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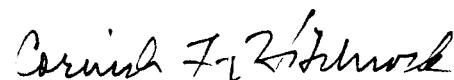
Hon. Carol J. Mitten, Chairperson
Zoning Commission for the District of Columbia
441 Fourth Street, Suite 210-South
Washington, DC 20001

Re: Z.C. No. 02-17 (5401 Western Avenue PUD)

Dear Chairperson Mitten and Members of the Commission:

Attached are the proposed Findings of Fact and Conclusions of Law submitted on behalf of Friendship Heights Organization for Reasonable Development, Hazel Rebold, Betsey and Steven Kuhn, Martin Rojas and Jackie Braitman. For the Commission's convenience, a diskette containing a copy of this document in Word format is being submitted as well.

Respectfully submitted,



Cornish F. Hitchcock
Counsel for FhORD
Parties in Opposition

cc: All parties

ZONING COMMISSION
District of Columbia
Case 02-17
Exhibit 219

ZONING COMMISSION
District of Columbia
CASE NO.02-17
EXHIBIT NO.219

**ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA**

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) Z.C. Case. No. 02-17
Development and Zoning Map Amendment)
for Property at Western Ave., N.W., and)
Military Road, N.W. Square 1663, Lots 7)
and 805)
)

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
FRIENDSHIP HEIGHTS ORGANIZATION FOR REASONABLE DEVELOPMENT,
HAZEL REBOLD, BETSEY AND STEVEN KUHN,
MARTIN ROJAS AND JACKIE BRAITMAN**

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on November 14, 2002, December 12, 2002 and December 16, 2002. At those hearing sessions, the Zoning Commission considered the application from Stonebridge Associates 5401, LLC (hereinafter called "Stonebridge"), 5401 Western Avenue Associates LLP and the Abraham and Louise Lisner Home for Aged Women (hereinafter called the "Lisner Home"), who together are referred to as the Applicants. The Applicants requested consolidated review and one-step approval of a Consolidated Planned Unit Development (PUD) and a related amendment to the Zoning Map of the District of Columbia, pursuant to Chapter 24 and Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

Preliminary Matters

1. This is the revised application brought by the Applicants seeking consolidated review and approval of a PUD and a related map amendment. The first application was filed on March 22, 2002, and requested approval of a development of an apartment house with 200 to 225 units with a gross floor area of approximately 234,750 square feet, including approximately 7,200 square feet of ground floor retail.
2. On August 19, 2002, the Applicants revised their proposal in a Prehearing Statement, and requested approval of a development of an apartment building with 185 to 215 units with a gross floor area of 232,200 square feet, including a 3,000 square foot child care center.
3. On October 25, 2002, the Applicants revised their proposal again, requesting a gross floor area of 185,000 square feet for up to 125 units and a child care center with up to 6,000 additional square feet in a separate building.

4. The revised application filed on October 25, 2002 requested a map amendment from R-5-B to R-5-C for Square 1663, Lot 805, located at 5401 Western Avenue, N.W. The Applicants also requested an increase in the maximum height permitted for a PUD in R-5-C by 5%, an increase in the FAR permitted for a PUD in R-5-C by 5%, and flexibility to permit more than twenty-five children in the child care center.

5. In the PUD Submission and Prehearing Submission, the Applicants requested consolidated approval of a PUD and map amendment. In the Supplemental Prehearing Statement dated October 25, 2002, the Applicants requested an amendment to its application. The Applicants requested a consolidated review and approval of a PUD in conjunction with a requested map amendment, such that Stonebridge can build a residential building and underground parking on Square 1663, Lot 805, and a separate day care center, to be used by Chevy Chase Plaza Children's Center, hereinafter referred to as "CCPCC", on Square 1663, a portion of Lot 7.

6. On August 19, 2002, D.C. Councilmember Patterson submitted a letter to the Zoning Commission in opposition to the Application. Councilmember Patterson noted her testimony and the D.C. Executive Branch's position against the excesses in development planned for the Maryland side of the border in Friendship Heights, and she discussed her "longstanding concern that the residential character of the Friendship Heights neighborhood in the District be preserved." She stressed that the "current zoning provides the appropriate "buffer" between strictly commercial enterprises and the single-family residential neighborhood along Military Road, to the east and to the south."

7. On August 21, 2002, D.C. Councilmember Catania, a member of the WMATA Board, submitted a letter to the Zoning Commission in opposition to the Application. Councilmember Catania noted that he opposed the enormous scale of the project and the adverse impacts on the neighborhood.

8. D.C. Councilmember Mendelson also submitted a letter to the Zoning Commission in opposition to the Application

9. On October 24, 2002, the Friendship-Tenleytown Citizens Association wrote a letter to the Zoning Commission reporting their unanimous vote to oppose the Stonebridge proposal based on its inappropriately great mass and height, violation of the "Ward 3 "master plan," traffic impact, and lack of meaningful amenities for the public at large.

10. The Commission granted party-in-opposition status to Friendship Heights Organization for Reasonable Development, an unincorporated community-based organization of Friendship Heights DC neighbors who oppose the rezoning sought by Stonebridge Associates, Inc. for its proposed development at 5401 Western Avenue, N.W. FhORD members and supporters include over 400 individuals. Eleven of these people live within 200 feet of the site proposed for redevelopment. Party-in-opposition status was also granted to four of its members, Hazel F. Rebeld, Betsey and Steven Kuhn, Martin Rojas and Jackie L. Braitman (collectively "FhORD" or "Opponents"). FhORD supports the redevelopment of this site, currently with no housing units, to a residential development to the full extent provided for under the current zoning.

11. FhORD filed a motion to postpone due to the material changes in the Application on October 25, 2002 and the material omissions in the October 25, 2002 Application. This motion to

postpone was rendered moot by the Commission's decision to hear the Applicants' case on November 14, 2002, and hold all questions and cross-examination until a subsequent night.

12. Complaints were filed by neighbors concerning the content, placement and maintenance of Notice of Public Hearing required by section 3015, requiring such Notice to be "posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property."

a. The Notice for this case contained numerous inaccuracies, including the incorrect statement that the rezoning requested "is consistent with the high-density designation for the site on the Generalized Land Use Map of the Comprehensive Plan." As an owner of property within 200 feet, party Hazel F. Rebeld requested on 09-22-02 that a Revised Notice of Public Hearing be published in the DC Register and also sent to all parties who received the incorrect Notice. Ms. Rebeld received a Revised Notice by mail 10-17-02.

b. Letters filed by Ms. Rebeld (10-09, 10-11, 10-16 and 10-27-02) and Marilyn J. Simon (10-22-02) concerned the posting of the Notice on only the Western Ave. frontage of the Washington Clinic property, and they noted the lack of Notice on the Military frontage of the Clinic, on both the Western and Military frontages of the Lisner Home, and on both of the buildings located on the subject property. Subsequent to complaints, a Notice was placed on the side of the Clinic facing Military Road, behind a bush and not in "plain view of the public."

13. The Affidavit of Posting filed by the Applicant on September 30, 2002, states that two Zoning Notices were posted, one on the "5400 block Military [sic] & Western Avenue, NW," and the other at "5401 Western Avenue, N.W." It was accompanied by photographs of two postings, both on Western Avenue. In a letter filed on December 5, counsel for the Applicant claimed that posting was not required on the Lisner site, and that the postings on the 5400 block of Western Avenue and 5401 Western Avenue were sufficient. The letter also stated that there had been actual notice and that the issue was moot inasmuch as the Zoning Commission had commenced the hearing.

14. The party opponents argued preliminarily that the application must be dismissed because the gross square footage of the proposed building would exceed the maximum gross square footage for R-5-C, the proposed zoning designation, even if an additional density of 5% were granted. The Applicants excluded from its square footage calculation "bays projecting over the property line on Western Avenue" and a "mechanical shaft deduction," both of which are explicitly included in the definition of "gross floor area" as stated in 11 DCMR §§ 199.1. The party opponents state that the actual gross square footage is at least 188,150, while the maximum allowed in R-5-C, with additional density of 5%, would be 184,128. The party opponents also argue that using the proper measuring point, the height of the proposed building exceeds 78.75 feet, the maximum height that would be permitted in an R-5-C zone if 5% addition height were permitted.

15. Applicants claimed that they were not required to include the bays, that the 2% mechanical shaft deduction related only to chases that have a single cap, and that the height was properly measured. Applicants further stated that Zoning Administrator would examine the plans and that they would not be issued a building permit if they were not within the R-5-C zone limits, even if

approved by the Zoning Commission. The Opponents' motion to dismiss was denied in favor of considering the issues in the course of the hearing.

Findings of Fact

16. The subject site consists of Lot 805 and a portion of Lot 7 in Square 1663, having a total site area of 58,840 square feet. Lot 805 is 43,840 square feet (1.00643 acre) zoned R-5-B, and is currently improved with the Washington Clinic. The portion of Lot 7 is 15,000 square feet that is currently part of the grounds of the Lisner Home and is zoned R-2.

17. The project site is roughly triangular in shape, with an acute angle formed by its frontages on Western Avenue and Military Road, NW. In Maryland, across Western Avenue from the site is the Chevy Chase Metro Building and the Chevy Chase Center. The Chevy Chase Center has been approved for redevelopment and will have a two-story commercial component for a depth of approximately 150 feet back from Western Avenue. To the east of the site is the two-story Lisner Home (zoned R-2). To the south of the site are detached single-family houses (zoned R-2), the Courts of Chevy Chase townhouses (approved under a PUD, and built, within R-5-B height and FAR restrictions), and the Chevy Chase Pavilion building. Both the Chevy Chase Metro Building in Maryland and the Chevy Chase Pavilion (Embassy Suites) extend approximately 200 feet farther to the west than the subject site and, unlike the subject site, have frontage on Wisconsin Avenue. These two Wisconsin Ave. buildings are largely off-set to the west of the subject site, with their eastern boundaries only slightly overlapping with the western boundary of Lot 805. These aspects of the site are reflected in FhORD's Response to Applicant's Rebuttal, filed on January 27, 2002, on FhORD Exhibit A: Official DC Zoning Map; and FhORD Exhibit C: The subject site is not on the Wisconsin Avenue Commercial Corridor.

18. Stonebridge Associates, Inc. is a privately held real estate investment and management firm. Stonebridge Associates, Inc. created Stonebridge Associates 5401, LLC as a limited liability corporation to develop 5401 Western Avenue. 5401 Western Avenue Associates, LLP is the owner of Lot 805, Square 1663, and the Abraham and Louise Lisner Home is the owner of Lot 7, Square 1663.

19. As Laurence Freedman testified, party in opposition Friendship Heights Organization for Reasonable Development (FhORD) is an unincorporated community-based neighborhood organization with over 400 members and supporters.

20. Party in opposition Hazel F. Rebold lives at 4228 Military Road, NW, which she has owned since 1985. Hers is the closest house, there being 90 feet between the property line of the Rebold lot and the Lisner Home portion of the subject site.

21. Parties in opposition Betsey and Steven Kuhn reside at 4211 Military Rd., NW, in the closest house to the subject site on the north side of Military Road. Their property is located on the same square as the subject site, from which it is less than 200 feet distant.

22. Party in opposition Martin Rojas lives with his wife and young daughter at 5347 43rd Street, NW, which is within 200 feet of the subject site.

23. Party in opposition Jackie L. Braitman has owned and occupied 5343 43rd Street, NW, for more than 10 years. Her property is also within 200 feet of the subject site.

24. In a preliminary report, dated May 31, 2002, the District of Columbia Office of Planning analyzed the Applicants' request. The D.C. Office of Planning stated that it did not support the project as proposed.

25. At its regular monthly meeting on June 10, 2002, the Commission reviewed the Applicants' request, considered the D.C. Office of Planning's Preliminary Report, and set down this matter for a contested public hearing.

26. The March 22, 2002, Stonebridge application had been preceded by meetings between Stonebridge and ANC Commissioner Jill Diskan, neighbors of her choosing, and the director of the Chevy Chase Plaza Children's Center ["CCPCC"]. The first of these meetings was held 09-18-01, and the last 01-07-02.

27. Participant Hazel Rebold, who was present at all of these meetings, testified that she perceived these meetings to be perfunctory steps carried out for the PUD application process, and that her suggestions to reduce height and mass were dismissed with laughter from the Stonebridge team.

28. Laurence Freedman testified that the developer was clear that it would not respond to "the community's concerns about mass [and its] basic concerns about rezoning [the Washington Clinic site] and the mass and density [of the proposed building.]" Douglas Firstenberg, principal of Stonebridge Associates, testified that residential development under current zoning, in his view, did not make sense.

29. Laurence Freedman, of 4104 Legation Street, N.W., and Dr. Marilyn Simon, of 5241 43rd Street, in October 2002 filed an overview of zoning and land use principles impacting the Washington Clinic site entitled History of Zoning and Land Use Planning of the Washington Clinic Site from 1974 – 2002.

30. The subject site is located within ANC 3E. Presentations were made by Stonebridge and by FhORD, in opposition, at the ANC 3E meeting on September 12, 2002. At the following meeting on October 10, 2002, the ANC 3E Commissioners decided not to vote on the Stonebridge proposal, but instead to attempt to have the ANC negotiate directly with Stonebridge, without the inclusion of FhORD or any neighborhood or citizen involvement. ANC3E held a special meeting on Nov. 7, at which the last proposal was presented, and ANC 3E voted 3 to 2 to oppose the application.

31. ANC 3G has an interest in this application due to its proximity to this site and the impact of Military Road and Western Avenue traffic on ANC3G. On Nov. 4, ANC 3G voted 5-1 to oppose the Application.

32. The D.C. Office of Planning issued its final report on the revised proposal on November 4, 2002, with corrected versions issued on November 7, 2002 and November 14, 2002. It recommended approval of the proposed project as revised on October 25, 2002, with conditions relating to a need to develop acceptable procedures for the execution and maintenance of the affordable housing element, refinement of the Construction Management Plan with a "greater emphasis on ensuring excavation methods than prevent damage to adjacent residences," a clarification of parking provisions (where 137 spaces for 125 units plus 4 spaces for day care

staff, a total of 141 garage spaces, would be located), and additional information on the Transportation Management Program.

33. On November 18, 2002, Stonebridge submitted additional information on their proposed affordable housing program, stating that there would be four to six units ranging from 900 to 930 square feet, which would be offered, through a lottery held by the Applicant, to first time home-buyers with an HPAP eligibility certificate. The proposal also included restrictions on resale for the first 20 years, and a formula for the split between the seller and the District of Columbia Housing Trust Fund for units sold after the first 20 years. It was estimated that the units would be sold for approximately \$166,393.

34. The subject site is zoned R-5-B and R-2. The R-2 District consists of those areas that have been developed with one-family detached or semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. 11 DCMR § 300.1. The R-5 Districts are subdivided into R-5-A, R-5-B, R-5-C, R-5-D, and R-5-E Districts. In R-5-A Districts, only a low height and density shall be permitted; in R-5-B, a moderate height and density shall be permitted; in R-5-C, a medium height and density shall be permitted; and in R-5-D a medium-high height and density shall be permitted. [11 DCMR § 350.2]

35. The R-2 District permits matter of right development of single-family detached and semi-detached dwellings with a minimum lot area of 3,000 square feet, a minimum lot width of 30 feet, maximum lot occupancy of 40 percent, and a maximum height of 3 stories/40 feet. Use as a child/elderly development center may be permitted as a special exception in an R-2 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of § 205.

36. The R-5-B District permits matter of right development of rowhouses, flats and apartments to a maximum FAR of 1.8, a maximum lot occupancy of 60% percent, and a maximum height of 50 feet. The R-5-B District permits matter of right development of a child/elderly development center provided, that the center shall be limited to no more than 16 individuals. These requirements can be relaxed under the PUD process such that FAR can be increased to 3.0 and the maximum height to 60 feet.

37. The R-5-C District permits matter of right development of townhouses, flats and apartments to a maximum FAR of 3.0, a maximum lot occupancy of 75%, and a maximum height of 60 feet. The R-5-C District permits matter of right development of a child/elderly development center provided, that the center shall be limited to no more than 16 individuals. These requirements can be relaxed under the PUD process such that FAR can be increased to 4.0 and the maximum height to 75 feet.

38. The R-5-D District permits matter of right development of townhouses, flats and apartments to a maximum FAR of 3.5, a maximum lot occupancy of 75%, and a maximum height of 60 feet. The R-5-C District permits matter of right development of a child/elderly development center provided, that the center shall be limited to no more than 25 individuals. These requirements can be relaxed under the PUD process such that FAR can be increased to 4.5 and the maximum height to 90 feet.

39. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a one- stage PUD. The Commission may impose development

conditions, guidelines and standards that may exceed or be less than the matter-of-right standards for height, FAR, lot occupancy, parking and loading, and yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions that would otherwise require approval by the BZA.

40. The Zoning Commission hearing was conducted on three nights, November 14, 2002, December 12, 2002 and December 16, 2002.

a. On November 14, 2002, testifying on behalf of the proposal were Douglas M. Firstenberg, a principal of Stonebridge, Shalom Baranes, an architect, Roger Lewis, an architect and planner, Cullan E. Elias, an expert in traffic engineering, Eric Smart, a real estate economist, and Steven E. Sher of Holland & Knight, LLP, an expert in urban planning. All the witnesses were qualified as expert witnesses.

b. On December 12, 2002, testifying on behalf of the District Department of Transportation, DDOT, were Ken Laden, Associate Director for Transportation Policy and Planning, and Colleen Smith, Ward 3 Transportation Planner.

c. On December 12, 2002, Andrew Altman, Director, Ellen McCarthy, Deputy Director, and Steven Cochran, of the Office of Planning also testified on behalf of the proposal.

d. Chris McNamara, Tad Baldwin, Frank Gordon and Kevin Pettitt testified as individuals in support of the proposal. Sam Black and Cheryl Cort, representing the Smart Growth Alliance, testified in support of the proposal. Smart Growth Alliance is an organization chaired by Robert Harris, executive partner at Holland and Knight, LLP, the Applicants' attorney. Caren Bohan, Allison Feeney, and Gregory Poe, all parents of children at the CCPCC, testified as individuals in support of the proposal. Lisa Danahy, Executive Director of the CCPCC also testified in support of the proposal. Larry Thaw, a Little League coach, supported the proposal based on the assumption that the Applicants were offering \$700,000 in playground improvements. Matthew Tobrina, President of the Board of the Lisner Home, one of the Applicants, testified in support of the proposal.

e. On December 16, 2002, testimony against the proposal by the parties in opposition was given by Hazel Rebold, who owns a house across the street from the site at 4228 Military Road; George Oberlander, an urban planner who was qualified as an expert witness; Joe Mehra, a traffic engineer who was qualified as an expert witness; Marilyn J. Simon, who owns a house close to the site on 43rd Street and is an economist; Laurence J. Freedman, who owns a house close to the site at 4104 Legation Street, and Betsey Kuhn who owns a house on Square 1663. All witnesses except Ms. Rebold, Dr. Simon, Mr. Freedman and Ms. Kuhn were qualified as expert witnesses.

f. The parties in opposition on December 16, 2002, also submitted drawings to accompany the testimony of Hazel Rebold [Exhibit 200], the written statement of Joe Mehra [Exhibit 198], the written statement of George Oberlander [Exhibit 202]; and copies of an 83-slide Powerpoint slide show that was presented to accompany the oral testimony of Mr. Mehra, Mr. Oberlander, Dr. Simon and Mr. Freedman [Exhibit 192].

g. Testifying in their official capacity as ANC representatives against the project were presenters Tad DiBiase from ANC 3E [Exhibit 180] and Robert Gordon from ANC 3G [Exhibit 197]. Also testifying against the proposal were Margaret Mellon, who owns a house across 42nd Street from the Lisner Home; Anne Jansen, who owns a house within 200 feet of the subject site; Anthony Furano, who owns a house on 41st Street; Joel Hunter, who owns the second house from the site on the Square 1663; Luther Miller, an architect who owns a house on Jenifer Street, and Mary Lindquist, who owns a townhouse at the Courts of Chevy Chase, approximately 100 feet from the subject site.

Existing Zoning and the Comprehensive Plan

41. As discussed in the filed History of Zoning and Land Use Planning of the Washington Clinic Site from 1974 – 2002, the Washington Clinic site is one of the three most intensively zoned residential sites in the Tenleytown-Friendship Heights corridor. The other two other residential sites in the Tenleytown-Friendship Heights Corridor are the WMATA bus terminal on Wisconsin Avenue below Jennifer Street (zoned R-5-B), and the northeast quadrant of Square 1661 that contains the Courts of Chevy Chase townhomes (zoned R-5-D through a PUD but PUD approved and built within R-5-B standards for height and density).

42. Mr. Oberlander and Mr. Freedman testified and demonstrated on the D.C. Official Zoning Map that the entire eastern edge of the site borders land zoned low-density R-2, and the entire southern edge borders land zoned moderate-density R-5-B, with the exception of a the zoning line through the very western point of the site, literally at the intersection of Western Avenue and Military Road, which abuts a C-3-A zone. (The northwestern edge borders Maryland.)

43. Mr. Oberlander and Mr. Freedman testified that this site is part of a gateway to the residential neighborhoods of Friendship Heights and Chevy Chase DC. The current zoning allows a height of 50 feet, a FAR of 1.8, residential development of 78,912 square feet.

44. In the 1950s and 1960s, in anticipation of new freeways serving Friendship Heights, the Friendship Heights area was largely zoned commercial. [Z.C. Order 87, Case No. 73-29, Statement of Reasons, February 12, 1974, at p. 2.]

a. An extensive 17-month planning effort by the NCPC, Montgomery County, the District Office of Planning and Management (predecessor to the current Office of Planning), all impacted government agencies, and all interested neighborhood groups. As a result of this planning effort, the NCPC published the Friendship Heights Sectional Development Plan, which fully recognized of the benefits of the then-pending Metrorail station at Friendship Heights.

b. When it became clear that there would be no freeways serving Friendship Heights, that major road widening was not advisable, and that the new Metrorail system would soon have a station at Friendship Heights, in 1974 the Zoning Commission adopted the National Capital Planning Commission's (NCPC) recommendations regarding rezoning. [Z.C. Order 87, generally.]

c. Specifically, on February 12, 1974 the Zoning Commission rezoned all or part of ten Squares in Friendship Heights and decided not to rezone any other Squares in the "1974 Plan Area," bounded by Western Avenue to the north, 41st Street to the east, Fessenden Street to the

south and 47th Street to the west. [See Z.C. Order. 87, Case No. 73-29, February 12, 1974.]

d. Specifically, on February 12, 1974, the Zoning Commission adopted the National Capital Planning Commission's (NCPC) recommendation to rezone the Washington Clinic Site to R-5-B to provide a transition between high-density commercial zoning (C-3-A) on Wisconsin Avenue and low-density residential zoning (R-2) in the surrounding neighborhood. [Z.C. Order 87, generally.]

e. Mr. Oberlander testified that as a direct result of the NCPC recommendation “[t]he current R-5-B zoning was deliberately placed on the site as part of an extensive planning, traffic and zoning process[and] was put in place to protect (sic) the property values, assure orderly development and safeguard the general welfare.”

f. As part of this rezoning, the Zoning Commission specifically rezoned Square 1663, Lot 805—the Washington Clinic site—to R-5-B zoning to provide for moderate-density residential development—five times the density of the surrounding residential zoning. [Z.C. Order 87, Case No. 73-29, February 12, 1974, at p. 2, para. 3(c).]

g. Mr. Oberlander testified that, as the current official Zoning Map now reflects, the boundary of that rezoning of the Washington Clinic site was very well defined—a curved boundary of a pie-shaped lot with a radius of exactly 334 feet, and an interior angle of just over 45 degrees – the exact dimensions of Lot 805.

h. In addition, the Zoning Commission deliberately and specifically rezoned part of Square 1661 to the immediate south of the Washington Clinic site to R-5-B as well (Square 1661, Lots 1, 11-16, 812, and that portion of lots 808 and 809 lying further than 150 feet from Wisconsin Avenue) to provide, together with the Washington Clinic site, about a 2-acre swatch of land zoned R-5-B. [Z.C. Order 87, Case No. 73-29, February 12, 1974, at p.2, para. 3(b).]

i. The Zoning Commission set forth four major objectives of this rezoning of the core of Friendship Heights. The rezoning of the Washington Clinic site, and the rezoning of specified lots on the east side of Square 1661 (currently the location of the Courts of Chevy Chase townhomes), were to achieve the following objective:

[R]ezoning certain areas on the periphery of the plan area to medium density residential in order to provide a buffer between the high density commercial and mixed use portions of the plan area and the surrounding low density residential community. [Z.C. Order 87, Case No. 73-29, Statement of Reasons, at p. 2]

j. This objective directly reflected the recommendation of the National Capital Planning Commission (backed by the Interagency Task Force on Friendship Heights) to the Zoning Commission that the Washington Clinic site be part of:

moderately density residential development around the edges of the [Friendship Heights commercial] core area to provide a compatible transition in order to protect the surrounding low-density residential area. ["Final Friendship Heights Sectional Development Plan," dated October 3, 1974, at p. 10]

45. As discussed in the filed History of Zoning and Land Use Planning of the Washington Clinic Site from 1974 – 2002, the 1974 objective of transition zoning is reflected in the R-5-B standard, specifically:

- a. Height of 50 feet, as a transition from the 90 feet that the 1974 rezoning would allow on Wisconsin Avenue to the 3-stories (and 40 feet) allowed in the surrounding neighborhoods. [In 1974, R-5-B allowed for a height of 60 feet, but this was adjusted as part of a general review of residential heights and densities reflected in a revision of the zoning regulations in 1992. [Final Rulemaking, 39 DCR 8305-11, November 13, 1992.]
- b. FAR of 1.8, as a transition from the 3.5 to 4.0 FAR (C-2-B, C-3-A zoning, respectively) allowed on the western part of Square 1661 on Wisconsin Avenue to the low-density surrounding neighborhoods (R-2) (R-2 has no specified FAR, but even with a PUD the R-2 density allowed is 0.4);

46. The parties agree that a critical limiting factor in the 1974 rezoning was the traffic capacity of the arterial streets. [Nov. 14, Tr. at 71] The rezoning of the Washington Clinic and part of Square 1661 served another key of objective of the 1974 planning efforts, “controlling commercial and residential development within the plan area at a level consistent with the traffic capacity of the main arterial and feeder streets within the plan area.” [Z.C. Order 87, Case No. 73-29, Statement of Reasons, February 12, 1974, at p. 1.] Without the freeways anticipated in the 1950's and 1960's to serve Friendship Heights, the Zoning Commission recognized that the existing road transportation infrastructure had serious, and identifiable, limits.

- a. The current Comprehensive Plan for Ward 3 reflects this exact theme, as well. It states that the ward's "commercial zoning is a legacy of the 1950's population projections and the extensive freeway system then planned for the district" and that "much of this medium density [commercial] zoning must be downzoned." [DC Comprehensive Plan, Sec. 1409.5.]
- b. In 1974, the Zoning Commission specifically stated that "the public interest requires that the existing zoning at [the Friendship Heights area] be revised so as to reduce the potential for high-density traffic generating uses beyond the capacity of the street system," and that "commercial development in Friendship Heights on both sides of the line has created considerable traffic congestion at peak hours and on Saturdays ... that threatens the stability of the adjacent single family residential communities." [Z.C. Order 87, Case No. 73-29, Statement of Reasons, February 12, 1974, at pp. 2, 4.]
- c. In 1974, the Zoning Commission was fully aware of the planned Metrorail stop at Friendship Heights. The Zoning Commission, in fact, specifically relied on the NCPC and Interagency Task Force's inclusion in their planning efforts the assumption that the Metrorail station in Friendship Heights would carry 30% of all peak hour commuter trips. [Z.C. Order 87, Case No. 73-29, Statement of Reasons, February 12, 1974, at p. 3.]
- d. The Applicants contend that transit usage is significantly higher than anticipated by the Commission when it rezoned this site in 1974. [Nov. 14, Tr. at 72.]
- e. The party-opponents testified and presented evidence that transit usage is not significantly higher now than anticipated by the Zoning Commission when it rezoned this site in 1974. Mr.

Oberlander was an urban planning consultant with the National Capitol Planning Staff for 31 years, and during 1974 he supervised the work that became the Friendship Heights Sectional Development Plan, and in relevant part which was adopted by the Zoning Commission. Mr. Oberlander testified that “[n]o anticipated changes have occurred other than increased traffic” and thus no anticipated changes have occurred to warrant “land-use changes or intensification” of Lot 805, Square 1663. Further, the party Opponents submitted U.S. Census 2000 data to indicate that actual rush hour vehicle trip generation per housing unit is as intense as anticipated when the site was rezoned; the U.S. Census 2000 data for Census Tract 11, Block 5, which includes the Washington Clinic site, is .663 automobile trips per unit (for commuters).

f. The parties agree that since 1974, there is no additional traffic capacity of the arterial streets, and no road widening or new roads.

g. Within the 1974 Plan Area, between 1974 and today, the Zoning Commission has made no zoning changes apart than PUD's, but has approved four PUD's for projects with residential components (three of which are in Square 1661, including one that was not built but was superceded by another PUD) [Z.C. Order 824 (“McCaffery PUD” superceding “Miller PUDs”); Z.C. Order 528, 528-A, 528-B, 528-C, 528-D, Case No. 86-21F/85-9P, April 13, 1987, June 11, 1990, June 8, 1992, June 13, 1994, June 10, 1996, respectively (“Miller PUD”); see Z.C. Order 493 (original “Miller PUD”).][Z.C. Order No. 519, Case 85-20C, February 9, 1987, (“Abrams PUD”), pp. 5, 18-20.] [Z.C. Order 921, Case No. 00-03C, September 17, 2001, (“Tenley Park LLC PUD”).]

h. In the case of “Tenley Park LLC PUD” approved in 2001, the Zoning Commission specifically “reject[ed] the notion that the property's proximity to the Tenleytown Metro Station would have justified R-5-B rezoning,” given the scale and character of the neighborhood. The Zoning Commission also state that “[t]his project is an example of development that is transit-oriented, increased housing density ... and meets with the approval of the nearby residential community. The Zoning Commission had previously “declined to vote” on the Holladay Corporation's Application to build 14 townhomes on this site and rezone it to R-5-B, but instead “suggested changes” that led to the Tenley Park LLC Application that was granted. [Z.C. Order 921, Case No. 00-03C, September 17, 2001, (“Tenley Park LLC PUD”).]

47. Ms. Rebeld and Mr. Freedman testified and as is discussed in the filed History of Zoning and Land Use Planning of the Washington Clinic Site from 1974 – 2002, of these four PUD's (three actually built) within the 1974 plan area, the Courts of Chevy Chase provides the obvious and best comparison to the Washington Clinic site because it is part of the transition zone created in 1974. The Courts of Chevy Chase involves 29 townhomes, it has a developed residential FAR is approximately 1.85, the neighborhood did not oppose it but supported it, it provides a transition or buffer between the commercial zone and the neighborhood, its design is in harmony with the single-family neighborhood and it has immediate access to the Metrorail station, which is in the same Square as the residences.

48. As reflected on the D.C. Official Zoning Map, other than the Mazza Gallery PUD on Square 1660, there are no other PUD's reflected on the most current Office of Zoning map within the entire area bounded by Western Avenue, Connecticut Avenue, Nebraska Avenue, and

Massachusetts Avenue, a broad area of upper Northwest DC. As Mr. Freedman testified, due to the prior PUD's, cumulatively, the core of Friendship Heights has experienced very dense commercial, office and residential development well above that contemplated and permitted by the zoning that has been in place from 1974-2002.

49. As discussed in the filed History of Zoning and Land Use Planning of the Washington Clinic Site from 1974 – 2002, apart from project specific reviews, the Office of Planning has never studied the cumulative impact of development to date on the neighborhoods. The neighborhood of Friendship Heights DC does not have the benefit of a new Small Area Plan (nor is one planned, except for the limited Upper Wisconsin Commercial Corridor Study). Mr. Oberlander testified that the 1974 Friendship Heights Sectional Development Plan was effectively a Small Area Plan and is effectively the Small Area Plan in place for the core commercial and residential area of Friendship Heights DC.

50. As discussed in the filed History of Zoning and Land Use Planning of the Washington Clinic Site from 1974 – 2002, the Comprehensive Plan designates the Tenleytown and Friendship Heights Metrorail stations as Housing Opportunity Areas. The goal of Housing Opportunity Areas is simply to create more housing than is presently available within the Housing Opportunity Area – more actual density than under present uses. The Comprehensive Plan contains no statement that current residential zoning is an impediment to creating new housing, nor that upzoning residential land is the preferred tool to create new housing.

51. Specifically, the Comprehensive Plan defines Housing Opportunity Areas as:

areas where the District expects and encourages either new housing or rehabilitated housing. These housing opportunity areas are not the only areas where new housing units will become available, but represent locations of significant concentrations. Most Metrorail stations outside the Central Employment Area, and some within, will support additional housing units. [DC Comprehensive Plan, Sec. 1118.6.]

52. This provision of the Comprehensive Plan then specifies that two “other” ways to provide additional housing at Housing Opportunity Areas are “the conversion of existing nonresidential buildings for housing” and the “return of vacant units to the housing market.” [DC Comprehensive Plan, Sec. 1118.6.]

53. The Comprehensive Plan also lists aspects of Housing Opportunity Areas that make them ripe to support additional housing units, which suggest that methods to achieve additional housing include new development on “vacant or poorly used land,” “surplus property sites,” “sites that exhibit potential for successful joint public and private initiatives,” and “areas where development can be used to improve neighborhood quality.” [DC Comprehensive Plan, Sec. 1118.7.] As Mr. Freedman testified, there is no mention of upzoning or rezoning residential land in these provisions of the Comprehensive Plan.

54. The Comprehensive Plan for Ward 3 lists four Housing Opportunity Areas, including Friendship Heights. [DC Comprehensive Plan, Sec. 1409.4(a).] At the Friendship Heights Housing Opportunity Area, the Comprehensive Plan for Ward 3 specifically identifies three sites

as housing development sites: the Lord & Taylor parking lot, the WMATA parking garage, and the 4300 Block of 43rd Street. [DC Comprehensive Plan, Sec. 1401.7]

a. As Mr. Oberlander and Mr. Freedman testified, the Lord & Taylor parking lot is zoned C-3-A or C-2-B, so it fits perfectly with the dominant theme of the Comprehensive Plan and the Housing Opportunity Area approach to promote housing in commercial zones; the WMATA is slated for residential development; and the 5300 block of the 43rd Street now have the Courts of Chevy Chase townhomes. The Comprehensive Plan does not specifically mention the Washington Clinic site as a housing development site.

b. The parties agree that the Washington Clinic site currently has no housing units. As Ms. Rebold and Mr. Freedman testified, under existing zoning, matter of right development would allow residential development 3.5 times as large as the current Washington Clinic building. This level of residential development would add a very significant amount of new housing, as envisioned by the designation of the Friendship Heights Metrorail station as a Housing Opportunity Area, and is in full accord with the Comprehensive Plan and the Housing Opportunity Area provisions, especially given the strained infrastructure at the core of Friendship Heights.

c. As Mr. Oberlander testified, the 1974 planning and zoning efforts serve as a predictable guide that provide the Friendship Heights neighborhood with a framework to assess the compatibility of new development. As Ms. Rebold and Mr. Freedman testified, any new development should respect for the history, character, values and scale of the residential neighborhoods, and integrate new development with these residential neighborhoods.

55. Mr. Oberlander testified that the Zoning Commission rezoned this site on the recommendation of the National Capital Planning Commission, based on the work of the Interagency Task Force on Friendship Heights, that it be part of "moderately density residential development around the edges of the [Friendship Heights commercial] core area to provide a compatible transition in order to protect the surrounding low-density residential area." Mr. Oberlander testified that this is a sound planning principle and Stonebridge's request to rezone this single site, dismantle this transition zone and convert it into high-density, and then deem the adjoining parcel of land the new "transition zone" has no grounding in the history of zoning of the Washington Clinic site or in the sound planning principles that are applicable to it.

56. The Applicants testified that the Washington Clinic site is a "pocket" that is appropriate for integration with the commercial corridor of developments that have frontage on Wisconsin Avenue.

57. Mr. Freedman testified that, from the neighborhood perspective, the Washington Clinic site is an essential transition zone between high-density commercial uses on Wisconsin Avenue and the low-density residential uses to the east and south of the site, as reflected in all planning documents and zoning decisions since 1974.

58. The Applicants submitted a written statement that enumerated elements of the Comprehensive Plan and that concludes that the project is not inconsistent with the Comprehensive Plan. [October 25, 2002, Application, Report of Steven Sher, pp. 15-21.]

59. Without any analysis or application to the project as proposed on October 25, 2002, the Applicants claim summarily that the project is not inconsistent with the Housing element, Environmental Protection element, Transportation element, urban design element, Ward 3 Economic Development element, Ward 3 Housing element, Ward 3 Environment element, Ward 3 Transportation element, Ward 3 Urban Design, and Ward 3 Land Use element. As set forth below, the project is inconsistent with these elements of the Comprehensive Plan.

60. Mr. Freedman testified that FhORD opposes the spot zoning that the Applicant requests for the Washington Clinic site, on the ground that it destabilizes the neighborhood by creating uncertainty about land use. He stated that "if you in fact take away this whole clinic site what you're left with is half or less of the original transition zone. That's why the neighborhood is anxious and opposes this spot zoning change, why we feel so insecure."

61. Mr. Freedman also testified that FhORD "strongly support[s] smart growth, transit oriented development and residential development within the current zoning."

Requirements for Approval of a PUD

62. Section 2403.9 of the Zoning Regulations enumerates ten "evaluation standards" that must be proven by the proponent of a PUD. In a typical PUD application, a project may qualify for approval by being "particularly strong" in only one or a few of the categories in §2403.9, as well as "acceptable" in all proffered categories and "superior in many." 11 DCMR § 2403.10.

63. The Zoning Regulations require that the public benefits and amenities must fully justify the "flexibility" (additional height and density) requested over current zoning.

64. The Zoning Regulations require that the project must not be inconsistent with the Comprehensive Plan. 2400.4.

65. The Applicants described their amenity package to include:

- a. housing in a residential zone, which could be developed for other uses;
- b. a day care center to be used by the Chevy Chase Plaza Children's Center;
- c. improvements to Chevy Chase Park;
- d. significant additional open space and tree preservation and the creation of "green" and additional landscaping in open space, as well as landscaping enhancements to public space;
- e. landscaped walkway from Military Rd. to Western Ave., including a retaining wall for pedestrian cut-through to Western;
- f. a gazebo in the open space;
- g. traffic enhancements, a traffic management plan and pedestrian safety enhancements;
- h. excess residential parking and visitor parking;
- i. a Construction Management Plan; and
- j. four to six affordable housing units.

66. 2403.9(a): Urban design, architecture, landscaping, or creation or preservation of open spaces.

a. The goal of urban design in this area of stable character is stated in section 711.1 of the Comprehensive Plan: “The areas of stable character objectives are to maintain those areas of the District that have a positive physical image and to provide that new development and renovation within or adjacent to these areas is complementary in scale and character.” Therefore, evaluation of urban design requires looking at development on properties that surround the subject site. Clockwise from the east:

i. To the east of the entire site is the Lisner Home property. The closest parts of the Lisner Home are one and two stories. [Oct. 25th submission, drawings A5, S7] The tallest part of the Lisner Home is three-stories, and less than 40 feet. The Lisner Home has an FAR of less than 0.5.

ii. To the south is a two-story detached house on the corner of Military Road and 43rd Street, square 1664 lot 810, whose property line is 90 feet from the subject site. This house is approximately 26 feet tall, and is abutted by a one-story house and another two-story house.

iii. Also to the south across Military Road, the majority of this site faces the three-story Courts of Chevy Chase townhouses located on Square 1661 on the west side of 43rd Street. These townhouses were designed to be a transition and buffer between the R-2 residential neighborhood and the Wisconsin Avenue commercial corridor. They have a maximum height of 45 feet, and are set back approximately 80 feet from the Military Road right-of-way. This is the townhouse component of the McCaffery/Eakin-Youngentob PUD, which has an FAR of approximately 1.86.

iv. A small slice of the Chevy Chase Pavilion/Embassy Suites is diagonally across from the site, adjacent to the townhouses, and has Wisconsin Avenue frontage. According to the Applicants, the Embassy Suites is the same height as the proposed development.

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

vi. Also across Western Avenue in Montgomery County is the Chevy Chase Center, which has been approved for total redevelopment. Stonebridge Associates is the developer for this property also, on a fee basis. There will be a two-story neighborhood retail (grocery store) wing, with a height of approximately 35 and 45 feet, extending back from Western Avenue (into Maryland) for a depth of about 150 feet. [Stonebridge October 25 submission, drawing S7 and others]

vii. Both Stonebridge architect Mr. Baranes and witness Mr. Sher described the height of the Chevy Chase Center as 90 feet. Opponents state that this is very misleading, since the only part approved for 90-foot height is the office component, which is far removed behind this two-story neighborhood retail building. Only after the roughly 150 foot

neighborhood retail wing does the height increase to 90 feet. Both Mr. Baranes and Mr. Sher omitted any reference to the extensive low component, although it is much closer to the subject site.

viii. Mr. Sher's report [Oct. 25th submission, p 2] states that the new Chevy Chase Center will have an FAR of 2.0, but Opponents presented data indicating that the FAR for the Chevy Chase Center redevelopment, including its parking lot, will be even lower, 1.12.

b. Testimony concerning the significant negative impact to the immediate neighborhood was presented by party Opponent Hazel Rebold, owner of the closest detached house, 4228 Military Road, whose property is 90 feet from the subject site. Her testimony was accompanied by submitted drawings.

i. Ms. Rebold presented photographs to convey the character of her two-story home, her one and two story immediate neighbors, and the three-story townhouses on Square 1661 across 43rd Street. She submitted a scale drawing of the proposed building (78.7 feet and up to 94.5 feet) compared to her 26-foot tall house and the even shorter houses of her immediate neighbors.

ii. Her submission included additional photographs of the Courts of Chevy Chase townhouses, which are on the same square as an entrance to the Friendship Heights Metro Station. They face the site across Military Road, from which they are set back approximately 80 feet. She testified that this townhouse development is a pleasant transition between her neighborhood and the commercial corridor on Wisconsin Avenue.

iii. She submitted photographs of a townhouse development recently built within a block of the Bethesda Metro Station, as an example of a "smart growth" urban design that could be used here also. This development has only a single curb cut, which leads to an underground parking level, in which each townhouse has a private two-car garage under their own unit.

c. The Applicants claim their proposal is appropriate urban design in the context of existing nearby buildings.

i. Applicants' witness Steven Sher [Report to the Zoning Commission, Nov. 14, 2002, page 11] stated that "Proposed height and density are consistent with existing and permitted height and density to the north and south." Applicants' witness Roger Lewis claimed "In overall form and massing, the building as designed, will successfully co-exist with surrounding uses and buildings, and relate well to adjoining streetscapes."

ii. The Applicants refer in testimony and submissions to compatibility with all three PUD developments existing on square 1661 and also say that their own request is similar in nature.

d. The Opponents have noted that:

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

- ii. The subject site is about 200 feet removed from Wisconsin Avenue.
- iii. Although Applicants referred [in their Closing Statement] to these PUD developments on Square 1661 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.
- iv. 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.
- e. The Commission concludes that the Applicants' characterization of the surrounding area is inaccurate and misleading. The subject site is approximately 200 feet removed from Wisconsin Avenue, and it is not comparable to the developments having frontage on this commercial corridor. Rather, this site is the continuation of a transitional band between the higher density to the west and the low density one and two-story institutional and residential areas to the east and south.
- f. The Commission finds that the massive size of the development proposed for this site would be inconsistent with the essential transitional/buffer function of this site as it relates to the immediate area, and as required for good urban planning.
- g. The Commission finds that the proposed development lacks the "compatibility and sensitivity to the scale of existing buildings, maintenance of environmental quality, integration of new development with existing area or neighborhood character" required for good urban planning and stated in the Comprehensive Plan for Ward 3, §1406.1(d).
- h. The Applicants claim [Applicants' Submission dated August 19, 2002] that the "placement of the building on the Site and the elimination of the Lisner Wing minimizes any adverse impacts resulting from the height on the adjacent community."
- i. Applicants' witness Roger Lewis testified regarding the project design that "It's height, geometry and multiple façade treatments will harmonize, and be in scale with nearby structures and abutting properties."
- ii. 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."
- iii. The Applicants' Rebuttal Exhibit A drawings are claimed to 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."
- iv. The Applicants also presented 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.

i. The Opponents believe the height and mass of the proposed development would have a severe negative impact on the nearby areas. The proposed building has a stated height of 78.7 feet (eight stories above grade, plus two below), and a height of 94.5 feet at the penthouse "tower-like element," as described by Mr. Baranes [measurements from Oct. 25th submission, drawing A7], which is continuous with the facade of the building.

i. The view when standing at the front door of the house at 4228 Military Road. is by no means the only view of importance to the owner of this house. The subject site is the primary view from twelve widows in this house, all of which would be dramatically impaired.

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

j. Testimony was given by Opponent Luther D. Miller, III, an architect whose family has lived on Jenifer Street since 1911. He said he disagrees with his former mentor Roger Lewis, who had testified for the Applicants, concerning the merits of this project. Mr. Miller supported the existing zoning and does not see "how a high rise tower dwarfing the homes of my neighbors buffers them from other high rise towers." He also has concern that this would "encourage and set a precedent" for further violations of our carefully devised zoning plan.

k. The Opponents have noted that the only development in the District adjoining this site that is even as tall as the proposed development is the small slice of the Chevy Chase Pavilion/Embassy Suites that is diagonally across from the site, and has Wisconsin Avenue frontage. According to the Applicants, the Embassy Suites is the same height as the proposed development. The Mazza Galleria development, on the Wisconsin Avenue commercial corridor (unlike the subject site), is 65 feet high from an elevation approximately 9 feet lower than the measuring point used by the Applicant. Thus the proposed development (assuming a legal height of 78.75' per the Applicant) would be 22 feet higher than the Mazza Galleria.

l. The Commission finds that it is meaningless to compare the relationship of the closest house (4228 Military Road) to its neighbors to its west with the neighbor that the Applicants now proposed to its north. 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. Additionally, the Commission finds it is inappropriate for the Applicants to presume to know what the preferred view would be for the resident of this or any other house, or to or to presume what character of development the residents should find more pleasing and compatible for their own neighborhood.

m. The Commission finds that the proposal is very significantly taller and very significantly more dense than its surroundings. When the development is reviewed in context and in relation to the existing and approved developments for the area, the building is inappropriately large, incompatible in scale and character, and intrusive to the residential neighborhood to the east and

south. This proposal does not represent good urban planning.

n. The Commission finds that the architecture is not exceptional or superior within the meaning of the applicable regulations. There is no demonstration that the architecture is somehow superior to what could be accomplished under matter of right zoning.

67. 2403.9(b): Site planning, and efficient and economical land utilization.

a. The Applicants have claimed that they offer exceptional planning of the site by putting the mass of their building toward the north and west of the subject site, leaving the open area toward the residential neighborhood.

b. The Commission finds that placing the mass of the development toward the commercial area across Western Avenue, and the open space toward the neighborhood, is not exceptional planning of the site. It is unlikely that any other developer placing a single building on this site would propose a site plan that is any less desirable than that proposed by the Applicants.

c. At the hearings, there was considerable questioning of the Applicants' witnesses concerning alternative plans that could be developed under the current zoning, particularly townhouses.

i. Stonebridge principal Douglas Firstenberg stated that his firm "didn't think it made sense to put townhouses at this site. We didn't think it made sense to put 50 plus or minus condos at this site. We thought it would be terribly inappropriate to develop this site as a medical clinic building." However, he gave no explanation for these conclusions.

ii. Under cross-examination, Mr. Firstenberg said that there are no impediments to matter of right development of the site.

iii. Under questioning by Commissioners May and Hood, Applicants' witness Mr. Baranes said that he had not given much consideration to designing a development under the current zoning. In response to a questioning from Opponents' attorney, Mr. Baranes said that townhouses were quickly dismissed as unfeasible due to the challenge of accommodating "all the driveways that you have to cut in to allow each townhouse to have a garage."

iv. Under questioning by Opponents' attorney, Mr. Baranes conceded that "in theory" a townhouse development could be built with a single curb cut to an underground garage level.

v. Commissioner May asked the Applicants "why not townhouses?" He asked for two of the Applicants' witnesses to address this question, not from an economic point of view or from a development point of view, but just from a planning point of view.

(1) A person in support of the Applicants, Mr. Sam Black from the Smart Growth Alliance said "it would probably be a challenge to get those townhouses on there and to get proper automobile circulation to each one of those."

(2) Applicants' witness Mr. Lewis stated that it would be a "problematic site" for rowhouses, and that the issue of transit-oriented development supports something of greater density.

d. 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.”

e. Opponents agree that multiple curb cut on either Military Road or Western Avenue are a bad idea. They have cited that all curb cuts require the approval of the Department of Transportation, as stated in Title 11 Regulations §2117.14, and that it is unlikely that such multiple curb cuts would be allowed.

f. Party Opponent Ms. Rebold testified that urban townhouse developments have been efficiently designed with an underground parking level and only a single curb cut. This is a very efficient use of land, eliminating surface paving and maximizing both the number of housing units and the landscaped area.

g. Opponents have cited that they have talked to the developers of two townhouse developments near busy Metro stations, the Courts and Chevy Chase (across from the subject site) and the Villages of Bethesda, (using the underground garage level plan) about the subject site. Both of these developers are of the opinion that this is a very desirable site for a townhouse development, and there are no impediments to its feasibility here.

h. The Commission finds that there has been no demonstration of impediments on the subject site that prevent it from being developed with townhouses. Efficient land use can be achieved with an underground garage level. Additionally, the compatibility of this type of plan with the immediate residential neighborhood is desirable.

68. 2403.9(c): Effective and safe vehicular and pedestrian access; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts.

a. This Commission is also required to evaluate the proposal in terms of its ability to mitigate adverse traffic impacts. The Applicants proposed to provide “signal enhancement” at Western Avenue; “limitation of parking and loading entrances to only Western Avenue”; “no left/U-turn signs at Military Road lay-by; signal modification at Wisconsin Circle and Western Avenue; signage improvements at Military Road and 43rd Street; signage improvements at Military Road and 42nd Street; signalization improvements at Military Road and Reno Road; traffic calming on 43rd Street”; and “crosswalk reconstruction” at Western Avenue and Wisconsin Circle, “at the building entry on Western Avenue, and on Military Road.

b. The Commission finds that:

i. 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.

ii. 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.

iii. 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.

iv. 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.

v. 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.

vi. 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.

vii. 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.

viii. 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.

ix. “Traffic calming on 43rd Street” has not been specified, commented on by DDOT or the neighborhood, and thus has no demonstrated value.

x. 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.

c. Further, the Commission finds that 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.

d. The Commission finds that effective and safe vehicular and pedestrian traffic is a major concern with this project, and that the applicants proffered no solutions to these problems which were superior, let alone exceptional. Indeed, the proposed project may well worsen traffic safety in the area.

69. 2403.9(d): Historic preservation of private or public structures, places or parks.

a. With regard to §2403.9(d), the historic preservation of private structures, the Commission finds that this is not an applicable factor.

70. 2403.9(e): Employment and training opportunities.

- a. Stonebridge has not offered a first source employment agreement.
- b. The Comprehensive Plan states that: “Discretionary zoning actions, such as Planned Unit Developments, affecting Ward 3, shall . . . treat amenities such as . . . first-source employment as requirements.” [§1409.8(c)(3))]
- c. The Commission finds that the Stonebridge proposal has not met this requirement.

71. 2403.9(f): Housing and affordable housing.

- a. As to housing as an amenity, 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.
 - i. In addition, the Applicants proposed no additional housing over that possible under matter of right development.
 - ii. 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).
- b. As to affordable housing, in its October 25 Revised Prehearing Submission, Stonebridge added an affordable housing component. The Applicants only stated that the affordable housing component would involve 5,514 square feet to be set aside for four to six affordable units, but provided no information about how the affordable housing program would be implemented. More information was requested, and on November 14, the Applicants provided a brief description of the program. On December 12, the Zoning Commission requested additional information on the affordable housing proposal.
 - i. On January 6, 2003, Stonebridge proposed to provide four to six affordable units at an initial price estimated to be approximately \$166,393. The units would be allocated by a lottery to be administered by the Applicant, with households eligible for the Department of Housing and Community Development Home Purchase Assistance Program [“HPAP”] allowed participate in the program. Each unit would have a restricted selling period of 20 years, which would be restarted with each resale. Purchasers would commit to continuous owner occupancy. The Applicants placed a value on this amenity of \$100,000 to \$150,000 per unit.
 - ii. On December 16, Dr. Simon testified that, as proposed, the affordable housing amenity was unlikely to provide any benefit to the District. The Opponents reviewed the Applicants’ January 6 submission and filed a response demonstrating that the Applicants did not adequately address the Commission’s and the Opponents’ concerns and that the District was unlikely to benefit from the affordable housing amenity.
 - iii. The Opponents argued that the proposal lacked a mechanism to assure that the units set aside as affordable units would be purchased and occupied by qualified households. The Opponents noted that the Applicants proposed to use HPAP certification to determine

whether a household qualified for the subsidy, and that HPAP certification is meant to determine eligibility for a modest subsidy, and as such was unworkable as a method of determining eligibility for a subsidy worth hundreds of thousands of dollars per unit.

iv. The Opponents also described several ways in which the intent of the program could be evaded and the four to six affordable units would not house qualified households. The Opponents maintain that, when the subsidy per household is substantial, as is the case in this proposal, the program will necessarily serve few households and will necessarily require an unacceptable level of regulation, monitoring and enforcement to ensure that the restrictions of the program are maintained.

v. The Opponents further stated that even if the restrictions of the proposal were enforceable and even if the four to six affordable housing units were, in fact, occupied by target households, four to six affordable units in Ward 3 could have been provided with a relatively small subsidy. The Opponents also noted that in five months in the second half of 2002, at least 97 market rate condominiums in Ward 3 had sold at or below the target price set by the Applicants or at a slightly higher price, and thus, affordable condominium units in Ward 3 could be sold to eligible households at a substantially lower subsidy per unit.

vi. The Opponents conclude that even if the restrictions of the proposal were enforceable and even if the four to six affordable housing units were, in fact, occupied by target households, the value of this amenity, at most \$50,000, pales in relation to the degree of flexibility requested by the Applicants, an increase in height of over 38 feet and the increase in gross floor area of over 103,099 square feet.

c. The Commission finds that the affordable housing amenity, as proposed, provides little or no value to the District inasmuch as the restrictions are not enforceable, the size of the subsidy per unit creates enforcement issues that cannot be resolved, and the number of units to be provided would be minimal, even if sufficient regulatory, monitoring and enforcement mechanism were to be put in place.

72. 2403.9(g): Social services/facilities.

a. Stonebridge has not proposed to provide any social services or facilities in its proposal.

73. 2403.9(h): Environmental benefits, such as storm water runoff controls and preservation of open space or trees.

a. The Applicants have claimed that they provide an amenity of open space.

i. The Applicants refer to providing “central meeting area,” for the use of the general public.

ii. Applicants’ architect Mr. Baranes said the site plan has “taken this very open area around the Lisner Home, and basically just extended it right out to the face of our building, across our site. There are existing mature trees here, they’ll be kept in place.”

iii. A person in support of the Applicants, Sam Black, claimed “we are taking the park land that currently surrounds the Lisner home and extending it right across the southern end of our site, so that both the townhouses to the south and the Lisner home actually get to

look out to a park, what is essentially a private park...”

b. Opponents have noted 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.

c. The Opponents have illustrated, on maps of the local area, the limited size of the open space actually being provided by the Applicants on their own land. Opponents have noted that the Applicants repeatedly seem to lay claim to property that they neither own nor control. The “existing mature trees” to which Mr. Baranes referred are not part of the subject site and therefore it is no surprise that “they'll be kept in place.”

d. Opponents have cited and illustrated that the open space that is actually owned by the Applicants cannot possibly resemble a park, even a very small park. With virtually the entire Clinic site being excavated and undermined with the underground parking levels, it will not be possible to grow any trees in this very shallow soil; it cannot possibly be “devoted to trees, shrubs, and groundcover.”

e. The Opponents have cited [in their Response to the Stonebridge Rebuttal] that almost the entire Clinic site will have imperious coverage, posing an environmental concern and conflicting with §1406.5(b)(6), stating the need to minimize the construction of impervious surfaces.

f. Opponents note that the Applicants repeatedly imply that the open space on their site is public space, but there are no provisions to provide this.

i. On the Clinic part of the site, any open space would belong to the condominium association, and there is no assurance they would allow the use of their yard as public space. No provisions have been proposed to compel the condominium association to allow public access.

ii. On the Lisner part of the site, there are no provisions that would prevent the open space from being fenced off for the exclusive use of the daycare center.

g. The Commissioners find that property not owned by the Applicants can not be considered in their claimed amenities.

h. The Commissioners find that the amount of open space proposed is only very slightly greater than the minimum actually required under current zoning on the combined site and is not a significant amenity.

i. Additionally, they find that it is not appropriate to characterize this relatively small and treeless area, over-shadowed by an eight-story building, as a “park.”

ii. They find that approximately 5,000 square feet of the open space is devoted to the parking lot for the daycare center, and is not particularly attractive in the context of open space.

i. The Commissioners find that 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, or to the land on the Lisner strip.

j. The Applicants claim that they offer an amenity of tree preservation.

i. 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. They state in their Rebuttal that “the six mature trees that are no longer on the Site will not be removed by the development.”

ii. The Applicants state that in addition to the six trees above, they “still propose[s] to retain the remaining six mature trees within the boundaries of the Site.”

iii. The Applicants also count the ten trees that are on the city-owned right-of-way on both Western Avenue and Military Road as trees that they preserve.

k. The Opponents have testified and cited in submissions that on the entire 1.35 acre site, only three small trees will actually be preserved.

i. 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.

ii. Another tree, ostensibly to be preserved by a small recess in the garage perimeter, is unlikely to survive construction well within its root-zone.

iii. 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.

iv. Three sycamore trees, each of 6’ diameter, would be preserved on the site.

l. The Commission finds that 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.

m. The Commission finds that the ten trees on the right-of-way of public streets are not owned by the Applicant, but are owned by the city. Therefore, the Applicant, who has no right to remove them, cannot reasonably claim to be preserving them by not doing so.

n. The Commission finds that the only trees to remain on this entire site (1.35 acres) would be three small sycamores, and it is not reasonable to construe this as tree preservation.

o. Additionally, the Commission concludes that 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 shallow depth of soil that can only support plants of a very small size.

74. 2403.9(i): Uses of special value to the neighborhood or the District of Columbia as a whole.

a. Stonebridge has proposed several amenities of special value to the neighborhood: (1) improvements to Chevy Chase Park, (2) a new building on the Lisner land for the Chevy Chase Plaza Children’s Center rent-free for 50 years, (3) a pedestrian pathway between Military Road and Western Avenue, and (4) a gazebo as a neighborhood “meeting place” on the Clinic site..

i. Stonebridge has proposed to provide \$75,000 in improvements to Chevy Chase Park. [Post Hearing Submission, Attachment 2]

ii. Opponents do not dispute that this would constitute a neighborhood amenity although they do want assurances that the improvements to the park will actually be worth \$75,000.

iii. Stonebridge has proposed to provide to the Chevy Chase Plaza Children's Center, a market-rate day care center, a building with a capacity for 44 children rent-free for 50 years. Stonebridge has estimated the value of this amenity at \$300,000.

iv. Dr. Simon testified that this is inconsistent with the Ward 3 Comprehensive Plan, which calls for an "increase in child care facilities in commercial areas," [10 DCMR 1408.2(m)], while other ward plans, such as the Ward 4 plan, calls for an "increase in child care facilities in the ward." [10 DCMR 1529.1(i)]

v. The Commission finds that the Ward 3 Comprehensive Plan calls for an increase in child care facilities only in commercially zoned and that the proposal to place a child development center on this site is inconsistent with the Comprehensive Plan.

vi. Dr. Simon testified that the proposed day care center offers little value to the neighborhood. The CCPCC is currently obligated to use approximately 16 slots for children living near the CCPCC. The remaining slots were to be used by children of employees working in square 1661. If the day care center were to be provided as a neighborhood amenity, it would bring the total number of CCPCC slots required to be devoted to the close-in neighborhood to 60. Data from Census 2000 indicates that, in Census Tract 11, which is slightly larger than the area between Western and Nebraska Avenues on the north and south, and Wisconsin and Connecticut Avenues to the west and east, there are a total of 244 children under the age of 6, and of those, only 116 children have no parents outside the workforce. Given that this area is significantly larger than the local area to be served by the new child care center, and given that many parents would have other day care options, such as below-market day care offered by their employers, Dr. Simon concluded that an additional 44 day care slots does not constitute a neighborhood amenity.

vii. Ms. Danahy testified that 71% of alumni families live within 15 blocks of the CCPCC, and 31% live less than five blocks away [Dec. 16 Tr. At 189]. Ms. Danahy also testified that 2 of the 30 current students live in Maryland. [Dec. 16 Tr. at 195.] In response to a request by the Zoning Commission, Ms. Danahy submitted data on the residences of children who attend or had attended the CCPCC. That data shows that at most 31 [or 34%] of 92 alumni children are District residents living within one mile of the CCPCC and at most 19 [or 21%] of 92 alumni children are District residents living within five blocks of the CCPCC. In addition, the submitted data shows that 9 of the 31 current students live in Maryland, and only one child lives within 5 blocks of the CCPCC.

viii. Ms. Danahy also testified that there are currently 2,009 licensed child care spaces in Ward 3 and that there are 5,600 children under the age of 14 with all parents working in Ward 3. [Dec. 16 Tr. at 190.] She did not provide data on the percent of licensed day care spaces that serve school-age children on the number of pre-school children with all

parents working in Ward 3.

ix. The Commission finds that the CCPCC proposed day care amenity offer little value to the neighborhood.

x. Dr. Simon also noted that the Applicants did not proffer conditions to target the day care center's services to benefit the community. In the Post-Hearing Submission, the Applicants did not proffer conditions, but stated that such conditions would be proffered in their Proposed Findings of Fact and Conclusions of Law.

xi. Dr. Simon provided conditions that could be used, if it was determined that increased day care in a residential zone was appropriate and that it would provide a benefit to the community, but noted that in that instance, the amenity would be considered, at most, a minor amenity. The conditions provided by Dr. Simon included:

- (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.

- (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.
- b. The Commission finds that the proffered improvements valued of \$75,000 to the Chevy Chase Park are a minor amenity and the proposed day care center provides little or no value to the neighborhood and does not constitute an amenity.
- c. The Commission finds that placement of a child development center in a residential zone in Ward 3 is inconsistent with the Comprehensive Plan.
- d. The Applicants claim to offer as a neighborhood amenity “a paved, landscaped walkway from Military Road to Western Avenue to provide access for the public.”
 - i. Applicant Mr. Firstenberg claimed he “listened to the community,” and that they requested a pedestrian path that linked Military Road with Western Avenue, so people could get to shopping at Chevy Chase Center and the Metro . . .” [Nov. 16 Tr. at 39.]
 - ii. Stephen Cochran of the OP listed among the benefits and amenities “There’s a public walkway and open space access.” [Dec. 12 Tr. at 146] “the walkway would be an amenity.” [Dec. 12 Tr. at 155]
- e. The Commission finds that the path is at most a minor amenity for the neighborhood.

f. The Commission finds that retaining this access, which has always been available to the neighborhood, is a feature that any development of the subject site would be likely to provide and is not greater than could be reasonably expected under matter of right development

g. The Commission finds that the Applicants offer no assurance that this path on private property would actually be designated for public use through any legally enforceable provision.

h. The Commission also notes that the walkway does not serve any purpose regarding access to the Metro entrances, as claimed by Mr. Firstenberg. Rather, use of this path in either direction diverts pedestrians from their closest entrance to the Metro.

i. The Applicants claim that providing a gazebo in the condominium apartment building's yard is an amenity for the neighborhood.

i. Applicant Mr. Firstenberg testified "We've put a gazebo in the middle of our open spaces, a logical place for people in the community to meet." [Nov. 14 Tr. at 46.]

ii. Opponents have questioned what provisions are proposed to ensure public access to this privately owned yard. Additionally, they questioned how welcoming this meeting place would be for the public, located under residential windows and overshadowed by an eight story building.

j. The Commission finds that the gazebo is at most a trivial amenity for the neighborhood.

75. 2403.9(j): Other public benefits and project amenities and other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

a. The Applicants offer a Construction Management Plan as an amenity.

i. Ellen McCarthy of the OP testified that in comparison to the previous proposal from the Applicants, there would now be "one less floor to be excavated, which means less likelihood of having to rely on blasting." She further testified of her confidence that "any construction contractor who knows they will be subject to liability will be extremely concerned about making sure that they do not cause adverse impact with regard to the neighboring property." [Dec. 12, Tr. at 163]

ii. Opponent Hazel Rebold testified that the reduction in the number of parking levels had barely changed the elevation planned for the lowest level of the structure, EL 299' in Stonebridge Submission of October 25, 2002, Drawing A4. Stonebridge Submission of March 22, 2002, Drawing A3 had shown lowest level of EL 297'. Therefore, there would be almost no reduction of the probability that the Applicants would want to conduct blasting. She and her close neighbors have requested that blasting be prohibited on the site. Ms. Rebold also testified that her house had been seriously damaged during prior nearby construction on Square 1661.

iii. The Commission recognizes that liability for damage applies regardless of any explicit agreement between the parties but does not assure avoidance of damage to the neighbors' property. Therefore, an adequate Construction Management Plan is required.

iv. Testimony concerning the inadequacy of the Plan submitted by Applicants and dated August 19, 2002, was given at the hearings by Opponents Betsey Kuhn, Anne Jansen, and Hazel Rebولد, each of whom has party status and lives within 200 feet of the subject site.

b. Although Stonebridge included changes in their Proposed Elements of Construction Management Plan of January 6, 2003, the Opponents filed a list of inadequacies in FhORD's Response to the Applicants' Rebuttal (Exhibit E).

i. The proposal does not prohibit blasting on the site.

ii. 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.

iii. 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.)

iv. 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.

(1) Additionally, the monitoring services should extend throughout construction, but at reducing frequency after the subsurface operations are complete.

(2) 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.)

v. 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.

vi. 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.

vii. The complaint process is cumbersome and time-consuming, requiring multiple meetings and several stages and with long time periods devoted to each stage.

(1) 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.

(2) 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.

(3) 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.

viii. 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.

ix. 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.

x. The proposed Plan fails to require keeping a lighted path open between Military and Western throughout construction.

c. The Commission finds that the proposed Construction Management Plan is deficient for the reasons cited above by the Opponents. Additionally, in view of the fact that its purpose is to mitigate the negative impact of the construction process, the value of this Plan as an amenity is questionable.

d. 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.

i. The Opponents claim that the proposed parking ratio would not constitute an amenity inasmuch as it is not superior to that required in recent Zoning Commission Orders for the area, it is not sufficient parking giving automobile ownership statistics for the area, and it is not superior to that which would be required to make these units marketable.

ii. The Opponents note that, for the current zoning, R-5-B, the Zoning Regulations require one parking space for every two apartments.

iii. The Opponents also note that, the Applicants have ignored recent Zoning Commission Orders for comparable sites:

(1) 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: "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."

(2) 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: "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.]

(3) 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: “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.

(4) 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.]

iv. The Opponents also state that the Applicants have also ignored the available Census 2000 data on car ownership in the area. The Opponents submitted data for Census Tract 11, Block Group 5, a small area east of Wisconsin Avenue near the Metrorail station, showing that average vehicle ownership was 1.41 vehicles per occupied housing unit, for all housing units and 1.45 vehicles per owner-occupied unit.

v. The Applicants also state that the proposed 1.1 spaces per unit exceeds market demand for parking since market demand is less than 1.0 spaces per unit. The Opponents stated that a review of condominiums listed for sale indicates a large number of luxury condominiums with at least one garage parking space in the proposed price range or less, and thus, concludes that, 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 Opponents claim that 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.

e. The Commission concludes that, 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.

f. The Commission finds that the proposed amenities are modest in nature and not substantial benefits, let alone amenities of exceptional merit needed for approval of such a PUD.

76. Economic Impact: There was a significant amount of testimony on the Applicants' economic impact analysis.

a. Mr. Smart, the Applicants' economic expert, testified that the proposed development would produce annual direct tax revenues approaching \$1.8 million more than the current use and \$1 million more than matter of right development.

b. Dr. Simon testified that it would be inappropriate to compare the tax revenue generated by the proposed development with the tax revenue generated by the current use inasmuch as the Washington Clinic has announced that it would be closing.

c. Dr. Simon also testified that Mr. Smart made serious errors in calculating the tax revenue associated with the proposal. She testified that: (1) Mr. Smart did not base his estimate of District income taxes on the District tax rates; (2) Mr. Smart did not consider the homestead exemption in estimating the real estate taxes associated with owner-occupied units; (3) Mr. Smart assumed an income of \$144,000 for the residents of the affordable units; and (4) Mr. Smart overstated the impact on retail sales tax revenue. Correction of these errors would result in a significantly lower estimate of annual tax revenue.

d. Dr. Simon also testified that Mr. Smart assumed that matter of right development would be a smaller version of the Stonebridge proposal and that the 15,000 square feet of R-2 land included in the site would generate no tax revenue.

e. Dr. Simon testified that income and real estate taxes associated with the Stonebridge proposal might reasonably be estimated to be no more than \$1,200,000 to 1,300,000 assuming that there are no units eligible for a senior exemption and no more than 10% of the units are rented, while the matter-of-right, owner-occupied development would likely generate \$938,623 in annual District income and real estate taxes. A modest PUD under current zoning would generate \$1,026,567 in annual District income and real estate taxes. Further, Dr. Simon testified that the mix of units that are rented or purchased by retirees with lower taxable incomes were similar to that of other condominiums in the same price range, the annual income and real estate taxes associated with the Stonebridge proposal falls to \$1,141,837, which is comparable to the tax revenue that would be generated by a modest PUD, which consists of 100,000 square feet of condominiums and townhouses on the Clinic site and 5 houses on the Lisner land.

f. The Comprehensive Plan states that: "Discretionary zoning actions, such as Planned Unit Developments, affecting Ward 3, shall . . . treat amenities such as tax revenue . . . as requirements." [§1409.8(c)(3))]

g. The Commission finds that the economic analysis submitted by the Applicants is seriously flawed and that the Applicants have not demonstrated that the proposed development would generate significantly more annual tax revenue than would be generated by matter of right development with current zoning.

CONCLUSIONS OF LAW

77. At its public meeting held on _____, 2003, the Zoning Commission reviewed and considered all testimony and evidence presented in this case, including all post hearing submissions and responses from all parties. Based on its deliberations in this case, the Commission's conclusions of law and decision follow:

78. The Commission finds that the notice was not properly posted in accordance with 11 DCMR §§ 3105.4 and 3105.5.

79. The Commission finds that the Applicants incorrectly excluded the bays on Western Avenue and incorrectly used a 2% mechanical shaft deduction. The Commission further finds that the actual FAR of the proposed building on the Clinic site is at least 4.29 and exceeds the maximum FAR permitted in an R-5-C zone.

80. The Commission finds that the PUD would be inconsistent with the intent of the Comprehensive Plan. The subject site is zoned R-5-B and R-2. The R-2 District consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. 11 DCMR § 300.1. In R-5-B, a moderate height and density is permitted 11 DCMR § 350.2, and the Clinic site was designated as R-5-B to serve as part of a transitional buffer zone between the commercial zoning within 150 feet of Wisconsin Avenue and the R-2 neighborhood to the east. This theme is preserved in the Comprehensive Plan, which lists the following objective:

Conserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of housing, building, and zoning codes and the maintenance of the general level of existing residential uses, densities and heights. § 1104.1(b)

81. Stonebridge claims that rezoning at this site is justified because it is within a Housing Opportunity Area. The Commission concludes that the policies of the Comprehensive Plan for Ward 3 was designed to protect areas zoned for single family homes from dense development, and that the Housing Opportunity Area for Friendship Heights does not justify the rezoning that the Applicants request.

82. Section 2403.9 of the Zoning Regulations enumerates ten "evaluation standards" that must be proven by the Applicants. A project may qualify for approval by being "particularly strong" in only one or a few of the categories in §2403.9, but must be "acceptable" in all proffered categories and superior in many. §2403.10.

1. With regard to §2403.9(a), regarding architecture and urban design, the Commission finds that the proposal is not exceptional or superior for the reasons stated in Finding 65, above.

2. With regard to §2403.9(b), regarding site design and planning, the Commission finds that the proposal is not exceptional or superior for the reasons stated in Finding 66, above.

3. With regard to §2403.9(c), safe vehicle and pedestrian access and connections to public transportation, the Commission finds that the proposal is not exceptional or superior for the reasons stated in Finding 67, above..

4. With regard to §2403.9(d), the historic preservation of private structures, the Commission finds that this factor is not applicable.

5. With regard to §2403.9(e), regarding employment and training opportunities, the Commission finds that the Ward 3 plan considers a first source employment agreement to be a requirement for discretionary zoning actions, such as PUDs, to be a requirement, and that by failing to offer a first source employment agreement, the Applicants have not met this requirement.

6. With regard to §2403.9(f), regarding housing and affordable housing, the Commission finds that the proposal is not exceptional or superior for the reasons stated in Finding 70, above.

7. With regard to §2403.9(g), regarding social services and facilities, the Commission finds that the applicants have provided for no such amenities in their proposal.

8. With regard to §2403.9(h), regarding environmental benefits, the Commission finds that the proposal is not exceptional or superior for the reasons stated in Finding 72, above.

9. With regard to §2403.9(i), regarding uses of special value of the project, the Commission finds that the proposed improvement to the Chevy Chase Park are a minor amenity, that the path would likely be part of any development on this site, that the gazebo is, at most, a trivial amenity, and that the proposed day care center is inconsistent with the Comprehensive Plan and would provide little or no benefit to the community.

10. With regard to §2403.9(j), regarding other public benefits and amenities, the Commission finds that the benefits were overstated by the Applicants and that they are modest benefits at best, and not exceptional in nature for the reasons stated in Finding 74, above.

11. With regard to the economic impact, the Commission finds that the project would not produce significantly higher tax revenues for the District than matter-of-right development with current zoning and would likely produce comparable tax revenues to a modest PUD with current zoning. The Comprehensive Plan requires that a demonstration that the proposed project would produce significant additional tax revenues over matter-of-right development for all discretionary zoning actions in Ward 3. The Commission finds that the Applicant has not met this requirement.

83. The Zoning Commission finds that the public benefits and amenities do not justify, and are far outweighed by, the “flexibility” (additional height and density) requested over current zoning.

84. The approval of this application is inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act, and the Zoning Regulations and Map of the District of Columbia.

85. The Zoning Commission accorded Advisory Neighborhood Commissions 3E and 3G the great weight to which they are entitled, and concurs with those ANCs that the project would negatively impact the Friendship Heights community.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia ORDERS that the application for a Consolidated Planned Unit Development for Square 1663, Lots 7 and 803 and map amendment from R-5-B to R-5-C for Square 1663, Lot 805 be DENIED.

Vote of the Zoning Commission was taken at a public meeting on _____
2003: ____ to ____ (_____, to deny;
_____, opposed..)

This order was adopted by the Zoning Commission at its regular public meeting on
_____, 2003, by a vote of _____
(_____, to adopt; _____, opposed)

In accordance with the provision of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register, that is on _____.

CAROL J. MITTEN
Chairperson,
Zoning Commission

JERRILY R. KRESS, FAIA
Director,
Office of Zoning

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

CERTIFICATE OF SERVICE

I hereby certify that, on January 30, 2003, a copy of the foregoing Proposed Findings of Fact and Conclusions of Law and Conclusions of Law were served by first-class mail on:

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