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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 for Summary Dismissal

Dear Members of the Commission:

On October 31, 2002, the Friendship Heights Organization for Responsible Development ("FHORD"), through its counsel, filed a Motion for Summary Dismissal (the "Motion"). The Motion argues that the above-referenced application for a planned unit development ("PUD") and related zoning map amendment (the "Application") should be dismissed because it is based on amenities which do not meet the standards for approval and that it lacks the information necessary for consideration of the Application by the Zoning Commission.

Stonebridge Associates 5401, LLC, the applicant in the above-referenced case (the "Applicant"), opposes the Motion because the substantial amenities package proposed clearly meets the standards for approval of a PUD and the Applicant's three submissions (which are the basis of the Application) 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, such that the Commission has sufficient information to move forward. Therefore, the Motion is without merit and should be denied.

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CASE NO.02-17
EXHIBIT NO.104

The Applicant responds to each of the Motion's specific contentions as follows:

I. AMENITIES MEET THE STANDARDS FOR APPROVAL OF A PUD

The Motion requests summary dismissal of the Application on the grounds that the Application as revised is based on amenities that do not meet the standard for approval of a PUD. The Zoning Regulations require the Zoning Commission to evaluate specific public benefits and project amenities of a proposed development. Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site as a matter-of-right. 11 DCMR § 2403.6. Project amenities are one type of public benefit, specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors. 11 DCMR § 2403.7. These public benefits and project amenities (for purposes of this case, referred to as the "Community Amenity and Benefits Package") are to be evaluated by the Commission in reviewing the Application.

As discussed in its Original Submission on March 22, 2002, its Prehearing Submission on August 19, 2002, and further refined in its Supplemental Prehearing Submission on October 25, 2002, the Applicant has presented a Community Amenity and Benefits Package that is comprehensive and extensive for this residential project. The proposed package provides significant benefit to the neighborhood and the District as a whole and responds to the issues raised by both the community and the Office of Planning. In its report dated November 4, 2002, the Office of Planning concluded that the "proposed public benefits of the project more than justify the zoning flexibility requested."

In summary, the following elements are included in the proposed Community Amenity and Benefits Package:

- Creation of Additional Housing
- Creation of Affordable Housing
- Paved, Landscaped Walkway from Military Road to Western Avenue
- Open Space and Tree Preservation
- Landscaping and Significant Enhancements to Existing Streetscape

- Transportation Management Plan and Traffic Improvements
- Safety Improvements
- Provision of Excess Parking
- Children's Center (approximately 3,000 square feet)
- Improvements to Chevy Chase Park
- Construction Management Plan

The Motion suggests that two of the aforementioned amenities (the day care and affordable housing) do not meet the standards for approval of a PUD and concludes that the only appropriate amenity is the proposed improvements to Chevy Chase Park. The following addresses the issues discussed in the Motion.

A. Day Care Center

1. *Approval of Day Care Center Use by Zoning Commission*

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. According to Section 2405.7 of the Zoning Regulations, 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. Thus, 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.

The Zoning Commission is not required to utilize the same evaluation standards as the Board of Zoning Adjustment. However, should the Commission decide to apply the special exception standards set forth in Section 205, the Applicant has presented a discussion of its compliance with those requirements in its Prehearing Submission (pages nine through ten) filed with the Commission on August 19, 2002. Moreover, the Applicant can address issues in detail as is necessary at the public hearing.

2. Day Care Center As Part of the PUD Site

The day care center can properly be included within the boundaries of the PUD site. Since the Application was filed in March, 2002, the size of the PUD site has remained essentially the same. In response to the community's concerns about extending the R-5 zoning designation on to the Lisner property, the Applicant has modified the Application accordingly, which results in a split-zoned site. The Motion incorrectly argues that such split-zoning creates a PUD site that 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 is to 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. 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 also satisfies the minimum area requirements. Specifically, 74.5 percent of the site is zoned R-5-B and is to be located in the R-5-C District, 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.

Under either scenario, the minimum area requirements are met. Accordingly, the Lisner property proposed to include the day care use is properly included within the PUD site.

3. Day Care Center as an Appropriate Amenity

The Motion further argues that even if the day care center can be approved by the Zoning Commission, the day care center is not an appropriate element of the Community Amenity and Benefits Package. The Zoning Regulations state that in deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects according to the specific circumstances of the case. 11 DCMR § 2403.8. Thus, it is within the Zoning Commission's purview to

determine whether the proffered day care center is in fact a neighborhood amenity.

The Zoning Regulations specifically identify "uses of special value to the neighborhood or the District of Columbia as a whole" as one possible public benefit or project amenity. 11 DCMR § 2403.9(i). Since its formation in 1989, the Children's Center has always been a benefit to the community, serving both the residential community and the commercial community. Specifically, in Zoning Commission Order No. 519, the Zoning Commission found the child care center to be a public benefit and project amenity for development of the nearby Chevy Chase Plaza. In that case, the Zoning Commission conditioned its approval of the PUD on the creation of a child care facility to be organized as a non-profit organization pursuant to the provisions of the Internal Revenue code and operated so that enrollment was open to children of employees of the projects in Square 1661 and to children of community residents on an equal basis with a goal of achieving a 50-50 ratio between the two groups. The condition further provided that if the child care facility must make an organizational or other change to maintain its non-profit status, the child care facility would continue to promote the 50-50 mix between neighborhood children and children of employees of the projects with the goal of ensuring that neighborhood children participate in the child care facility on an equal or preferred basis with children of employees.

Similarly, the Applicant in this case proposes to grant a fifty-year lease to the Chevy Chase Plaza Children's Center ("Children's Center") created by the above-referenced PUD to more than double its capacity. The Children's Center has been an important addition to this community and has become so successful that it has grown to capacity in its existing space. The provision of the expansion space just one block from the existing center provides the ideal location and an appropriate amenity related to this Application.

This proposed amenity is consistent with the Comprehensive Plan. A public action objective of the Economic Development element is to facilitate the establishment of new and the expansion of existing child-care facilities in residential, commercial and mixed use areas. 10 DCMR § 209.2(k). Furthermore, a major policy of the Land Use element for Ward 3 includes increasing the supply of child care facilities within the ward. 10 DMCR § 1409.2(m). Accordingly, the proposed day care center is clearly a use of special value to the neighborhood and District of Columbia as a whole.

Through the public hearing process, the Zoning Commission can evaluate the extent to which the expansion of the day care facility constitutes a public benefit or project amenity for this Application. In fact, the Children's Center has

requested party status in support of the project and will review its role in the community for the Zoning Commission. FHORD's request for summary dismissal based on the benefit of this amenity – prior to public hearing and prior to the Zoning Commission having an opportunity to evaluate the amenity – is without merit.

B. Affordable Housing as an Amenity

In response to the Office of Planning's request, the Applicant has incorporated an additional on-site amenity of affordable housing. Affordable housing is specifically identified by Section 2403.9(f) of the Zoning Regulations as an appropriate public benefit and project amenity for a PUD. As part of this amenity, the Applicant has committed to allocate five percent of the increased square footage over that permitted as a matter-of-right to affordable housing for those households who earn no more than eighty percent of the average median income for the Washington metropolitan area. This proposal results in between four and six units being devoted to affordable housing in an area in significant need of the same.

In working with the Applicant during October, the Office of Planning urged the Applicant to include this amenity due to the significant need for this type of housing in this area. In response, the Applicant introduced affordable housing as an amenity at the time it modified its Application in accordance with Section 3013.8 of the Zoning Regulation. The Applicant has provided the Commission with the general details of the proposed amenity, which is one of many amenities in a substantial community amenity package. At this time, the Zoning Commission has sufficient information for its evaluation of this amenity, and accordingly, summary dismissal of the case on this basis is not warranted.

II. COMPLIANCE WITH THE ZONING REGULATIONS

A. Information Requested By Section 2403.11

The Motion argues that the revised proposal lacks information specifically required by Zoning Regulations to be included in the Applicant's prehearing submission. However, the Applicant's submissions include the information contemplated by 11 DCMR § 2403.11. That information can be found on page D1 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 Supplemental Prehearing Submission (pages nine through ten),

and the Statement from Steven E. Sher at Exhibit F in the Supplemental Prehearing Submission.

Moreover, the Applicant has submitted detailed information with respect to this project to the Zoning Commission, the Office of Planning, and the community since the beginning of the process. The Applicant has worked extensively with the community and has demonstrated a willingness to address issues raised by the community, as evidenced through the important modifications made to the project throughout the process in response to the community. The public hearing process is designed to provide an opportunity for a project to be reviewed in detail and questions to be asked and answered. Thus, summary dismissal is not proper simply because members of the community have additional questions regarding aspects of the Application.

B. Setback of Mechanical Penthouse and Height of Building

The Motion argues that the Application fails to request relief from the applicable setback requirements for roof structures and as a result that the Applicant has failed to disclose the height of the project. In the residential districts, the Zoning Regulations require that a roof structure be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. 11 DCMR § 400.7(b). As is evidenced on page S4 of the architectural plans and drawings submitted with the Supplemental Prehearing Submission, the roof structure is setback 18'6", a distance at least equal to its height above the roof. The area on each side of the roof structure constitutes an architectural embellishment, which will contain no mechanical equipment or otherwise occupiable space and has no setback requirement. Therefore, no relief is necessary.

Furthermore, Section 199 of the Zoning Regulations define the height of a building as the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. 11 DCMR § 199. The definition of building height does not include a roof structure or mechanical penthouse. Thus, the Motion's assertion that the height of the project is ninety-eight feet is incorrect. The project has a maximum height of building of 78.75'.

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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

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PROOF OF SERVICE

I hereby certify that on November 7, 2002, a copy of the foregoing Response to FHORD's Motion for Summary Dismissal was served on the following persons or organizations as stated below:

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