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\*Representative Office

December 5, 2002

**WHAYNE S. QUIN**  
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Internet Address: [wquin@hklaw.com](mailto:wquin@hklaw.com)

## **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  
**Requested Information**

RECEIVED  
D.C. OFFICE OF ZONING  
2002 DEC - 5 PM 12: 07

Dear Members of the Commission:

As requested by the Zoning Commission at the November 14, 2002, public hearing, Stonebridge Associates 5401, LLC, the applicant in the above-referenced case (the "Applicant"), addresses the issues as follows:

- *Interpretation of Posting Regulations and Compliance with Same.* Attached hereto as Exhibit A is a letter to the Zoning Commission related to this issue.
- *Elevations/Plans/Rendering of Day Care Center.* Attached hereto as Exhibit B are the requested plans and zoning tabulations for the Day Care Center. As is evidenced in these plans, the design of the Day Care Center employs three basic strategies to minimize its visual impact and to blend in with the existing Lisner Home. First, the proposed structure has been reduced to one story and is cut into the existing slope of the ground. As a result, the eastern side and part of the southern side of the structure are below-grade, and the lawn of the Lisner property extends over the proposed structure. Second, the walls enclosing the Day Care Center and the adjacent parking area will mimic the form of the existing retaining walls around the Lisner Home

*ZONING COMMISSION  
District of Columbia  
Case 02-17  
Exhibit 175*

**ZONING COMMISSION**  
District of Columbia  
CASE NO.02-17  
EXHIBIT NO.175

Zoning Commission for the  
District of Columbia  
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patio. Third, the brick color, size, texture and pattern will match the existing Lisner Home.

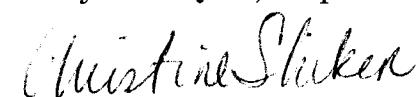
- *More Detailed Landscape Plans, including comparison of existing conditions and proposed conditions.* These documents are included as part of Exhibit B.
- *Amenities within the Residential Building.* The Applicant plans to incorporate amenities within the residential building, such as a community/party room, a fitness center and concierge services.

We appreciate the Commission's consideration of this additional information. 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: Parties to Z.C. Case No 02-17C (***See Attached Proof of Service***)  
Ellen McCarthy, Office of Planning (Via Hand Delivery)  
Stephen Cochran, Office of Planning (Via Hand Delivery)

## **PROOF OF SERVICE**

I hereby certify that on December 5, 2002, a copy of the foregoing Response to ANC 3E's Request for Change in Hearing Date was served on the following persons or organizations as stated below:

Advisory Neighborhood Commission 3E      (***Via U.S. Mail***)  
PO Box 9953  
Washington, D.C. 20016  
(202) 244-0800  
Fax (202) 362-0360 (ATTN: POLLY KING)

Advisory Neighborhood Commission 3E      (***Via Hand Delivery***)  
c/o Jill Diskan, Chair  
5315 43<sup>rd</sup> Street, N.W.  
Washington, D.C. 20016

Advisory Neighborhood Commission 3/4G      (***Via Hand Delivery***)  
5601 Connecticut Avenue, N.W.  
Washington, D.C. 20015  
(202) 363-5803  
Fax (202) 686-4366

Andrea Ferster and Cornish Hitchcock (***Via Hand Delivery [5 copies]***)  
1100 17<sup>th</sup> Street, N.W. 10<sup>th</sup> Floor  
Washington, D.C. 20036  
(202) 974-5142  
Fax (202) 331-9680

*Counsel for the following parties:*

*Friendship Heights Organization for Responsible Development*  
*Hazel Rebold*  
*Steve and Betsey Kuhn*  
*Jackie Braitman*  
*Martin Rojas*

Friendship Heights Organization for Responsible Development  
c/o Laurence Freedman      (***Via Hand Delivery***)  
4104 Legation Street, N.W.  
Washington, D.C. 20015



Christine Moseley Shiker, Esq.  
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December 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  
**Notice Issues**

Dear Members of the Commission:

Stonebridge Associates 5401, LLC, the applicant in the above-referenced case (the "Applicant"), files this letter in response to the Office of Zoning's request for a discussion of the posting of notice related to the above-referenced Zoning Commission case.

## **Notice Was Posted in Compliance with Regulations**

Pursuant to the Zoning Regulations, the Applicant is required to post the property with the notice of hearing at least forty days in advance of the hearing. 11 DCMR § 3015.3. The required notice must be placed upon the Applicant's property in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property. 11 DCMR § 3015.5.

The Applicant posted one sign on the property at the 5400 block of Military Road and Western Avenue, N.W. and one sign at 5401 Western Avenue at the entrance to the Clinic on the wall surrounding the clinic building. See Affidavit of Posting filed September 30, 2002. The signs used verbatim the language of the notice as published by the Zoning Commission in the D.C.

Register. This posting was in compliance with the requirements and was completed at least forty days prior to the public hearing.

Section 3015.9 of the Zoning Regulations requires the Applicant to maintain the posting by checking the signs weekly and reposting when necessary. The Applicant maintained and replaced (when necessary) the signs at least weekly. See Affidavits of Maintenance filed November 14, 2002. A revised notice was published in the D.C. Register on October 4, 2002. On October 9, 2002, the Applicant replaced the three signs with the revised publication notice. On October 14, 2002, the Applicant posted two additional revised publication notices following a complaint from Ms. Hazel Rebeld. From that date, the Applicant continued to maintain and replace signs as required.

The opposition asserts that notice should also have been posted on the Lisner Home Building. Section 3105.5 of the Zoning Regulations clearly states that notice must only be posted on existing buildings located on the subject property. In this case, the subject property does not include the Lisner Home Building, and thus, notice was not required to be posted and should not have been posted on that building.

### **Actual Notice**

Under the relevant case law, actual notice is sufficient to cure any technical violation of notice requirements. For instance, in *Monaco v. District of Columbia Board of Zoning Adjustment*, 461 A.2d 1049 (D.C. 1983), the court found that there was no substantial prejudice where the Zoning Commission failed to meet its self-imposed thirty-day deadline for prehearing publication of a proposed regulation in the D.C. Register, but timely notice had been placed in two newspapers more than thirty days in advance, interested parties had actual notice one week prior to the hearing, the hearing transcript revealed vigorous participation in opposition to the regulations and two extra weeks were allowed for filing of additional written comment. Similarly, the court in *Committee of Washington's Riverfront Parks v. Thompson* found that actual notice to the affected ANC which allowed meaningful participation in an proceeding is sufficient to cure merely technical violations of notice requirements of the ANC Act. 451 A.2d 1177, 1183 (D.C. 1982) *citing Shiflett v. District of Columbia Board of Appeals and Review*, 431 A.2d 9 (D.C. 1981) and *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372 (D.C. 1977).

In this case, there can be no argument that the Friendship Heights Organization for Responsible Development or other members of the community

Zoning Commission for the  
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were unaware of the Applicant's proposal. The Applicant began working with the community seven months prior to filing the application and has continued to actively engage the community in the process since that time. More recently, Advisory Neighborhood Commission 3E considered the application at its monthly meetings in September, 2002, and in October, 2002, and at a special meeting on November 7, 2002. Advisory Neighborhood Commission 3/4G considered the application at its monthly meeting in October, 2002. At each of these meetings, the public hearing date was announced.

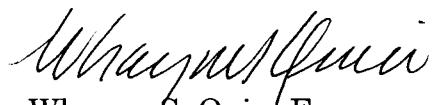
Furthermore, the record is replete with letters in support and in opposition from members of the community. Similarly, the public hearing itself was attended by a significant number of community members. Therefore, it is clear that the community has had actual notice of the hearing, whether or not the Applicant complied with the posting regulations.

**Notice Issue Is Moot**

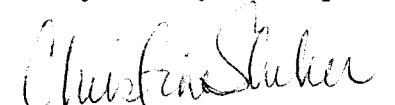
Despite the fact that the Applicant properly posted notice on the property and the fact that the community received actual notice of the hearing, the issue of whether notice was properly posted on the property is now moot. At its November 14, 2002, hearing, the Zoning Commission commenced the public hearing process for the above-referenced case, permitting only the Applicant's presentation to be made. The Zoning Commission then publicly continued the public hearing to Thursday, December 12, 2002. Therefore, all parties and persons involved have had complete legal and actual notice at least sixty days in advance of the upcoming hearing, and thus, there is no possible prejudice.

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

Very truly yours,



Whayne S. Quin, Esq.



Christine Moseley Shiker

**5401 WESTERN AVENUE, NW  
DAY CARE ZONING TABULATION**

**DECEMBER 5, 2002  
SBA PROJECT #11-005**

	<b>REQUIRED/ALLOWED</b>	<b>PROVIDED</b>
MINIMUM LOT AREA	4,000 SQ FT	15,000 SQ FT
MINIMUM LOT WIDTH	40 FT	40 FT +
FAR	0.4	.12
GROSS FLOOR AREA	6,000 SQ FT	1,800 SQ FT*
LOT OCCUPANCY	60% MAX	12% MAX
BUILDING HEIGHT	40 FT MAX	18 FT MAX
PENTHOUSE HEIGHT	18.5 FT MAX	NONE PROVIDED
PENTHOUSE AREA	666 SQ FT	NONE PROVIDED
REAR YARD	DEPTH = 20 FT MIN	20 FT +
SIDE YARD	8 FT MINIMUM	8 FT MIN
OPEN COURT WIDTH	NONE REQUIRED	NONE PROVIDED
PARKING	1 PER 4 TEACHERS & OTHER EMPLOYEES	4 SPACES**
LOADING	NONE REQUIRED	NONE PROVIDED

\* THE GROSS FLOOR AREA IS CALCULATED BY USING THE PERIMETER METHOD  
CALCULATION.

\*\* THE SPACES ARE LOCATED IN THE BELOW GRADE PARKING STRUCTURE BELOW  
THE RESIDENTIAL BUILDING ON LOT 805.





NOTES:

- 1- THE PROPOSED DAY CARE BUILDING IS DESIGNED TO BLEND IN WITH THE EXISTING LISNER HOME.
  - THE WALLS ENCLOSING THE DAY CARE BUILDING AND THE ADJACENT PARKING WILL MIMIC THE FORM OF THE EXISTING RETAINING WALLS AROUND THE LISNER HOME PATIO.
  - THE PROPOSED STRUCTURE IS CUT INTO THE EXISTING SLOPE OF THE GROUND. AS A RESULT, THE EASTERN END OF THE STRUCTURE IS BELOW-GRADE, AND THE LAWN OF THE LISNER PROPERTY EXTENDS OVER THE PROPOSED STRUCTURE.
  - THE BRICK COLOR, SIZE, TEXTURE, AND PATTERN WILL MATCH THE EXISTING LISNER BRICK.

- 2- THE FENESTRATION OF THE DAY CARE BUILDING MAY VARY WITH THE REFINEMENT OF THE INTERIOR SPACE PROGRAM.



DAY CARE DIAGRAM

5401 WESTERN AVE.

W A S H I N G T O N , D C .

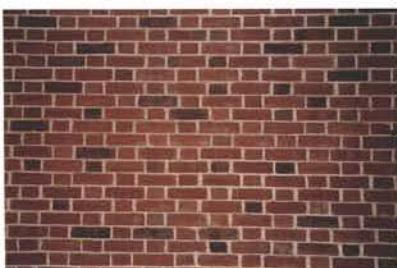
DECEMBER 5, 2002

SHALOM BARANES ASSOCIATES

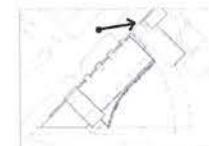
STONEBRIDGE



PHOTOGRAPH OF EXISTING LISNER PROPERTY



THE BRICK COLOR, TEXTURE AND  
PATTERN OF THE PROPOSED DAY  
CARE BUILDING WILL MATCH THAT  
OF THE EXISTING LISNER HOME(SHOWN)



5401 WESTERN AVE.

W A S H I N G T O N , D C .

DECEMBER 5, 2002

STONEBRIDGE

SHALOM BARANES ASSOCIATES



CHEVY CHASE CENTER



5401 WESTERN AVE.

W A S H I N G T O N , D C .

DECEMBER 5, 2002

SHALOM BARANES ASSOCIATES

STONEBRIDGE A1

NOTES:

1. INTERIOR PLAN LAYOUTS ARE CONCEPTUAL AND SHOWN FOR ILLUSTRATIVE PURPOSES. THE FINAL LAYOUT MAY VARY.
2. REFER SHEET L1 FOR LANDSCAPE PLAN
3. REFER SHEET A3 FOR BUILDING DIMENSIONS





NORTHWEST ELEVATION  
WESTERN AVENUE

5401 WESTERN AVE.

W A S H I N G T O N , D C .

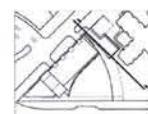
STONEBRIDGE

SHALOM BARANES ASSOCIATES

0 10 20 30



DAY-CARE ELEVATION  
SECTION THROUGH VISITOR PARKING



5401 WESTERN AVE.

W A S H I N G T O N D C .

DECEMBER 5, 2002

STONEBRIDGE

SHALOM BARANES ASSOCIATES

6 20 40