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Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
EXHIBIT NO. 60A2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17276 of Phillips Park, LLC

EXHIBIT A

At the outset, and as indicated below in response to proposed conditions by other parties, the Applicant agrees with the Board that it does not have the authority to impose conditions related to construction on any applicant for any type of relief before the Board, whether it is for a special exception or a variance. The Board's authority is limited to imposing conditions that have a relationship between the ultimate relief requested and the issues the Board must address in assessing whether to grant such relief. In other words, the zoning regulations look to the impacts of the completed construction and how those impacts can be mitigated and accommodated. The manner in which any project is constructed is governed by a variety of District of Columbia regulations that are within the authority of over District of Columbia agencies, such as the Department of Consumer & Regulatory Affairs, the Department of Transportation and the Department of Health.

Explanation of the Applicant's Proposed 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.

Explanation: Minor adjustments to lot lines that are consistent with the plans reviewed and approved by the Board should be permitted to allow compliance with District regulations and the order as to grading and tree preservation.

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 as Exhibit __ of the Record.

Explanation: Condition is both consistent with the Applicant's intent, as depicted in the site plans, as well as the request of the Office of Planning.

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 façade, 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.

d. A minimum of two (2) off-street parking spaces for each house shall be maintained at all times.

Explanation: Consistent with Condition 2 to BZA Application No. 15743. Allows the Applicant and future homeowners minor flexibility while maintaining the spirit and intent of the order.

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.

Explanation: Condition addresses the request of the ANC to have pools constructed within the building setback lines and also address the request to have larger setbacks on properties abutting parkland. Consistent with Condition 4 of BZA Application No. 15743.

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.

Explanation: This condition address concerns of NPS and the parties regarding lots adjacent to parkland. Also consistent with Condition 5 to BZA Application No. 15743.

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.

Explanation: The Architectural Guidelines address many of the Board's concerns regarding the development of the Property, including consistency with surrounding neighborhood, use of materials, and development of combined theoretical lots. Guidelines are intended to be more restrictive than zoning regulations.

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.

Explanation: Addresses concerns of Board, parties and NPS regarding type of plantings to be used throughout development and, more specifically, adjacent to parkland.

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.

Explanation: Addresses concerns of Board and parties regarding storm water management and maintenance of open spaces, as well as the Applicant's promise to keep the development's roads and sidewalks open to the public.

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.

Explanation: Generally addresses those construction issues that are within the Board's purview.

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.

Explanation: Complies with 11 DCMR § 2516.3.

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.

Explanation: Responds to concerns of the Board, parties and government agencies.

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.

Explanation: Responds to concerns of the Board, parties and government agencies.

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.

Explanation: Responds to concerns of the Board, parties and government agencies.

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.

Explanation: Responds to concerns of the Board, parties and government agencies.

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.

Explanation: Responds to concerns of the Board, parties and government agencies.

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.

Explanation: Responds to concerns of the Board and parties.

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.

Explanation: Responds to concerns of the Board and parties.

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.

Explanation: Responds to concerns of Ms. Hardy and the ANC.

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

Explanation: Consistent with the order in BZA Application No. 15340-B.

RESPONSES OF THE APPLICANT TO THE OFFICE OF PLANNING'S PROPOSED CONDITIONS:

1. *The prohibition of the development becoming a gated community.*

Response: The Applicant has agreed to this condition.

2. *The installation of sidewalks along Foxhall and W Streets.*

Response: The Applicant has agreed to this condition.

3. *Soil erosion control (subject to approval of DOH).*

Response: The Applicant has committed to this, which, as pointed out by the Office of Planning, is under the authority of the Department of Health.

4. *The homeowners association to maintain open spaces, sidewalks and roads.*

Response: The Applicant has agreed to this.

RESPONSES OF THE APPLICANT TO THE ANC'S PROPOSED CONDITIONS:

1. *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.*

Response: The Applicant has agreed that, 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. With regard to the removal of the concrete slabs and other remnants from the right-of-way, NPS testified that it was likely that more environmental damage was likely by the removal of the debris as opposed to letting it remain. As such, removal of the debris would be contrary to the request of NPS and should not be a condition of this order.

2. *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.*

Response: The Applicant's proposed conditions 3 and 4 establish a non-disturbance buffer for properties adjacent to parkland that addresses this concern of the ANC.

3. *All swimming pools be constructed within the allowable lot footprint.*

Response: The Applicant has agreed to this condition.

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

Response: The Applicant has agreed to this condition only as to lots adjacent to parkland, as run off from all other lots will be treated in the storm water management system.

5. *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.*

Response: The Board has no jurisdiction over property not subject to the application and cannot compel Ms. Hardy to comply with this requirement. The Applicant, however, will continue to negotiate in good faith with Ms. Hardy regarding issues affecting her property.

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

Response: The Applicant has agreed to this reasonable request.

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

Response: The Applicant has agreed to this.

8. *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.*

Response: The Applicant has agreed to this.

9. *The existing entrance at 2101 Foxhall Road be used as the construction entrance.*

Response: Construction issue beyond Board's jurisdiction. In addition, this will not allow for the Applicant to minimize construction impacts on all neighboring properties, nor stage construction as agreed to with some of the W Street residents.

10. *The adoption of a construction management plan to be reviewed and monitored by DDOT.*

Response: Construction issue beyond Board's jurisdiction. Regardless, the Applicant has submitted a proposal to the parties, and a commitment to the Board for the record.

11. *Restriction of the hours of construction from 7 am to 5 pm Monday through Friday and the prohibition against any weekend construction.*

Response: Construction issue beyond Board's jurisdiction. The applicant will comply with all D.C. Regulations regarding construction.

12. *The implementation of a twenty-four (24) hotline.*

Response: Although outside the purview of the Board, the Applicant has agreed to this.

13. *The adoption of a DDOT approved heavy construction truck protocol and route.*

Response: Construction issue beyond Board's jurisdiction. Regardless, the Applicant has submitted a proposal to the parties, which includes the "Cooper Rules" regarding construction vehicles.

14. *The return of Foxhall Road to the same condition or better upon completion of project related utility work.*

Response: Construction issue beyond Board's jurisdiction. Regardless, the Applicant has proposed significant improvements to Foxhall Road.

15. *The adoption of a phasing plan for the development with safeguards in the event the Applicant did not complete the project.*

Response: Construction issue beyond Board's jurisdiction. Regardless, the Applicant has submitted a proposal to the parties.

16. *A prohibition against the intrusion into the drip lines of trees slated for protection, the oversight of the tree preservation efforts by a registered arborist and assurances that the provisions of the Urban Preservation Act of 2002 are implemented, if not exceeded.*

Response: All construction will be monitored by a certified ISA arborist to ensure the preservation of trees slated as such. The arborist will determine the areas around such trees not to be disturbed. As testified to by the Applicant's arborist, which testimony was unchallenged, the important factors include the critical root zone ("CRZ") and the minimum clearance zone ("MCZ"). There will be no disturbance in the MCZ and a sufficient volume of the CRZ will be undisturbed to allow the preservation of the tree. With regard to compliance with the Urban Preservation Act, that is out of the jurisdiction of the Board.

17. *Continued health of the wetlands through the monitoring by all appropriate agencies (the Corps, NPS and DOH) of the wetlands during construction and the prohibition against the use of harmful chemicals – herbicides or road salts.*

Response: The Applicant's proposed conditions adequately address the wetland issues that are within the Board's jurisdiction. That is, they address any potential adverse impacts.

18. *Monthly meetings between the contractor/builder, the immediate neighbors, interested parties and a representative of the ANC at the Palisades Library.*

Response: The Applicant has agreed to quarterly meetings, which are reasonable given (a) the expected length of the project and (b) the 24 hour hotline.

19. *The Applicant publicly release its grading plan for peer-review by an independent grading and engineering expert before approval.*

Response: Although not required, the plans have already undergone peer review and will be reviewed by other District of Columbia agencies as permits are prepared. As the Applicant has

proved it qualifies for the requested special exception with its current plans, this condition is not necessary and there is no basis in the zoning regulations for its imposition.

20. *The Applicant publicly release a Stormwater management plan for peer-review by an independent Stormwater expert before approval. The new plan to include (i) assurance that the filtration system can handle a so-called 100 year storm; (ii) calculations for maximum and minimum Stormwater discharges into the wetland; (iii) documentation of the efficacy of the system in filtering road salt, oil and petroleum products, and other pollutants; (iv) alternative to adding a large amount of fill around the wetland; and (v) other related issues including the feasibility of a rain garden system on each lot.*

Response: The Applicant has submitted its storm water management plan as part of the record, giving the parties sufficient opportunity to study the plans and provide evidence in response. Furthermore, although not required, the plans have undergone peer review. As the Applicant has proved it qualifies for the requested special exception with its current plans, this condition is not necessary and there is no basis in the zoning regulations for its imposition. The Applicant's storm water management proposal goes above and beyond what the District requires for both quality and quantity control. Furthermore, there is no rationale for planning for a 100 year storm.

21. *The placement of a conservation easement over the wetlands, wetlands buffer and Stormwater management area in favor of the NPS, the Potomac Conservancy and The Nature Conservancy, as well as the requirement of a 100' buffer around the wetlands.*

Response: This proposal goes beyond the Board's authority.

22. *The conduction of a new tree inventory and survey to be made available to all interested parties.*

Response: Although not required, the plans have undergone peer review. As the Applicant has proved it qualifies for the requested special exception with its current plans, this condition is not necessary and there is no basis in the zoning regulations for its imposition. Finally, three (3) tree inventories have been performed.

23. *The use of native trees and shrubs for landscaping.*

Response: The Applicant has agreed to this within the non disturbance zones adjacent to parkland and has submitted a landscaping plans that also responds to this request.

24. *A 100 foot building setback from parkland.*

Response: The Applicant has proposed 30 to 40 foot non disturbance zones from parkland. This is a reasonable accommodation of both concerns of the parties, as well as the Applicant's needs. Furthermore, no evidence was presented that there would be adverse impact by the Applicant's proposed non disturbance zones.

25. *Sanctions for violation of any conditions adopted by the Board, as well as procedures for harmed parties to redress their injuries.*

Response: Insofar as the condition proposes procedures for private parties beyond what is available in the zoning regulations, this proposal goes beyond Board's jurisdiction.

26. *Written and enforceable agreements with the developer and Ms. Hardy, the Certain Residents and the FOW.*

Response: This proposal goes beyond Board's jurisdiction.

RESPONSES OF THE APPLICANT TO PROPOSED CONDITIONS OF THE FRIENDS OF WHITEHAVEN:

1. *The Applicant must protect at least 100 of the 252 identified "special trees", with diligent care and attention provided to protecting those trees with migratory bird nests. A certified arborist must be on site when activities that could harm special trees occur.*

Response: The Applicant's arborist has demonstrated that its proposal sufficiently preserves special trees while accommodating the development plans. The Applicant will further comply with the District of Columbia's tree regulations and its plans provide for more tree cover than presently exists..

2. *The Applicant must consult with an independent wildlife expert on maintaining and protecting the fox den.*

Response: The Board is satisfied that the Applicant's plans will not have an adverse impact on the surrounding areas. Furthermore, this goes beyond the Board's jurisdiction.

3. *The Applicant must have the Corps, the applicable representative(s) of the D.C. government, and an independent expert analyze the impact of all final construction plans (e.g. grading, storm water, tree, site, management) upon both the parkland wetlands and the wetlands on the Phillips property. Maximum and minimum storm water discharges into the wetlands must be calculated. If relevant, mitigation actions must be identified and be enforceable. Documentation on road salt and pollutant filters must be provided. Up-to-date soil and geologic data must be provided and integrated into the final plans.*

Response: The Board is satisfied that the Applicant has submitted sufficient evidence that its plans will not have an adverse impact on the surrounding area. With regard to review of other agencies, such a condition is outside the Board's jurisdiction but within the final purview of other D.C. agencies..

4. *Independent peer review of the entire final development plan by the Low Impact Development Center (LIDC), located in Prince George's County, Maryland, and the nation's leader in low impact development issues.*

Response: This condition goes beyond the Board's jurisdiction.

Wetland/Parkland Issues.

5. *Document true extent of natural and man-made wetland and streams.*

Response: The Board is satisfied that the Applicant has complied with applicable regulations regarding the wetlands on the Property.

6. *Document existing topography, including streams and rough grading of Driggs road.*

Response: The Applicant has provided existing and proposed grading plans.

7. *Establish 100 foot wetland buffers 100 foot park setbacks.*

Response: The Applicant has proposed 30 to 40 foot non disturbance zones from parkland. This is a reasonable accommodation of both concerns of the parties, as well as the Applicant's needs. With regard to the wetlands, the Applicant has provided the required twenty-vie foot (25') setback. The Applicant's expert testified, without contradiction, that this buffer zone is adequate for the protection of the natural wetland. Additionally, there is more than a 100 foot deep buffer along the entire southern border of the wetland, accommodated by eliminating one lot, and another average of 100 foot of open space along the north side where the gentle grassy slope over the storm water management system is located Furthermore, no evidence was presented that there would be adverse impact by the Applicant's proposed non disturbance zones and buffer zones.

8. *Establish wetland conservation easement on all wetlands and streams.*

Response: This proposal goes beyond Board's jurisdiction.

9. *Incorporate wetland as site feature, reduce fill (30 feet) and decrease slope (33%)[to the north of the wetland].*

Response: The Applicant has incorporated the natural wetland as a major feature into the Property. The Applicant illustrated that the slope down to the natural wetland is gentle and will not cause any adverse impact on the wetland and is in compliance with D.C. regulations.

10. *Provide documentation on wetland protection measures during and after construction.*

Response: The Board is satisfied that the Applicant has complied with applicable regulations regarding the wetlands on the Property. Furthermore, this condition is outside of the Board's jurisdiction.

11. *Provide documentation on handling existing surface water in areas to be filled.*

Response: This proposal goes beyond Board's jurisdiction.

Storm Water Issues

12. *Provide calculations for maximum and minimum storm water discharge into wetland.*

Response: This information has already been provided. The Board is satisfied that that the Applicant has met its burden of proof for the relief requested and that it won't have an adverse impact on the surrounding environment. Furthermore, jurisdiction of the wetland is with either the U.S. Army Corps of Engineers or the D.C. Department of Health.

13. *Provide documentation on road salt filter or other abatement feature.*

Response: The Board is satisfied that that the Applicant has met its burden of proof for the relief requested and that it won't have an adverse impact on the surrounding environment.

14. *Provide Corps permits for filling of wetland and discharge into wetland.*

Response: This condition goes beyond the jurisdiction of the Board.

15. *Extend island past low point of main road to filter storm water before entering SWM system.*

Response: No evidence was presented to support this condition. Furthermore, the Board is satisfied that that the Applicant has met its burden of proof for the relief requested and the Applicant has proposed conditions to ensure the development won't have an adverse impact on the surrounding environment.

Low Impact Development Issues

16. *Design LID and storm water filtration system to handle 100 year storm.*

Response: The Board is satisfied that that the Applicant has met its burden of proof for the relief requested and the Applicant has proposed conditions to ensure the development won't have an adverse impact on the surrounding environment. Furthermore, there is no rationale for planning for a 100 year storm.

17. *Set aside 20 percent of each lot to be used for rain garden.*

Response: There was no evidence that this was feasible or necessary.

18. *Show dedicated rain garden areas on each lot.*

Response: There was no evidence that this was feasible or necessary. The Applicant provided testimony on which areas are appropriate for "rain gardens."

19. *Provide documentation on how to construct rain garden on compacted fill.*

Response: There was no evidence that this was feasible or necessary. Evidence presented clarified that the proposed storm water management system is not dependent on infiltratable soils. The Applicant provided testimony on which areas are appropriate for "rain gardens."

20. *Provide covenant language requiring owners to maintain rain gardens.*

Response: There was no evidence that this was necessary and the Applicant has agreed to bind the homeowners to maintenance responsibilities for all SWM facilities.

21. *Conduct peer review of LID techniques by Low Impact Development Center.*

Response: This goes outside the Board's jurisdiction. Moreover, the FOW failed to present evidence that the Applicant had not meet its burden of proof that the proposed development will not have an adverse impact on the surrounding area.

Trees Preservation Issues

22. *Update tree inventory – add missing trees and remove dead trees.*

Response: The Board finds that the most recent plans filed on March 2, 2005, accurately reflect the location of trees on the Property.

23. *Identify tree number type of tree, and size of tree to be saved on legible plan.*

Response: The Board finds that the most recent plans filed on March 2, 2005, accurately reflect the location of trees on the Property.

24. *Work with topography to save at least 75% of trees and reduce retaining wall heights.*

25. *Move the road of the woodland ridge to save more trees in the eastern woodland.*

26. *Remove roads, retaining walls and structures from poplar and beech root zones.*

27. *Remove lot A-13 to save 49 inch caliper chestnut oak (#78).*

28. *Examine all trees for nests prior to removal. Do not remove trees with active nests.*

Response to 25-28: The Board finds that the proposed plans will not have an adverse impact on the surrounding area or environment and that the Applicant has made reasonable efforts in following the natural contours of the Property and has maximized tree preservation.

29. *Provide details of retaining walls showing footing depth, material, heights, distance to tree, limits of grading, tree root protection area (oak, beech poplar), etc.*

Response: The Board finds that the Applicant has provided plans with sufficient detail for the purposes of the Application.

Site planning Issues

30. *Provide complete and up to date geotechnical data as recommended by Schnabel.*

Response: The Board finds that the Applicant provided sufficient evidence that the project can be constructed without adverse impact on the surrounding area. Where necessary, appropriate fill will replace existing fill and further plans will be finalized for permit review.

31. *Reduce number of lots to avoid negative impact to wetlands and streams.*

Response: The Board agrees that the larger lots, as proposed by the Applicant, provide the greatest protection to the environment.

32. *Correct circulation flaw resulting from removal of second W Street entrance.*

Response: The Board does not find any credible evidence that there is a circulation flaw with the proposed plan. The Board credits the traffic experts of the Applicant with regard to the flow of traffic.

33. *Provide plans and schedule for deeding abandoned 44th Street right-of-way to NPS.*

Response: The proposed conditions of the Applicant adequately addresses NPS's desires with regard to the 44th Street right—of-way.

34. *Consolidate lots 12 and 13.*

Response: Configuration of the matter of right lots is outside the Board's jurisdiction.

35. *Conduct peer review by NPS, Potomac Conservancy, Chesapeake Bay Foundation, The Conservation Trust, Sierra Club or other NGO.*

Response: No evidence was presented that the Applicant had failed to meet its burden of proof that the proposed development will not have an adverse impact on the surrounding area. Thus, not only is this request outside the Board's jurisdiction, there is no evidence to support such a request.

Ms. July Moore's Proposed Conditions

36. *Layout the roads to fit with the topography.*

Response: The Board agrees with the Applicant that the proposed plans accomplish this goal.

37. *Reduce the lot size to save valuable wetland and woodland habitat.*

Response: The Board agrees that the larger lots, as proposed by the Applicant, provide the greatest protection to the environment.

38. *Preserve more trees in groves instead of single specimens.*

Response: The Board agrees with the Applicant that it has accomplished this goal.

39. *Save certain percentage of native vegetation on each lot.*

Response: The Board agrees with the Applicant that it has accomplished this goal.

RESPONSES OF THE APPLICANT TO PROPOSED CONDITIONS OF CHANDRA HARDY:

1. *A perimeter fence and landscaping of her choice along the boundary of her property.*

Response: This request is outside of the Board's jurisdiction.

2. *Shared cost of a perimeter fence along the section of her property abutting parkland.*

Response: This request is outside of the Board's jurisdiction.

3. *The Applicant to bear the cost of the removal and replacement of any of the trees on her property that die or are damaged by the construction for a period of up to ten (10) years from the end of the construction.*

Response: This request is outside of the Board's jurisdiction.

4. *The Applicant to bear the cost of any damage to property or life caused by trees that die or are damaged by construction.*

Response: This request is outside of the Board's jurisdiction.

5. *The use of a little driveway lighting as possible.*

Response: The Applicant has proposed adequate conditions to deal with lighting.

6. *The use of down-lit, muted street lighting turned away from her property.*

Response: The Applicant has proposed adequate conditions to deal with lighting.

7. *The provision of a construction management plan.*

Response: This request is outside of the Board's jurisdiction. Regardless, the Board acknowledges that the Applicant has provided such a Plan for the record.

8. *Monthly meetings between the contractor/builder and neighbors during construction to take place at either the Mt. Vernon campus of George Washington University or the Palisades Library.*

Response: The Applicant has agreed to quarterly meetings, which are reasonable given (a) the expected length of the project and (b) the 24 hour hotline.

9. *A requirement that any disputes be submitted to mediation.*

Response: This request is outside of the Board's jurisdiction.

10. *A requirement that all storm water from the Property be drained away from her property and a provision that her engineers be permitted to review the plans for SWM both at the design and land preparation phases of construction.*

Response: 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.

11. The Applicant work with DDOT to ensure that the planned re-construction and repair of Foxhall Road be re-graded to ensure that storm water flows into the drains and not across her driveway and property and that a buffer be created in front of her property and driveway to guide the storm water into the drains.

Response: This request goes beyond the Board's jurisdiction. Regardless, the Board finds that the off-site storm water management plans have been designed so as to have no adverse impact on surrounding properties.

RESPONSES OF THE APPLICANT TO PROPOSED CONDITIONS OF THE CERTAIN RESIDENTS:

1. *Appointment of one of the W Street neighbors as an ex-offico, non-voting member to the architectural committee.*

Response: This request is outside of the Board's jurisdiction.

2. *Postponement of the board's decision on the Application in hopes of precluding an inadequate piecemeal response to the traffic problems raised by the proposed development. Postponement would provide time for all concerned parties of the Foxhall Road area to attempt to find a comprehensive solution which could provide benefits for all concerned. The postponement would also give the Applicant an opportunity to complete whatever legal arrangements needed to be made so that the owners and developer can be more fully introduced to the BZA and the neighborhood. Additionally, a postponement would also give the applicant an opportunity to submit the final plans required under the Zoning Regulations and noted by the Office of Plans not yet available.*

Response: The Board's finds no authority in the zoning regulations to allow it to take such action. Furthermore, the Board finds that the Applicant has proposed adequate conditions to safeguard against any adverse traffic impacts. With regard to the identity of a developer, the Board 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. Finally, the Board finds that plans for the project provide sufficient detail to review the application.

3. *Elimination of the recently proposed 9th house on the south side of W Street.*

Response: The matter of right lots are outside the Board's jurisdiction.

4. *The creation of a mechanism for formal coordination between the neighbors and the developer.*

Response: The Applicant has agreed to quarterly meetings with neighbors, as well as the establishment of a 24 hour hotline.

Response to Construction Management Plan Submitted by the ANC, Certain Residents and Ms. Hardy

In general, the Applicant responds that the proposed construction management plan ("CMP") is beyond the Board's jurisdiction. There is no indication that the proposed CMP has been reviewed and approved by the full ANC. Furthermore, it was drafted without consultation with the Applicant. Because many of the provision are significantly more restrictive and/or burdensome than applicable regulations, the Applicant is submitting a Construction Commitment, containing reasonable terms it is willing to abide by during the construction of the proposed project. Furthermore, the Applicant will continue to work with the parties in this regard.

1. *Prior to the commencement of any construction, a management plan for wildlife preservation shall be instituted in cooperation with the Fish and Wildlife Administration.*

Response: More restrictive than applicable regulations.

2. *A licensed arborist shall be on site during construction to ensure the survival of all privately owned trees and those designated permanent to the development site. The developers shall bear the cost of removal and replacement for any tree on private property that dies or is damaged during the period of construction and for a period of five years following the completion of the project.*

Response: The Applicant has agreed to having a licensed arborist review all construction and grading to ensure the preservation of trees slated as such, as well as for the protection of trees on Ms. Hardy's property.

3. *Hours of operation shall be 7:OO AM to 4:OO PM Monday through Friday. There shall be no work on weekends or Federal holidays.*

Response: Construction hours permitted pursuant to the building code are 7:00 a.m. to 7:00 p.m. Monday through Saturday. The restrictions proposed by the parties are unreasonable and would cause completion of the project to be significantly delayed.

4. *The construction site entrance shall be exclusively from Foxhall Road between "Lots 2 and 3"as identified on the February 28, 2005, Preliminary Grading Plan for Dunmarlin at Phillips Park. Use of W Street for parking by construction workers or for staging of construction vehicles shall be strictly prohibited throughout the life of the construction.*

Response: The Applicant has addressed the construction entrance in its proposed conditions and in its Construction Commitment. The Applicant agrees to avoid the use of W Street, where possible, for construction purposes. However, it may be necessary to use W Street during the construction of the houses fronting W Street.

5. *The construction staging area shall be south of lots designated "A-1, A-2 and A-3" as identified on the February 28, 2005, Preliminary Grading Plan for Dunmarlin at Phillips Park, and shall be surrounded with mature 12 foot tall Foster Holly and Blue Spruce trees and an 8 foot high fabric-covered chain link fence on the staging area side to provide visual protection for the residents of W Street during the construction phase. The fabric fence covering shall be forest green in color.*

Response: The Applicant has addressed the staging areas in Exhibit A to its Construction Commitment.

6. *Identical buffering of trees and a high fabric covered chain link fence shall be provided for all exposed project areas that are visible from or abut property at 2001 Foxhall Road, NW, that is owned by Chandra Hardy. In addition, a permanent black wrought-iron perimeter fence of her choice will be installed along the property line between the Phillips Park project and 2001 Foxhall Road to separate the existing residence from development intrusion. Unobtrusive driveway down-lighting shall be installed along the project roadway in areas bordering neighbors' properties.*

Response: The Applicant is attempting to work out a separate agreement to address the needs of Ms. Hardy.

7. *Visual and physical buffering and protection of immediate neighbors shall be maintained and remain in place until completion of construction.*

Response: The Applicant shall make reasonable efforts to buffer the constructions activities from the surrounding properties.

8. *Lighting of the construction site shall be unobtrusive from all immediate neighbors' properties.*

Response: The Applicant shall make reasonable efforts to buffer the constructions activities from the surrounding properties.

9. *All private properties shall be protected from any construction impacts. These shall include but not be limited to dirt, noise, noxious odors, water pollution and vibrations. Notice of any property damage shall be investigated within eight hours by the contractor/builder and immediate restoration of property shall be done to the satisfaction of the homeowner.*

Response: The Applicant shall comply with all regulations regarding protection of adjacent properties during construction activities.

10. *Periodic interior and exterior window and house washing, cleaning and painting, if necessary, shall be provided to the immediate neighbors to eliminate construction dust, dirt and damage.*

Response: The Applicant shall comply with all regulations regarding protection of adjacent properties during construction activities.

11. *W shall Street be kept clean and measures shall be taken to protect the neighbors from the spread of construction dirt.*

Response: The Applicant shall comply with all regulations regarding protection of adjacent properties during construction activities.

12. *W Street vehicular access to and from the neighborhood residences shall be maintained at all times.*

Response: The Applicant shall not block entrances to residences.

13. *A twenty-four hour hotline shall be established and maintained for the duration of the construction.*

Response: The Applicant has agreed to this as a condition of the order.

14. *A 24 hour security guard shall be on the premises at all times.*

Response: The Applicant shall take all reasonably necessary steps to secure the Property. Furthermore, construction shall be phased so that, as houses are completed, they will be occupied.

15. *The construction site trash, waste material and miscellaneous debris shall be contained, and site dumpsters shall be emptied as often as necessary to maintain a site clean of debris. Food waste shall be secured in animal proof containers for pick-up and removal.*

Response: This condition is reasonable.

16. *Immediate notice shall be provided to all neighbors before any hazardous material is brought to or stored on the site.*

Response: Although it is not expected that hazardous materials will be brought to the Property, the Applicant will comply with all applicable code requirements regarding any such materials.

17. *A DDOT-approved truck protocol and route shall be established. All trucks entering the property shall use only the designated entrance between "Lots 2 and 3" as identified on February 28, 2005, Preliminary Grading Plan for Dunmarlin at Phillips Park. All trucks exiting the property shall be covered, brushed and hosed.*

Response: The Applicant has adopted the Cooper Rules as part of its Construction Commitment.

18. *Foxhall Road shall be restored to the same condition as at the start of construction, or if interim improvements are made, then to that condition, or better, when related project utility and construction work is completed. At the end of construction DDOT shall be notified and the restored road condition shall be approved.*

Response: The Applicant will restore Foxhall Road, as required by DDOT.

19. *Monthly meetings shall take place including the contractor/builder, the immediate neighbors, interested parties and ANC 3D at the Palisades Library. Timely announcements, arrangements and scheduling of monthly meetings shall be the responsibility of the contractor/builder.*

Response: The Applicant has agreed to quarterly meetings as a condition of the order.

20. A process for mediation and, if necessary, arbitration shall be agreed to, to ensure expeditious dispute resolution arising from the development project. Developer shall pay 100 percent of such costs.

Response: Beyond the Board's jurisdiction or the requirements of any applicable regulations.

21. In the event that the entire project as presented to the BZA and if approved by the BZA is begun but not completed or completed in a timely manner, the developer shall be required to leave a tidy, landscaped, attractive, vehicular accessible and safe site including the traffic safety features described in the BZA filing. If there are any adverse consequences impacting the adjacent neighbors' properties, the developer shall be responsible for making restitution to those residences. Developer/builder shall purchase insurance to ensure funds are available from start of project until 5 years after project's completion, or until disputes arising from project are resolved to cover adverse consequences of project. The conditions outlined in this Construction Management Plan shall be agreed to by Phillips Park LLC, the immediate neighbors and ANC 3D and enforceable by the Department of Consumer and Regulatory Affairs of the District of Columbia.

Response: Beyond the Board's jurisdiction or the requirements of any applicable regulations.

B

EXHIBIT B

DUNMARLIN ARCHITECTURAL STANDARDS

Outline February 14, 2005

PURPOSE FOR THE ARCHITECTURAL STANDARDS:

The purpose of the architectural standards is to help create and maintain a sense of neighborhood, to recognize, protect and enhance those built and natural features that make the neighborhood unique, and to enhance the community's overall value.

Furthermore, its purpose is to provide guidance to homeowners, architects and landscape architects working in the community through the common use of architectural scale, proportions, elements and materials. This is not intended to produce stylistic conformity but visual harmony.

Lot sizes vary in size and arrangement, to encourage a variety in the size and cost of developed properties in the development. However, the average lot size of approximately 11,000sf is based on precedents in nearby, established neighborhoods.

These standards may be used by the Architectural Review Board of the Homeowners Association to guide and judge the conformity of proposed improvements to the community.

ARCHITECTURAL STANDARDS, INTRODUCTION:

The architectural standards are intended to guide the character of the initial development and subsequent changes over time. They address the siting of homes, the materials that may be used for the structures themselves, the landscaping, exterior lighting and all improvements.

They are intended to enhance, not replace the obligatory regulations that have bearing on the community, such as zoning or building restrictions.

ARCHITECTURAL REVIEW PROCEDURE:

These architectural standards will also outline the review procedures and enforcement.

ARCHITECTURAL REVIEW COMMITTEE:

The Architectural Review Committee will review submissions of all proposed improvements for compliance with the Architectural Standards. It will issue detailed responses to these submissions and issue letters of disapproval and requirements for re-submittal and/or approval as appropriate. It will be empowered to enforce the requirements of the Architectural Standards.

The Architectural Review Committee will comprise five members:

1) Chairperson: A representative of Barnes Vanze Architects.
2) Another guest Architect.
3) A certified arborist.
4) A Civil Engineer or Landscape Architect.
5) A representative of the ownership of the development.

ARCHITECTURAL STANDARDS, OVERVIEW:

Dunmarlin is designed to be a community of low-density single-family houses, organized around a loose, flowing, block design of interconnecting streets, following the sloping contours of the site. The community is organized around a central boulevard, opening over a large lawn to a natural wetland. This green sweep at the heart of the development opens onto the National Parkland flanking the community to the South and East. The streets all have sidewalks and crosswalks designed to foster pedestrian activity and neighborhood interaction.

The housing styles allowed are typical of those found in the nearby, established Washington DC garden suburbs. At their foundations are the traditional styles found throughout New England, all based on European styles, adapted to local climate, materials and traditions. These may be interpreted in a traditional or contemporary manner, subject to the appropriate use of the elements, proportions and details of the original styles and these standards. Local, regional or climatic traditions such as the use of porches (whether open, screened or enclosed) are encouraged.

SITING AND SITE REQUIREMENTS:

To maintain a defined streetscape within the community, a minimum of thirty percent (30%) of the front façade of every principal structure shall be on or within three feet of the front yard building restriction line. If a small (maximum six-foot (6') wide) front porch is used, this may be extended to seven feet.

Front doors are required to face the street, on the front of the main structure. On the matter of right lots numbers 1 through 13, this is either Foxhall Road or W Street. Furthermore on these lots, vehicular access, curb cuts, and on-site parking is confined to being off the rear or side roads, not the front.

Swimming pools may only be built within the buildable zoning footprint prescribed for each lot.

Retaining walls may only be built of natural stone, gravity or veneered. Stone is to be laid as described for "walls" below. Certain naturally colored cementitious block retaining wall systems may be approved on a case-by-case basis. No wood retaining walls are allowed.

All theoretical subdivision lots that have a rear yard abutting the Whitehaven Park on the South, or the Glover Archibald Park (or 44th Paper Street) to the East, will be subject to further controls designed to preserve the green buffer to the Parks: The goal is to preserve a buffer on the Development's land which

helps preserve the green edge fronting the Park. With the exception of approved fences, no structures of any kind (including retaining walls, patios, decks or any accessory structures) may be constructed within the Rear Yards beyond the building restriction line. Rear Yards building restriction lines (BRL)on these properties abutting the current parkland and the 44th paper street have been increased from the zoning regulation required depth of 25 feet, as follows: For lots A29-A33 and A10, rear yard BRL is 30', for lots A34, A35, A11 and A12, rear yard BRL is 40', for lot A11, rear yard is 30 on the west side and 40' to the east side.

For lots A11, A12, A13, A35 and A34, Accessory Structures (including pool houses) may be built in rear yards, only within the BRL, as allowed by the District zoning regulations and subject to the following restrictions: Maximum Height to be one story and 15', maximum foot print to be 250 sf, maximum plumbing amenities to be two sinks and one WC:

To limit the spread of invasive plant species, only trees and shrubs listed on the "approved species" plant list may be planted in this area. Weeds or insects and disease infestations species within these areas may only be controlled using environmentally "friendly" weed or insect or disease control products. The Homeowners Association will have these areas monitored on a bi-annual basis.

FAR AND LOT COVERAGE:

In addition to the Zoning requirements required by the District of Columbia, the following regulations will apply. The intention of these regulations is to encourage houses that are suitable in size and scale to the lots on which they are built.

Lot Coverage: For houses that are 1½ floors or less above grade, lot coverage may be forty percent (40%). For houses that are larger than 1½ stories above grade, coverage is reduced to thirty-five percent (35%) of the lot. If two (2) adjacent lots are purchased and combined by one property owner, the maximum lot coverage is reduced to thirty percent (30%) of the combined lot. If three (3) or more adjacent lots are purchased and combined by one property owner then lot coverage is reduced to twenty-five percent (25%) of the combined lot area.

Floor Area Ratio (FAR): The allowable maximum FAR for any improvements is to be forty percent (40%) of the lot area plus 2,000sf. All finished or finish-able areas within the structures above grade with ceiling heights of seven foot clear or more and five times the area of fenestration in the basement, cellar or below-grade area will be counted to establish the measured FAR. Assembly of multiple, adjacent lots by one owner to build larger houses will be discouraged.

ARCHITECTURAL STANDARDS, DETAILS:

Walls:

- All exterior walls should appear solid and be made of traditional building materials. Natural (not cementitious) or painted brick, with contrasting mortar color, natural or painted stucco, painted siding (wood or Hardiplank) and natural stone, are acceptable. Stone is to be laid to have a structural, not

veneered appearance, either as coursed or squared stonemasonry, or uncoursed fieldstone with a horizontal appearance. Cast stone or limestone details are allowed.

Roofs:

- Minimum roof pitch allowed for gabled or hipped roofs is 7:12 (mono-pitches are not allowed). For flared edges, 3:12. For simple pitched porch roofs, leaning against the principal building, 3:12. No large flat roofs allowed. Allowable materials include natural slate, clay tile and machine-cut, red cedar shingles. No asphalt or metal roofs, except that copper or zinc-coated copper roofs may be allowed over minimal areas such as porches, bay windows, crickets etc. either flat-seam soldered or hand-worked standing seam.
- Skylights are discouraged and if used, may not be substantially visible from any adjacent street.

Garages:

- Garage doors are to face side or rear yards wherever possible.
- Carriage-house styled garage doors only are acceptable; single doors encouraged maximum ten foot (10') wide, if doubles used, maximum eighteen foot (18') wide.

Windows and Doors:

- These elements are to be proportioned in such a way that they compliment the Architectural Standards described in the overview above.
- A maximum of thirty percent (30%) by area of any façade visible from a street may be fenestrated.
- Windows and doors should be square or have vertical, not horizontal proportions.
- Window openings may not be wider than four feet by ten feet (10') high, except that the use of muntins of a minimum width of three inches (3") may allow the ganging of several such windows together.
- Doors may be a maximum of four feet wide by 10 feet high (4' x 10'), except fenestrated doors may be mulled together as described above for windows, and/or joined to form French doors with sidelights.
- Exterior doors to be fenestrated or paneled, no flush doors.
- All glass to be clear with a maximum of ten percent (10%) transmissivity reduction for energy control. Minor amounts of stained glass may be allowed.
- Windows and doors to be solid or composite wood, painted or clad. No vinyl or metal windows or fenestrated doors.
- Windows and fenestrated doors, except those facing the rear of the property, shall have glass divided by muntins and mullions into panes no larger than twenty-four inches (24") in height or width. For all windows and fenestrated doors, only true divided lights or simulated divided lights may be used. No removable muntins or mullions are allowed.

Exterior Lighting:

- Will be reviewed by the Architectural Review Committee to ensure the quality and consistency of exterior lighting to avoid light pollution.

Prohibited Design Elements:

- The excessive changing of wall or roof planes to create multiple, stepped walls, roofs and/or gables.
- Elements that are over-scaled or exaggerated such as overly vertical front entry proportions.
- Plans and elevations containing excessive angles.
- Multiple building elements used in irrational way.
- The use of ersatz building materials (painted running PVC trim, cementitious siding and high-quality cast PVC shutters are excepted).
- Side elevations that show a lack of composition.
- Shutters that are not scaled to accurately fit the windows they flank and installed in any manner other than on traditional hinges, with shutter dogs.
- Outdoor mechanical units within five feet of any lot line.
- Visible dish antennae of over twenty-four inch (24") diameter.

Professionals:

- To ensure the quality of the proposed development, the Architectural Standards will also contain professional guidelines and requirements for all professionals permitted to work within the development, including architects, landscape architects, builders and Civil Engineers.

Natural Environment Preservation:

- The Landscaping Guidelines have been formulated to protect and enhance and guide additions or changes to the natural features of the site.