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November 5, 2002

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## **VIA HAND DELIVERY**

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

Re: 5401 Western Avenue, N.W.  
Zoning Commission Case No. 02-17C  
**Response to FHORD's Motion to Postpone Hearing**

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Dear Members of the Commission:

On October 28, 2002, the Friendship Heights Organization for Responsible Development ("FHORD"), through its counsel, filed a Motion to Postpone Hearing (the "Motion"). The Motion argues that the modifications made to the above-referenced application are not within the scope of the public notice and are not consistent with the requirements of the Zoning Regulations. Stonebridge Associates 5401, LLC, the applicant in the above-referenced case (the "Applicant"), opposes the Motion for the following the reasons: (a) the modifications to the application were made in response to the Applicant's work with the community, including FHORD, and the Office of Planning and the community has been fully involved in the process since before the application was filed; (b) the modifications were timely filed; (c) the modifications are within the scope of the public notice; and (d) the modifications are in accordance with Chapter 24 of the Zoning Regulations.

As discussed in detail below, FHORD has been fully informed regarding the project since before the application was filed and has been provided with all information in a timely manner as required by the Zoning Regulations. Accordingly, the Applicant requests that the Zoning Commission deny the Motion.

ZONING COMMISSION  
District of Columbia

Case 02-17

Order 103

**ZONING COMMISSION**  
District of Columbia  
CASE NO.02-17  
EXHIBIT NO.103

### **Involvement of the Community with the Project**

Prior to filing the Planned Unit Development ("PUD") and Zoning Map Amendment applications in March, 2002 (the "Original Submission"), the Applicant engaged the local community in an extensive interactive design process to facilitate a strong and important dialog regarding this project. Starting in September, 2001, seven months before filing the application, the Applicant met with members of the Advisory Neighborhood Commission 3E ("ANC 3E") and numerous community representatives as well as attended a series of seven working group meetings to discuss ideas and concerns related to the project. At the time it filed the Original Submission on March 22, 2002, the Applicant incorporated responses to many of the issues that had emerged from members of the community during these meetings.

In the time between the Original Submission and the Prehearing Submission filed on August 19, 2002 (the "Prehearing Submission"), the Applicant continued to actively engage the local community in discussions regarding the project and to work with the community to address concerns and comments. During this time, the Applicant also continued to work with the Office of Planning to review design changes to further that office's goal for development of this site. In response to comments and concerns raised by both some members of the community and the Office of Planning, significant changes were made to the application in the Prehearing Submission.

Since filing the Prehearing Submission, the Applicant has continued its work with the community and the Office of Planning. The Applicant attended the September, 2002, ANC 3E meeting. At that time, some members of the community, including members of FHORD, did not support the revised proposal set forth in the Prehearing Submission and reiterated concerns relating to the development's density, height and relationship to the nearby residential community.

At the September meeting, the ANC did not vote on the project. Rather, the ANC suggested that the Applicant negotiate with the ANC to see if a compromise position could be reached, which would be discussed at the October ANC meeting. During that month, the Applicant met and talked with the ANC commissioners in an effort to reach a compromise. During the discussions, the ANC commissioners clearly stated that essential elements of any compromise position included the following: reduction in height; reduction in the number of units; for-sale versus for-rent project; and retaining the R-2 zoning on the Lisner property. Through the ANC, the leaders of FHORD were well aware of these compromise discussions and the proposed elements of a compromise.

The Applicant integrated each of the essential elements of the compromise into its new proposal. On October 4, 2002, the Applicant learned that the written summary of the proposed compromise discussed with the ANC had not been forwarded to FHORD, although an ANC Commissioner confirmed that the details had been shared with FHORD orally. That day, the Applicant delivered copies of the summary of the revised development which described the modified design, including that it would incorporate less density, a lower height, fewer units, for-sale units versus for-rent units, no change in zoning on the Lisner property, and continued incorporation of the Children's Center. At the October 10, 2002, ANC meeting, the Applicant stated that it wished to have the opportunity to present its specific revised plan in early November so the ANC could consider a fully developed proposal before it voted on a recommendation to the Zoning Commission. In response to a desire from the community for information as soon as possible, the Applicant promised to provide to the community a written summary of the changes by Friday, October 18, 2002, and copies of the full statement filed with the Zoning Commission on Friday, October 25, 2002, (the "Supplemental Prehearing Submission") as required by the Zoning Regulations. Both of these deadlines were met. As indicated at the ANC 3E meeting, all design changes made in the Supplemental Prehearing Submission were consistent with the themes that had been discussed and shared with a broad representation of the community (including FHORD), the ANC, and with the Office of Planning.

#### **Timely Modification to the Application**

Section 3013.8 of the Zoning Regulations states that "[n]o application or petition shall be modified less than twenty days prior to public hearing." In accordance with this regulation, the Applicant modified its application to reflect the changes it made in response to its discussions with the community, the Office of Planning and the District Department of Transportation and filed its Supplemental Prehearing Submission twenty days prior to the public hearing. The purpose of this regulation is to provide an applicant with the opportunity to work with the community and District agencies and to make responsive changes without fear of significant delay. The Motion does not allege a failure to comply with this regulation.

#### **Modifications Within the Scope of the Notice**

As a matter of law, the Zoning Commission has the authority to approve requests for zoning map amendments and zoning changes that are within the scope of the notice, i.e., they are more restrictive than what is advertised in the

legal notice<sup>1</sup>. The Zoning Commission has consistently applied this rule in an effort to allow an applicant to respond to issues raised by the community and/or the Office of Planning in supplemental filings as permitted by the Zoning Regulations. In this case, the Applicant proposes a development that is less intensive than that advertised and incorporates changes that are in response to the community's and the Office of Planning's concerns and comments. Whether or not members of the community are satisfied with these changes is a matter to be reviewed during the public hearing process.

Without discussing the merits of each change, the Applicant submits that each proposed change is more restrictive (or less intensive) than that advertised and is thus within the parameters of the legal notice provided:

- The project continues to be an apartment house focused primarily on Western Avenue, N.W., with a Children's Center as part of its community amenities and benefits package. The proposed retail component for the project was eliminated in the Prehearing Submission. The fact that the project is now a for-sale project versus a for-rent project is irrelevant for notice purposes, as zoning makes no distinction between these types of housing.
- The notice advertises a rezoning of the entire site from R-5-B/R-2 to R-5-D. The Applicant has modified its application to rezone the R-5-B portion of the site to R-5-C and has proposed no rezoning for the R-2 portion of the site. This modification is within the parameters of the notice, as it is a more restrictive zoning classification for a portion of the site and is not a change in zoning for the remaining portions of the site.
- The hearing notice indicated that the project would contain a maximum of approximately 235,360 square feet of gross floor area. The gross floor area has been reduced to a maximum of 182,200 square feet for the apartment house and 3,000 square feet for the Children's Center, which results in a total gross floor area of less than that noticed. Furthermore, the notice states that the project will have a

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<sup>1</sup> In a footnote on page 8 of the Motion, FHORD asserts that posted public notice was inadequate. The Applicant posted notice on each street frontage of the site and on the front of each existing building located on the site in compliance with 11 DCMR § 3015.5. A copy of the Affidavit of Posting was filed with the Zoning Commission on September 30, 2002, as required by 11 DCMR §§ 3015.7 and 3015.8. The Affidavit of Maintenance, as required by 11 DCMR § 3015.9, will be filed with the Zoning Commission on November 14, 2002. In any event, there can be no argument that FHORD and other members of the community were unaware of the Applicant's proposal.

maximum FAR of 4.0. The modified project proposes a maximum FAR of 3.15 for the entire site. Although the Motion compares an FAR of 4.2 for the modified proposal (which is discussed in the Supplemental Prehearing Submission) to the original proposed FAR of 4.0, this comparison is misleading because the 4.2 FAR is computed based on a smaller portion of the site. Thus, the proposed gross floor area for the modified proposal is less than that noticed.

- Although the total number of parking spaces has been reduced, the ratio of parking (1.1 parking spaces per unit) has remained consistent throughout the various modifications to the application and is in fact more than twice that required by the Zoning Regulations for an apartment house in the R-5-B District and more than three times that required by the Zoning Regulations for an apartment house in the R-5-C District. As stated in the Prehearing Submission and Supplemental Prehearing Submission, parking is provided for the Children's Center as required by the Zoning Regulations.
- Although a new curb cut has been added for the relocated loading in response to the District Department of Transportation's report dated October 8, 2002, the total number of curb cuts for the project will not increase from the current number of curb cuts.

### **Compliance with Chapter 24 of the Zoning Regulations**

In discussing the changes to the application, the Motion suggests that the Applicant has not provided sufficient information in accordance with Chapter 24 of the Zoning Regulations for the Zoning Commission or the public to properly review the Application. The Applicant submits that its filings are in accordance with the requirements of Chapter 24 and that the three submissions made to the Commission sufficiently evidence the purposes and objectives of the project, including the proposed form of the development and how the application meets the PUD evaluation standards of Section 2403.

The Applicant responds to the issues raised in the Motion as follows:

- The Supplemental Prehearing Submission includes the information contemplated by 11 DCMR § 2403.11. That information can be found on page D1 of each of the architectural plans and drawings submitted with the Original Submission, the Prehearing Submission and the Supplemental Prehearing Submission as well as in the text of the statements submitted as part of the Original Submission (pages ten through twelve), the Prehearing Submission (page eight), the

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Supplemental Prehearing Submission (pages nine through ten), and the Statement from Steven E. Sher at Exhibit F in the Supplemental Prehearing Submission.

- Although the Supplemental Prehearing Submission introduces affordable housing as a new amenity for the project at the request of the Office of Planning, this amenity is discussed in detail on pages twelve and thirteen of the Supplemental Prehearing Submission.
- The Motion asserts that including the R-2 portion of the lot in the PUD site is improper because it does not satisfy the area requirements of 11 DCMR § 2401. The Zoning Regulations do not specifically indicate the method by which the minimum area requirements are to be applied in the event of a split-zoned PUD site with differing minimum area requirements. However, the subject property contains 43,840 square feet that is currently zoned R-5-B and will be located in the R-5-C District, which requires a minimum area of only 15,000 square feet. Thus, the site meets the minimum area required for a PUD and is, in fact, almost three times more than the minimum required. Although there is additional land zoned R-2 included within the proposed PUD site, such inclusion does not disqualify the site from properly being a PUD. Alternatively, if the land area required is prorated based on the split-zoned portions of the site, the application satisfies the minimum area requirements. Specifically, 74.5 percent of the site is zoned R-5-B, which requires a minimum area of 15,000 square feet, and 25.5 percent of the site is zoned R-2, which requires a minimum area of two acres. Thus, the resulting prorated minimum area is approximately 33,391 ( $[15,000*74.5\%] + [2 \text{ Acres}*25.5\%]$ ). Because the site is in excess of 58,000 square feet, the minimum area requirements are met. In any event, the Zoning Commission has full discretion to approve any zoning within the scope of the notice as long as the PUD as submitted complies with the minimum area requirements.
- The Motion indicates that the proposed Children's Center in the R-2 district is improper because it circumvents the required approval by the Board of Zoning Adjustment. The Zoning Commission has the authority to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment. 11 DCMR § 2405.7. Therefore, the Applicant can request that this use be permitted in the R-2 or R-5-C District and the Zoning Commission can consider the potential impacts of the use and impose conditions as necessary.

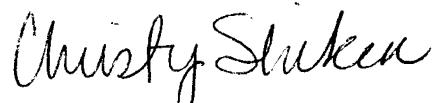
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We appreciate the Commission's consideration of this response. Should you have any questions or need additional information, please do not hesitate to call me.

Very truly yours,



Whayne S. Quin, Esq.



Christine Moseley Shiker

cc: ANC 3E (Via Facsimile 202/783-0444 and US Mail)  
ANC 3/4G (Via Facsimile 202/686-4366 and US Mail)  
Friendship Heights Organization for Responsible Development  
c/o L. Freedman (Via US Mail)  
Hazel Rebold (Via US Mail)  
Stephen and Betsy Kuhn (Via US Mail)  
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Andrea Ferster, Esq. and Cornish Hitchcock, Esq., counsel for FHORD, H.  
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Chevy Chase Citizens Association (Via US Mail)  
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