walls within the Property, Mr. Gauzza testified that many were being provided so as to allow the preservation of trees and to permit the preservation of the Property. Furthermore, Mr. Gauzza explained that the plans submitted only demarcate the highest point of the retaining walls, which typically feather down. By way of example, Mr. Gauzza testified that the retaining wall nearest Ms. Hardy's property would be six feet (6') at its highest point and would feather down to four feet (4') and then to nothing.

53. Mr. Gauzza testified that erosion would not be an issue, since the Applicant's plans provide for sediment and erosion control, which are required prior to any grading and/or construction permits being issued. The methods to be employed at the site, according to Mr. Gauzza, are "tried and true."

54. Mr. Gauzza testified that the fill found on the Property was normal for the region and would support the proposed development. Other than the fill naturally associated with the old Phillips mansion locations, which fill is to be removed, according to Mr. Gauzza, the existing soils will be readily graded and compacted, as needed, to accomplish the grading plan submitted into the Record. Further structural fill, if needed, will be imported to the site.

Wetlands.

55. Mr. Barnes testified that there was an artificial wetland in the center of the Property caused by a water main break. Mr. James Ingram also testified that the flagging of the wetlands by the Corps on the Property was to mark both natural and man-made wetlands, and that the Corps was aware that the large area in the center of the site was an unnatural wetland. As to the natural wetland

at the southern portion of the Property, Mr. Ingram testified that it was not a high-quality wetland due to the amount of invasive plant species within the wetland and wetland buffer area. Mr. Ingram explained that the wetland would be improved by the development, as a result of the cleaning-up of the wetland, removal of invasive species and removal of the current negative impact due to the chlorinated water being released into the Wetland.

56. Mr. Ingram explained that the Corps' jurisdiction ends at the boundary of the natural wetland and that the twenty-five foot (25') buffer was a District requirement, relying on Maryland regulations. Mr. Ingram testified that the twenty-five foot (25') buffer was adequate to protect the wetland, along with the removal of the invasive species and stabilization of the surrounding soils, which would result from the development.

57. Also on rebuttal, Mr. Barnes explained that the slope to the north of the wetlands was a gentle slope and that, contrary to accusations of the opposition, you would easily be able to see the wetlands from the surrounding houses.

58. With regard to road salt, Mr. Pitchford testified on rebuttal that sodium chloride was the most environmentally sound application due to the detrimental nature of chemicals found in other alternatives.

ANC 3D.

59. By letter dated February 4, 2005, the ANC indicated its support of the project subject to the following conditions:

a. The Applicant relinquishing all rights/claims to 44th Street that abuts the Property, remove the concrete slabs and other remnants of the old road bed along the paper road and work in collaboration with NPS to ensure the District transfers jurisdiction of 44th Street to NPS;

b. Covenants being placed on the deeds of sale of the properties that border on federal parkland that prohibits the placement of structures within the rear yard setback;

c. All swimming pools be constructed within the allowable lot footprint;

d. The homeowners association considers a policy prohibiting the use of harmful chemicals/pesticides on properties within the development;

e. The Applicant 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;

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

g. The Applicant agrees not to request that DDOT fully signalize the traffic light on Foxhall Road at Field School; and

h. The Applicant work closely with DDOT and to assume all costs related to the installation of a new on demand traffic light at the proposed new entrance on Foxhall Roads.

60. In its letter of support, the ANC expressed its concern over the withdrawal of a builder from the application. Ms. Alma Gates, Chair of ANC 3D, explained during her testimony that absence of this builder caused great concern, but the ANC representatives acknowledged that a majority of the ANC did not share this view, nor had the ANC agreed to the additional conditions requested in Ms. Gates testimony.

61. Ms. Gates testified as to concern over the proposed SWM system. Ms. Gates also criticized the proposal for tree preservation. Neither of these positions reflected the position of a majority of the ANC.

62. Ms. Gates submitted a letter from the Colony Hill Neighborhood Association requesting that the Board deny the application until a comprehensive traffic study is completed taking into consideration both the proposed development, as well as the adjacent Brady estate. The letter further suggested that an extension of Whitehaven Parkway should be considered.

63. By letter dated March 3, 2005, based on their erroneous belief that the site plan had been significantly altered, following an ANC meeting to which the applicant was not invited, the ANC proposed additional conditions, which would require that the Board micro-manage construction of the proposed project, a power with which the Board is without authority.

Office of Planning Report.

64. By report dated February 8, 2005, OP stated that it generally supported the direction of the application. However, OP stated that it could not make a recommendation at that time because the Applicant had revised the site plan and OP had not yet had a chance to study the new plan. At the hearing, OP testified that it supported the efforts to integrate the development with the surrounding community, as well as the efforts to save clusters of trees. Although OP was generally supportive of the application, it did testify that the order should be conditioned up the prohibition of the development becoming a gated community; sidewalks installed along Foxhall and W Streets; soil erosion control (subject to approval of DOH); and requirement that on the homeowners association to maintain open spaces, sidewalks and roads.

65. In addition to OP's testimony, Tim Karikari, Chief Technical Review, Erosion & Sediment Control of DOH testified in general support of the application. Mr. Karikari testified that he had reviewed the conceptual plan for SWM and was in agreement with the plan. Mr. Karikari stated that DOH would coordinate environmental assessment review of the Environmental Protection Agency (EPA), as the site was over sixteen (16) acres.

66. On March 28, 2005, OP submitted a final report recommending approval of the development with the following conditions:

National Park Service Testimony.

67. David Murphy testified on behalf of NPS. Mr. Murphy testified that it was NPS's desire to have storm water run off from Foxhall Road adjacent to the Property collected and piped down to the storm drain at Whitehaven. With regard to the clean up of 44th Street, Mr. Murphy testified that it was NPS's belief that removal of the debris on 44th Street would result in more environmental damage than leaving it in place.

68. With regard to fencing, Mr. Murphy testified that the idea of a three foot (3') perimeter fence separating the Property from adjacent parkland was suggested in connection to the previously proposed border road, which would have acted as a separation between the park and private land. Mr. Murphy explained that when yards back onto parkland, residents tend to expand their yards into parkland. Because of this, it was Mr. Murphy's preference that, under the revised plans, five to six foot (5-6') fences of architectural quality be installed. Moreover, Mr. Murphy testified that NPS did not want to see any building, grading, or retaining walls in the rear-yard setbacks.

69. With regard to SWM, Mr. Murphy testified that NPS wanted to see a system similar to the Field School system installed in the Property.

70. When questioned about allowing Whitehaven Park to be used for a new entrance into the Property, Mr. Murphy replied that Whitehaven Park was part of the nation's capitol's park system and NPS had the duty of preserving Whitehaven Park as such.

Certain Residents.

71. Certain Residents testified that they were concerned with the departure of one of the builders, as well. Certain Residents further testified as to their concern over the addition of the ninth matter of right house on W Street. However, both these concerns are outside of the jurisdiction of the Board. The third area of concern of the Certain Residents was traffic.

72. Certain Residents testified that the current condition of the intersection of Foxhall Road and W Street, as well as Foxhall Road in general, is dangerous, and that the new development would exacerbate this problem, while acknowledging that the placement of a traffic signal at the Foxhall

entrance to the site may alleviate this concern. Certain Residents believed that DDOT's approval of the project was "hasty". According to the Certain Residents, the safest place for the entrance into the new development was through Whitehaven Park. They advocated that this solution would also benefit the future development of the Casey Estate to the south.

73. Lou Nevins also testified on behalf of the Certain Residents. Mr. Nevins testified that they were not in opposition to the development, as the proposal was much better than what might have been constructed, as well as previous proposals. Mr. Nevins requested that the order be conditioned on an appointment of one of the W Street neighbors as an ex-offico, non-voting member to the Applicant's architectural committee.

Chandra Hardy.

74. Ms. Hardy testified that the construction of the project would have an adverse effect on her life, her property and the ecology of the Property itself and that the developer hadn't addressed her concerns. With regard to construction, Ms. Hardy was concerned with noise, dust and visual pollution. However, to the extent these concerns deal with construction and not the completed project, they are outside the jurisdiction of the Board.

75. Ms. Hardy also testified that it was her belief that the site plan didn't accurately reflect the location of the trees on the boundary line between her land and the Property. She also stated that she spoke with an arborist who informed her that the loop road near her property line should be moved sixty feet (60') to the east in order to ensure the preservation of the trees on the property line. However, upon cross examination, she refused to reveal the name of the arborist and did not produce any reports to support her claims.

76. Ms. Hardy requested several conditions, most of which addressed construction issues, which are beyond the Board's jurisdiction.

Friends of Whitehaven.

77. FOW was represented by William Snape, III. Mr. Snape asserted that the proposed development would adversely affect surrounding parkland, in particular a fox den located on the Whitehaven Park property and migratory birds. Mr. Snape requested that the Applicant be ordered to protect at least 100 of the 252 identified "special trees;" consult with an independent wildlife expert on maintaining and protecting the fox den; and have the Corps, and the applicable representative(s) of the D.C. government, and an independent expert analyze the impact of all final construction plans upon the wetlands on the Phillips property. Mr. Snape also asked the Board to condition the order on the Applicant obtaining review of the entire final development plan by the Low Impact Development Center (LIDC), located in Prince George's County, Maryland.

78. Mr. Kent Slowinski, Chair of the FOW, provided testimony on behalf of FOW. Mr. Slowinski is an unlicensed landscape architect. Mr. Slowinski alleged that there were undocumented wetlands on the Property. However, on cross examination, Mr. Slowinski admitted that no testing was done of the soils or water by the FOW in the alleged undocumented wetland to verify whether it was a natural and manmade wetland.

79. Mr. Slowinski also alleged that the Applicant was not working with the contours of the Property, with regard to grading and that the tree preservation efforts of the Applicant were not sufficient. Mr. Slowinski introduced a plan that he believed was more conservative. This plan proposed to protect approximately one half of the Property as a wetland easement. Upon cross examination, Mr. Slowinski admitted to not previously revealing this plan to the Applicant, as he had only devised it the night before the hearing. Moreover, Mr. Slowinski admitted that he had not verified whether his proposed lots were buildable, taking into account front, side and rear yards, as well as tree preservation. Finally, Mr. Slowinski admitted that, for any development of the Property, grading would be necessary, including grading out from the interior roads, and that it would, in fact, be unsafe to develop the Property without grading.

80. Mr. Slowinski recommended additional conditions, many of which were based on his misunderstanding that there would be any construction or grading within the wetlands area delineated by the Corps of Engineers.

81. Ms. July Moore, a conservation biologist, also testified on behalf of the FOW. Ms. Moore, who was not qualified as an expert, testified that she had four (4) recommendations for the development of the Property:

a. Layout the roads to fit with the topography;

b. Reduce the lot size to save valuable wetland and woodland habitat;

c. Preserve more trees in groves instead of single specimens;

d. Save certain percentage of native vegetation on each lot.

82. Ms. Moore testified as to other concerns, however, those concerns were related to the construction of the Property and, therefore, outside of the Board's jurisdiction.

FINDINGS OF FACT

1. The Applicant, Phillips Park, LLC, pursuant to 11 DCMR § 3104 petitioned the Board for a special exception under Section 2516 to allow a theoretical lot subdivision for the construction of thirty-five (35) single family dwellings in an R-1-A zone district at premises 2101 Foxhall Road. The proposed development would also include twelve (12) matter-of-right homes along Foxhall

Road and W Street, N.W. Throughout the application process, the Applicant modified the plans to seek approval of only thirty-three (33) homes, while increasing the matter of right homes to thirteen (13).

2. The Applicant's proposed thirty-three (33) dwelling units, as set forth in its theoretical subdivision plan, comply with the zoning provisions set forth in sections 2516.1 through 2516.10, as follows:

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.

The Board finds that the Applicant has 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 by the zoning regulations. Thus, homes will easily meet the open space requirements for each lot, as illustrated on the site plan. The Board finds that each house will be constructed within the buildable area with a maximum of forty percent (40%) lot occupancy.

With regard to other zoning requirements, the Board finds that 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 Board finds that the building sites have been designed in compliance with this section.

(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;

The Board finds that front yards of at least twenty-five feet (25') are being provided for each lot.

(c) A rear yard shall be required; and

The Board finds that 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 Board finds that the rear yards for proposed lots A28 through A35, the only lots affected by this provision, comply with this requirement.

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;

The Board finds that roadways are not included in the area of any theoretical lots or any yard, as required by this provision.

(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;

The Board finds that all dedicated right-of-ways (ie., private roadways plus sidewalks) are at least twenty-five feet (25') wide.

(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

The Board finds that there are two (2) entrances to the proposed development.

(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.

The Board finds that 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.

The Board finds that all homes proposed for the development will comply with the height requirements 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.

The Board Finds that 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 Board finds that the development complies with all applicable provisions of the zoning regulations. The also finds that the Applicant has taken great care to ensure that the development will not have an adverse impact 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, the Board finds that great care has been taken to ensure the new development is compatible with this character. 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, while clearly delineating the Park from the site.

The Board finds that 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, the Board finds that 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.

3. Further, the Board has mitigated any possible negative impact of the proposed subdivision by requiring the Applicant's compliance with certain conditions, as the Board is authorized to do under section 2516.11.

4. As testified to by the Applicant's witnesses and as illustrated in its prehearing statement, the Applicant was proactive in meeting with the surrounding neighbors, often incorporating their concerns and comments into the proposed plans. This spirit of cooperation and adaptation continued throughout the hearing process, during which the plans were further modified to address comments and concerns of the Board. The Board finds that the end result is a plan that addresses the requirements of the zoning regulations, environmental issues and the special features of the Property while appropriately balancing the concerns of the various parties and neighbors with the need to devise a feasible development plan for this private Property.

5. The ability to develop, through theoretical lot provisions of the zoning regulations, multiple principal buildings using Assessment and Taxation (A&T) lots, rather than on a record lot, is well established and has previously been addressed by the Office of the Attorney General in a June 22, 1978 opinion.

6. The Applicant's proposal to develop the property has been designed in a manner that meets the reasonable concerns of the DOH, DDOT, DPR, NPS and the parties to the application, but also allows the Applicant to proceed with this development.

7. The Board concurs with the Applicant, the Office of Planning, the other District agencies that the application meets the standards for approval and does not adversely impact the surrounding area, including the adjacent parklands.

8. In terms of the concerns of the ANC, Certain Residents and Ms. Hardy that a builder, who was part of the initial application filing, is no longer mentioned as a builder for all or a portion of the proposed project, the Board, consistent with its order in BZA application No. 15743 of the Y.W.C.A. of the National Capital Area (November 17, 1993), finds that the Applicant has the ability necessary to develop the site. Further, the Board is of the opinion that the zoning regulations do not require that the Applicant utilize the services of any particular builder for the theoretical lots. It is the property owner, through designated agents, that seeks approval of any special exception requested, as required by the Board's regulations, and the Board's authority is to insure that the proposal made by the Applicant complies with the applicable regulations..

9. In terms of the ANC's and Certain Residents' concerns regarding traffic and the location of the entrance to the proposed new development, the Board finds that the proposed Foxhall Road entrance 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. Finally, the Board finds that any concerns regarding sight-lines from the new entrance on Foxhall Road will be alleviated by the

installation of an on-demand traffic light at that intersection, which the applicant and DDOT have agreed to install, as well as by the reconfiguration of Foxhall Road at the entrance.

10. The Board finds that the Applicant's tree preservation plans are adequate for the Property and will ensure the protection of trees slated for preservation. The Board further finds that the most recent plans filed on March 2, 2005, accurately reflect the location of trees on the Property.

11. The Board finds that the SWM plans for the Property not only exceed DOH's requirements, but that the SWM system proposed will more than adequately protect the wetlands and adjacent parkland and properties. The Board finds that the proposed SWM system will ensure that only clean water at controlled flow rates will be returned to the Wetland. The Board agrees with the Applicant that the proposed development will have a positive effect on the wetlands through the elimination of the chlorinated water currently leaking into the wetlands and the removal of invasive plant species from the wetlands area. The Board further finds that the core collection and filtering elements (ie, filteras and Baysaver) can be easily maintained from public areas.

12. The Board finds that the plans for the project provide sufficient detail to review the application. The Board further finds that the overall urban design of the proposal meets the standards of approval.

13. The Board finds that the Applicant has made reasonable efforts to ensure that the development of the Property will not adversely impact adjacent properties, parkland or environment.

14. The Board finds that the Applicant has provided adequate setbacks from parkland and around the natural wetland area. The Board finds that there is no justification for the 100 foot setbacks suggested by representatives of the ANC or by FOW.

15. The Board finds no justification for the prohibition against the use of road salt within the Property.

16. The Board finds that the plans for the project provide sufficient detail to review the application. The Board further finds that the overall urban design of the proposal meets the standards for approval.

17. The Board's findings with regard to proposed conditions of any party not incorporated into this order are attached as Exhibit A hereto.

CONCLUSIONS OF LAW AND OPINION:

A special exception is a use that is deemed compatible with other uses in the same zone district. Section 3104.1 of the zoning regulations 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).

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant requests a special exception, the granting of which requires a showing of substantial compliance with the criteria set forth in sections 2516 and 3104.1 of the zoning regulations. The Board further concludes that the applicant has met its requisite burden of proof. The subject site is large enough to provide more than the minimum area requirements for each of the proposed thirty-three (33) subdivided lots. The proposed subdivision meets each of the criteria set forth in 11 DCMR 2516. The Board further concludes that the applicant's plans that provide for the construction of thirty-three (33) detached dwellings are in keeping with the general character of the immediate neighborhood and are less likely to have an adverse impact on the light, air, and privacy of adjoining and nearby properties.

The Board concludes that the proposed development has been designed so as to balance the concerns of the community, traffic safety issues, environmental sensitivity to both the Property and surrounding parkland and the ability to develop this private property. The Applicant has worked closely with government officials at the District and Federal level, as well as the ANC and its neighbors. The end result is a project that will not adversely impact either traffic, the adjoining neighborhoods or parkland.

The Proposed project has been designed to complement and connect with the surrounding neighborhood. The access through the Property from W Street to Foxhall Road will provide the existing residents of W Street a safer means of access to and from Foxhall Road. As such, the proposed project will have a positive impact on traffic. Any concerns regarding sightlines from the new Foxhall Road entrance are addressed by the Applicant's agreement to bear the costs for the installation of an on-demand light at this entrance.

The project has been designed to be environmentally sensitive, although the Department of Consumer & Regulatory Affairs, and not this Board, has the ultimate responsibility for insuring compliance with the District of Columbia's environmental protect act. *Concerned Citizens of Brentwood v. District of Columbia Board of Zoning Adjustment*, 634 A.2d 1234, 1241-42 (D.C. 1993). Internal roads follow the natural contours of the Property. This allows the least amount of grading possible, as well as the preservation of a greater number of trees. In addition to preserving approximately sixty percent (60%) of the specimen trees on the Property, the Applicant is proposing to plant a large number of significant caliper trees, resulting in a net gain of healthy trees on the Property. With regard to the natural wetlands on the Property, these wetlands will be enhanced due to the abatement of the infiltration of chlorinated water and road run-off into the natural wetlands. An additional benefit to the natural wetlands will be the removal of invasive plant species from this area.

The proposed SWM has been designed to incorporate an innovative system that includes multiple-source water-filtering collection points and a Baysaver separator. Combined with its stormwater management quantity control system of underground storage pipes, the proposed system ensures that only clean water at controlled flow rates will be returned to the natural wetland. The design capacities of this system far exceed the District's requirements for both quality and quantity. These core collection and filtering elements can be easily maintained from public areas. Consistent with this innovate, low-impact storm water management philosophy, other opportunities for water filtration and bio-retention in private yards and/or private road median will be incorporated during detailed design.

As recognized in *Glenbrook Road Association v. District of Columbia Board of Zoning Adjustment*, 605 A.2d 22 (DC 1992), the Board's function in special exception cases such as the present matter is to "determine whether a reasonable accommodation has been made between the [applicant] and the neighbors[,] which does not interfere with the legitimate interests of the latter." *Id.* at 25. Thus, the Board need not treat the Applicant's needs as irrelevant. *Id.* Based on the foregoing and the evidence of the Record, the Board concludes that the proposed development makes a reasonable accommodation of the concerns of the neighbors, while allowing a development that meets the Applicant's needs.

The Board further concludes that, as conditioned, the approval of the requested special exception relief is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighboring property.

The Board further concludes that it has given the Advisory Neighborhood Commission's evidence and testimony the "great weight" to which it is entitled.

Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

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. Sidewalks shall be constructed on at least one side of the internal streets, as well as along the perimeter of the Property along Foxhall Road and W Street, in accordance with the site plan submitted on March 2, 2005 at Exhibit __ of the Record.

3. The proposed dwellings shall be constructed accordance with the typical floor plans and elevations of Barnes Vance Associates marked as Exhibit No. ____ of Record, provided that the Applicant shall have flexibility to modify plans-to make the houses fit 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, provided that the materials and construction complies with the Architectural Guidelines to be prepared in accordance with this order. 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. 4) and materials generally consistent with the plans submitted in the Record of this case, as well as the Architectural Guidelines;

   b. All construction, including modifications, shall be in compliance with the applicable Zoning Regulations;

   c. Except as provided in Condition 1, no such modification shall involve and/or result in the reconfiguration of any of the theoretical lots or reduction in lot area or width; and

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

   e. Reduction in the number of lots should any future wetlands jurisdictional determination result in an expansion of the current jurisdictional area.

4. The proposed dwellings shall be constructed behind the building setback line shown on the plan filed as Exhibit __ of the Record. Pools shall be constructed within building setback lines. With the exception of lots abutting parkland or the 44th Street right-of-way (lots A-10, A11, A29, A30, A12, A13, A34 and A35), patios at grade and decks at or below the main floor shall be permitted between the building setback line and the individual lot lines.

5. 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 suggested by NPS, a five to six foot (5-6') architectural quality shall be installed on the eastern and southern borders of the Property. This fence shall not cross the natural wetland area;

b. As illustrated on Exhibit 6 of the Applicant's March 2, 2005 filing, lots A-10, A11, A29 and A30 will have a thirty foot (30') non-disturbance buffer area and lots A12, A13, A34 and A35 will have a forty foot (40') non-disturbance buffer area. This buffer area may only be planted with trees and shrubs listed on the "approved species" plant list. Weeds or insects and disease infestations species within these areas may only be controlled using environmentally "friendly" weed or insect or disease control products. Mr. Barnes testified that to ensure these standards are upheld, the homeowners association will have these areas monitored on a bi-annual basis and, furthermore, that these areas will be protected by a covenant; and

c. Prior to constructing any houses on the lots referenced in condition 4.b., the Applicant shall submit to the Superintendent, National Park Service a plan for review with respect to the appropriate number, quality and spacing of trees within the setback area of such lots. This plan 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 March 2, 2005, included in the plans as Exhibit 5, marked as Exhibit No. ___ of the Record.

6. Architectural Guidelines shall be established in accordance with the outline attached to this order as Exhibit B. Final Architectural Guidelines may be more, but not less, restrictive than the outline and shall be filed with the land records prior to the subdivision of the Property. The final Architectural Guidelines may not be amended so as to remove restrictions approved by this order. All construction shall be in accordance with the Architectural Guidelines.

7. Landscape Guidelines consistent with the landscape guidelines submitted by the Applicant as Exhibit __ of the Record shall be filed with land records prior to the subdivision of the Property. The Applicant shall work with NPS to refine the lists of acceptable and prohibited plant

species. Final Landscape Guidelines may be more, but not less, restrictive than the guidelines submitted in the Record and may not be amended so as to remove restriction approved by this order.

8. Covenants, conditions and restrictions (CC&Rs) consistent with this order shall be filed with the land records prior to the subdivision of the Property. In addition to the required provisions set forth in these conditions, the CC&Rs shall require that the home owners' association maintain the storm water management facility and all open spaces, sidewalks and roads.

9. The construction entrance to the Property shall be located on Foxhall Road at the proposed new entrance to the development. 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.

10. 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.

11. A storm water drainage system shall be constructed in accordance with Exhibit __ of the Record. Where possible, filteras and bioretention systems shall be installed as proposed. The Applicant shall enter into maintenance agreement for the annual maintenance and upkeep of all storm water management systems, including the filteras, bioretention systems and Baysaver.

12. Storm water management along Foxhall Road for the Property shall be constructed in accordance with Exhibit __ of the Record. To the extent possible, the Applicant shall coordinate these improvements with DDOT's planned improvements to Foxhall Road.

13. The entry-ways (vehicular and pedestrian) to the Property shall remain open to the public in perpetuity. The homeowners' association documents shall provide that this provision may not be amended or deleted without prior approval of the Board with notice to all parties, their successors or assigns.

14. If requested by NPS, the Applicant shall work with NPS to have the 44th Street right-of-way closed and, in such case, the Applicant shall relinquish all rights/claims to its entitlement to the 44th Street right-of-way to NPS.

15. The Applicant shall work with DDOT and assume all costs related to the installation of a new on demand traffic light at the proposed new entrance to the Property from Foxhall Road. The Applicant agrees not to recommend to DDOT either a right turn only policy from the east side of W Street or to request that DDOT fully signalize the traffic light on Foxhall Road at Field School.

16. Prior to the commencement of any construction on the Property, the Applicant shall establish a twenty-four (24) hour hotline and distribute this number to all parties. Additionally, the Applicant shall meet with the neighbors and a representative of the ANC on a quarterly basis until construction is completed. The time and location of such meetings shall be distributed on an annual basis prior to the commencement of construction and on each anniversary until the completion of construction.

17. The Applicant shall retain the services of an ISA certified arborist to oversee all phases of grading and construction to ensure the preservation of trees slated for preservation.

18. Any driveway or street lighting within the Property shall be of a type and positioned so as to minimize any impact on 2001 Foxhall Road.

19. Construction of the project may be phased over a period of TEN (10) YEARS.