

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

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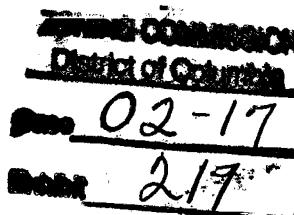
RE: Application of Stonebridge Associates, 5401)
LLC, on behalf of 5401 Western Avenue)
Associates, LLC, and the Louise Lisner)
Home for Aged Women, for Approval of a)
Consolidated Planned Unit Development and)
Zoning Map Amendment for Property at)
Western Ave, N.W., and Military Road, N.W.)
Square 1663, Lots 7 and 805.)

Case No. 02-17

REBUTTAL SUBMISSION OF FRIENDSHIP HEIGHTS ORGANIZATION FOR RESPONSIBLE DEVELOPMENT

Friendship Heights Organization for Responsible Development, including the individual members granted party status in this proceeding (Hazel F. Rebold, Betsey and Steven Kuhn, Jackie Braitman and Martin Rojas (collectively "FhORD")) offer the attached rebuttal to the Applicants' post-hearing submission. In a nutshell:

- Zoning and Planning Issues. The Applicants err in their attack on the existing zoning. The "band of C-2-B and C-2-A" established in 1974 was the result of a deliberate planning and zoning process which also created an adjoining band of R-5-B transition or step-down zoning, to preserve the adjoining R-2 single family housing area to the east and south of the site. The Clinic site is a major part of that R-5-B band of transitional or step-down zoning (Pp. 1-2 & FhORD Ex. A).
- If anything, events since 1974 confirm the wisdom of that zoning classification, given the increased commercial activity on Wisconsin Avenue; no new conditions justify a change in zoning (P. 2).
- The alleged changes in traffic patterns sufficient to warrant rezoning have not been demonstrated, and the 2000 Census data for the neighborhood undercuts the Applicants' estimates (Pp. 3-4).
- There are significant differences between this proposed PUD and PUDs that were previously approved in Square 1661 (Pp. 4-9; FhORD Ex. C and D).
- Neighborhood Protection. The building's visual impact is not as minimal as the Applicants argue (P. 7).
- The elements of the Applicants' Proposed Construction Management Plan, even as revised, remain inadequate to protect neighbors' interests (FhORD Ex. E).



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- Traffic. The Applicants' traffic estimates remain unpersuasive. They rest on incorrect traffic volumes, incorrect and unsubstantiated vehicle trip generation rates, an unrealistic 65% modal split, and inflated future traffic growth estimates; DDOT's submission using 2000 Census data confirms that transit usage in the area is below the 50% usage rate DDOT previously assumed (Pp. 9-12 & FhORD Exs. B, H and J).

- Amenities Package. Despite the Applicants' additional submission, there remain serious questions about whether the small amount of affordable housing being offered will, in fact, accomplish the intended goal of serving the intended beneficiaries (Pp. 12-16).

- The Applicants have still failed to demonstrate how the additional day care at market rates will benefit the community, and the CCPCC's criticism of FhORD's analysis is based on erroneous assumptions (Pp. 17-19 & FhORD Ex. F).

- The extent of tree preservation is overstated (Pp. 19 & FhORD Ex. G).

- Applicants misstate the FhORD position on open space, which in any event is only seven percent greater than the minimum under matter-of-right development on the Clinic site (P. 20).

- The proposed traffic and pedestrian safety improvements only partially mitigate traffic impacts (Pp. 20-21).

- Supposedly "excess" parking for building residents may be insufficient, based on 2000 Census Data and an examination of nearby properties, thus precluding a finding that the proffered parking levels are an amenity (Pp. 21-23).

- The Applicants fail to establish that there will be a substantial "premium" in tax revenues, offering no factual basis for their estimates or a rebuttal of FhORD's detailed assessment (Pp. 23-24 & FhORD Ex. I).

Respectfully submitted,



Cornish F. Hitchcock

Andrea C. Ferster

1100 17th Street, N.W. 10th Floor
Washington, D.C. 20036
(202) 974-5111

Counsel for FhORD Parties in Opposition

27 January 2003

CERTIFICATE OF SERVICE

I hereby certify this 27th day of January 2003 that this Rebuttal was served by first-class mail, except as otherwise indicated, upon:

Whayne S. Quin
Christine Moseley Shiker, Esq.
Holland and Knight
2099 Pennsylvania Ave., N.W. Suite 100
Washington, D.C. 20006
(Via messenger)

ANC 3E
P.O. Box 9953 Friendship Station
Washington, D.C. 20016

ANC3G/4G
PO Box 6252, NW Station
Washington, DC 20015

Andrew Altman, Director
Office of Planning
801 North Capitol Street, N.W. Suite 4000
Washington, D.C. 20002

Cornish F. Hitchcock
Cornish F. Hitchcock

FhORD's Response to the Applicants' Rebuttal is given below each of the Applicants' statements.

Applicants' Rebuttal: Attachment 2

The opposition in this case argues that the proposed development should not be approved for the following reasons: (1) the rezoning to R-5-C and the resulting development are not appropriate for the area; (2) the project has adverse traffic impacts; and (3) the project provides insufficient amenities. This rebuttal addresses these primary issues, as well as the opposition's more minor arguments related to economics and parking.

FhORD Response: The Applicants misstate the issues. FhORD presented evidence and argument that (1) the rezoning to R-5-C plus an additional 5% height and an additional 5% density (essentially R-5-D zoning standards) and the resulting development are not appropriate for the area or legally justified; (2) the Applicant's traffic and parking analyses are fundamentally flawed and thus the traffic and parking impact would likely be significant or, at the least, are unknown; (3) the Applicants request enormous "flexibility" over matter of right density and height which far outweighs the proposed amenities and benefits that have a minimal cumulative value to the neighborhood and the city; and (4) the proposed development is inconsistent with the Comprehensive Plan.

Additionally, FhORD, in its motions, demonstrated that the Applicants misrepresent the legal gross square footage and thus that the proposed project cannot legally be approved under R-5-C zoning even with 5% additional density. FhORD also demonstrated that the Applicants had no legal basis for its measuring point for height, and thus the proposed project cannot legally be approved under R-5-C zoning even with 5% additional height.¹ FhORD also noted that the Applicants misrepresent the legal height of the building by omitting without legal justification a 18'6" vertical brick wall above the roof and horizontally beyond the roof, and thus the proposed project cannot be legally approved under R-5-C zoning even with 5% additional height.²

I. CURRENT ZONING AND APPROPRIATENESS OF REZONING

A. BRIEF REVIEW OF ZONING HISTORY OF SITE AND AREA

Applicants' Rebuttal: In 1958, the Site was originally zoned R-2. The Site was rezoned in 1963 to C-3-A, reflecting changes in the growing Friendship Heights area at that time. In 1974, the Site was downzoned from C-3-A to R-5-B. At this time, the Zoning Commission also changed the Zoning Map to zone the area around the core intersection of Wisconsin and Western Avenues with a band of C-2-B and C-2-A. The eastern portion of Square 1661, Square 1663 and Square 1657 (the bus garage) were zoned R-5-B. The residential areas to the east and west of the commercial strips were maintained in the R-2 Districts.

FhORD Response: The site was rezoned in 1963 to C-3-A not to reflect "changes in the growing Friendship Heights area at that time" but to reflect the adjoining zoning along Wisconsin Avenue. Importantly, the "band of C-2-B and C-2-A" established in 1974 was the

¹ Using the proper measuring point (the middle of the Military Road building frontage), which is at least a few feet lower elevation than 322 feet, the corrected Stonebridge height (over 78.75 feet) cannot be allowed in an R-5-C zone.

² The Applicant's architect calls this 18'6" wall an "embellishment." However, the Zoning Regulations consider this structure in a residential zone to be part of the building height. *See* 26 DCMR Sec. 199 (building height measured to highest point of the roof or parapet); 26 DCMR Sec. 411 (building heights in residential zones). *See also* Zoning Commission Order 476, Case 84-10 (June 9, 1986) (penthouse setbacks) (rejecting proposal for allowing 18'6" parapets in certain zones as proposed by the Office of Planning and calling this essentially a roof height increase).

result of a deliberate planning and zoning process which also created an adjoining band of R-5-B transition or step-down zoning, to preserve the adjoining R-2 single family housing area to the east and south of the site. The Clinic site is a major part of that R-5-B band of transitional or step-down zoning. See FhORD Exhibit A, Official DC Zoning Map.

B. "KEEP THE ZONING" IS NOT APPROPRIATE FOR THIS SITE

Applicants' Rebuttal: Throughout this case, the opposition's mantra has been "Keep the Zoning." The opposition bases this argument almost entirely upon the notion that the neighborhood has some right to the maintenance of the zoning enacted in 1974. However, the 1974 zoning is based on an almost thirty year old analysis that is outdated and has been overtaken by changes in the area. Thus, the R-5-B zone designation is based on premises that are no longer valid and as result the current zoning is no longer appropriate.

FhORD Response: This misrepresents FhORD's position and the testimony in the record. First, FhORD demonstrated that the zoning enacted in 1974 was done as a result of extensive public agency and community involvement and after extensive deliberation. FhORD demonstrated that the planning rationale underlying that zoning decision was sound, and that the rationale and R-5-B zoning for this site is correct and appropriate today. Second, George Oberlander, the FhORD expert in planning, testified that that no relevant changes within the District have taken place except for those which were anticipated in the Sectional Development Plan upon which the Zoning Commission based its zoning decision in 1974. No new conditions have developed, he testified, other than greater traffic congestion, and no new conditions justify a zoning intensification. Further, the density of commercial development on Wisconsin Avenue has increased, not decreased, thus reaffirming the need for maintaining, not eliminating, the transition zone established deliberately to protect the low-density housing areas to the east and south. See FhORD Exhibit A, Official DC Zoning Map.

Further, FhORD argued that any zoning changes should promote the stability of the neighborhood, and that spot zoning of this one-acre site instead would promote instability. The neighborhood does expect that zoning changes will not be arbitrary, but instead should be predictable and based on sound planning rationales. For example, every rationale to support the Applicant's proposal would apply as well to rezoning of the adjacent Lisner Home, and the uncertainty of parcel-by-parcel zoning is enormously destructive to the neighborhood. Instead, FhORD supports development consistent with the zoning adopted directly from the Sectional Development Plan.

1. THE 1974 REZONING WAS BASED ON ASSUMPTIONS RELATED TO TRAFFIC THAT ARE NO LONGER VALID

Applicants' Rebuttal: The 1974 rezoning is not appropriate for the Site today because the Zoning Commission based the rezoning on assumptions that are no longer valid. Contrary to the opposition's position, the primary and basic consideration for the 1974 downzoning was the traffic capacity of the arterial streets. Although the zoning was put in place after the adoption of the Metrorail system, the rezoning took place before the construction of the Friendship Heights Metrorail Station. Using projections of the use of this Metrorail station, the Zoning Commission based its traffic analysis of the carrying capacity of the arterial streets on a thirty percent modal split, stating that the "the subway is expected to carry only 30% of all peak hour commuter trips in and out of the area." Zoning Commission Order No. 87, page 3. As a result of that analysis, the Zoning Commission downzoned the Site to R-5-B. The Friendship Heights, Tenleytown and Bethesda Metrorail Stations were all opened in 1985. Since that time, it has become clear that the capacity and use of that Metrorail station has far exceeded what the Commission anticipated in 1974. The 1989 WMATA "Development Related Ridership Survey II Report" indicated that the transit modal split for suburban residential land uses within the Beltway were found to range from 48.5% to 73.7% with the average being 60.0%.

Since 1985, 2002 data provided by WMATA indicates that the average passenger boarding for this station has increased by approximately sixty-two percent. This trend is supported by media reports within recent years of significant increases in transit ridership on the WMATA Metrorail system. According to testimony by O.R. George & Associates, the appropriate modal split is sixty percent, or as high as sixty-five to seventy percent. The District Department of Transportation ("DDOT") conservatively estimates the modal split at fifty percent.

In any event, there is far greater transit usage than that assumed by the Commission in 1974 when the area was downzoned. Therefore, the assumptions used by the Commission at the time of the 1974 rezoning are no longer valid.

FhORD Response: The 1974 rezoning was premised on careful consideration of the traffic capacity of the street system and the estimated "modal split" of the anticipated Metrorail station. Since 1974, the traffic capacity of the street system has not increased, and the demand on that street system has greatly increased and will continue to increase due to approved developments. The 1989 WMATA ridership survey is not in the record in this case, has not been provided in full to FhORD for evaluation, does not appear to be anything more substantial or reliable than a "survey," and in any event does not appear to be applicable to this site. Further, increases in Metrorail ridership do not bear on the issue of the appropriate estimated modal split of Stonebridge residents; more overall riders on Metrorail does not mean a higher percentage of local commuters use Metrorail.

Further, neither the Applicants nor DDOT presented any support – empirical or otherwise -- for the "estimate" that a 50% modal split is appropriate, or that the Sectional Development Plan's estimate of a 30% modal split at this station has been exceeded. Thus, the Applicants have not supported its assertion that the transportation premises of the deliberate 1974 rezoning of this site are no longer valid.

As to the appropriate modal split, even assuming DDOT's 50% modal split, it is not appropriate, not logical and not reasonable to use a trip generation rate of 0.25 trips per unit. Census 2000 data for Census Tract 11, block Group 5, a small area near the Friendship Heights Metrorail station, indicates that, for 517 occupied housing units, 343 workers 16 or older used a car, truck or van as their means of transportation to work. For the same 517 occupied housing units, 297 workers 16 or older used the Metro. See FhORD Exhibit B, "Census 2000, Means of Transportation to Work for Workers 16 Years and Over." This means that in 2000, for the small area near the Friendship Heights Metrorail Station, there were 0.66 morning private vehicle commuting trips and 0.66 evening commuting private vehicle trips per unit generated.

Thus, the actual Census data for this neighborhood³ reflects that 110 units will generate 72.6 morning commuting trips by automobile and 125 units would generate 83 trips by private vehicle. The Applicant's theoretical data (0.25 trips per unit, reduced by a 50% modal split), on the other hand, leads to the conclusion that these 110 units would generate only 13.75 morning commuting trips by automobile – only 19% of the actual data. Thus, clearly the Applicant's theoretical approach is flawed and must be disregarded in favor of the actual 2000 Census data.

Further, the Applicants state that since 1985 there has been an increase of sixty-two percent in the number of passengers boarding at the Friendship Heights Metro station, and imply that this was not anticipated and therefore not planned for accordingly. The Friendship Heights

³ As FhORD testified, there is no reason to think that Stonebridge residents will be any more, or any less, "transit oriented" than the existing residents very nearby to Metro, who are attracted to the neighborhood due to proximity to Metro but who, like other D.C. residents, generally still own cars and use them for uses not served by Metro.

station opened on August 25, 1984, so a significant increase is expected since its first year of operation as residents adjusted their commuting choices.

2. THE COMPREHENSIVE PLAN WAS ADOPTED IN 1984 AND 1985

Applicants' Rebuttal: The Comprehensive Plan, which sets forth the planning policies for the District, was not adopted until 1984. Similarly, the Land Use Element of the Comprehensive Plan, which designates the Site as a Regional Center and in a Housing Opportunity Area, was adopted in 1985. The Ward 3 Plan, which sets forth the more specific policies for the area, was also not in place at the time of the 1974 rezoning. Thus, the current planning policies did not exist at the time the Site was rezoned in 1974. Zoning is not static; instead, it is a dynamic process which reflects the current conditions and factors at the time it is put in place. Thus, the Commission has the opportunity to re-evaluate the zoning of the Site in light of these policies and the current conditions.

FhORD Response: FhORD concurs that the Comprehensive Plan should inform the Commission as to the appropriate zoning for this site. The Ward 3 Comprehensive Plan is the most relevant, as it is specific to the Ward and the area at issue. In the Ward 3 Comprehensive Plan, there is no doubt that the overarching goal is to preserve and protect Ward 3's low-density residential neighborhoods.

With respect to the Friendship Heights Housing Opportunity Area, the Ward 3 plan specifically lists three sites as most appropriate for new housing units – one is contiguous to the Washington Clinic and has the same underlying zoning as has been developed as townhomes under R-5-B height and density standards, one is planned for development (WMATA bus garage), and one in undeveloped and has no housing (Lord & Taylor parking lot). Though clearly the Washington Clinic site is within the general Housing Opportunity Area (though not a specific housing opportunity site), the goal of a Housing Opportunity Area is to create new housing units and does not automatically mean rezoning is appropriate.

The proposed rezoning would create absolutely no additional new housing units over matter of right development, according to the undisputed testimony of the Office of Planning and FhORD. Further, the rezoning of the Washington Clinic site would only provide larger, more expensive units than matter of right zoning, and this is inconsistent with the Ward 3 Comprehensive Plan to create as much housing as possible for elderly residents of Ward 3, new entrants into the housing market and similar underserved populations.

C. APPROPRIATE ZONING FOR THE SITE

Applicants' Rebuttal: Because the R-5-B zoning is based on premises that are no longer valid in the context of the current application, the Zoning Commission must determine the appropriate zone designation for this Site. This process is similar to that undertaken by the Zoning Commission for those projects immediately to the south of the Site in which the Zoning Commission rezoned and approved three PUDs for Square 1661 in 1987 and 1997.

FhORD Response: The Applicants cite the approval of three PUDs on Square 1661 in 1987 and 1997, saying their own request is similar in nature. This is based on an inaccurate characterization of both Square 1661 and the surrounding area.

(1) Unlike the subject site, all three of the Square 1661 PUDs have frontage on the Wisconsin Avenue commercial corridor.

(2) The subject site is about 200 feet removed from Wisconsin Avenue.

(3) Although Applicants referred in their Closing Statement to the Square 1661 developments as being "immediately across Military Road," this includes property more than

700 feet distant from their site. Using this radius, approximately 150 houses in the R-2 residential neighborhood are as close.

(4) To buffer the R-2 neighborhood to the east of 43rd Street, there is a broad band in which the height of each of these developments on Square 1661 never exceeds 45 feet. This transitional zone is six townhouses deep on most of the block.

See FhORD Exhibit C, "The subject site is not on the Wisconsin Avenue Commercial Corridor."

Applicants' Rebuttal: The Zoning Commission has the authority to amend the Zoning Map if a proposed rezoning is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641.01 of the D.C. Code. As was discussed in the Applicant's submissions to the Commission and in its testimony during the public hearings, the proposed rezoning meets these criteria as follows:

- The proposed zone is not inconsistent with the Comprehensive Plan;
- The proposed zone will not produce objectionable traffic conditions;
- The requested rezoning will promote the health and general welfare by stabilizing land values and facilitating Metro ridership; and
- The proposed rezoning will not lead to the overcrowding of land.

In this case, the location of the Site, the character of the surrounding area and the District's planning goals and objectives support the request for R-5-C zoning on this Site. Each of the criteria for a rezoning have been thoroughly discussed in the Applicant's submissions and in its testimony to the Commission.

Accordingly, this rebuttal addresses the primary issue raised by the opposition: namely, that the building is too big for the Site. Although the issue of traffic generation has been discussed extensively, the District Department of Transportation, as well as the Applicant's traffic engineer, find that the project creates no unacceptable traffic impact. A response to the opposition's traffic contentions can be found in Section II below.

As stated, the opposition argues that R-5-C zoning results in a building that is too big for the Site. However, when the development is reviewed in context and in relation to the existing and approved developments for the area, the Commission will find that the size of the building is entirely appropriate.

FhORD Response: The Applicants state in their Rebuttal that "when the development is reviewed in context and in relation to the existing and approved developments for the area ... the size of the building is entirely appropriate." We cite, in addition to other submissions, testimony, and other parts of this document, the following facts about the closest developments to all three sides of the triangular subject site. These facts demonstrate that the proposal is very significantly taller and very significantly more dense than its surroundings:

(1) To the east of the entire subject site is the Lisner Home property. The closest wing of the Lisner Home is two-stories, and the tallest part is three-stories. The Lisner Home has an FAR of less than 0.5.

(2) To the south-east is a two-story detached house on the corner of Military Road and 43rd Street.

(3) Due south, the majority of this site faces a development that is a maximum of 45 feet tall, that is set back approximately 80 feet from the Military Road right-of-way. This is the

"Courts of Chevy Chase" townhouse component of the McCaffery/Eakin YoungentobPUD,⁴ with an FAR of approximately 1.86.

(4) The only development in the District adjoining this site that is even as high than the proposed development is the small slice of the Chevy Chase Pavilion/Embassy Suites that is diagonally across from the site, and the Embassy Suites is the same height as the proposed development, according to the Applicant.

(5) The Chevy Chase Metro Building, 143 feet tall, is across Western Avenue and is in Maryland. The building is largely off-set to the west of the subject site and has frontage on the Western Avenue commercial corridor. Western Avenue is a Special Street [406.1(c); 806], and has a 120-foot wide right-of-way.

(6) To the northwest across Western Avenue, the majority of this site faces a development that will be approximately 35 and 45 feet tall, and continues at these low heights for a depth of approximately 150 feet (back from Western Avenue into Maryland). This is the grocery store component of the Chevy Chase Center, as approved for redevelopment. The Applicants repeatedly refer to this as a 90-foot tall development, which is totally misleading. The office component, which is the only part approved for 90-foot height, is far removed behind this two-story retail building, at least 270 feet away from the subject site. The FAR for the Chevy Chase Center redevelopment, including its parking lot, will be 1.123.⁵

(7) The Mazza Galleria development on Wisconsin Avenue is 65 feet high from an elevation at least 9 feet lower than the measuring point used by the Applicants,⁶ and thus the proposed development (assuming a legal height of 78.75' per the Applicant) would be at least 22 feet higher than the Mazza Galleria.

Thus, "when the development is reviewed in context and in relation to the existing and approved developments for the area" the size of the building is entirely inappropriate. See FhORD Exhibit D, "Rezoning the Washington Clinic site would destroy the transition band."

Applicants' Rebuttal: First, the proposed project will not cast a shadow on any residential property or impact the light and air of any residential property. Furthermore, attached hereto as Exhibit A are sectional drawings illustrating the visual impact of the size of the development from the perspective of a person standing in front of the closest single family dwelling.

These drawings illustrate the minimal impact on a person when viewing the project from the east. In fact, if townhouses with a height of fifty feet were constructed on the Site under the matter-of-right zoning as proposed by the opposition, the visual impact on the closest single family dwelling is more intrusive. See Exhibit A.

Moreover, as the Office of Planning testified, the best buffer is no building at all.

Thus, the proposed more than one-half acre of green, open space in conjunction with the setback of the proposed building, reduces the perceived visual impact on the area.

⁴ Zoning Commission Order 824: "...29 townhomes will be constructed as a buffer between the commercial area of Wisconsin Avenue and the residential neighborhood east of 43rd Street. ...The height of the townhomes will be approximately 45 feet to the top of the roof. ...The floor area ratio (FAR) of the project shall not exceed 1.86."

⁵ The Chevy Chase Center will have 412,000 sq. ft. on 8.42 acres [366,747 sq. ft, according to the Maryland Department of Assessments and Taxation], which yields an FAR of at most 1.123.

⁶ The measuring point for Mazza is no higher than the elevation at the corner of Western and Wisconsin, which is the highest point on the site.

FhORD Response: The Applicants claim that their Exhibit A drawings illustrate "the visual impact of the size of the development from the perspective of a person standing in front of the closest single family dwelling" (4228 Military Road). They further claim this impact to be "minimal," and that "if townhouses with a height of fifty feet were constructed on the Site under the matter-of-right zoning as proposed by the opposition, the visual impact on the closest single family dwelling is more intrusive."

However, the view when standing at the front door is by no means the only view of importance to the owner of this house. The subject site is the primary view from twelve windows in this house, all of which would be dramatically impaired.

The Applicants also present an illustration intended to compare the relationship between the house at 4228 Military Road and the existing buildings to its west (town houses and then the Embassy Suites) with its relationship to the development they propose. This is a meaningless comparison. The fact that this house is situated with the Wisconsin Avenue commercial corridor to its west does not justify imposing additional height and density to its north as well.

Furthermore, the claim that townhouses would be "more intrusive" on this house is flatly rejected by its owner, Hazel Rebold. Ms. Rebold, a visual artist who has owned her home for 18 years, feels that the least intrusive neighbor for her house and her residential neighborhood (entirely detached houses and townhouses) would clearly be more townhouses, not an eight-story apartment building.

Applicants' Rebuttal: Additionally, as testified to by the Applicant's experts in urban planning, the appropriate zoning for this Site is a designation that places the highest residential density on the Site without creating adverse impacts. As discussed in detail in the Applicant's submission and in its testimony, the project does not create adverse impacts on the nearby community. The proposed density of the project is less than that constructed or approved for nearby developments. Similarly, the height of the building is less than that approved by the Zoning Commission for Chevy Chase Pavilion, which has a height of one hundred feet (exclusive of the mansard roof and other architectural embellishments) adjacent to a residential townhouse development. This proposal reflects the same pattern of density and juxtaposition of height of this area and as is seen along Connecticut Avenue, while also respecting the specific site context and overall community.

FhORD Response: The height approved for the Chevy Chase Pavilion office component is not comparable; that is the denser zoning designed for frontage on Wisconsin Avenue. The Court of Chevy Chase zoning, the residential townhouse development, is comparable, as it is part of the exact same contiguous transition zoning as the Washington Clinic site. Further, the proposed development is higher than the buildings on Connecticut Avenue, and the denser zoning along Connecticut Avenue generally extends only 150 feet or so on either side of Connecticut Avenue.⁷ In contrast, the proposed rezoning would extend about 534 feet from Wisconsin Avenue (about 200 feet to the site from Wisconsin Avenue), plus 334 feet lot line of Lot 805. Thus, this comparison is misleading and does not support the Applicant.

D. BENEFITS OF APPROVAL OF PUD VERSUS MATTER-OF-RIGHT DEVELOPMENT

Applicants' Rebuttal: Approval of the proposed project as part of a PUD results in many benefits that would not occur with development of the Site as a matter-of-right. First, development of the Site as a matter-of-right requires no review by the community or the District. Thus, the developer can proceed without consultation with the city or the community. For instance, a townhouse development as a matter-of-right could have multiple curb cuts and primary access could be from Military Road, generating more traffic on that street.

⁷ The maximum the R-5-D zone extends on either side of Upper Connecticut Avenue (above Nebraska Avenue) is 173 feet to the west, and 300 feet to the east, and this "corridor zoning" fronts on Connecticut Avenue.

FhORD Response: In their Rebuttal, the Applicants erroneously claim that “a townhouse development as a matter-of-right could have multiple curb cuts and primary access could be from Military Road, generating more traffic on that street.”

All curb cuts require the approval of the Department of Transportation, as stated in Title 11 Regulations §2117.14: “Detailed plans shall be submitted to the D.C. Department of Transportation for approval of all curb cuts and driveway openings, to ensure that compliance with these regulations does not conflict with the responsibility of the Department to protect safety in the public space.”

It is unlikely that approval would be granted for “multiple curb cuts” on either Military Road or Western Avenue because of the traffic concerns stated by the Applicants. However, it is also unnecessary to have more than one curb cut for an entire townhouse development. A single curb cut could be made on Western Avenue, just like the one proposed by the Applicants. This can lead down into a common basement level, from which each owner enters their own two-car garage. This garage level can be just partially below grade, under townhouses raised up a few steps, and can be very attractive. One example of this creative plan for urban townhouses is the Villages of Bethesda, within one block of the busy Bethesda Metro. This plan eliminates driveways, maximizes landscaping, and maximizes townhouses per acre, all with a single curb cut. We have talked to the developers of both the Courts and Chevy Chase and the Villages of Bethesda about the subject site. They both are of the opinion that this is a very desirable site for a townhouse development, and there are no impediments to its feasibility here.

This townhouse plan also requires a somewhat smaller area to be excavated, and would preserve the 15 foot-wide strip of land (5,000 square feet) on the Military Road frontage of the Clinic site that is between the property line and the building restriction line. In the Stonebridge plan, this must be excavated for construction of their garage. On this strip there are 4 mature trees that could be saved with townhouses: two trees with trunk diameters of 10 inches, one of 22 inches, and one of 24 inches. Additionally, this area would not be made impervious, an important environmental consideration.

Applicants' Rebuttal: Furthermore, development as a matter-of-right would allow more site coverage and less common open space. The R-5-B District permits a lot occupancy of sixty percent, as compared to the proposed development which has a lot occupancy of less than forty-five percent. As a result, the community would not have the open space that will be provided as part of the proposed development.

FhORD Response: The lot occupancy for this project is stated to be 53% (fifty-three percent) for Lot 805 in Revised Pre-Hearing Submission of October 25, 2002, page 10. This is only 7% (seven percent) less than the maximum lot coverage allowed under the current R-5-B zoning for Lot 805.

Further, the Applicants imply that the open space on their site is public space, but as proposed, there is no assurance that it will in fact be public space. To ensure that the courtyard and other open space are public space, if this project were to be approved, it is essential that the Zoning Commission incorporate into a final PUD order the condition that the courtyard and all other open space be open to the public without restriction for the duration of the PUD, that the condominium by-laws and other relevant documents reflect this, and that no portion of Lot 805 or Lot 7 can be fenced off or otherwise designated as an outdoor play area for the exclusive use of CCPCC or the residents of the residential building. In addition, it would be appropriate to require signage on the property indicating that the courtyard and other open space is open to the public, so that neighbors will not feel like they are trespassing on private property or otherwise inappropriately visiting the courtyard. Without such assurances, the courtyard will likely either

be restricted by the condominium owners, or otherwise not be actually available or welcoming to neighbors.

Applicants' Rebuttal: The R-5-B zoning also permits projects as a matter-of-right, such as a much larger medical clinic, which would create significant negative impacts on the area, especially in terms of traffic and parking. Finally, development of the Site as a matter-of-right results in the loss to the community and the District of affordable housing, improvements to the Chevy Chase Park, expansion of the day care facilities, significant landscape improvements, economic benefits, traffic and pedestrian safety improvements, and any type of construction management plan. Accordingly, because there are no unacceptable adverse impacts, the community and the District are substantially benefited by development of the Site under a PUD when compared with development as a matter-of-right.

FhORD Response: In the Rebuttal, the Applicants maintain that "R-5-B zoning permits projects as a matter-of-right, such as a much larger medical clinic." Given the zoning limitations on a medical clinic that can be developed in R-5-B, it is unlikely that any developer would opt for this use.⁸

Any clinic which can be developed as a matter-of-right in an R-5-B zone is limited to a single joint practice, which likely would limit the size of the development. A collection of medical practices is not permitted in an R-5-B zone, even as a special exception. Further, it is unlikely that development of this site for a large, single joint medical and/or dental practice would be more profitable than residential development allowed as a matter-of-right. Therefore, the Applicant's association of unacceptable adverse impacts with matter-of-right development is unfounded.

The Applicants' "Proposed Elements of Construction Management Plan" submitted January 6, 2003, has many deficiencies. See FhORD Exhibit E, "Construction Management Plan is Inadequate for Protection of Owners of Nearby Property."

The Applicants maintain that there would be no unacceptable adverse impacts from the proposed development. It is clear from the evidence presented by FhORD, neighbors and other opponents that the negative impacts associated with the proposed development would be substantial.

II. TRAFFIC

Applicants' Rebuttal: The District Department of Transportation ("DDOT") in its supplemental memorandum to the Zoning Commission filed dated January 2, 2002, stated that "the project would generate approximately fifteen percent fewer AM and PM peak hour trips compared with the number of trips generated by the existing Clinic use." Thus, at the outset, the project has less of an impact on traffic than the existing use.

The DDOT filed two reports with the Zoning Commission (dated October 8, 2002, and November 13, 2002) as well as testified at the December 12, 2002, public hearing in support of the PUD application. The DDOT concluded that vehicular traffic generated by the proposed project can be accommodated with little or no negative impact on the area road network. This conclusion is the same as that found by the Applicant's traffic engineer, O.R. George & Associates.

⁸ In fact, R-4, and thus R-5-B, does allow a "clinic for humans" as a matter-of-right. [11 DCMR §330.5(f).] However, a clinic is defined as a "building or part of a building in which members of the medical or dental professions are associated for the purpose of conducting a joint practice of the professions." This use, however, is limited: "The term "clinic" shall be limited to those buildings in which the joint practice of medical or dental professions is conducted in such a manner that all fees for services rendered are established by and paid to a common business office without direct payment of the fees to individual practitioners, and shall not include a building in which the separate and individual practice of the above professions is conducted." [11 DCMR §199, emphasis added.]

The opposition presented expert testimony in an effort to establish potential adverse impacts on traffic related to this project. The memorandum from O.R. George & Associates, dated December 30, 2002, and attached hereto as Exhibit B, responds to each of the opposition's contentions and concludes that the project will have no adverse impact. The DDOT, as stated in its supplemental memorandum to the Zoning Commission on January 2, 2002, also reviewed Mr. Mehra's contentions and concluded that the proposed development will have no adverse impact on traffic.

FhORD Response: O. R. George & Associates, Inc. (ORG) has prepared a rebuttal statement, dated December 30, 2002, in response to Joe Merhra's (party-opponents traffic expert) testimony before the Zoning Commission. The rebuttal attempts to clarify the ORG study and the findings, but does not address the fundamental flaws that Mr. Merhra presented to the Commission. Mr. Mehra's written response statement, along with two charts, is attached hereto as Exhibit J. A summary of this response is as follows.

First, the Applicant continues to use the incorrect traffic volumes. The use of the correct volumes will result in LOS F at some of the intersections. ORG has attempted to show that LOS D is achieved if the Highway Capacity software or the Synchro model is executed with the site located in the Central Business District, and purports to show that LOS D and LOS C can be achieved at some intersections. However, the Applicants' results were achieved by reducing the future traffic volumes at several of the intersections, in comparison to the traffic volumes included in their earlier report, as submitted to the Zoning Commission. Some examples of traffic volumes that have been reduced from the earlier data: northbound Wisconsin Avenue at Western Avenue in AM peak hour reduced from 993 to 917; westbound Wisconsin Circle at Wisconsin Avenue reduced from 423 to 390; northbound on Wisconsin Avenue at Wisconsin Circle reduced from 1327 to 1248 in AM peak hour and from 1454 to 1377 in PM peak hour. These reductions have been achieved by the Applicant by reducing the timing of yellow and red signals, and increasing the timing of green signals, and other changes that either would sacrifice safety for more traffic flow or are not reflective of actual conditions, e.g. the actual number of lanes on the actual roads. This is set forth in more detail in the full written response at Exhibit J.

Second, the Applicants continue to use incorrect and unsubstantiated vehicle trip generation rates, and incorrect and unsubstantiated "split modal" reductions to account for transit usage. The Applicants underestimated the vehicle trip generation rates for the residential use at the Stonebridge project, as well as the vehicle trip generation rates for nearby retail uses. For example, the Applicants state that for the WMATA retail use, the vehicle trip rate will be 54% less than the other local retail sites, which generate 2.8 trips per 1,000 square feet for all retail, which is exactly the rate a M-NCPPC report uses – using actual data -- for retail sites one hundred feet from the Metro station. Likewise, as to residential uses, actual data from the Twin Towers Apartment building in Silver Spring, located approximately 900 feet from the Metro rail station, shows a vehicle trip rate that is approximately 36% more than the trip rates used by the Applicant. This is set forth in more detail in the full written response at Exhibit J.

As to the modal reductions, ORG has assumed a 65% mode split share for transit and walk uses in their analysis, or 50% if adjusted to accommodate DDOT's response. However, the Friendship Heights Sector Plan study used a higher vehicle trip rate for apartment uses. Further, actual data collected by the M-NCPPC, however, shows a much lower transit usage, as documented in the report entitled, A Post-Metrorail Transportation Characteristics Study®, Prepared for the M-NCPPC, July 1987. This report shows that the mode share for the Barlow Building and the Chevy Chase buildings, located in Friendship Heights, are only 20 to 27 percent (and one would expect office buildings to have a higher transit use rate than residential buildings). Excerpts from this report are attached to the written response at Exhibit J.

Third, the Applicant continues to misstate future traffic growth rates. The Applicant's own rebuttal shows that the traffic volumes on Wisconsin Avenue have increased by 3.4% per year, however, ORG has used 2% per year in their analysis. This results in an underestimation of traffic volumes on Wisconsin Avenue by 5% or approximately 1,500 vehicles daily.

Additionally, the Applicant has not included the 328 trips to be generated by the occupancy of the Chase Tower development. The Applicant notes that the Tower was occupied at the time of traffic counts in January/February of 2002, but that is incorrect and, in fact, the building appears not be occupied to date. The Applicant continues to brush aside safety issues. For example, the Applicant has not addressed the major safety issue with the proposed garage exit being approximately 50 feet offset from the Wisconsin Circle intersection. The garage exit lines up with the eastbound Wisconsin Circle at the intersection. There is a high probability of head-on collisions due to this off-set. The Applicant also has not proposed binding conditions that would prohibit the loading dock from being used during the drop-off or pick-up times for the day care center, thus they fail to address the serious safety issue created by a combined loading dock/day care parking lot.

In response to DDOT's comments, DDOT's comments on Mr. Mehra's testimony are largely the same as the Applicants' rebuttal comments and therefore the above response applies to DDOT's comments, as well. DDOT has also presented 2000 Census data (which it calls 2002 Census Data) regarding commuting to work. Census tracts 11 and 10.1 which include the site and the immediate Friendship Heights area show that 33.9 percent and 29.9 percent of commuters, respectively, used transit. These numbers are significantly below the 50% transit usage assumed by DDOT for Stonebridge. In an inexplicable stretch to support its desired conclusion, DDOT provides transit usage data for other communities in the District with approximately 50% transit usage. These communities have characteristics that are different from the Friendship Heights area and the transit usage can not be assumed to be the same.

In summary, the Applicants' rebuttal has not provided any new valid information that can support their traffic analysis and results, and Mr. Mehra's conclusions and concerns are still valid.

Though much of this data and analysis is technical, at base the Applicants' errors are fundamental, significant and easy refuted, as the following table demonstrates.

Comparison of Stonebridge Theoretical Traffic Generation versus Actual Traffic Generation Based on Census 2000 Data (Census Tract 11, Block Group 5)			
	Actual Census Data	Stonebridge Theory (Using O.R. George Method)	Correct Stonebridge Estimate (Using Census Data)
Housing Units	517	125	125
Total Trips Generated	1.543/unit 798 ⁹	0.5/unit 62	1.543/unit 193
Transit Use	330 (0.638/unit)	31 (0.25/unit trip generation after 50% modal split)	78
Car, Truck Or Van	343 (0.663/unit)	31 (0.25/unit trip generation after 50% modal split)	83
Walk, Bicycle or or Work at Home	125		30

Thus, Stonebridge estimates that the project will generate 31 automobile trips each morning and each evening. Using the actual commuter transit uses of the neighborhood, the project will generate 83 automobile trips each morning and each evening, or 268% of the Applicants' estimate. There is no question that this actual empirical data should trump the Applicants' various theoretical analyses, and there is absolutely no support for the Applicants' assertions that new residents will be more transit oriented than the existing close-in neighborhood or will be more like some other neighborhood – St. Elizabeth's hospital area or north of Union Station – than the actual Ward 3 neighborhood in which it will be located.

III. SUFFICIENCY OF AMENITIES

Applicants' Rebuttal: The Zoning Regulations require the Zoning Commission to 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 of a specific case. The Applicant proposes a substantial Community Amenity and Benefits Package for this proposal, which has been created and modified during this process in response to requests and issues raised by the community. The value of the package is in excess of \$1,700,000, as set forth in detail in Exhibit C, for those items that have a quantifiable value.

The opposition claims that certain elements of the Community Amenity and Benefits Package do not constitute an amenity or benefit for the community. The following is a summary of each contention and why each is without merit:

FhORD Response: The Applicants place a value on their proposed Community Amenity and Benefits package in excess of \$1,700,000. We demonstrate below that, for the most part, the

⁹ This corresponds exactly to the Census 2000 data that there are 798 workers over the age of 16 in Tract 11, Block 5. Of these workers, 61 walk or bicycle to work and 64 work at home.

claimed amenities have little or no value. In addition, the cost of the purported Amenities or benefits is not the correct measure of their actual value.

Some amenities, such as the affordable housing amenity and the day care amenity, lack any provisions that assure that the District or the community would more than a *de minimus* benefit from the proposed amenities. It is also clear that tinkering with the provisions of the affordable housing amenity or a day care amenity would not address that basic concern. Other proposed amenities, such as the claimed excess parking and visitor parking, and the open space and landscaping, are not superior to what would normally be provided with any development or even superior to that which would be required with development as a matter-of-right with current zoning. Other proposed amenities, significant additional open space and tree preservation, are, in fact, not provided in the project. Several proposed amenities, a gazebo, traffic enhancements, traffic management plan and pedestrian safety, are trivial in their nature. The only proposed amenity of demonstrated value is the \$75,000 in improvements to Chevy Chase Park,¹⁰ and this proposed amenity pales in comparison to the requested increase in height of over 38 feet and the increase in gross floor area of over 103,099 square feet.¹¹

Each of the proposed amenities is discussed below.

A. AFFORDABLE HOUSING

Applicants' Rebuttal: The opposition argues that the affordable housing amenity, which many (including the Office of Planning) have called an exceptional and precedent-setting part of this development, does not constitute an amenity for the community because (1) the Applicant's submission did not include sufficient specificity as to the operation of the program and (2) the amenity is an "inefficient" means of providing affordable housing.

First, in response to questions and comments raised during the public hearing process, the Applicant has provided additional specificity regarding the operation of the affordable housing program after further work with the Office of Planning and the Department of Housing and Community Development. This information is made part of this Post-Hearing Submission as Attachment 4.

FhORD Response: On December 16, in its testimony on the proposed affordable housing amenity, FhORD noted that while affordable housing may be desirable in concept, the Applicants' specific proposal would likely produce little, if any, benefit for the District inasmuch as: (1) it provided a very small number of units; (2) the duration of the amenity was at

¹⁰ The Applicant's have provided no assurance that this amenity will have the stated value. In fact, we understand that earlier estimates of the cost of the landscaping and track improvements for the park were in a much lower range. Thus, if this project were to be approved, the Applicant should be required either to contribute \$75,000 outright to the non-profit Friends of Livingston Park, or demonstrate that the cost to the Applicant of the improvements is that amount (or, if not, the difference would be contributed to the Friends of Livingston Park).

¹¹ The actual increase in square footage being requested exceeds the states 103,088 square feet, inasmuch as the Applicants have excluded from their calculations "bays projecting over the property line on Western Avenue" and two percent of the measured square footage to account for a "mechanical shaft deduction." The Zoning Regulations are clear, and according to the definitions in §199.1 the bays and the mechanical shaft area must be included in the gross square footage. The Zoning Regulations, Title 11, Chapter 1, Section 199.1, define the term "Gross floor area" as "the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls . . ." Further, "The term "gross floor area" shall include basements, elevator shafts, and stairwells at each story; floor space used for mechanical equipment (with structural headroom of six feet six inches (6 ft. 6 in.) or more); penthouses; attic space (whether or not a floor has actually been laid, providing structural headroom of six feet six inches (6 ft. 6 in.) or more); interior balconies; and mezzanines. The term "gross floor area" shall not include cellars, and outside balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building." The Applicants are actually requesting an increase of gross floor area of over 109,000 square feet.

most 20 years; (3) the proposed sale and resale restrictions would be impossible to enforce; and (4) there is no adequate enforcement mechanism to ensure that the target audience is notified when the units become available or that these units would, in fact be owner-occupied. It was also pointed out at the hearing that the eligibility criteria was would include as eligible individuals, such as medical students, that by most standards are not the appropriate targets for an housing subsidy program.

In the Rebuttal, the Applicants stated that they have worked with OP and the Department of Housing and Community Development to provide additional specificity to address each of these concerns. The result of this effort was provided at their Attachment 4 to the Post-Hearing Submission. We reviewed Attachment 4 and have concluded that it does not in fact adequately address these concerns and that the District is unlikely to benefit from this proposal. The proposed affordable amenity program, as revised in the Post-Hearing Submission, remains a poster child for how not to effectively provide affordable housing to District residents. Any subsidy program that is based on awarding windfall gains to four to six lottery winners does not effectively advance the associated goals of that policy.

FhORD had noted that the basic approach taken in the affordable housing proposal was fatally flawed, that absent significant, costly, continuous and unacceptably intrusive regulation and enforcement by the District, such a program would not succeed in providing affordable housing opportunities to a reasonable number of households in the target population. This would be true for any proposal that involves selling units for significantly less than their market value. Other programs, such as the Home Purchase Assistance Program [HPAP],¹² can provide a modest subsidy to a relatively large number of households and enable them to purchase a residence in the District. By providing a relatively small, but effective subsidy to each target household, enforcement and monitoring issues are kept at a minimum and the associated level of regulation and intrusive monitoring is also kept to a minimum. When the subsidy for each household is substantial, the program will necessarily serve fewer households and will necessarily require more regulation, monitoring and enforcement to ensure that each of the restrictions of the program are maintained.

While the Applicants in their submission have attempted to address the issues of duration of the program and the enforcement of the conditions, the proposal in Attachment 4 does not achieve this goal. As pointed out at the hearing, use of HPAP certification to determine whether a household is qualified for this large subsidy produces anomalous results. For example, a fourth year medical student would likely qualify and would be able to remain in the unit for a significant period of time even after becoming a licensed physician. As noted above, HPAP certification is meant to determine eligibility for a modest subsidy, a low-interest loan to enable lower and moderate income persons and families to make a down payment toward a first home purchase within the District of Columbia as his or her primary place of residence, with principal and interest to be paid in full at an interest rate of no less than 3%.

There are many ways in which the intent of this program can and is likely to be evaded:

¹² The District of Columbia web site has a description of its Home Purchase Assistance Program: "The Home Purchase Assistance program provides interest-free and low-interest loans to qualified residents, which enables them to purchase houses, condominiums, or cooperative apartments. Residents who are accepted into the three-tiered program are eligible for loans to meet down payment and closing cost requirements. The loan amounts are based on a combination of factors, including income, household size, and the amount of assets that each applicant must commit toward a property's purchase price. Loans provided are subordinate to private first trust mortgages." [http://dhcd.dc.gov/services/home.shtm#HPAP]

1. If the initial lottery is not well publicized, the initial allocation of units can be tainted.
2. A more difficult problem occurs when each of these four to six units becomes available for resale, since it is unlikely that a major effort can or would be made to inform all eligible households of their availability.
3. Further, the seller would be selecting the purchaser, and there are many complexities in determining the actual compensation that the seller would receive and whether there were any other transactions associated with the sale to allow the seller to net more than the allowable return.
4. Most importantly, it is almost impossible, absent bed checks, to guarantee that the units would actually be owner-occupied. The standard homestead exemption involves a \$288 per year benefit related to owner-occupancy, and yet there have been problems with unqualified home-owners claiming the \$288 annual benefit. Given the potential gains associated with owner-occupancy of these four to six units, the incentive to falsely claim that status is enormous, and that restriction could not possibly be enforced through a commitment to "continuous owner occupancy," as proposed. Other methods of verifying owner-occupancy would either be ineffective or unacceptably intrusive.

The Applicants also propose that each homeowner, on resale, will see an increase in price up to "the cumulative change in the consumer price index plus the cost of permanent improvements to the unit." Again, given that the units are worth approximately twice the initial offering price, each homeowner will receive the specified return. Market rate purchasers, however, are not guaranteed a return equal to the increase in the CPI. In fact, in recent years, some homeowners near the subject site had lost money on resale. While the return on subsidized purchases of owner-occupied housing must be capped, it is inappropriate to guarantee this return on resale, and this guarantee exacerbates the enforcement issues associated with the proposal by increasing the incentive to evade the intent of the program.

In summary, the terms of eligibility and continuing eligibility, i.e., owner-occupancy, are unenforceable, and the proposal to enforce the restrictions on resale "through a deed restriction, covenant and/or other legal means" is unworkable inasmuch as there is no party with standing and an interest in enforcing those terms. In any event, the Applicants have not submitted a draft document of the sort that they believe would accomplish the intended goal, and such an important matter – how the restriction will actually be enforced -- cannot be swept under the rug or left for some future point.

The Applicants also have not considered the likelihood that qualified owner-occupants will default on their mortgages. In determining the maximum income and the selling price, the Applicants have assumed a monthly condominium fee of \$200. If condominium costs exceed that amount, qualified owner-occupants might be required to spend a relatively high proportion of their income on housing related costs, increasing the likelihood of default, or requiring cross-subsidization from the owners of the market rate units. A requirement of cross-subsidization raises substantial consumer protection issues in the sale of the market-rate units, and absent such a requirement, the likelihood of default for the affordable units is substantial if those units are actually purchased by qualified households. In addition, the resale price is increasing with the CPI plus permanent improvements, while the qualifying income is based on the "low income level" allowed under the Section 8 Program or an appropriate successor program. The qualifying

income might not be increasing at the same rate as the price of the resold units is increasing, and this would result in either a high probability of default or a likelihood that the units will not be purchased by the truly qualified households.

In addition, a review of condominium sales listed on the District of Columbia web-site indicate that within five months, from June 2002 through November 2002, 61 condominiums in Ward 3 sold for less than the price at which Stonebridge is offering to sell these affordable units. In those five months, another 18 units in Ward 3 sold between \$166,393 and \$180,000, and an additional 18 units between \$180,000 and \$190,000 sold. Many of these units were near a Metrorail station.

Applicants' Rebuttal: Second, the opposition contends that this amenity is an "inefficient" means of providing affordable housing, arguing that the inefficiency results from devoting larger, more expensive units to affordable housing. The Applicant has provided this amenity after significant work with the Office of Planning in accordance with the policies currently in place in the District. In fact, this application appears to be the first residential project to voluntarily include an affordable housing component.

Furthermore, the Ward 3 element of the Comprehensive Plan specifically states that affordable housing is to be treated as an important public amenity. 10 DCMR § 1402.5(d). Thus, the proposed affordable housing units constitute an amenity entitled to consideration by the Zoning Commission.

FhORD Response: In the Rebuttal, the Applicants state: "the Ward 3 element of the Comprehensive Plan specifically states that affordable housing is to be treated as an important public amenity. 10 DCMR § 1402.5(d). Thus, the proposed affordable housing units constitute an amenity entitled to consideration by the Zoning Commission." While it might be appropriate to include the proposed four to six affordable housing units as an amenity, the Applicants claim that the value of the four to six units is \$100,000 to \$150,000 for each unit provided. However, condominium units in Ward 3 could be made available at the target price of \$166,393 at a significantly lower cost. It is not appropriate to value this amenity at more than the cost of selling condominium units in Ward 3 for \$166,393. Condominium units in Ward 3 are available for less than \$166,393, and additional units in Ward 3 can be provided in this price range by other means. While there would be excess demand to buy units these units for \$166,393, approximately half their market value, the Applicants have not provided evidence that individuals wishing to purchase condominiums in this price range have been unable to find market-rate units. Further, if four to six units can be provided in a renovated building or at another location, for slightly more than \$166,393 each, the value of the amenity is properly only the difference between the cost of those four to six units and the \$166,393 that the target households pay. Given the availability of units in this range and given the small number of units that the developer is proposing to provide, the value of this amenity is small, no more than \$50,000. However, unless the Commission determined that the proposed regulatory and enforcement measures were sufficient to assure that the amenity would actually result in more affordable housing available to target households, the proposed affordable housing amenity would have no value.

B. HOUSING AS AN AMENITY

Applicants' Rebuttal: The opposition argues that housing cannot be considered an element of the Community Amenity and Benefits Package because it could be provided as part of a development under the matter-of-right standards. First, Section 2403.9(f) of the Zoning Regulations specifically identifies housing as an amenity and does not differentiate this amenity on the basis of whether the same number of housing units could be provided under the matter-of-right zoning. The Zoning Commission has previously concluded that housing constitutes an amenity for development of residentially-zoned properties in the following recent cases: Zoning Commission Order No. 831 (3133 Connecticut Avenue, N.W. – The Kennedy-Warren) (effective December 19, 1997); Zoning Commission Order No. 870 (7th and G Streets, S.W.) (effective

February 26, 1999); and Zoning Commission Order No. 945 (EYA Development Inc., Bryan School) (effective September 28, 2001).

Second, although residential uses are permitted under the matter-of-right zone, the opposition fails to acknowledge that there is no guarantee that housing would be provided. The R-5-B zone permits a broad range of institutional uses, including a medical clinic, hospital, museum, or church. Because the R-5-B District does not require residential uses, the Applicant could develop the Site with nonresidential uses. Therefore, housing is a substantial and important amenity.

FhORD Response: The Office of Planning's written report indicated that it was reluctant to consider the provision of housing in a residential zone as an amenity, though inexplicably it modified this position slightly in favor of the Applicants in its testimony. In addition, the Applicants proposed no additional housing over that possible under matter of right development. Further, there is very little likelihood that a non-housing use would be pursued at this site; given the neighborhood, Office of Planning, Comprehensive Plan and city interests and policies, there would be no support for any non-housing use of this site (and no expectation of any favorable BZA or Zoning Commission treatment if necessary). Thus, though a strict matter of right non-housing use may be theoretically possible, this is a red herring.

C. DAY CARE CENTER

Applicants' Rebuttal: The opposition argues that the proposed day care center is not an amenity because there is no guarantee that the center will benefit the community and because the day care center does not constitute "affordable" day care. First, the Applicant has committed to provide the day care as an extension of the existing Chevy Chase Plaza Children's Center (the "Children's Center"), created as part of the Planned Unit Development approved by the Zoning Commission in Zoning Commission Order No. 519 and will proffer conditions in its proposed Findings of Fact and Conclusions of Law to target the day care center's services to benefit the community.

FhORD Response: In their Rebuttal, the Applicants state that they "will proffer conditions in their proposed Findings of Fact and Conclusions of Law to target the day care center's services to benefit the community." This is insufficient for two reasons:

(1) FhORD has already demonstrated that there is unlikely to be sufficient demand for market-rate day care space in the community. FhORD has provided data showing that, in Census Tract 11, which is slightly larger than the area between Connecticut and Wisconsin Avenues on the east and west and Western and Nebraska Avenues on the north and south, there are a total of 118 children under the age of 6 that have no parents outside the work force.¹³ The Applicants are asking to increase from 16 to 60 the number of market rate day care slots provided by CCPCC designated in PUDs to serve a portion of Census Tract 11. Clearly, there is no demonstrable need for this proposed amenity in this neighborhood.

(2) On December 16, FhORD has provided language that might be used if a day care amenity is considered appropriate. The Applicants have had an ample chance to review that language, and proffer appropriate conditions. The Applicants have not provided language in a timely manner than can be reviewed by FhORD to determine whether it does provide appropriate safeguards to target the day care center's services to the community

¹³ There are 244 children under 6 years old in Census Tract 11. Of those, 234 children live with both parents. For 118 children living with both parents, both parents are in the labor force. For 87 children living with both parents, only the father is in the labor force, and for 22 children living with both parents, only the mother is in the work force. Ten children in Census Tract 11 live only with their mother, and for all 10 of those children, the mother is not in the work force.

(3) Moreover, if there were determined to be a demonstrable need for day care as a neighborhood amenity, it could be provided in a much more cost-effective manner. As noted in earlier filings and at the Hearing, day care capacity to serve neighborhood families can be increased by specifying a space in the project that could only be used for that purpose. Provided in a cost-effective manner, a day care capacity could be provided at a relatively low cost. The cost would be the difference between the rent that could be charged a day care center and the rent that could be charged if converted to another allowable use. In this instance, the cost would be the difference between the rent that could be paid by a day care center, with a projected gross annual revenue of approximately \$500,000,¹⁴ and the rent that could be obtained if the day care center were to be converted to single-family housing. The amenity would be valued at the lesser of that amount or the value of additional day care capacity. Therefore, the value of the proposed amenity would be negligible. Ms. Danahy, Executive Director of the Chevy Chase Plaza Children's Center, submitted a separate rebuttal to the FhORD testimony. FhORD's response to the Supplemental Submission of the Chevy Chase Plaza Children's Center is attached. See FhORD Exhibit F..

Applicants' Rebuttal: Second, neither the Zoning Regulations nor the Comprehensive Plan require that a day care center must provide "affordable" or subsidized day care (as compared with market rate day care) in order for such facility to constitute an amenity for a PUD application. There is no basis for the proposition that a day care facility providing market rate services is not an amenity. Furthermore, the Children's Center is a not-for-profit organization with a mission to provide quality care for children between the ages of three months and five years of age.

FhORD Response: Applicants state that neither the Zoning Regulations nor the Comprehensive Plan require that the day care center provide affordable child care. However, the clear intent of the policies to encourage additional day care capacity is to have *affordable* day care available. For example, the Economic Development Element of the Comprehensive Plan includes the following section: "Affordable, quality child care is an essential precondition for parents with children under the age of fifteen (15) to enable them to work, seek employment, compete school, and participate in job training programs." [10 DCMR §200.14 emphasis added.] The Housing Element of the Comprehensive Plan states; "Zoning and health-care regulations should be designed to promote and increase in affordable child care programs and facilities." [10 DCMR §3007, emphasis added.] The Ward 3 Comprehensive Plan makes it clear that the expanded day care capacity is to be developed in the commercial zones, not the residential zones. [10 DCMR §1409.2.] Given the amount of traffic that would be generated by the proposed day care center, if the CCPCC were to apply for a special exception to locate in an R-2, they would not meet the criteria set out under 11 DCMR §205.

The Applicants also state that the CCPCC is a non-profit corporation.¹⁵ Non-profit status does not mean that the community will benefit from the expansion of the CCPCC. In Zoning Commission Order 519, it was stated that the CCPCC received "a rent concession of approximately \$42,900 per year." In the proposed PUD, the CCPCC will be receiving a more

¹⁴ The CCPCC charges approximately \$1,000 a month for a full time student, and slight higher prorated amount for a part time student. Parents are also expected to pay other fees, make other contributions and to help with additional fundraising. Full tuition for 44 full time students for 12 months would be \$528,000.

¹⁵ According to the Internal Revenue, "To be tax-exempt as an organization described in IRC Section 501(c)(3) of the Code, an organization must be organized and operated exclusively for one or more purposes set forth in the IRC Section 501(c)(3) and none of the earnings of the organization may inure to any private shareholder or individual." Qualification for non-profit status does not provide a test of whether a specific organization provides benefits a particular community as contemplated in a Zoning Commission Order.

substantial rent concession. There is no evidence that the community has benefited from this subsidy in the form of below-market rates, scholarships for lower-income families or similar benefits.

D. TREE PRESERVATION

In Applicants' Rebuttal: response to the community's concerns, the Applicant redesigned the project and its underground parking facilities, as described in the August 19, 2002, Prehearing Submission, in order to save twelve existing mature trees on the southeastern portion of the Site. Since that time, the project has undergone further revision, and the boundaries of the Site have changed such that six of the existing mature trees saved as part of the redesigned project are no longer within the boundaries of the Site. Exhibit D illustrates the changes in the boundaries of the Site and reflects the existing trees proposed to remain.

The opposition argues that, as a result of the boundary change, tree preservation no longer constitutes an amenity to the community. This argument is without merit. First, the six mature trees that are no longer on the Site will not be removed by the development. The Applicant still proposes to retain the remaining six mature trees within the boundaries of the Site. Furthermore, throughout the entire process, the Applicant has agreed to retain ten existing trees along Western Avenue and Military Road. Finally, the Applicant proposes significant new landscape improvements that will also serve as a benefit to the community.

FhORD Response: Remarkably, the Applicants claim in their Rebuttal that they provide an amenity of tree preservation because they are not buying land with as many trees on it as certain other areas of land that they could have owned but decided against. It is fallacious for the Applicants to claim that they have decided to preserve six other trees by not buying them and removing them. Having decided not to buy these trees, the Applicants have no control over them whatsoever.

The Applicants state in their Rebuttal that "the six mature trees that are no longer on the Site will not be removed by the development." It is obvious that all trees not on their site "will not be removed by the development." This applies as well to the city-owned trees existing in the right-of-way of both Military Road and Western Avenue, which Applicants also claim to preserve, although they have no right to remove these city trees under any circumstance.

Additionally, one of the trees claimed as preserved is clearly almost dead and is also located right against the garage excavation, where it could not survive even if it were healthy now. Another tree, ostensibly to be preserved by a small recess in the garage perimeter, is unlikely to survive construction well within its root-zone. The sixth of the "six mature trees within the boundaries of the Site" cannot be identified, although perhaps reference is being made to the small (6") pine tree which is actually located on city property.

Since the only trees to remain on their entire one and one-third acre site would be three small sycamores (each with 6" trunk diameter), it is not reasonable to construe this as tree preservation.

Additionally, new trees cannot be planted on almost the entire Clinic site, since the parking garage extends under virtually all of it, even past the building restriction line and right up to the property line. This leaves a depth of soil that can only support plants of a very small size. More trees could be preserved, however, using the development plan that Opponents have described above for townhouses with their garages entered from a common underground parking level. See FhORD Exhibit G, "Three small trees will be preserved on the site."

E. OPEN SPACE

Applicants' Rebuttal: Section 2403.9(a) of the Zoning Regulations identifies the creation or preservation of open space as an amenity to be considered by the Zoning Commission. As part of its proposal, the Applicant has incorporated approximately 24,700 square feet (more than one-half acre) of landscaped green space.

The opposition argues that because there is currently no building constructed on that portion of the Site, the Zoning Commission should not consider this proposed amenity. The Washington Clinic development includes a large-sized parking lot covering much of the eastern portion of the site. The Applicant proposes a green space with landscaping, pedestrian paths and a central meeting area in place of this parking area. Furthermore, Attachment 1 illustrates the beneficial impact that the green space will have on the development of the Site.

FhORD Response: Regarding the Applicants' claimed provision of Open Space as an amenity, the Opposition cannot identify the argument to which reference is made in the Stonebridge Rebuttal. They claim to refute an Opposition position "that because there is currently no building constructed on that portion of the Site, the Zoning Commission should not consider this proposed amenity." This is not a position taken by us.

However, the FhORD notes that the open space provided on the Clinic portion of the site is only seven percent greater than the minimum required under matter of right development (as per Revised Pre-Hearing Submission October 25, 2002, drawing D1: 47% provided; 40% required under R-5-B).

Although the Applicants refer to providing "central meeting area," there is no provision to assure that the public will be allowed access to this private property owned by the condominium association.

Applicants' Rebuttal says "Furthermore, Attachment 1 illustrates the beneficial impact that the green space will have on the development of the Site." This illustration is misleading. By adding green color and trees to areas of the photograph that are adjacent to, but not within the subject site, this implies that the site includes the city-owned right-of-way on the Military Road and Western Avenue frontages, and a large area that is actually part of the Lisner Home grounds.

F. TRAFFIC AND PEDESTRIAN SAFETY IMPROVEMENTS

Applicants' Rebuttal: As part of the Community Amenity and Benefits Package, the Applicant's traffic engineer, O.R. George & Associates, completed a study identifying modifications to traffic and pedestrian patterns in the neighborhood to benefit the community. The Applicant proposes working with DDOT to refine and implement the proposed improvements and modifications to 43rd Street, Military Road, and Western Avenue.

The opposition argues that these improvements do not constitute an amenity because such improvements serve only to mitigate traffic impacts created by the project. This statement is incorrect. As presented in the Applicant's submissions and its testimony, these proposed improvements result in the mitigation of *existing* traffic operational and safety conditions and are not needed to mitigate traffic resulting from the proposed development. Therefore, the proposed improvements all serve to create a safer and more easily accessed community – a clear public benefit.

FhORD Response:

The proposed improvements serve only to partially mitigate traffic impacts created by the project and are necessary for the Applicant to market and sell the condominiums, which are located between Western Avenue (a major arterial) and Military Road (a minor arterial) and which require crossing one of these roads to obtain access to the Metrorail station and all restaurant, commercial and retail sites in Friendship Heights. Some of the proposed improvements have no demonstrated value.

The proposed "signal enhancement" at Western Avenue and Wisconsin Avenue does not mitigate the impact of the proposed development, as the signal is already projected to be at an F level or, with already planned mitigation in connection with other developments, at an E level.

The proposed signage improvements, signal modification and pedestrian crosswalk improvements are necessary to mitigate the impact of the project, and even then the Applicant has not demonstrated that these improvements will provide for safe vehicular and pedestrian access across the major arterial of Western Avenue or across Military Road, access which is necessary for entrance to the Metrorail station.

Specifically, the "limitation of parking and loading entrances to only Western Avenue" is, at most, a mitigation feature, and in fact the parking entrance offset from the Wisconsin Circle traffic creates the potential safety hazard of head-on collisions and the loading entrance combined with the day care parking lot creates obvious and serious safety risks. The "no left/U-turn signs at Military Road lay-by" is, at most, a mitigation feature; there are no current problems with left turns or U-turns at that location where there are currently three parking spaces for doctor-owners of the Washington Clinic. The signal modification at Wisconsin Circle and Western Avenue is obviously necessary for the functioning of the project, and does not mitigate any current problem. Signage improvements at Military Road and 43rd Street are necessary to provide for the safe crossing of day care children between the two facilities and for residents of the project. Signage improvements at Military Road and 42nd Street, where there already have been signage improvements, are unlikely to mitigate this unsafe intersection without the addition of a traffic light or stop sign; prior signage improvements at this intersection have failed to improve the safety of that intersection. Signalization improvements at Military Road and Reno Road have no demonstrated value and any improved flow on Military Road is likely to be offset by diminished traffic flow on Reno Road. "Traffic calming on 43rd Street" has not been specified, commented on by DDOT or the neighborhood, and thus has no demonstrated value. Lastly, the "crosswalk reconstruction" at Western Avenue and Wisconsin Circle, "at the building entry on Western Avenue, and on Military Road" are clearly necessary for the marketing of the project and the use of its residents, and these reconstructions have not been specified and likely are to create new traffic problems.

Further, the proposed project will create unmitigated significant safety hazards for the children to be enrolled in the new day care center, such as crossing Military Road during the morning and afternoon rush hours (for any children in fact walking to the center); crossing Military Road for all children who during the day need to get from the 43rd Street day care facility to the proposed new one; and loading and unloading into cars in the combined parking lot/loading dock for the residential building.

G. EXCESS RESIDENTIAL PARKING

Applicants' Rebuttal: As part of the Community Amenity and Benefits Package, the Applicant proposes the provision of additional residential parking in response to the community's request. The Zoning Regulations require one parking space for every three apartments, while the project proposes a parking ratio of 1.1 space per residential unit. First, in its supplemental memorandum to the Zoning Commission dated January 2, 2003, the DDOT concluded that the proposed number of parking spaces is more than adequate for the proposed project. Furthermore, the testimony of O.R. George & Associates established that the market demand for parking is less than 1.0 space per unit; thus, any parking above that ratio is an additional benefit to the community. Moreover, the opposition's argument that sufficient parking is not provided is addressed in the rebuttal memorandum from O.R. George & Associates, attached hereto as Exhibit B.

FhORD Response: In the Rebuttal, the Applicants claim that the proposal to provide a parking ratio of 1.1 spaces per residential unit is an amenity inasmuch as the Zoning Regulations require one parking space for every three apartments. First, for the current zoning, R-5-B, the Zoning

Regulations require one parking space for every two apartments. The Applicants appear to be citing the requirement for the requested zoning, R-5-C, and not the current zoning, R-5-B. [11 DCMR §2101.1]

The Applicants have ignored the available Census 2000 data on car ownership in the area. For Census Tract 11, Block Group 5, a small area between Fessenden Street and Western Avenue, east of Wisconsin Avenue, average vehicle ownership was 1.41 vehicles per occupied housing unit, for all housing units. See FhORD Exhibit H: "Census 2000, Aggregate number of vehicles available by tenure for occupied housing units." If one considers only owner-occupied units, the average vehicle ownership increases to 1.45 vehicles per owner-occupied unit. See Attachment 4. The Applicants estimate vehicle ownership averaging 0.7 vehicles per unit with no supporting evidence. This theoretical estimate must be outweighed by the actual data. Thus, Stonebridge residents can be expected to own between 155 automobiles (110 units) and 176 automobiles (125 units), and thus parking is inadequate, not excessive.

More importantly, the Applicants have ignored recent Zoning Commission Orders for comparable sites:

For the Tenley Hill PUD [Z.C. Order No. 904, Case No. 98-21C, September 13, 1999], near the Tenleytown Metrorail Station, the Zoning Commission required at least one space per unit with a provision for additional guest parking:

5. The project shall provide approximately 75 parking spaces on two below-grade levels and a loading berth as shown in the plans. The project will include approximately 52 parking spaces on the B-1 parking level and approximately 23 parking spaces on the upper parking level. There shall be at least a 1:1 ratio of parking spaces to units in the residential portion of the project. The use of the commercial portion of the parking garage by residents of the project and their guests shall be in accordance with the Commercial Parking Level Management Plan, as shown in Exhibit 51 of the record..

For the Abrams PUD [Z.C. Order No. 519, Case No. 85-20C, February 9, 1987] on Square 1661, the Zoning Commission required at least 1:1 parking ratio, and further required that the spaces be fully accessible, not available for commercial use and prohibited rental or separate conveyance:

12. The applicant shall provide not less than 248 parking spaces. The applicant shall also provide at least one fully accessible parking space with each apartment unit. Such parking shall only be used by the owner or occupant of the apartment and not for commercial use. The contract of the parking space shall prohibit later rental or separate conveyance of the parking space. [Z.C. Order No. 519, Decision, ¶12.]

For the Miller PUD [Z.C. Order No. 528, Case No. 86-21F/85-8P, April 13, 1987], also on Square 1661, the Zoning Commission also required at least one fully accessible space per unit for the exclusive use of the owner or occupant:

12. The applicant shall provide at least one fully accessible parking space with each apartment unit. Such parking shall only be used by the owner or occupant of the apartment and not for commercial use. The contract of the parking space shall prohibit later rental or separate conveyance of the parking space. [Z.C. Order No. 528, Decision, ¶14.]

The Miller PUD was not developed, and in November 1996, McCaffery Interest, Inc. and Eakin Youngentob Associates, Inc. applied for a modification of the Miller PUD. The modification was approved [Z.C. Order No. 824]. The residential component of the project consists of 29 townhouses, the Courts of Chevy Chase. Each townhouse has two parking spaces, either a two car garage or a one car garage and tandem space.

The Tenley Park PUD consists of 6 semi-detached units in three buildings, one and a half blocks east of the Tenleytown Metrorail station. The Zoning Commission required significant off-street parking, three spaces per unit, in this PUD:

Each unit will include a two-car garage, and six off-street parking spaces will also be provided, as shown on the plans marked as Exhibit No. 180. [Z.C. Order No. 921, Case No. 00-03C, November 16, 2001, Decision ¶6.]

The Applicants also state that market demand for parking is less than 1.0 spaces per unit. However, a review of condominiums in zip codes 20015, 20016 and 20008 with a floor area of at least 1,200 square feet listed on January 12, 2003 on "Realtor.com" indicates a large number of luxury condominiums with at least one garage parking space in the proposed price range or less. Thus, in order to be attractive relative to these other units, the Applicants' project would also need to provide at least one space per unit of garage parking. The Applicants cannot support the claim that the proposed number of spaces is superior to that which would normally be available in the type of development that they propose, and therefore cannot be considered excess parking and an additional amenity for the community.

Thus, in comparison to other Zoning Commission Orders and in comparison to vehicle ownership statistics for the area closest to the Metrorail Station, the proposed 1.1 spaces per unit, including visitor parking and day care employee parking, cannot be considered an amenity, and in fact, should be considered to be inadequate. Further, the proposed number of spaces does not exceed that which would be expected in the type of development proposed.

IV. ECONOMIC ANALYSIS

Applicants' Rebuttal: The detailed economic analysis presented by Dr. Marilyn Simon for the opposition concluded that the proposed project would provide approximately \$400,000 to \$500,000 in additional annual revenue over Dr. Simon's calculations for a project under the matter-of-right provisions. Bolan Smart Associates, the Applicant's expert in real estate economics, concluded that, even using Dr. Simon's inputs, the additional revenue would be approximately \$600,000 to \$800,000. Although the numbers are different, the premium is substantial under either set of numbers. Furthermore, this additional revenue is recurring and will likely increase over time. According to Bolan Smart Associates, even under Dr. Simon's calculations, this annual increase in revenue would be sufficient to support upwards of \$10,000,000 in expanded District bonding capability. Thus, under either the opposition's or the Applicant's analysis, the revenue created for the District is substantial.

FhORD Response: The Applicants have provided no response to the Dr. Simon's review of Mr. Smart's economic impact analysis. The Applicants also state, without explanation, that, using Dr. Simon's inputs, Mr. Smart determinate that the additional annual revenue associated with the proposed project over matter-of-right development would be approximately \$600,000 to \$800,000. Without an explanation of this conclusion, we cannot determine the source of Mr. Smart's error.

We have attached spreadsheets, FhORD Exhibit I, that calculate the income and real estate tax associated with:

- (1) the Stonebridge proposed project, which requests flexibility of an increase of at least 38 feet in height and an increase of over 100,000 square feet in gross floor area;
- (2) a matter-of-right development with townhouses and single-family houses; and
- (3) a modest PUD under current zoning, with condominiums, townhouses and single-family houses, requiring flexibility of an increase in 10 feet in height and less than 20,000 square feet in gross floor area.

These spreadsheets corrected Mr. Smart's analysis by:

- (1) replacing his assumed tax rates with the District tax rates in D-40,
- (2) adding the homestead exemption, which was omitted from Mr. Smart's calculation,
- (3) reducing the value of the affordable housing from the \$480,000 assumed by Mr. Smart to \$166,393 and reducing the income for the affordable units from \$144,000 to \$54,400; and
- (4) basing development under matter-of-right with current zoning on likely development with current zoning, rather than a smaller version of the Stonebridge proposal.

In one spreadsheet, the mix of owner-occupants, renters and senior was changed to match the mix in a similarly sized condominium building with units in the same price range. The spreadsheets were calculated using all of Mr. Smart's other assumptions. These spreadsheets clearly demonstrate that:

- (1) The Stonebridge proposal, basing the share of units that are owner-occupied with a standard homestead exemption, owner-occupied with a senior exemption and rented on the profile in a similar condominium in Ward 3, is estimated to yield annual real estate tax revenues of \$483,696 and annual income tax revenues of \$658,141, for total annual revenues of \$1,141,837.
- (2) Matter-of-right development under current zoning, consisting of 40 townhouses and 5 single family houses, is estimated to yield annual real estate tax revenues of \$342,000 and annual income tax revenues of \$596,623, for total annual revenues of \$938,623, approximately \$200,000 less than the Stonebridge proposal.
- (3) A modest PUD under current zoning consisting of 29 condominiums, 27 townhouses and 5 single family houses, requiring flexibility of 10 feet in height and 20,000 square feet in area, is estimated to yield annual real estate tax revenues of \$389,789 and annual income tax revenues of \$636,778, for total annual revenues of \$1,026,567, approximately \$115,270 less than the Stonebridge

The Applicants are requesting significant zoning flexibility, and clearly, the estimated additional tax revenues associated with this project are minimal over matter-of-right. The proposed development requires a significant amount of flexibility, more than twice the square footage allowed as a matter-of-right under current zoning, yet would produce only 15% more revenue. Comparable additional tax revenues can be generated with very modest flexibility and no change in current zoning.

The Ward 3 Comprehensive Plan states that "Discretionary zoning approvals, such as Planned Unit Developments, affecting Ward 3 shall . . . treat amenities such as tax revenues . . . as a requirement." 10 DCMR §1409.8(c)(3). Clearly, this requirement is not met with by the Stonebridge proposal.

V. PARKING

Applicants' Rebuttal: The opposition asserts that the parking garage is physically incapable of providing a maximum of 142 parking spaces, which is the number of spaces the Applicant proposes should the project include 125 condominium units (1.1 ratio plus four spaces for the day care center). The Applicant has studied its plans and has determined that it can satisfy a condition that would require a parking ratio of 1.1 spaces for the maximum number of units within the criteria set forth in the architectural plans and drawings. In addition,

the Applicant commits to provide a minimum number of bicycle parking spaces in an amount equal to twenty percent of the number of condominium units.

FhORD Response: FhORD notes that, as it presented in its testimony, using no more than two-levels of underground parking that does not extend beyond the Clinic property, the Applicants cannot achieve more than the 117 spaces – including inaccessible “tandem” spaces -- that are shown on the Applicants’ drawings. The Applicant’s rebuttal that the architect says he can accomplish the 1.1 to 1 ratio for up to 125 units is unsupported by drawings or analysis; implausible given the existing drawings; suspect and unreliable given the prior statement of the Applicants that additional parking would be achieved with a “half” of an additional (third) underground level of parking, and thus must be disregarded.

The parking that Stonebridge can actually provide is a limiting factor of this proposed development. As shown on the Applicant’s drawing A4, the Applicants can provide 96 accessible parking spaces, without going beyond two levels of underground parking under only Lot 805 – 117 total spaces, minus 17 tandem spaces, minus 4 accessible spaces for day care teachers. Alternatively, Applicants request flexibility to have up to 25% of the spaces as tandem spaces. If this were to be granted by the Zoning Commission, this would mean assurance of only 84 accessible spaces (75% of 117 spaces, minus 4 for day care teachers). Thus, under the Applicant’s assurance of a 1.1 to 1 parking ratio and the understanding that the Zoning Commission generally has required at least one accessible space per unit, the Applicants must be limited to either 94 units (or 84 units if 25% tandem flexibility is granted).

WAS1 #1148337 v1

FhORD Exhibits

FhORD Exhibit A: Official DC Zoning Map

FhORD Exhibit B: Census 2000, Means of Transportation to Work for Workers 16 Years and Over.

FhORD Exhibit C: The subject site is not on the Wisconsin Avenue Commercial Corridor

FhORD Exhibit D: Rezoning the Washington Clinic site would destroy the transition band.

FhORD Exhibit E: Construction Management Plan is Inadequate for Protection of Owners of Nearby Property

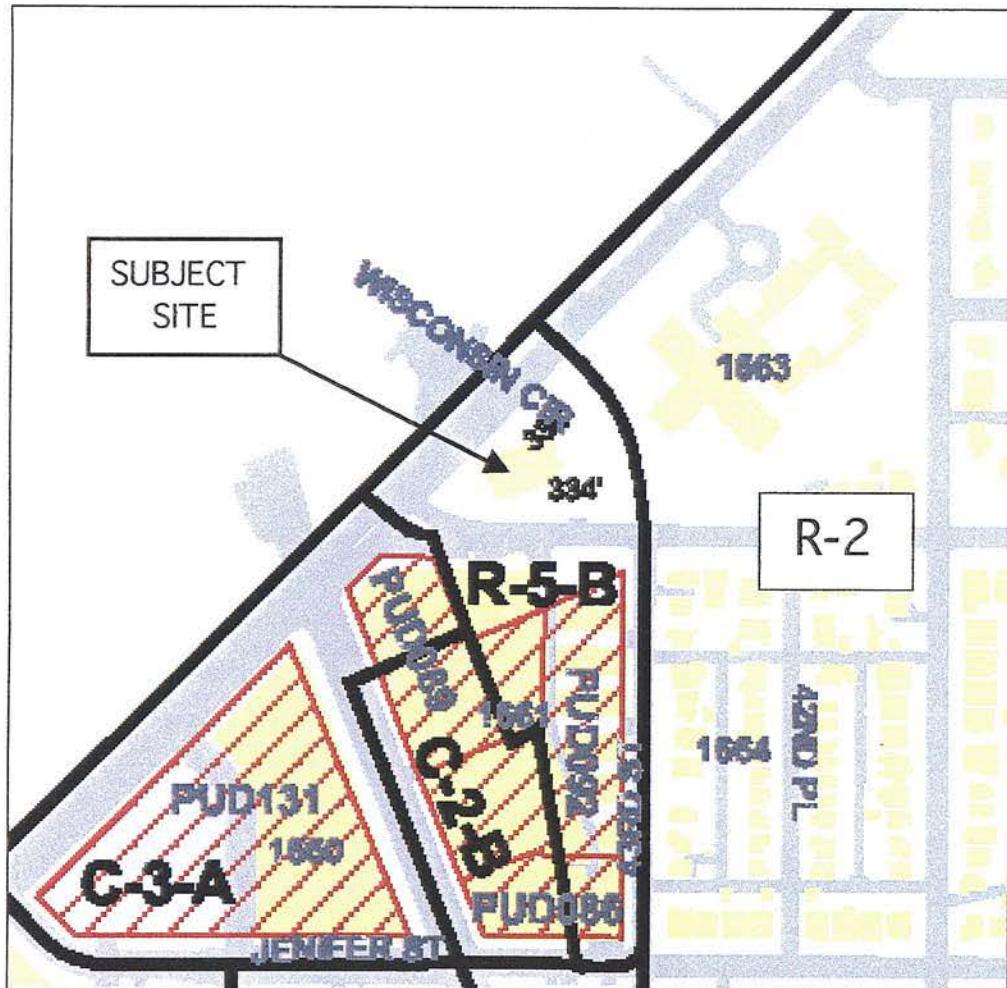
FhORD Exhibit F: FhORD Response to Supplemental Submission of the Chevy Chase Plaza Children's Center Dated January 6, 2003

FhORD Exhibit G: Three small trees will be preserved on the site

FhORD Exhibit H: Census 2000, Aggregate number of vehicles available by tenure for occupied housing units

FhORD Exhibit I: Calculation of Economic Impact: Stonebridge Proposal, Matter-of-Right with current zoning, Modest PUD with current zoning (106,000 SF)

FhORD Exhibit J: Response to O.R. George & Associates, Inc. Rebuttal Statement dated December 30



OFFICIAL DC ZONING MAP (October 2002)

The Washington Clinic site, along with the rest of the R-5-B band of zoning, provides the essential transition between the higher density Wisconsin Avenue commercial corridor and the low density R-2 neighborhood.

Official DC Zoning Map

Exhibit A

Exhibit B

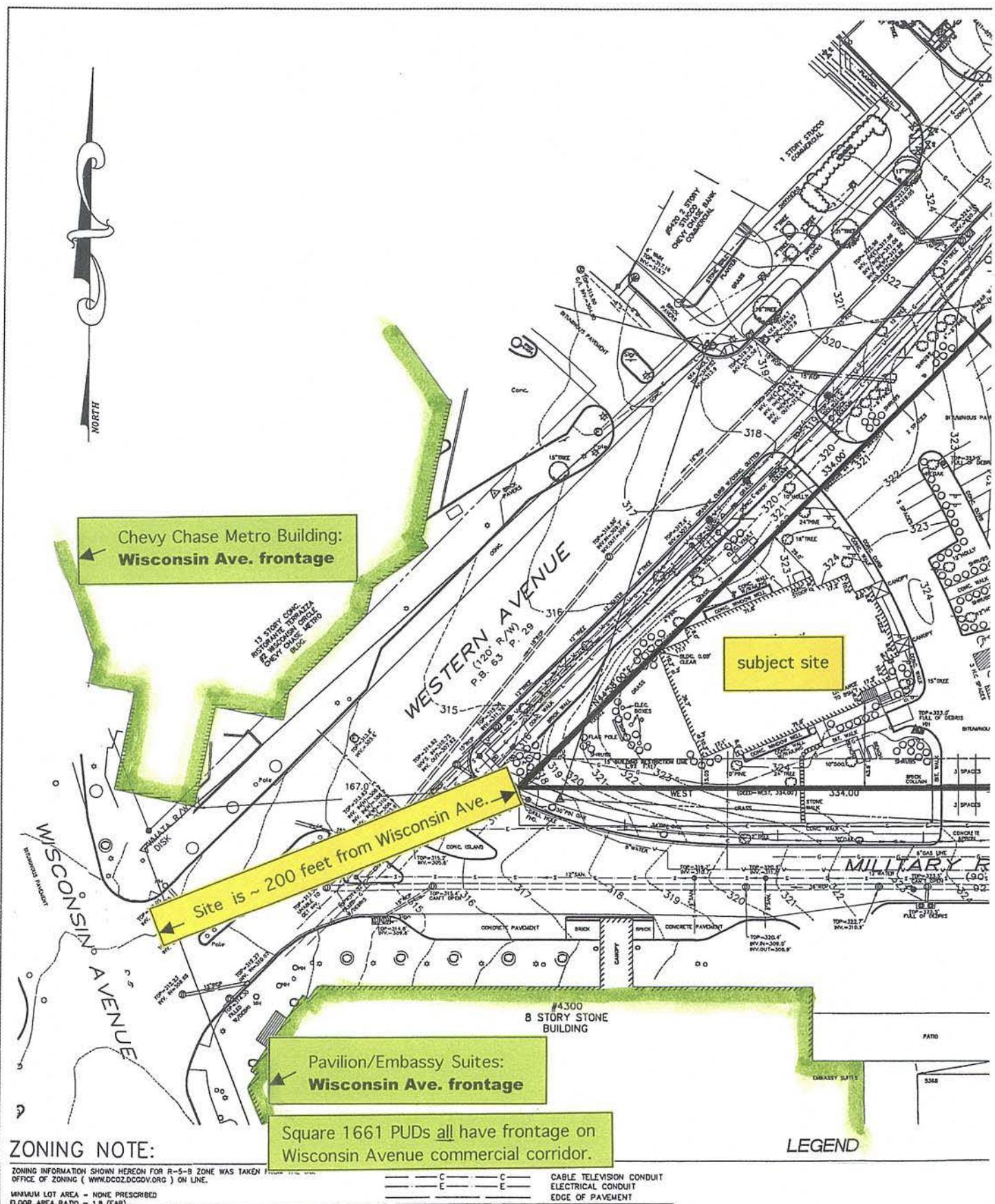
P30. MEANS OF TRANSPORTATION TO WORK FOR WORKERS 16 YEARS AND OVER [16] -

Universe: Workers 16 years and over

Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

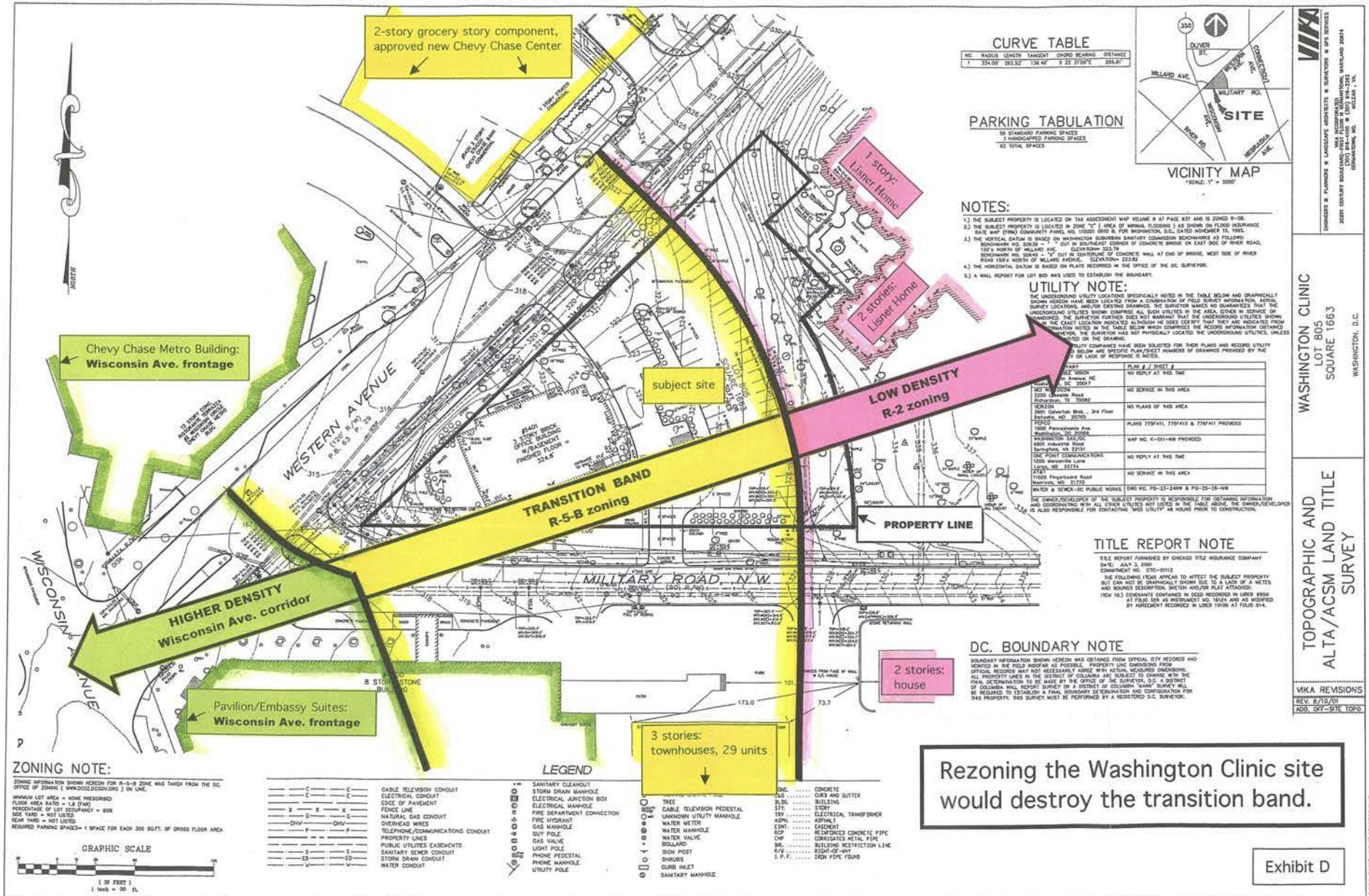
	Means of Transportation: Workers 16 & Older				Means of Transportation per Housing Unit			
	Block Group 1, Census Tract 11, District of Columbia, District of Columbia	Block Group 3, Census Tract 11, District of Columbia, District of Columbia	Block Group 4, Census Tract 11, District of Columbia, District of Columbia	Block Group 5, Census Tract 11, District of Columbia, District of Columbia	Block Group 1, Census Tract 11, District of Columbia, District of Columbia	Block Group 3, Census Tract 11, District of Columbia, District of Columbia	Block Group 4, Census Tract 11, District of Columbia, District of Columbia	Block Group 5, Census Tract 11, District of Columbia, District of Columbia
Total housing units:	757	306	274	517	757	306	274	517
Car, truck, or van:	505	236	233	343	0.667	0.771	0.850	0.663
Drove alone	423	183	227	325	0.559	0.598	0.828	0.629
Carpooled	82	53	6	18	0.108	0.173	0.022	0.035
Public transportation:	367	80	130	330	0.485	0.261	0.474	0.638
Bus or trolley bus	56	0	13	19	0.074	0.000	0.047	0.037
Streetcar or trolley car (público in Puerto Rico)	0	0	0	14	0.000	0.000	0.000	0.027
Subway or elevated	311	80	103	297	0.411	0.261	0.376	0.574
Railroad	0	0	7	0	0.000	0.000	0.026	0.000
Ferryboat	0	0	0	0	0.000	0.000	0.000	0.000
Taxicab	0	0	7	0	0.000	0.000	0.026	0.000
Motorcycle	0	0	0	0	0.000	0.000	0.000	0.000
Bicycle	11	15	0	14	0.015	0.049	0.000	0.027
Walked	46	15	6	47	0.061	0.049	0.022	0.091
Other means	29	0	23	0	0.038	0.000	0.084	0.000
Worked at home	66	54	64	64	0.087	0.176	0.234	0.124

U.S. Census Bureau Census 2000



The subject site is not on the Wisconsin Avenue commercial corridor.

Exhibit C



Rezoning the Washington Clinic site would destroy the transition band.

Exhibit D

Exhibit E

CONSTRUCTION MANAGEMENT PLAN IS INADEQUATE FOR PROTECTION OF OWNERS OF NEARBY PROPERTY

The "Proposed Elements of Construction Management Plan" submitted by Stonebridge on January 6, 2003, does not address most of the inadequacies that the neighbors have previously cited.

1. The proposal does not prohibit blasting on the site.
2. An effective construction management plan should provide for clear, prompt and adequate relief with respect to damage to property caused during construction, as well as the consequences of that damage, including loss of enjoyment of one's property, expenses associated with responding to the damage and emotional distress. The proposal is deficient in that it does not provide for payment of liquidated damages to neighbors for any such losses suffered in addition to the cost of repairs.
3. Stonebridge offers to have the Community Advisory Committee choose one of three engineers from a list given to them by Stonebridge. This is inadequate because it does not require Stonebridge to reimburse, from an escrow account, all reasonable costs associated with the closest property Owners choosing and retaining their own expert engineering counsel, independent of Stonebridge, to perform the pre-construction (and possibly post-construction) surveys of their real property. (The neighbors offer to specify that they will hire Haley and Aldrich, who provided similar services during construction on Square 1661.)
4. Stonebridge offers to "contract for construction monitoring services during the course of sheeting/shoring, dewatering, excavation, installation of building foundations and below-grade walls." For these services to be meaningful, the neighbors must have confidence that the firm providing these services is independent of Stonebridge and has the mission of protecting the neighbors' property. Monitoring is only useful to the extent that data is interpreted, limits are set, and action is taken as necessary. Therefore, the neighbors request that they be the party to hire the services to be performed, with the expense being reimbursed by Stonebridge from an escrow account.
 - a. Additionally, the monitoring services should extend throughout construction, but at reducing frequency after the subsurface operations are complete.
 - b. Stonebridge offers that "the Developer will monitor vibrations during its operations and implement a program to evaluate the structural settlement of Surveyed Homes," but as stated above, it is necessary that the neighbors be the party to hire the services, with the expense being reimbursed by Stonebridge. (The neighbors offer to specify that they will hire Haley and Aldrich to perform these services also.)
5. The proposed escrow account is inadequate because it fails to provide for reimbursement by Stonebridge of the Owners' property repairs, professional fees and damages, as well as fines.

6. In prior nearby construction activities, there was severe damage to several of the close homes, and the damage was so extensive that the developer ended up buying out several of the owners. The proposal here is insufficient because there is no provision of a buy-out clause that an Owner may exercise at his option in case of extreme damage to a house.
7. The complaint process is cumbersome and time-consuming, requiring multiple meetings and several stages and with long time periods devoted to each stage.
 - a. The proposed Complaint Process involves 3 stages: If a complaint is made to the developers' Representative, and if it is not resolved, 14 days must elapse before the Liaison Committee meets to determine if a violation has occurred. Then another 14 days elapse before a meeting of the Liaison Committee and the Liaison Committee Advisor, who attempt to resolve the problem. Then another 14 days must elapse before another meeting of the same group to impose a fine.
 - b. Recognizing that complaints can be as pressing as the neighbors being kept up all night with off-hours deliveries of materials, we suggest that the middle step be eliminated, and that the timing between the remaining steps be dramatically shortened. We suggest that an unresolved complaint be followed within 48 hours by a meeting of the Liaison Committee to determine if a violation has occurred. If not then resolved, and unless all parties agree to an extension of time, the Liaison Committee and their Advisor would meet within 48 hours to take corrective action or impose a fine.
 - c. The "Community Advisory Committee" is poorly defined. It needs to be clarified that this Committee is entirely composed of representatives for the neighbors, not the Developers.
8. The fines structure provides for fines of between \$100. and \$1,000. to be paid by Stonebridge to an organization (yet to be determined) in the event of certain outlined Major and Minor Infractions. These amounts are too low to be effective. Amounts between \$500. and \$5,000. would be appropriate. Additionally, the \$10,000. fine that would be paid to this unnamed organization for "Failure to Provide Property Owners with Preconstruction Survey" does not adequately protect the interest of individual Owners. Fines resulting from this or any infraction that harms an individual property should be paid to that Owner, not to a third party. It should also be clarified that this payment would be made to each individual Owner who was not surveyed and not to the group of all Owners jointly.
9. The proposal lacks clarification limiting all vehicular access to and from the site to Western Avenue only, including for access to the "construction or rental offices." Also, since these units are said to be condominiums, we assume this is a mistake in the wording, and should read "sales offices" instead of "rental offices." It fails to state clearly that there will be no access to the site from Military Road, and that there will be no construction-related traffic on Military Road in either direction, including for Dumpster service. It fails to require queuing only on the site, and workers waiting early only on the site.
10. The proposed Plan fails to require keeping a lighted path open between military and Western throughout construction.

FhORD RESPONSE TO SUPPLEMENTAL SUBMISSION OF THE CHEVY CHASE PLAZA CHILDREN'S CENTER DATED JANUARY 6, 2003

On January 6, 2003, Ms. Lisa Danahy, Executive Director of the Chevy Chase Plaza Children's Center ["CCPCC"] submitted a letter and attachment in which she claimed to correct "inaccuracies and contradictions" in the FhORD December 16, 2002 testimony. Ms. Danahy's "clarifications and corrections" are unpersuasive and should be disregarded. Some of the errors in her submission are based on a misreading of the FhORD testimony, but most of the errors are based on a misreading of the Abrams PUD. In any event, the data submitted by Ms. Danahy clearly indicated that CCPCC is not in compliance with the terms of Zoning Commission Order No. 519, and Census 2000 data clearly indicates that the neighborhood would not find the proposed day care amenity to be a priority.

Each of the points raised by Ms. Danahy is discussed in turn.

1. Ms. Danahy cites the following statement from FhORD testimony:

The day care proposal does not efficiently provide day care capacity and does not constitute a neighborhood amenity.

Stonebridge proposed to provide new space rent-free for fifty years to an incumbent market-rate day care provider;

In her comments, Ms. Danahy claimed that she was providing a large number of child care spaces for the square footage allowed. Clearly, Ms. Danahy did not understand the point of this statement. The statement relates to the cost of providing the space, and not to the number of children using the space. A day care center can operate without rent-free space, and by providing space for day care at the market rate for day care space, a day care amenity, if appropriate for the neighborhood and if consistent with the Comprehensive Plan, can be provided at a much lower cost. It is not necessary to provide rent-free space to a day care provider in order to assure that the space will be used for day care.

Ms. Danahy also states that, since the ANCs 3E and 3G determined that the child care center, with 15-16 spaces to be used by the community, was an amenity when the Abrams PUD was approved, they must believe that 44 additional spaces must be an amenity justifying substantial flexibility in height and density. As stated later in the FhORD testimony and supported by Census data, it is fallacious to draw that conclusion.

Ms. Danahy also cites a waitlist of 92 children as indicating a need for additional day care. An examination of the addresses given indicate that only 16 of those children live in the District within half a mile of the current CCPCC and only 14 children live in the District within half a mile of the proposed CCPCC. In addition, it is well known that parents will place their names on more than one waiting list. In particular, parents might also have their name on a waiting list for subsidized, below-market-rate child care sponsored by their employer. Ms. Danahy has not indicated how many names on the waitlist are contacted to fill any given spot, or how many of the parents on the wait list consider the CCPCC to be their first choice.

2. Ms. Danahy cites the following statement from FhORD testimony:

Provision of the day care amenity removes 15,000 SF of R-2 land from possible future development.

Ms. Danahy states that they had negotiated the purchase of that portion of land prior to the inclusion of the day care amenity. However, the timing of the agreement with Lisner does not change the fact that, if the 15,000 square feet of Lisner land is developed with this PUD, that land cannot be developed as single family housing, which is permitted under current zoning.

3. Ms. Danahy cites the following statement from FhORD testimony:

The day care proposal does not constitute a neighborhood amenity:

There is no assurance that the capacity will be used by the neighborhood children.

Ms. Danahy claims that the CCPCC is “licensed to provide child care for 31 children whose families live or work in the Friendship Heights community.” [emphasis added] She states that her current enrollment exceeds the goal set forth in the Order. She also recommends that “because enrollment can fluctuate,” vague language should be used in this zoning order. First, an examination of the information submitted by Ms. Danahy on current enrollment reveals that current enrollment does not meet the clearly stated targets set out in ZC Order 519.

Zoning Commission Order 519 includes the following language:

The Applicants contend that: “The child care center would be used 50 percent by members of the neighborhood, who would be walking to the Metro or carpooling and 50 percent by employees of the proposed development.”

“The child care facility shall be organized as a non-profit organization pursuant to the provisions of the Internal Revenue Act and operated so that enrollment is open to children of employees of the projects in Square 1661 and to children of community residents on an equal basis with the goal of achieving a 50-50 ratio between the two groups. If the child care facility must make an organizational or other change to maintain its non-profit status, the child care facility will continue 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.”

It is clear from the above language, that the goal of a 50-50 mix was to ensure that the neighborhood would have priority for at least 15-16 slots, and that the developer would not be using more than half the capacity of the child care center only to serve as amenity to make the project more attractive to commercial tenants. In Attachment B, Ms. Danahy provides data on her current enrollment. She indicates that of the 31 students enrolled:

- (a) four children who live in Maryland have parents who work in Square 1661.

- (b) four children, on the 5300 block of 42nd Place, the 4400 block of Faraday, the 4100 block of Emery and the 4300 block of Fessenden, live in the District within half a mile of the CCPCC,
- (c) four children live between half a mile and three-quarters of a mile of the CCPCC, and four children live in the District approximately three-quarters of a mile from the CCPCC.

Clearly, the CCPCC is not meeting the goals of Zoning Commission Order 519 and is not serving as an amenity to the neighborhood, as was the clear intent of the Order. Providing additional space for the CCPCC cannot be seen as a neighborhood amenity.

In her testimony on December 16, Ms. Danahy was asked the percentage of her current students that live in Maryland. Ms. Danahy stated: "I think right now I have two children out of 30. An examination of Attachment B, Enrollment Statistics for CCPCC as of August 2002, indicate that 9 of the 31 students were from Maryland. In order to demonstrate that 61% of the students lived in Friendship Heights, Ms. Danahy chose to include all of ANC 3E, ANC 3/4G and part of ANC 3F, which includes areas well over 2 miles from the CCPCC, and children whose addresses are over 1 ¾ miles from the CCPCC.

4. Ms. Danahy cites the following statement from FhORD testimony:

The day care proposal does not constitute a neighborhood amenity:

There is no provision for pass-through of economic benefit.

Ms. Danahy simply says that the economic benefit of more child care space is obvious. However, we note that this is market-rate capacity, and that tuition is approximately \$1,000 a month.¹ Requiring non-profit status does not benefit the community as claimed by Ms. Danahy. In Zoning Commission Order 519, it was stated that the CCPCC received "a rent concession of approximately \$42,900 per year." In the proposed PUD, the CCPCC will be receiving a more substantial rent concession. There is no evidence that the community has benefited from this subsidy.

¹ According to the CCPCC web-site, <http://www ccpcc.org/tuition.html>, the tuition rates at the CCPCC are as follows:

"Tuition Rates;

TUITION RATES for full-time care:

Child's Age--3 - 15 months--\$1,145
Child's Age--16 - 24 months \$1,065
Child's Age--25 - 30 months \$1,003
Child's Age--31 - 44 months \$956
Child's Age--45 months and up \$875

Additional Enrollment Fees:

\$50.00 Application Fee (Waitlist Fee)
\$150.00 Enrollment Fee
One-Month Security Deposit at time of Enrollment
Annual Capital Contribution (currently \$125 per child)"

5. Ms. Danahy cites the following statement from FhORD testimony:

Further, the Ward 3 Plan, Land Use Element, only calls for an increase in child care facilities in commercial areas. (Section 1409.2)

Ms. Danahy claims that the Lisner property is in a regional retail center. The Lisner property is clearly zoned R-2, low density residential, and the Clinic property is zoned R-5-B, also residential. It is clear that placement of a child care center on either site is inconsistent with the Ward 3 Comprehensive Plan.

6. Ms. Danahy cites the following statement from FhORD testimony:

Section 200.14 Affordable, quality child care is an essential precondition for parents with children under the age of fifteen (15) to enable them to work, seek employment, complete school, and participate in job training programs. [Economic Development Element]

Ms. Danahy states that she offers financial assistance through needs-based tuition assistance, tuition reduction for sibling enrollment, and discounted care for children of her teachers. Attachment C gives excerpts from the Family Handbook, in which it is stated that CCPCC offers tuition assistance to families living in ANC 3E who are earning a combined income of less than \$40,000 per year. Ms. Danahy has not indicated how many qualified families have applied for or been granted this assistance. Census data is not available for income by age of children, but it is clear that there are not a significant number, if any, families that would meet this criterion, and would be interested in paying the non-subsidized portion of the tuition fee. Discounts for children of employees is just an employee benefit, much as any other employer would offer and cannot be considered as part of a package that provides affordable day care to low income families. At any rate, the point of this quote from the Comprehensive Plan was that the goal of providing more day care was aimed at different types of child care providers and that following this goal, the District would be more interested in day care in communities where access to affordable day care can increase the ability of parents to work, go to school or get employment-related training.

7. Ms. Danahy cites the following statement from FhORD testimony:

Section 300.7 Zoning and health-care regulations should be designed to promote an increase in affordable child care programs and facilities. [Housing Element, emphasis added]

Ms. Danahy claims that their rates, \$1,000 a month, are at or below market-level. Clearly, the CCPCC is a market-rate facility, and is not the type of facility that the Comprehensive Plan states that zoning regulations should be designed to promote. Ms. Danahy also cites her waiting list, which was discussed above.

8. Ms. Danahy cites the following statement from FhORD testimony:

CCPCC is currently obligated to use 16 of its 32 slots for the local neighborhood. It has not filled those slots from the neighborhood.

In 2000-2001, 4 FTEs were from the neighborhood, 11 children resided in ZIP code 20015. [Source: CCPCC Directory of Children/Parents]

Ms. Danahy states that she is licensed for 31, not 32 children. Given that Ms. Danahy was not responsive to our requests for information, we relied on information available on her web-site and from neighbors who have used the CCPCC. Ms. Danahy only is able to claim to meet the goals set out in Zoning Commission Order 519 by redefining the neighborhood to include all of ANC 3E and ANC 3/4G. While ANC E, ANC 3G, CCCFH and FNC were all granted party status and opposed the Abrams PUD, that does not mean that the entire areas of each of those ANCs and the other organizations were viewed as the area that would be served by the CCPCC. In the Abrams PUD, the Applicant's own language describes the population to be served by the day care center as a relatively small area, by stating that the parents would be walking the children in on their way to the Metro. In any event, in this proceeding, ANC 3G was granted party status based on the proximity of part of the ANC to the site and on the likely effect of the proposal on traffic on Military Road as well as the likely increase in cut-through traffic on the east-west streets north of Military Road. This does not indicate that it is appropriate to define the neighborhood to include the entire ANC. Similarly, two ANC 3E Commissioners who supported the PUD stated that their part of the ANC was very far from the site and they did not know of any interest on the part of their constituents in this proceeding. The language defining the neighborhood in ZC Order 519 specifically mentioned that, by drawing children from the immediate neighborhood, who would be walking to the CCPCC, the impact of additional traffic would be minimized. According to the enrollment information submitted, the CCPCC is drawing its "neighborhood" residents from as far as 1 ¾ miles from the CCPCC, and those children are being driven to the site. Defining the neighborhood as a very large area undercuts the testimony of the Applicants' traffic expert stating that 2/3 of the children will walk to the new child care center.

The information provided by Ms. Danahy clearly shows that the CCPCC does not provide the day care capacity to the neighborhood that was contemplated in ZC Order 519, and does not meet the intent and purpose of that ZC Order.

9. Ms. Danahy cites the following statement from FhORD testimony:

This proposal would increase to 60 the number of CCPCC slots for the community.

Ms. Danahy states that the number of CCPCC slots available to the community will increase from 31 to 75 if the PUD is approved. The FhORD statement refers only to the slots reserved for the community, 50% of the current slots and 100% of the new slots. When this number is compared to the number of families in the community, it is clear that the additional 44 slots are not necessary.

10. Ms. Danahy cites the following statement from FhORD testimony:

In 2000, there were a total of 244 children under the age of 6 in Census Tract 11, and of those, 118 children had no parents outside the labor force.

Ms. Danahy states that she does not know what geographic area is included in Census Tract 11, which was described at the Hearing, December 16, transcript page 155. Since Ms. Danahy found the geographic description "unclear," she ignored the data, and instead supplied data for Ward 3. She also claimed that there were significantly more children in Ward 3 than there were child care spaces.

This comparison, of course, is irrelevant for two reasons: (1) Ward 3 is predominantly residential, and many parents work outside the ward and use child care facilities provided by their employer or child care facilities that are convenient to their place of employment, outside of the ward; and (2) Ward 3 also includes families that have child care options other than child development centers, including the employment of nannies. Thus, comparison of the number of children in Ward 3 with the number of spaces in child development centers in Ward 3 is misleading and does not present a true picture of the need for day care near Square 1663. Given that the Census shows a relatively small number of children, 118 children with no parents outside the labor force, in a larger area than the local neighborhood, an area from Wisconsin Avenue to Connecticut Avenue on the west and east, and from Nebraska Avenue to Western Avenue on the south and north, and given that Stonebridge is asking to provide a total of 60 day care slots to that area, and given that many of those child, most of whom have two working parents, would have access to subsidized day care from one or both employers, and given that some of those parents would prefer to hire a nanny, it is difficult to see that 60 day care slots are required in this area.

11. Ms. Danahy cites the proposed general principles for providing a day care amenity that was offered in the FhORD testimony:

Day Care Amenity: General Principles

- *Local Parents should face a choice of day care providers.*
- *The day care center should serve the local community.*
- *The day care amenity should be efficiently provided.*
- *Conditions to assure that the center meets these goals should be included in the PUD.*

Ms. Danahy states that she does not agree with these principles because the CCPCC is interested in expanding. Ms. Danahy had informed ANC 3E of her interest and that as a result of her requests to ANC 3E, an ANC Commissioner recommended that the Stonebridge proposal include space for the CCPCC. In fact, Ms. Danahy has made repeated requests for space through the ANC, through opposition to PUDs and by promising developers support in zoning and other regulatory approvals in exchange for rent-free space. Ms. Danahy had even requested that the ANC provide funds to help purchase space. More information on these requested is given in section 14, below.

In taking issue with these principles, Ms. Danahy appears not to understand the stated principles with which she takes issue. In particular, in providing any subsidy, the government agency administering the subsidy generally has a specific goal in mind. In this instance, it is the provision of day care to allow parents who might not otherwise have difficulty joining the workforce or getting job training to have access to affordable day care. In most instances, the agency finds that it can more effectively achieve that goal by introducing competition and encouraging new providers in the supply of services associated with its goal. Thus, in administering subsidies, it is generally appropriate to make certain that the incumbent operators are not given preference for the subsidies.

Exceptions are made in only rare instances, none of which apply here.² Providing this substantial subsidy to the incumbent provider, and only to the incumbent provider, in this instance the CCPCC, would discourage new operators from offering day care in this area. This would likely result in a higher price, lower quality and in less choice for parents. In evaluating day care providers, parent might have strong preferences about how the staff interacts with the children and other relevant characteristics, and these preferences vary within the community. If additional child care is to be provided, it is important that parents have available a variety of providers so that they can choose the provider that, in their opinion, provides the type of care that most closely matches their beliefs about how their child should spend that time.

12. Ms. Danahy also takes issue with the FhORD proposal for how a child care amenity might be more cost-effectively provided and better serve the neighborhood needs, if the Commission determines that a day care amenity is an appropriate, albeit minor, amenity for this or any other PUD that was included in the FhORD testimony:

Efficiently Providing a Day Care Amenity

- *The day care space shall be rented only to a day care provider and a minimum capacity is included in the PUD.*
- *80% of the children will reside in ANC3E04 or ANC 3E03.*
- *Incumbent neighborhood day care providers will not be eligible.*
- *If the day care center fails to operate or ceases to operate, the space will revert to residential use and the developer will make a contribution for an equivalent neighborhood amenity.*
- *The PUD should include a reporting requirement to assure compliance with the above conditions.*

As noted above, Ms. Danahy did not understand the why standard regulatory principles allow participation by an incumbent provider in this type of a subsidy only when other providers cannot provide the service, and prudent regulatory policy would never grant a special subsidy to an incumbent provider when other providers can provide the service, thereby providing the incumbent and new providers with the incentive to vigorously compete in quality of service and in the cost to parents of the service and to more closely match the needs of their respective clients.

Ms. Danahy states that if the child care center should fail to operate, the space should revert to residential use, as required in ZC Order 519, but that the developer should not be required to substitute another amenity. Clearly, the conditions in ZC Order 519 are insufficient, and absent a requirement to substitute another amenity, adopting

² The incumbent operator would not be eligible for this type of subsidy, unless it can be shown that no other operators could provide the service or there are significant scale economies such that one would not expect to see more than one operator. Also, incumbent operators might be eligible to receive a different type of subsidy. For example, portable subsidies for individual low-income, eligible households might be allow the subsidy-holder to use the subsidy to obtain services from either a new operator or an incumbent. The low-income parents, eligible for the subsidy, would determine which provider most closely matches their needs, and the incumbent would not be disqualified.

those conditions would act as an invitation to developers to offer phantom amenities in any future PUD proposal.

13. Ms. Danahy also takes issue with any reporting requirement, and states that there is ample oversight from the enforcement branch of the Office of Zoning. If Ms. Danahy had read the accompanying letter which included the full text of the proposal, she would have noticed that information was to be provided to the Zoning Enforcement Office and to the ANC. Absent a reporting requirement, the Zoning Enforcement Office cannot determine when the provider is not complying with the conditions of the Order. Absent a reporting requirement to the ANC, the ANC is unable to determine whether local families were aware of the requirement that the child care center serve the local community or whether local families were interested in using the facility but were turned away in favor of families that live far from the site. Given CCPCC's record, as shown by the data submitted, it is not surprising that she opposed a reporting requirement that would make enforcement of PUD terms possible. There are substantially fewer than 15 children from the neighborhood currently enrolled at the CCPCC, and yet Ms. Danahy claims a number of children from the neighborhood on her waitlist. Ms. Danahy is not in compliance with the letter or the intent of ZC Order 519. The full text of the FhORD proposal is provided as an attachment to this Response.

14. Ms. Danahy cites the following section of the FhORD testimony:

Claimed public benefits have minimal value:

Chevy Chase Plaza Children's Center

Actual public benefit as proposed: very minimal.

- *Comp. Plan stresses affordable child care.*
- *§300.7. Zoning and health-care regulations should be designed to promote an increase in affordable child care programs and facilities.* [Housing Element, emphasis added.]
- *No assurance of any neighborhood benefit -- either spaces reserved for neighborhood children or pass-through of economic benefit.*
- *Benefit inefficiently provided, cost to Applicant does not equal benefit to public. Also, cost of lost housing opportunity.*
- *Serious child safety issues will be created due to dual use loading dock/parking lot.*
- *Designated provider, CCPCC, is in continued and material breach of current PUD and should not be hand-picked as new provider.*

Ms. Danahy claims that "CCPCC currently provides affordable day care, as demonstrated by market rates and enrollment statistics provided." The rates for the CCPCC are approximately \$1,000 a month. This is clearly not what the District contemplated in the Comprehensive Plan when it stressed affordable day care.

Ms. Danahy states that CCPCC was selected by Stonebridge Associates as the operator of the proposed child care facility because of its experience for 13 years in

providing “affordable, quality child care within the Friendship Heights community.” Mr. Firstenberg of Stonebridge Associates states that they selected the CCPCC to be the operator of the child care facility on the recommendation of Jill Diskan. [Hearing Transcript, Dec. 12, p.37] For many years, Ms. Danahy had gone to Jill Diskan to request that benefits for the CCPCC be included as part of various PUDs, that a area set aside in the Donohoe PUD as a public park be converted to a private playground for the exclusive use of the CCPCC and even that the CCPCC be given a grant by the ANC to purchase space.³ Ms. Danahy also demanded that space for a tot lot be included in the modified Miller PUD on square 1661, and in fact testified in opposition to the PUD “based on the failure to provide a park in Square 1661 an its property with playground and equipment far the Children's Center.” [ZC Order 824, July 14, 1997, Findings of Fact 44, p. 8] Ms. Danahy had approached other developers in the area to trade free space in their project for support on zoning and other required approvals. Without consulting other members of the community, Ms. Diskan included this request for space by Ms. Danahy in Ms. Diskan’s list of neighborhood requests. This inclusion was not a result of research to determine whether the community supported this amenity, or whether the CCPCC had even been acting to further the intent and purpose of the Abrams PUD.

Ms. Danahy states that, “in order to ensure a neighborhood benefit, and allow for pass-through of economic benefit, Stonebridge Associates and the Zoning Commission need do nothing more than model the proposed child care facility after the center currently operated by CCPCC.” Clearly, an examination of the data submitted by Ms. Danahy and information from the CCPCC web-site on CCPCC rates, that would be insufficient. If the Commission determined that expanded child care capacity would be an amenity to the community, appropriate conditions are included in an attachment to this filing. Given that the conditions recommended by FhORD would have the day care provided in a cost-effective manner, the amenity would be modest at best. If the Applicant chooses to provide a larger subsidy to the day care provider, that would not be considered to be part of the amenity, since it provides no further value to the community.

In response to FhORD’s suggestion that the amenity be provided in a cost-efficient manner, Ms. Danahy simply responds that she sees the Stonebridge proposal as a generous sacrifice. As stated above, a generous Stonebridge sacrifice that provides no additional value to the community is not a generous amenity, and should not count as part of an amenity package.

With respect to the lost housing opportunity inasmuch as the child care center will remove from possible future development the equivalent of five building lots in an R-2 zone, Ms. Danahy simply states that it is outside the residential component of the Stonebridge PUD in a separate building. Obviously, that is the reason why it creates a lost housing opportunity, not a rebuttal to the claim.

³ See Minutes of ANC3E meeting, May 2002, http://www.anc3e.org/minutes/minutes_may.pdf, in which it was stated: “Chevy Chase Plaza presented a proposal: “Secure our Future” in which ANC 3E grant money will help to cover some of the down payment and the closing costs incurred in the purchase of 5310 43rd Street NW.”

Ms. Danahy takes issue with the claim that the dual use of the same area for a loading dock and the parking lot creates a hazard. This issue is discussed further in other sections of the FhORD submission. Ms. Danahy's unsupported assertions lack merit.

Ms. Danahy's takes issue with the FhORD statement that the CCPCC should not be the hand-picked recipient of a large subsidy. The information available on CCPCC's current enrollment indicates that she is in continued and material breach of the Abrams PUD and not acting to further the goals of that PUD or acting in the spirit of that PUD. The information submitted by Ms. Danahy on January 6 confirms FhORD's conclusion that the CCPCC is not fulfilling the terms of the Abrams PUD and is not furthering the goals of that ZC Order. The information further indicates that the CCPCC generates substantial traffic and that the proposed new location would generate more additional traffic, which would be inconsistent with the criteria under which a child care center might be granted a special exception to operate in an R-2 zone.

PROPOSED LANGUAGE FOR A DAY CARE AMENITY

[Excerpted from letter dated December 12, 2002, from Marilyn J. Simon to Carol Mitten, Chairman]

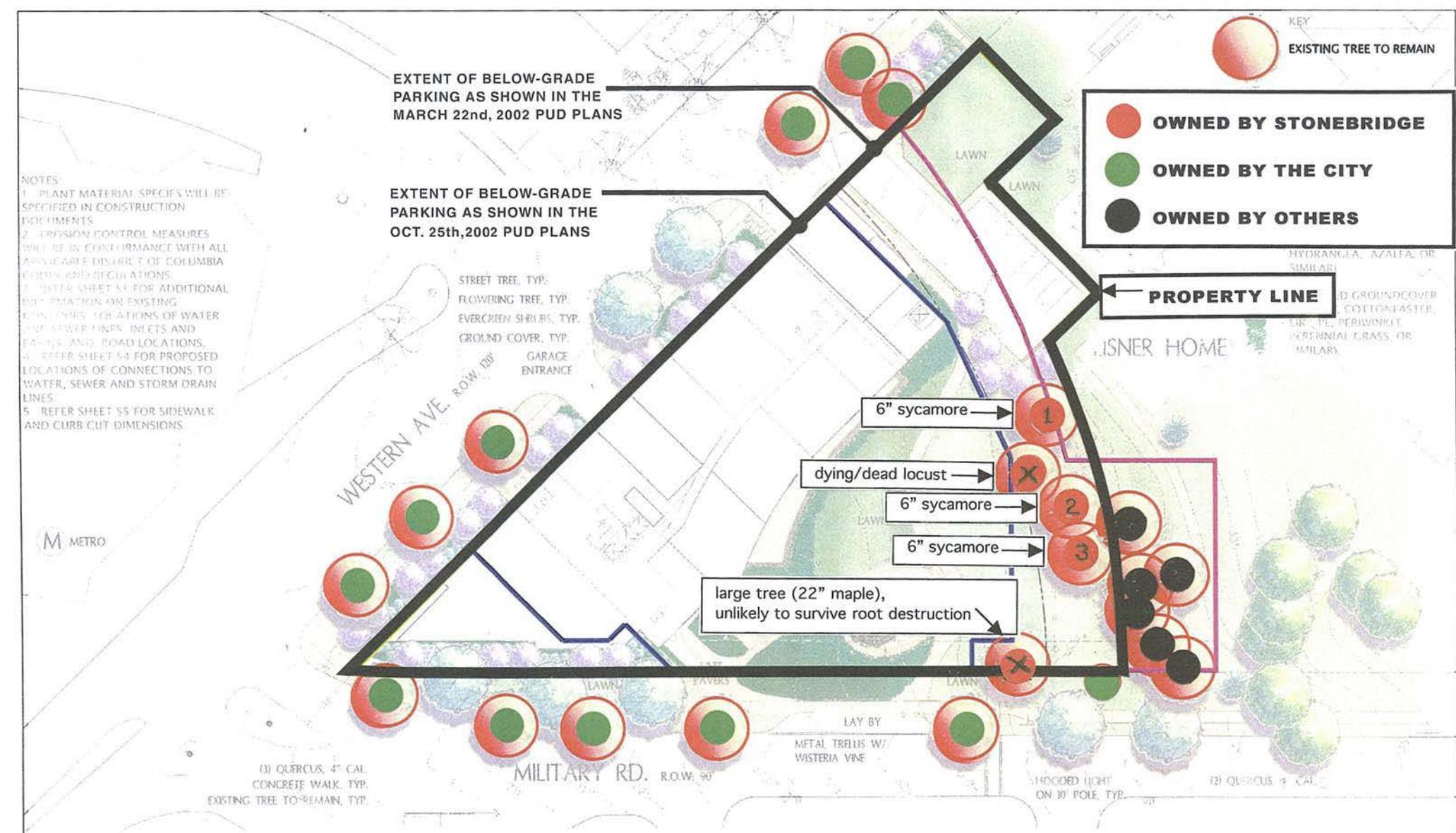
If it is determined to be of special value to the affected neighborhood, with these principles in mind, I propose the following conditions under which the provision of increased day care space constitutes a minor neighborhood amenity⁴:

1. The space made available for day care will be rented only to a licensed day care provider, who will serve a minimum of 44 [or some other appropriate number, as determined by the Commission] full time equivalent children.
2. At least 80% of the full time equivalent children should reside in the SMD ANC 3E04 or the SMD ANC 3E03. At least 90% of the full time equivalent children should reside in ANC 3E. This neighborhood preference must be the primary admission criteria, not to be trumped by "sibling preference" or other policies. In addition, to keep the impact on traffic low and to maximize the number of households affected by the development that benefit from this subsidy, strict preference should be given to children who reside in the District, within walking distance of the day care center.
3. If there is sufficient interest among other day care providers, incumbent neighborhood day care providers would not be eligible.
4. If the developer chooses to provide a small outdoor play area for the day care center, that play area will be open to neighborhood children when not in use by the day care center. The developer will be responsible for any insurance issues that arise from the availability of that play area to neighborhood children. Access to the play area may be restricted after dark or after 9 p.m., whichever is later.
5. There is no limit on the duration of this requirement, and if the day care center fails to operate or ceases to operate during the term of this PUD, both the following conditions would apply.
 - a. In the event that the child care facility fails or ceases to operate, the applicant shall re-convert the space to residential use, excluding any use for any professional office, e.g., doctors, dentists, attorneys, and other professions. [This is based on the Abrams PUD, ZC Order 85-20C, under which the CCPCC was formed.]
 - b. Further, in the event that the child care facility fails or ceases to operate, the developer will make a contribution to another neighborhood amenity, such as a local park, recreation program or library, which would be the equivalent of the remaining value of this amenity. If the project is to be developed for owner-occupancy, some additional provision is necessary to assure that the developer will make this contribution in the event the child care facility ceases to operate.

⁴ If, on the other hand, it is determined that day care capacity is an appropriate city-wide benefit, similar conditions should be included. The geographic areas for the area served and the reporting requirements would need to be change to reflect the area which is to benefit.

6. Once a year, the day care operator shall report the following information to ANC 3E and to the Zoning Enforcement Office:

- a. Names and addresses of children, along with the number of weeks they attended and days per week.
- b. For each child residing in ANC 3E, they should report the ANC SMD, and for each other District resident, they should report the ANC. [Exact language of this requirement and the following requirements would depend on the geographic area defined in 2, above.]
- c. The operator should calculate the full time equivalents for the each of the two SMDs, ANC 3E04 and ANC 3E03, and the full time equivalents for ANC 3E
- d. If the full time equivalents fall below the 80% and 90% required, they should provide evidence that no parents in the ANC SMDs or ANC were on the waiting list or requested that their children be placed on the waiting list in that time frame, and an item should be placed on the ANC agenda, or other notice given, to allow parents in those ANC SMDs to provide evidence that they requested placement on the waiting list during the relevant time period.
- e. If parents residing in the ANC SMDs or ANC requested placement when the targets were not met, the matter will be referred to the zoning enforcement office.



Three small trees would be preserved on the site.

Exhibit G

Exhibit H

H46. AGGREGATE NUMBER OF VEHICLES AVAILABLE BY TENURE [3] - Universe: Occupied housing units
 Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

**Aggregate number of vehicles
per housing unit**

	Block Group 1, Census Tract 11, District of Columbia, District of Columbia	Block Group 3, Census Tract 11, District of Columbia, District of Columbia	Block Group 4, Census Tract 11, District of Columbia, District of Columbia	Block Group 5, Census Tract 11, District of Columbia, District of Columbia	Block Group 1, Census Tract 11, District of Columbia, District of Columbia	Block Group 3, Census Tract 11, District of Columbia, District of Columbia	Block Group 4, Census Tract 11, District of Columbia, District of Columbia	Block Group 5, Census Tract 11, District of Columbia, District of Columbia
Housing Units	757	306	274	517				
Owner occupied:	561	186	207	455				
Renter occupied:	196	120	67	62				
Aggregate number of vehicles available:	1,008	342	464	727	1.33	1.12	1.69	1.41
Owner occupied	805	254	307	661	1.43	1.37	1.48	1.45
Renter occupied	203	88	157	66	1.04	0.73	2.34	1.06

U.S. Census Bureau Census 2000

Stonebridge Proposal: With 5 Affordable Housing Units
Profile of Standard Homestead Exemption, Senior Exemption and Renters for 4200 Mass Ave

Real Estate Tax	Notes	Per Unit	Units	Total	Value
Condominium Value	Assessed value 0.96% of assessed value less	\$ 480,000			\$57,600,000
Owner Occupied	\$30,000	\$ 4,320	55	\$ 237,600	
Rented	0.96% of assessed value	\$ 4,608	39	\$ 179,712	
Senior Exemption	0.48% of assessed value	\$ 2,304	26	\$ 59,904	
Condominium Value	Affordable	\$166,393			\$831,965
Owner Occupied	Source: Stonebridge Affordable Housing Worksheet, 11/18/02	\$ 1,296	5	\$ 6,480	
Total			120	\$ 483,696	\$58,431,965
Income Tax					
Owner Occupied					
Market Rate, One Earner					
Gross Household Income	30% of unit value	\$ 144,000			
Taxable Income	75% of gross	\$ 108,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 9,254			
Adjusted for Occupancy	96% occupancy	\$ 8,884			
Adjusted for New Residents	90% new residents	\$ 7,995			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 7,196	28	\$ 201,485	
Owner Occupied					
Market Rate, Two Earners					
Gross Household Income	30% of unit value	\$ 144,000			
Taxable Income	75% of gross	\$ 108,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000 for each earner	\$ 8,464			
Adjusted for Occupancy	96% occupancy	\$ 8,125			
Adjusted for New Residents	90% new residents	\$ 7,313			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 6,582	27	\$ 177,703	
Owner Occupied					
Affordable, One Earner					
Gross Household Income	Stonebridge 11/18/02	\$ 54,400			
Taxable Income	75% of gross	\$ 40,800			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 3,004			
Adjusted for Occupancy	96% occupancy	\$ 2,884			
Adjusted for New Residents	90% new residents	\$ 2,596			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 2,336	3	\$ 7,009	
Owner Occupied					
Affordable, Two Earners					
Gross Household Income	Stonebridge 11/18/02	\$ 54,400			
Taxable Income	75% of gross	\$ 40,800			
	\$1,250 plus 7.5% taxable income				
Income Tax	over \$20,000	\$ 2,810			
Adjusted for Occupancy	96% occupancy	\$ 2,698			
Adjusted for New Residents	90% new residents	\$ 2,428			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 2,185	2	\$ 4,370	
Owner Occupied					
Senior Exemption, One Earner					
Gross Household Income	Maximum eligible	\$ 100,000			
Taxable Income	75% of gross	\$ 75,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 6,185			
Adjusted for Occupancy	96% occupancy	\$ 5,938			
Adjusted for New Residents	90% new residents	\$ 5,344			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 4,809	13	\$ 62,523	
Owner Occupied					
Senior Exemption, Two Earners					
Gross Household Income	Maximum eligible	\$ 100,000			
Taxable Income	75% of gross	\$ 75,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000 for each earner	\$ 5,395			
Adjusted for Occupancy	96% occupancy	\$ 5,179			
Adjusted for New Residents	90% new residents	\$ 4,661			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 4,195	13	\$ 54,537	
Rental					
One Earner					
Gross Household Income	Based on monthly rent of \$2,200	\$ 88,000			
Taxable Income	75% of gross	\$ 66,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 5,348			
Adjusted for Occupancy	96% occupancy	\$ 5,134			
Adjusted for New Residents	90% new residents	\$ 4,621			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 4,159	20	\$ 83,172	
Rental					
Two Earners					
Gross Household Income	Based on monthly rent of \$2,200	\$ 88,000			
Taxable Income	75% of gross	\$ 66,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000 for each earner	\$ 4,558			
Adjusted for Occupancy	96% occupancy	\$ 4,376			
Adjusted for New Residents	90% new residents	\$ 3,938			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 3,544	19	\$ 67,342	
Total Income Tax			125	\$ 658,141	
Total				\$ 1,141,837	

Matter of Right, Current Zoning
40 Townhomes, 5 Single Family Homes

Real Estate Tax	Notes	Per Unit	Units	Total	Value
Condominium Value	Assessed value	\$ 480,000			\$0
	0.96% of assessed value less				
Owner Occupied	\$30,000	\$ 4,320	0	\$	-
Rented	0.96% of assessed value	\$ 4,608	0	\$	-
Townhomes on Clinic Site	0.96% of assessed value less	\$ 800,000			\$32,000,000
Owner Occupied	\$30,000	\$ 7,392	40	\$ 295,680	\$4,975,000
Single Family Homes on Lisner Site	0.96% of assessed value less	\$ 995,000			
Owner Occupied	\$30,000	\$ 9,264	5	\$ 46,320	
Total			45	\$ 342,000	\$36,975,000
Income Tax					
Owner Occupied	Condominium, One Earner				
Gross Household Income	30% of unit value	\$ 144,000			
Taxable Income	75% of gross	\$ 108,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 9,254			
Adjusted for Occupancy	96% occupancy	\$ 8,834			
Adjusted for New Residents	90% new residents	\$ 7,995			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 7,196	0	\$	-
Owner Occupied	Condominium, Two Earners				
Gross Household Income	30% of unit value	\$ 144,000			
Taxable Income	75% of gross	\$ 108,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000 for each earner	\$ 8,464			
Adjusted for Occupancy	96% occupancy	\$ 8,125			
Adjusted for New Residents	90% new residents	\$ 7,313			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 6,582	0	\$	-
Owner Occupied	Townhomes, One Earner				
Gross Household Income	30% of unit value	\$ 240,000			
Taxable Income	75% of gross	\$ 180,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 15,950			
Adjusted for Occupancy	100% occupancy	\$ 15,950			
Adjusted for New Residents	90% new residents	\$ 14,355			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 12,920	20	\$ 258,390	
Owner Occupied	Townhomes, Two Earners				
Gross Household Income	30% of unit value	\$ 240,000			
Taxable Income	75% of gross	\$ 180,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 15,950			
Adjusted for Occupancy	100% occupancy	\$ 15,950			
Adjusted for New Residents	90% new residents	\$ 14,355			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 12,920	20	\$ 258,390	
Owner Occupied	Single Family, One Earner				
Gross Household Income	30% of unit value	\$ 298,500			
Taxable Income	75% of gross	\$ 223,875			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 20,030			
Adjusted for Occupancy	100% occupancy	\$ 20,030			
Adjusted for New Residents	90% new residents	\$ 18,027			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 16,225	3	\$ 48,674	
Owner Occupied	Single Family, Two Earners				
Gross Household Income	30% of unit value	\$ 298,500			
Taxable Income	75% of gross	\$ 223,875			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000 for each earner	\$ 19,240			
Adjusted for Occupancy	100% occupancy	\$ 19,240			
Adjusted for New Residents	90% new residents	\$ 17,316			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 15,585	2	\$ 31,169	
Rental	One Earner				
Gross Household Income	Based on monthly rent of \$2,200	\$ 88,000			
Taxable Income	75% of gross	\$ 66,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000	\$ 5,348			
Adjusted for Occupancy	96% occupancy	\$ 5,134			
Adjusted for New Residents	90% new residents	\$ 4,621			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 4,159	0	\$	-
Rental	Two Earners				
Gross Household Income	Based on monthly rent of \$2,200	\$ 88,000			
Taxable Income	75% of gross	\$ 66,000			
	\$2,000 plus 9.3% taxable income				
Income Tax	over \$30,000 for each earner	\$ 4,558			
Adjusted for Occupancy	96% occupancy	\$ 4,376			
Adjusted for New Residents	90% new residents	\$ 3,938			
Adjusted for Taxpaying Residents	90% taxpaying	\$ 3,544	0	\$	-
Total Income Tax			45	\$	596,623
Total			45	\$	938,623

Modest PUD, Current Zoning: 106,000 SF
29 Condominiums, 27 Townhomes, 5 Single Family Homes

Real Estate Tax		Notes	Per Unit	Units	Total	Value
Condominium Value	Market Rate	Assessed value 0.96% of assessed value less \$30,000 0.96% of assessed value \$864,000 0.96% of assessed value less \$30,000 0.96% of assessed value less \$30,000	\$ 480,000 \$ 4,320 \$ 4,608 \$ 864,000 \$ 8,006 \$ 995,000 \$ 9,264	22 7 27 5	\$ 95,040 \$ 32,256 \$ 216,173 \$ 46,320	\$13,920,000 \$23,328,000 \$4,975,000 \$42,223,000
		Total		61	\$ 389,789	\$42,223,000
Income Tax						
Owner Occupied		Condominium Market Rate, One Earner				
Gross Household Income		30% of unit value 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 96% occupancy 90% new residents 90% taxpaying	\$ 144,000 \$ 108,000 \$ 9,254 \$ 8,884 \$ 7,995 \$ 7,196	11	\$ 79,155	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Owner Occupied		Condominium Market Rate, Two Earners				
Gross Household Income		30% of unit value 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 for each earner 96% occupancy 90% new residents 90% taxpaying	\$ 144,000 \$ 108,000 \$ 8,464 \$ 8,125 \$ 7,313 \$ 6,582	11	\$ 72,398	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Owner Occupied		Townhomes, One Earner				
Gross Household Income		30% of unit value 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 100% occupancy 90% new residents 90% taxpaying	\$ 259,200 \$ 194,400 \$ 17,289 \$ 17,289 \$ 15,560 \$ 14,004	14	\$ 196,060	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Owner Occupied		Townhomes, Two Earners				
Gross Household Income		30% of unit value 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 100% occupancy 90% new residents 90% taxpaying	\$ 259,200 \$ 194,400 \$ 17,289 \$ 17,289 \$ 15,560 \$ 14,004	13	\$ 182,055	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Owner Occupied		Single Family, One Earner				
Gross Household Income		30% of unit value 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 100% occupancy 90% new residents 90% taxpaying	\$ 298,500 \$ 223,875 \$ 20,030 \$ 20,030 \$ 18,027 \$ 16,225	3	\$ 48,674	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Owner Occupied		Single Family, Two Earners				
Gross Household Income		30% of unit value 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 for each earner 100% occupancy 90% new residents 90% taxpaying	\$ 298,500 \$ 223,875 \$ 19,240 \$ 19,240 \$ 17,316 \$ 15,585	2	\$ 31,169	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Rental		One Earner				
Gross Household Income		Based on monthly rent of \$2,200 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 96% occupancy 90% new residents 90% taxpaying	\$ 88,000 \$ 66,000 \$ 5,348 \$ 5,134 \$ 4,621 \$ 4,159	4	\$ 16,634	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Rental		Two Earners				
Gross Household Income		Based on monthly rent of \$2,200 75% of gross \$2,000 plus 9.3% taxable income over \$30,000 for each earner 96% occupancy 90% new residents 90% taxpaying	\$ 88,000 \$ 66,000 \$ 4,558 \$ 4,376 \$ 3,938 \$ 3,544	3	\$ 10,633	
Income Tax						
Adjusted for Occupancy						
Adjusted for New Residents						
Adjusted for Taxpaying Residents						
Total Income Tax				61	\$ 636,778	
Total				61	\$ 1,026,567	

O. R. George & Associates, Inc. (ORG) has prepared a rebuttal statement, dated December 30, 2002, in response to my testimony before the Zoning Commission Hearing. The rebuttal attempts to clarify the ORG study and the findings, but has not been able to contradict conclusively any of the statements made by me before the Commission. Further, ORG has attempted to show that LOS D is achieved if the Highway Capacity software or the Synchro model is executed with the site located in the Central Business District, as I had recommended. ORG's new analysis has resulted in a LOS D and LOS C at some intersections, but these results were achieved by **reducing** the future traffic volumes at several of the intersections, in comparison to the traffic volumes included in their earlier report, as submitted to the Zoning Commission. I will present a comparison of these numbers in this memorandum. The use of the correct volumes will result in LOS F at some of the intersections.

The critical issues are discussed here:

1. Vehicle Trip Generation rates -

ORG has assumed a 65% mode split share for transit and walk uses in their analysis. Actual data collected by the M-NCPPC shows a much lower share, as documented in the report entitled, " Post-Metrorail Transportation Characteristics Study", Prepared for the M-NCPPC, July 1987. A copy of the cover page is attached. This report shows that the mode share for the Barlow Building and the Chevy Chase buildings, located in Friendship Heights, are 20 to 27 percent only and not 65% as assumed by ORG (copies of pages from the report are attached). The actual mode shares for the retail and residential uses are described below.

WMATA Retail Use - ORG has used a vehicle trip rate of 2.8 trips per 1,000 square feet for all retail sites except the WMATA site. They have used a rate for the WMATA site which is 54% less than the other sites. No reasons are provided for using this rate. It should be noted that the retail trip rates in Friendship Heights area, based on actual data, is 2.8 trips per 1,000 square feet for a site that is located one hundred feet from the Metro station, as documented in the M-NCPPC report, cited above.

Stonebridge Apartment rates - ORG has assumed a 65% reduction factor due to transit and walk trips from Stonebridge, resulting in a vehicle trip rate of 0.22 per unit and subsequently increased it to 0.25 per unit at the recommendation of DDOT. Actual data from the Twin Towers Apartment building in Silver Spring, located approximately 900 feet from the Metro rail station, shows a vehicle trip rate of 0.30 per unit. This is approximately 36% more than the trip rates used by ORG. It should be noted that the Friendship Heights Sector Plan study also used a vehicle trip rate of 0.30 per unit for apartment uses.

This analysis shows that ORG has significantly underestimated the vehicle trip generation from the adjacent developments, as well as the Stonebridge project itself. Please note that I was the Principal Investigator of the Trip Generation Study for the U.S. Department of Transportation, that developed a handbook on trip generation rates for all uses. Based on my research, 65% reduction in vehicle trip rates due to transit and walk trips is a very high reduction for retail, residential and day care uses.

Levels of Service - ORG provides revised HCM results based on the site being located in the CBD area. These revised runs should have used the same data as before, except for the area type. However, a comparison of traffic volumes and other input data in to the new HCM model runs show major differences in traffic volumes (which have been further reduced from the numbers included in the traffic report), major differences in traffic signal timing, major differences in number of lanes, etc. Some examples of traffic volumes that have been reduced from the earlier data: northbound Wisconsin Avenue at Western Avenue in AM peak hour reduced from 993 to 917; westbound Wisconsin Circle at Wisconsin Avenue reduced from 423 to 390; northbound on Wisconsin Avenue at Wisconsin Circle reduced from 1327 to 1248 in AM peak hour and from 1454 to 1377 in PM peak hour. In terms of traffic signal timing, the yellow and all red signal timing has been reduced from 5 seconds to as low as 3 or 4 seconds at all intersections, which could be a major safety problem. The green signal timing for the other movements have been increased by reducing the yellow plus all red intervals and maintaining the total cycle length. This results in better levels of service at the expense of safety. The eastbound Jenifer Street number of lanes have been increased from one lane to three lanes. The effect of these changes by ORG results in a better level of service than reality. My testimony to the Zoning Commission included worksheets from the HCM model for one intersection and it showed that the intersection operates at LOS F.

ORG has conducted Synchro analysis to support their HCM results. However, the errors and omissions noted above are also included in the Synchro model runs. Therefore, the Synchro model results are not valid.

Future Traffic Volumes -

Traffic Growth Rates - ORG's rebuttal shows that the traffic volumes on Wisconsin Avenue have increased by 3.4% per year, however, ORG has used 2% per year in their analysis. This results in an underestimation of traffic volumes on Wisconsin Avenue by 5% or approximately 1,500 vehicles daily.

Other Developments - ORG has not included the 328 trips to be generated by the occupancy of the Chase Tower development. ORG notes that the Tower was

occupied at the time of traffic counts in January/February of 2002. However, the development was constructed in January 2002 and occupancy did not occur until after February. The Chase Tower brochure and their web site support this fact.

The impact of these two factors will result in worse levels of service than predicted by ORG.

Safety Issues - ORG has not addressed the safety issue with the proposed garage exit being approximately 50 feet offset from the Wisconsin Circle intersection. The garage exit **lines up with the eastbound Wisconsin Circle** at the intersection. There is a high probability of head-on collisions due to this off-set.

In conclusion, the ORG rebuttal has not provided any new valid information that can support their traffic analysis and results. My conclusions are still valid that the ORG studies have not provided mitigation measures for most of the intersections that would be operating at LOS F. The access plan has major safety problems and should be rejected.

Response to DDOT's Comments

DDOT's comments on my testimony are the same as ORG's rebuttal comments and therefore my response, as described above is valid for DDOT's comments, as well. DDOT has also presented 2002 Census data regarding commuting to work. Census tracts 11 and 10.1 which include the Friendship Heights area show that 33.9 percent and 29.9 percent of commuters, respectively, used transit. These numbers are significantly below the 50% transit usage assumed by DDOT for Stonebridge. The use of 50% transit usage results in a vehicle trip rate of 0.30 per unit. The data collected by M-NCPPC for a residential apartment building located approximately 900 feet from the Silver Spring Metro rail station showed a trip rate of 0.30 per unit. The DDOT's trip rates are approximately 20% below the actual observed rates. DDOT provides transit usage data for other communities in the District with approximately 50% transit usage. These communities have characteristics that are different from the Friendship Heights area and the transit usage can not be assumed to be the same.

Jhk & associates

**POST-METRORAIL
TRANSPORTATION CHARACTERISTICS STUDY**

prepared for
Maryland - National Capital Park and Planning Commission

by

**JHK & Associates, Inc.
Alexandria, Virginia**

July, 1987

Table C3. Mode Shares for Chevy Chase Building

	IN	OUT	TOTAL
For employees and visitors during the PM peak hour for the building (4:45 - 5:45 PM)			
- auto	73%	82%	80%
- transit	23	15	17
- walk	4	3	3
For employees only during the PM peak hour for the building (4:45 - 5:45 PM)			
- auto	NA	88%	88%
- transit	NA	10	10
- walk	NA	2	2
For employees only during the PM peak period			
- auto	NA	95%	NA
- transit	NA	12	NA
- walk	NA	3	NA

Note: The mode shares for employees only are derived from the workplace survey responses for the PM peak period. For this time period, only outbound (e.g. homebound) mode shares were collected.

Table C2. Mode Shares for Barlow Building

	IN	OUT	TOTAL
For employees and visitors during the PM peak hour for the building (4:45 - 5:45 PM)			
- auto	73%	74%	73%
- transit	24	23	24
- walk	3	3	3
For employees 2 IU during the PM peak hour for the building (4:45 - 5:45 PM)			
- auto	NA	75%	75%
- transit	NA	23	23
- walk	NA	2	2
For employees only during the PM peak period			
- auto	NA	84%	NA
- transit	NA	14	NA
- walk	NA	2	NA

Note: The mode shares for employees only are derived from the workplace survey responses for the PM peak period. For this time period, only outbound (e.g., homebound) mode shares were collected.