

5241 43rd Street, N.W.
Washington, D.C. 20015

June 26, 2002

Via Hand Delivery

Carol J. Mitten, Chair
Zoning Commission
District of Columbia Office of Zoning
Suite 210-S
441 4th Street, N.W.
Washington, D.C. 20001

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JUN 26 2002
ZONING COMMISSION
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Re: Zoning Commission Case No. 02-17, A Proposed One-Stage Planned Unit Development with Related Map Amendment at 5401 Western Avenue, NW – Square 1663, Lot 805 and a Portion of Lot 7

Dear Chair Mitten:

We are writing in our personal capacities to respond to the Application by Stonebridge Associates, Inc., submitted on March 22, 2002, and designated as Case # ZC 02-17. On June 10, 2002, the Zoning Commission set down this matter for a contested hearing. The undersigned are Marilyn Simon, who lives at 5241 43rd Street; Hazel Rebold, who lives at 4228 Military Road, in the house closest to the proposed development (90' between property lines, 71' between property line and Ms. Rebold's stone retaining wall); and Larry Freedman, who with his wife, Lucy Eldridge, and two-year old son, Levi, live at 4104 Legation Street, N.W., in Square 1743, which is immediately to the east of Square 1663.

We attach for your consideration,, the following documents:

1. Response to Stonebridge Application, Case ZC #02-17, June 26, 2002.
2. Remarks Concerning Drawings Filed as Part of ZC 02-17 (Stonebridge Associates), and Exhibits A through E thereto.

We have filed these documents for inclusion in Case #ZC 02-17, and are concurrently providing copies to each Zoning Commissioner and Stonebridge Associates, Inc.

This submission clarifies the legal requirements that the Stonebridge Application must satisfy, and corrects the inaccurate, misleading and omitted factual and technical information contained in the Stonebridge Application and Stonebridge Architectural Plans and Drawings.

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ZONING COMMISSION
District of Columbia
CASE NO.02-17
EXHIBIT NO.23

We urge you to review this submission, and hope that it will be informative and useful. We greatly appreciate the Office of Planning's professional work, and the Zoning Commission's serious attention to the Stonebridge Application and responses to it.

Respectfully submitted,

Marilyn Simon/LJF

Marilyn Simon

Hazel Rebولد/LJF

Hazel Rebold

Laurence Freedman

Laurence Freedman

cc: Douglas M. Firstenberg
Stonebridge Associates, Inc.

(Cover Letter and Response to Stonebridge Application via fax, 301.913.9615)
(Remarks Concerning Drawings by hand delivery)

RESPONSE TO STONEBRIDGE APPLICATION
CASE # ZC 02-17
JUNE 26, 2002

On March 22, 2002, Stonebridge Associates 5401, LLC, on behalf of 5401 Western Avenue Associates, LLP and the Abraham and Louise Lisner Home for Aged Women (the "Lisner Home"), the owners of the subject property (collectively, the "Applicants") submitted an application to the Zoning Commission for consolidated review and one-step approval of a Planned Unit Development ("PUD") and related Zoning Map Amendment. The Site is currently zoned as R-2 and R-5-B, and consists of:

- (1) A portion of Square 1663, Lot 7: 14,380 square feet zoned at R-2, and
- (2) Square 1663, Lot 805: 43,840 square feet zoned at R-5-B.

The Applicants request that the Zoning Commission rezone the entire Site to R-5-D, approve the request for a one-step PUD, approve 7200 square feet of retail in this residential zone, and grant relief for the set-back for the mechanical penthouse and from a side yard requirement. *See* Office of Planning, Preliminary Report, at 5-6.

On May 31, 2002, the D.C. Office of Planning recommended that the Zoning Commission schedule this application for a public hearing, but expressed significant reservations about the application. On June 10, 2002, the Zoning Commission set down this application for a contested hearing, at which time the Chair and the Vice Chair each expressed serious concerns about the viability of the application.

We have reviewed this application and submit the following response for consideration by the Office of Planning and the Zoning Commission. We respond in two sections: the first section briefly clarifies the legal requirements that the application must satisfy, which the application obfuscates, and the second section corrects the inaccurate, misleading and omitted factual and technical information.

SECTION ONE: D.C. LAW APPLICABLE TO THE STONEBRIDGE APPLICATION

The Applicants must justify each element of the action requested of the Zoning Commission. First, the application must provide justification for the proposed upzoning and related map amendments. The essential test under District of Columbia law is whether the Applicant can attain a "reasonable level of residential development" as a matter of right with the current zoning. Under matter of right zoning, as demonstrated below in the table at pp. 4-5, even without a PUD, it is indisputable that the Applicants can achieve a "reasonable level of residential development" as a matter of right under current zoning. We note that even the Applicant does not claim directly or indirectly that it cannot obtain a "reasonable level of residential development" on this site in this neighborhood under current matter of right zoning, and thus fails to justify the requested upzoning and related map amendments.¹

¹ The Office of Planning's Preliminary Report could not have been clearer on this point. It stated that "the applicant has not justified why such density should be the 200-225 units (approximately 180-200 units/acre) that could

Second, the application must meet the criteria for approving a PUD. To justify a PUD, the Zoning Regulations require that the Applicant demonstrate that the amenities and public benefits provide an adequate exchange for the increased density that is requested over the density allowed as a matter of right. To determine whether there is such an adequate exchange or balance, as a general matter the Commission “shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered ... and any potential adverse effects according to the specific circumstances of the case.” [11 DCMR § 2403.8].

Further, in addition to this overall balancing, “the regulations identify nine specific categories of amenities and benefits for potential consideration and provide that the Commission may also take into account ‘[o]ther 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.’ [11 DCMR § 2403.9(a-j)].” The law is clear that 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,” [11 DCMR § 2403.10], and that “[t]he applicant has the burden of proof in this regard.” [11 DCMR § 2403.2].

The Office of Planning's Preliminary Report analyzed in detail the proposed amenities, discounted or dismissed the purported public value of virtually all of them, and concluded that the only actual public amenity that the neighborhood agrees on is the proposed track at the Livingston Street Park. [Prelim. Report, at 11-13, 15.] That Report also recognized that the Applicant is request a “relatively high degree of [zoning] flexibility.” [Id., at 13]. The only reasonable conclusion is that the proposed PUD blatantly fails the requirement that the proposed amenities and benefits outweigh the negative impacts on the neighborhood, as the Office of Planning concluded.²

Third, the application must contain justification for the requested relief from the zoning law prohibiting retail use in a residential zone, requiring a minimum roof structure set-back and mandating side-yard requirements. Justification must be either a public purpose or a private hardship. However, the Applicant does not claim that this relief serves any public purpose or alleviates any hardship, possible justifications. For example, as for the proposed commercial use in a residential zone, the Applicants' only justification is that such use is not inconsistent with the commercial uses in nearby commercial zones. [Applicants' Statement, p. 12.] As for the roof structure and side yard, the Applicant describes the proposed deviations from the law, but does not attempt to justify them in light of any public purpose or private hardship. The private interests for the requested flexibility do not amount to a public justification.

After considering all the facts and circumstances of this site and this neighborhood, and even if the Applicant provided at a public hearing substantial evidence

be built under the requested R-5-D zoning with a PUD, rather than the 110 units (approximately 80-100 units/acre) that could be built under the existing R-5-B and R-2 zoning with a PUD.” Prelim. Report, p. 9. This is a fatal flaw.

² The Preliminary Report stated that the “benefits/amenities package outlined by the applicant does not yet seem to OP to sufficiently balance out the relatively high degree of flexibility requested” including the *doubling* of the density permitted as a matter of right. Prelim. Report, p. 13.

for each aspect of its application as required by law, the inescapable conclusion is that the Applicant cannot justify the requested upzoning and map amendments, the proposed PUD or the requested other relief from zoning laws. To the contrary, a close examination of the information in the March 22, 2002 application reveals that it fails to set forth even a *prima facie* case that the public interest would be served by approving this application.

SECTION TWO: FACTUAL RESPONSE TO STONEBRIDGE APPLICATION

The primary purpose of this submission is to respond to the significant amount of incorrect and misleading information in the Application and to highlight the omission of critical information in the application. We hope that this point-by-point factual and technical response will assist the Zoning Commission and the Office of Planning consider carefully the facts that must form the basis for consideration of this Application.

Chapter 24 of the Title 11, Zoning Regulations, states:

2403.11 To assist the Commission in applying the evaluation standards of this section, the application shall prepare and submit to the record of the case an annotated table that shows the following:

- (a) The extent to which the proposed development would comply with the standards and requirements that would apply to a matter of right development under the zone district classification of the site at the time the application is filed;
- (b) The specific relief that the applicant requests from the matter of right standards and requirements; and
- (c) If the applicant requests a map amendment, the extent of compliance with, and the requested relief from, the matter of right standards and requirements of development under conventional zoning.

While the Applicants included a short description of matter of right development under existing zoning, [Applicants' Statement, Section II.D., at pages 10-11], they did not submit an annotated table, and all submitted zoning tabulations compared Matter of Right under the requested zoning, R-5-D to the PUD Guidelines under R-5-D and the proposed project. Clearly, these are not the comparisons requested in the Zoning Regulations and are not relevant to evaluation of the proposal.

The following table provides a tabulation of the relevant development data, as required in 11 DCMR § 2403.11:

| | R-2 AND R-5-B MATTER OF RIGHT | R-2 AND R-5-B PUD GUIDELINES | PROJECT |
|--|---|---|--|
| Gross Floor Area | R-2: none given, but constrained by maximum of 3 floors and other restrictions R-5-B: 78,912 s.f. | 137,272 s.f. (maximum) | 234,750 s.f. total Residential: 232,750 s.f.; Retail: 2,025* s.f. |
| FAR | R-2: none given R-5-B: 1.8 11 DCMR §402 | 2.36 11 DCMR §2405.2 | 4.03 |
| Height | R-2: 40 feet R-5-B: 50 feet 11 DCMR §400 | 60 feet 11 DCMR §2405.1 | 90 feet |
| Lot Occupancy | R-2: 40% R-5-B: 60% 11 DCMR §403 | 55% 11 DCMR §2405.4 | 55% |
| Parking | Residential: one for each two units 11 DCMR §2101.1 Commercial not given | Residential: one for each two units ** 11 DCMR §24-5.6 Commercial not given, adequacy of proposal needs to be addressed | 218 spaces*** |
| Penthouse Height | | 18' 6" | 18' 5" |
| Penthouse Setback | Set back from all exterior walls a distance at least equal to its height above the roof upon which it is located 11 DCMR §400.7b | Set back from all exterior walls a distance at least equal to its height above the roof upon which it is located 11 DCMR §400.7b | 0 |
| Loading | | | Residential: 1@ 55' and 1 @ 20' |
| Number of dwelling units 900 s.f. each | 88-93 [OP Prelim. Report] | 138 [OP Prelim. Report] | 200-225 |

Notes to Tabulation:

* While that Applicants give the retail portion as 2,025 s.f., Application, at 12., it is, in fact, 7,200 s.f. and based on the Drawings A1 and A2, the Retail Level Plan, showing street entrances to the retail level at 317', it is apparent that the retail area is not part of a cellar, and therefore should be included in the gross floor area. 11 DCMR § 199.1.

** While the PUD Guidelines recommend one space for each two dwelling units, the Zoning Commission in comparable locations has required one fully accessible parking space per unit and stated that those spaces must be used by the owner or occupant of the apartment and cannot later be rented or conveyed separately.

*** Because commercial uses are not addressed in the matter of right standards or PUD Guidelines for R-2 or R-5, other methods must be developed to determine whether adequate parking is being provided for the commercial component of this project. However, note that this site does not qualify for a reduction in parking for the commercial component, as it is within 800 feet of an R-2 district:

2104.1 The number of parking spaces required under §2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty-five percent (25%); Provided, that the following requirements are met:

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 districts; and
- (b) The Metrorail station is currently in operation or is one (1) for which a construction contract has been awarded.

The Applicant requests that the Zoning Commission approve 7,200 sq. ft. of retail use on the first floor. [Applicants' Statement, p. 13.] They do not specify any limitations on the uses that would be permitted within this area. We suggest that the serious consideration be given to limitations on the commercial uses allowed within any retail area within a PUD on this site. The Zoning Commission has imposed such limitations in other comparable PUDs. See, for example, the Tenley Hill PUD, which stated that:

The applicant shall exclude from the commercial portion of the project fast-food establishments, dry cleaning establishments, establishments that hold or intend to hold a liquor license (this restriction will not apply to a "family-style" restaurant), or establishments that operate 24 hours a day. [Z.C. Order No. 904, Case No. 98-21C, September 13, 1999, Decision ¶8.]

In addition, the Commission should seriously consider the adequacy of the parking available for the commercial portion for customer and employee parking, the policies with respect to validation to encourage the use of provided parking, and the adequacy of the loading facilities for both commercial and residential uses.

IIA. SITE LOCATION AND DESCRIPTION

2. Land Use and Zoning of Surrounding Area

The Applicants state that Square 1661, to the south of the Site, is zoned C-3-B, but has been developed through the PUD process. [Applicants' Statement, p. 4.] In fact, while the Donohoe PUD [Chevy Chase Pavilion, the Embassy Suites and Office Building] is zoned C-3-B [Z.C. Order No. 517, Decision, p. 26], portions of the Abrams PUD [Chevy Chase Plaza] and the Miller PUD [Regent Park, not built, the Miller PUD was later modified and Friendship Center and the Courts of Chevy Chase were built on that site], both on square 1661 are zoned residential [Z.C. Order No. 519, Decision, p. 18; Z.C. Order No. 528, Decision, p. 19.] In addition, Square 1664, which is also directly south of the subject site, is zoned R-2.

The Applicants state that the Chevy Chase Center will be redeveloped to include a "ninety foot high mixed-use building," on a site directly across Western Ave. from their own site. However, they neglect to clarify that the 90 foot height of this new Chevy

Chase Center building is far removed from the Western Ave. frontage of the Chevy Chase Center complex, by a distance of approximately 150 feet. For approximately this depth back from its Western Ave. front, the Chevy Chase Center will be a building only two stories high, with a height of about 30 and 40 feet. Only after approximately 150 feet depth does the building height jump to 90 feet. [See Applicants' drawings Cover Sheet, M1, A8, A9; see also <<http://www.cclandco.com/projects/development.html>>]

The Applicants state that "immediately across Western Avenue in Montgomery County, Maryland, is a commercial office building with a height of 143 feet and an FAR of 4.0" and note that adjacent to that building is the Chevy Chase Center, which will include a 300,000 sq. ft. building. We note that the Chevy Chase Center will have 412,000 sq. ft. on 8.42 acres [366,747 sq. ft., according to the Maryland Department of Assessments and Taxation], which yields an FAR of at most 1.123. The Chevy Chase Metro Building is 241,000 sq. ft. on 1.4 acres. Thus, if we were to calculate the FAR for the combined Chevy Chase Center and Chevy Chase Metro Building complex, we would find an average FAR of 1.53, far below the 4.03 requested by the Applicants.

The Applicants state that the "closest detached single family residence is over 110 feet away on the south side of Military Road." In fact, the property of this home (Square 1664, lot 0810) is only 90 feet from this site. Additionally, as also applies to many other DC properties on major streets, this owner was permitted to build a stone retaining wall and fence directly behind the sidewalk, 19 feet closer to the subject site. That fence and wall, and effectively that homeowner's yard, is 71 feet from this site.

IIB. ZONING AND DEVELOPMENT HISTORY

In this section, the Applicants discuss the zoning and development on Square 1661. [Applicants' Statement, p. 5.] They omit several critical facts in their discussion. While they state that the maximum height on the residential portion of the Miller PUD was 40 to 48 feet, they failed to mention that this height limit covered the entire residential component on the 43rd Street side. [Z.C. Order No. 528, Decision ¶5, p. 20.] The maximum height of the residential component was reduced from the five and eight-stories, 48 foot and 77 foot heights, requested along 43rd Street, to four and five stories, 40 foot and 48 foot heights, that was granted. [Condition No. 4 of Z.C. Order No. 493 and Z.C. Order No. 528.] The gross square footage of the residential component was reduced from 124,167 sq. ft. as submitted to 88,045 sq. ft.

While the Square 1661 Z.C. Orders involved rezoning, it should be noted that the Commission did not intend to set a precedent for other sites or squares:

As to the concern expressed by ANC 3G and other parties and persons regarding pressures for further "upzoning", the Commission finds that . . . the subject site, which is designated by the Comprehensive Plan as part of a Regional Center and a Development Opportunity area as well as being in close proximity to the Metro system, is appropriate for the proposed development. The Commission further finds that each application must be judged on its own merit, and approval of the subject application on this square sets no precedent for development in any other site or any other square. [Z.C. Order No. 519, Findings of Fact, ¶59, p. 16.]

It is further noted that the area is no longer designated in the Comprehensive Plan as a Development Opportunity area, but is a Regional Center and Housing Opportunity area.

We want to further emphasize that, in 1974, after the Friendship Heights Metrorail station was planned, the Washington Clinic portion of the Site was rezoned, from R-2 to R-5-B. This rezoning followed several years of planning in anticipation of the planned Friendship Heights Metrorail Station. That planning effort involved the District of Columbia Government, the Montgomery County Government, the National Capital Planning Commission and citizen groups from the District and Montgomery County. In addition, we note that there is no residential zoning as dense as R-5-D in the Tenleytown-Friendship Heights corridor.

II.E & F. MATTER OF RIGHT DEVELOPMENT UNDER PROPOSED ZONING AND TABULATION OF DEVELOPMENT DATA

As noted above, the Zoning Regulations require that the Applicant provide information and a tabulation of development data based on the matter of right development under the zone district classification on the Site at the time of the application. That tabulation is provided above.

II.G. FLEXIBILITY UNDER THE PUD GUIDELINES

The Applicants request approval, as a special exception, of approximately 7,200 square feet of retail use for the first floor of the Project, and that the retail component be accessible and visible from Western Avenue. They also state that this use will serve as an amenity to the Project and the community. If retail use is to be allowed, well-defined conditions are required that would assure that there is sufficient free, validated parking, sufficient employee parking and adequate loading facilities for both commercial and residential uses. In addition, there is no support for the claim that the introduction of a commercial component on this site in the area could be considered an amenity to the community.

If a special exception for this commercial component is granted, it is essential that there is a clear decision about precisely what uses would be permitted within this area and all parking, parking validation and loading issues should be addressed in the Order. Certain commercial establishments are not appropriate for this site, and given that this use is not discussed in the Zoning Regulations for residential zones, clarification is necessary. See, for example, the Tenley Hill PUD:

8. The applicant shall exclude from the commercial portion of the project fast-food establishments, dry cleaning establishments, establishments that hold or intend to hold a liquor license (this restriction will not apply to a "family-style" restaurant), or establishments that operate 24 hours a day. [Z.C. Order No. 904, Case No. 98-21C, September 13, 1999, Decision ¶8.]

The Applicants also request flexibility on the roof structure requirements. As designed, with this flexibility, the roof structure, which will be the full 18' 6", will have no setback and be flush with the building on the side of the building facing the R-2 district. Thus, the face of the building will appear to be over 108 feet tall. This is not appropriate, inasmuch as it is inconsistent with the Comprehensive Plan: The proposed height of over 108 feet does not relate to the R-2 district or the townhouse development directly south of the Project. [See, 10 DCMR § 1406.9(a).]

IIIB. PUD REQUIREMENTS UNDER CHAPTER 24 OF THE ZONING REGULATIONS

2. Height and FAR Requirements Under Sections 2405.1 and 2405.2

While the Applicants have shown that the proposed height and FAR is within the PUD Guidelines for an R-5-D district, the zoning tabulation above shows that the proposed project is well outside the PUD Guidelines for a combined R-2 and R-5-B district. In addition, they state that the height in the southeastern corner is less than that permitted as a matter of right in the current zone, but neglect to state that this height is maintained for only a mere 20 feet from the building restriction line, far less than the depth required for lower height on PUDs that face R-2 districts. The Applicants also fail to state that from the vantage point most visible to the public, the corner of Military Road and Western Avenue, the height of the building will be 8 feet more than described throughout the Application, which uses the legal definition of height, and will be 98 feet without taking into account any roof structure.

For example, in the recent Zoning Commission decision on Tenley Hill [Z.C. Order 904, Case No. 98-21C, September 13, 1999, 46 D.C. Reg. 8153.], which has frontage on Wisconsin Avenue and is in a commercial zone, the height was restricted to 65 feet [Z.C. Order 904, Decision, ¶4], far below the maximum for a PUD on that site, the height of the roof structure was limited to nine feet and the size of the roof structure was reduced by 800 square feet. [Z.C. Order 904, Findings of Fact., ¶28].

On Square 1661, the Miller Companies requested a height of 60 feet for the entire residential portion of their project in an R-5-B district. [Miller Application for Friendship Heights PUD, July 19, 1985.] In the Order granting the PUD, the Zoning Commission reduced the residential component from five and eight stories to four and five stories:

5. The height of the residential component shall not exceed forty and forty-eight feet as shown on the plans marked as Exhibit No. 53B of the Record. [Z.C. Order 528, Case No. 86-21F/85-9P, Decision, ¶5.]

3. Impacts of the Project Under Section 2403.3

The Applicants assert that the impacts of the Project are not unacceptable to the surrounding area, and that the step down in height is the appropriate scale for the residential neighborhood to the east and southeast. A review of the plans indicates that the maximum height of 90 feet (effectively 98 feet from the primary vantage points) and the step down in height are not sufficient to avoid an unacceptable impact on the surrounding area and not sufficient to avoid an adverse impact on the light and air. The proposed height of 90 feet with a roof structure of 18 feet 6 inches and no setback for the rooftop structure on the side of the building facing the R-2 district raises line of sight issues. In addition, there are line of sight issues from the proposed project to neighboring houses and yards, where the design of the proposed structure affects the degree of privacy that neighboring homeowners expected when they purchased their homes given the R-5-B and R-2 zoning on that site.

The Applicants submitted a "Traffic Impact Study," which addresses only weekday rush hour traffic, and claims that the project will not have an unacceptable impact on traffic. Indeed, the report goes so far as to say that the project will have a

positive impact on traffic. They also assert, with no accompanying study, that the impact on new traffic on weekends is minimal. The "Traffic Impact Study" is seriously flawed. Many of the basic shortcomings of the study were addressed in Marilyn Simon's letter dated March 17, 2002. The neighborhood Working Group had specifically requested, and the Applicants promised, a traffic study addressing the effect of the Project on weekend traffic and parking, both of which are currently quite problematic. This was not provided, and weekend traffic and parking, as well as weekday traffic and parking, remain significant problems with a project this size on this property.

In particular, the primary pedestrian entrance to the residential component and one entrance to the commercial component is on the Military Road side of the Site. [See Applicants' Statement, Drawing S-5] In addition, there is probably inadequate parking for visitors to the residential component and customers and employees of the commercial component. With the pedestrian entrances and lay-by on Military Road, substantial traffic will be generated on neighborhood streets as people seek limited free parking in the area. In addition, based on the Economic Impact Analysis, Applicants' Statement at Tab G, it appears as though the Applicants plan to charge for this parking, which means that additional customers will be driving through the residential streets seeking free parking, a major source of traffic and parking problems, especially in evenings and weekends.

IIIC. PUBLIC BENEFITS AND PROJECT AMENITIES

In the Evaluation Standards section of Title 11, Chapter 24, the following standards are set out.

2403.2 The applicant shall have the burden of proof to justify the granting of the application according to these standards.

2403.3 The impact of the project on the surrounding area and upon the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.

Public benefits and amenities are defined:

2403.6 Public benefits are superior features of a proposed planned unit development that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter of right provisions of this title.

2403.7 A project amenity is one type of public benefit, specifically a functional or aesthetic feature of the proposed development, that adds to the attractiveness, convenience or comfort of the project for occupants and immediate neighbors.

It further requires that public benefits be demonstrated to be superior in quality to typical development of the type proposed:

2403.12 The annotated table required by §2403.11 shall also show how the public benefits offered are superior in quality and quantity to typical development of the type proposed and the duration of the operational or grant programs.

1. Housing (Section 2403.9(f))

The Applicants claim the creation of additional housing in this area of Ward 3 as a significant amenity to the community. The Site is currently zoned R-5-B, and thus can

support significant housing as a matter of right or developed as a PUD with current zoning. The provision of housing on a site that is zoned commercial might properly be considered an amenity; the provision of housing on a site that is zoned residential cannot be considered an amenity.

2. Urban Design, Architecture, Landscaping and Open Space (Section 2403.9(a))

The Applicants claim that the design of the project and the step down in height on the eastern portion of the Site to 52'8" and eventually stepping down to 42'8" at the southeast corner provides "relief to the adjacent neighborhood." [Applicants' Statement, p. 19] We note that the step down to 42'8" is effective for only 20 feet from the building restriction line and that a comparison with Z.C. Orders shows that the Commission has required stepdowns to a far greater depth on sites that abut low-density residential districts.

For example, in the recent Zoning Commission decision on Tenley Hill [Z.C. Order 904, Case No. 98-21C, September 13, 1999, 46 D.C. Reg. 8153.], the height was restricted to 65 feet [Z.C. Order 904, Decision, ¶4], far below the maximum for a PUD on that site, the height and size of the roof structure was limited and particular attention was paid to the view of the building from the surrounding neighborhood:

28. The applicant's post-hearing submission includes drawings, which reflect changes to the roof structure and the landscaping of the rooftop and southern terrace levels. The height of the penthouse structure was reduced by one foot so that the structure has a height of nine feet. The overall size of the roof structure was reduced by 800 square feet, by moving the penthouse structure away from the edge of the project closest to Fort Reno Park. In addition, the rooftop trellis has been refined and additional landscaping and planters have been added to soften and further obscure the view of the penthouse structure from the surrounding neighborhood and Fort Reno Park. The design of the southern terrace level was also revised to include additional planters and a refined trellis. (Exhibit 49 of the record) [Z.C. Order 904, Findings of Fact.]

On Square 1661, the Miller Companies requested a height of 60 feet for the entire residential portion of their project in an R-5-B district. [Miller Application for Friendship Heights PUD, July 19, 1985.] In the Order granting the PUD, the Zoning Commission reduced the residential component from five and eight stories to four and five stories:

5. The height of the residential component shall not exceed forty and forty-eight feet as shown on the plans marked as Exhibit No. 53B of the Record. [Z.C. Order 528, Case No. 86-21F/85-9P, Decision, ¶5.]

The residential portion of the Miller site was on the west side of the 5300 block of 43rd Street, N.W., across from an R-2 district.

The Applicants also claim that the paved, landscaped walkway from Military Road to Western Avenue is an amenity. [Applicants' Statement, p. 19] We note that this walkway is required to access the units, and thus is not of "superior quality and quantity to typical development" and therefore cannot be considered an amenity.

The Applicants also state that they offer significantly more open space than is required under R-5-D. [Applicants' Statement, p. 20.] However, as noted in the Tabulation, above, the lot occupancy is exactly equal to the maximum that would be allowed under a

PUD with current zoning, R-5-B. Further, we emphasize that the Site was up-zoned to R-5-B after the Friendship Heights Metrorail Station was planned.

The Applicants “claim significant enhancements to the existing streetscape and plans to improve the landscaping . . .” [Applicants’ Statement, p. 20.] We note, however, that excavation on the eastern section of the Site will involve the removal of at least 20 trees over 6 inches in diameter. Three of these trees are over 30 inches in diameter and 6 of those trees are between 18 and 24 inches in diameter. [Applicants’ Statement, Drawing S-1]. The proposal also appears to approach 100% lot coverage of impervious surface inasmuch as the underground parking is under almost all of the Site and there are paved surfaces over much of the few remaining portions of the Site. Paving over the area’s trees is hardly consistent with the Applicants’ purported benefit of landscaping.

The Applicants state that the 7,200 square feet of street level retail that they wish to include on this site in this residential district serves as an amenity. The inclusion of retail space in a residential district is not an amenity. Adequate retail opportunities exist in the Friendship Heights area, and it goes without saying that no D.C. planning documents identify increased retail in residential areas of Ward 3 as a planning goal.

3. Transportation Features (Section 2403.9(e) sic)

The Applicants maintain that the Project will have a “positive, albeit modest, impact on the traffic situation for the area.” [Applicants’ Statement, p. 20] The traffic study provided is seriously flawed, and does not accurately reflect the likely effect of this Project on traffic in the area. Just a few of the major problems with this study are discussed below.

The Applicants had been told that the effect of the Project on weekend traffic was a major concern to the neighborhood and the Applicants agreed to study weekend traffic. At p.3 of traffic study at tab F, they state that the Project will generate an average of 70 peak hour vehicle trips on weekends, but “the impact of these trips would be quite minimal, as the traffic volumes on the study area roadway network would be lower, compared with weekday traffic conditions.” No data on weekend traffic was provided. Weekend traffic is frequently more problematic than weekday rush hour traffic in the area. Significant traffic is also generated as cars circle the neighboring streets and alleys seeking free on-street parking. The Military Road traffic waiting for the signal at 41st Street frequently backs up to 43rd Street on weekends. Traffic on Wisconsin, Western and through the signalized intersections also has frequent weekend delays. The Applicants promised to study this issue and failed to do so.

The Applicants provided no study of additional traffic on Livingston Street, the obvious “cut through” to Connecticut Avenue when Western Avenue is backed up, or the related safety concerns for the children and recreational leagues that use the Livingston Street Park between 42nd and 41st Streets.

There are other serious flaws in the study relating to automobile usage and current traffic conditions. These flaws were not addressed.

The Traffic Study did not consider whether residents and their guests and the customers and employees of the retail component will actually use the parking facility. If they do not, we note that the pedestrian entrance to the residential component and one of

the retail entrances is on Military Road [Applicants' Statement, Drawing S-5], and residents, guests, customers and employees using this entrance will seek free on-street parking on our neighborhood streets, exacerbating the current parking and local traffic problems. This is particularly critical on nights and weekends when the residential parking restrictions are not in effect, but is also a major problem at other times when vehicles with zone 3 stickers can park all day and other vehicles can park for 2 hours.

The Applicants note that the parking entrance has been aligned with the existing signal and that the entrance from Military Road has been eliminated. They also refer to the "seldom-used curb cut on Military Road." This "seldom-used" curb cut has been blocked off for many years to increase the available parking spaces for the Clinic. In addition, no development on this site probably should even consider vehicular access from Military Road. Similarly, the only reasonable place for access from Western Avenue is at the signal, inasmuch as any other access point would be viewed negatively by potential tenants. Elimination of an inappropriate vehicular access point on Military Road and the change of a poorly designed, competitively unattractive access point on Western Avenue, both of which were part of the original Stonebridge proposal, cannot be considered a benefit. Benefits must be of superior quality to a typical development. Correcting inferior design does not qualify as a benefit.

In addition, the Applicants claim that additional work by O.R. George & Associates, as outlined in the December 19, 2001 letter from Osbourne R. George of O.R. George & Associates to Mr. Douglas M. Firstenberg of Stonebridge Associates, Inc., constitutes an amenity. The work included an agreement to "meet with the City to present the findings and recommendations, and to "negotiate" acceptance and implementation of the preferred mitigation measures." This was referred to as the Neighborhood Traffic Mitigation Study. The Neighborhood Traffic Mitigation Study was done at the request of one member of the Working Group, Mike Meier, who lives in the Courts of Chevy Chase on the 5300 block of 43rd Street. That individual is mainly concerned about vehicles that turn around in his driveway and had, for several years, attempted to have his block limited to one-way traffic. He wanted a traffic study that would provide that recommendation as well as efforts to work with the City to get his block limited to one-way traffic. Mike Meier is one of the two Working Group members that supports the Stonebridge proposal. The other Working Group member supporting Stonebridge is Lisa Danahy, a resident of Rockville and director of the Chevy Chase Plaza Children's Center.

At a Working Group meeting with Stonebridge and O.R. George, and also in writing, two members of the Working Group stated that it is inappropriate to do the localized traffic study referred to in this section and in the O.R. George study in Appendix F. They told the Applicants that traffic on the target streets is part of a larger issue and that the District is scheduled to address traffic issues in the larger area. Those comments were ignored, and the remainder of the discussion was directed to the individual requesting a recommendation that traffic on his block be restricted to one-way southbound. He was told he would be happy with the results of the O.R. George study, and that he might not like the recommendations of the District-sponsored study. Stonebridge was also informed in writing that the neighborhood opposes restricting traffic on the 5300 block of 43rd St. to one-way. Mike Meier had presented this same

proposal to make his block of 43rd St. one-way at an ANC meeting a couple of years ago. There was strong neighborhood opposition, and the majority of the ANC Commissioners agreed that it was inappropriate to attempt to address the neighborhood traffic issues in a piecemeal manner. Given that this traffic study is not desired by the neighborhood and was designed to have the results desired by a single individual, it cannot be considered an amenity.

4. Parking Features (Section 2403.9(c))

The Applicants note that they will provide parking at the rate of one parking space per apartment unit and 2.5 parking spaces per 1,000 square feet of retail space, and that this is almost three times that required by the Zoning Regulations. They also claim that this ratio is more than twenty percent higher than comparably located projects in the District of Columbia. [Applicants' Statement, p. 22.] The Applicants have, however, ignored recent Zoning Commission Orders for comparable sites:

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

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

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

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

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

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

The Miller PUD was not developed, and in November 1996, McCaffery Interest, Inc. and Eakin Youngentob Associates, Inc. applied for a modification of the Miller PUD. The modification was approved [Z.C. Order No. 824]. The residential component of the project consists of 29 townhouses, the Courts of Chevy Chase. The gross floor area of the residential component on 43rd Street was reduced from 88,045 sq. ft. to 83,000 sq.

ft. Each townhouse has two parking spaces, either a two car garage or a one car garage and tandem space.

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

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

In the Parking Study, the comparable properties cited by the Applicants [Applicants' Statement, Exhibit F, Appendix H] are not comparable. The District Properties include: 14th & N Streets, N.W.; 16th and Massachusetts Ave., N.W.; 1210 Massachusetts Avenue, N.W., 915 E Street, N.W.; 717 6th Street N.W.; 1300 N Street, N.W.; and 450 Massachusetts Ave., N.W. The parking ratios for these buildings range from 0.25 to 0.93 spaces per unit. These are all downtown locations, not comparable to this site, which abuts an R-2 district. They also considered Henry Adams House, with a parking ratio of 1.02 and Park Connecticut, with a parking ratio of 0.89.

The Applicants ignored other N.W. developments, such as Tenley Hill, which is required to have a ratio of at least 1:1.

In addition, a parking ratio of at least 1:1 would be standard for a typical development and cannot be considered an amenity.

However, given concerns about parking, it is appropriate to require as a condition for the PUD a parking ratio of at least 1:1 and the additional restriction that the Z.C. has applied to parking in other rental developments, for example: "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."

In addition, in the exhibits, the Applicants note that they might use significant tandem parking and compact car parking to meet this 1:1 ratio. As specifically noted in the Miller and Abrams PUDs, tandem parking was not permitted to be used to provide the required 1:1 parking ratio on the residential portion of the development. It is also difficult to understand how a significant number of compact spaces would be managed if each space is to be used only by the owner or occupant of the apartment, and later rental or separate conveyance of the spaces is prohibited.

We also note that there seems to be insufficient commercial and guest parking. In addition, the Applicants claim that they will offer free validated parking for customers of the commercial component and for guests to the residential component. They have not given any details about how much time would be allowed for validated parking. The details of the validated parking system need to be expanded upon, and provision of adequate free parking for customers and guests should be a condition of the PUD. Further, the free validated parking requirement should convey with the ownership of the property and should be a permanent requirement of any PUD if there is a commercial component on this site.

The Applicants do not address employee parking for either the residential or the commercial component. If this is to be provided, would they be using the 28 spaces allocated to customers and guests?

5. Special Value to the Neighborhood (Section 2403.9(i))

The Applicants propose to provide a playground for exclusive use of the Chevy Chase Plaza Children's Center ["CCPCC"], a market rate child care center with a capacity of only 32 children. The CCPCC had received a substantial subsidy as part of the Abrams PUD, which we believe was at over \$18,750 per slot, and it is not clear that an additional subsidy to this enterprise could be considered a public amenity. The Comprehensive Plan gives a general public action objective of "facilitat[ing] the establishment of new and the expansion of existing child-care facilities in residential, commercial, and mixed use areas," [10 DCMR §209.2(k).] In addition, the Comprehensive Plan mentions an objective for land use and zoning in Ward 3 as increasing the supply of child care facilities in commercial areas in the ward. [10 DCMR §1409.2(m)] The subsidy in the Abrams PUD met that goal. The proposed private "tot lot" does not expand the supply of child care facilities, and further subsidies to a small market-rate child care center are inappropriate.

Additionally, while the CCPCC purports to serve the immediate neighborhood, and was required to do so in the Abrams PUD, it is doubtful that goal is being met. A petition "in support of the proposed redevelopment of the Washington Clinic site" was prepared by the CCPCC and signed by 28 people, of which 8 parties declined to give their own address and were listed at the address of the CCPCC. Of the remaining parties, perhaps 5 households could be considered to be in this neighborhood if a very liberal criterion is used. The remaining signers live as far away as Cleveland Park, Bethesda, Gaithersburg, and Upper Marlboro. It is hard to see why the support of people living far from this site would be considered to be meaningful.

The Applicants also proposed improvements to the Chevy Chase Park. This is a public park serving the neighboring community and used by the CCPCC. These improvements would constitute a small, but real amenity.

6. Construction Management Plan (Section 2403.9(j))

As with other PUDs, an enforceable Development, Construction and Post-Construction Agreement should accompany any PUD at this site. It should address issues such as pre-construction survey, construction site management, construction site cleanliness, work hours, traffic and parking, and complaint procedures and communication. It should also address post-construction issues, such as prompt and complete repair of all utility cuts, and other post-construction issues that might be addressed in both the ZC Order and the Development, Construction and Post-Construction Agreement. [for example: hours, liquor licenses, uses, site lighting, etc.]

IV. Compliance with Comprehensive Plan

A. Purposes of the Comprehensive Plan

The Applicants cite several purposes of the Comprehensive Plan. In addition, we would like to note that the Land Use Element Chapter of the Comprehensive Plan

specifies policies established in support of the residential neighborhoods objectives, including:

(b) 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. [10 DCMR § 1104.1(b)]

B. Generalized Land Use Map

The Applicants assert that the areas to the south of the Site are designated Mixed-use for medium density residential and medium density commercial. In fact, part of the area directly south of the Site, Square 1664, is designated low density residential.

C. Compliance with Major Themes of the Comprehensive Plan

With respect to "respecting and improving the physical character of the District," the Applicants maintain that the "PUD process will ensure the development of an exceptional design in this well-developed and established community." [Applicants' Statement, p. 26] As noted above, the proposed Project has many features which are likely to negatively impact the neighboring community.

The Applicants also maintain that they have worked with the community in an effort to gather input. [Applicants' Statement, p. 26] As two of us are members of the neighborhood working group, we feel that the Applicant has not made any bone fide efforts to address serious community concerns.

D. Compliance with Major Elements of the Comprehensive Plan

1. Economic Development Element: The Applicants note that the District places "a high priority on development at selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use element and ward plans, with sensitivity to the surrounding area." [10 DCMR § 204.2(m)] Note that, for a PUD, the development must be found not to be inconsistent with the ward plans. In the Ward 3 Plan [10 DCMR § 14004.2(b)], the following is one of two major themes (emphasis added):

1400.2 Major themes for Ward 3:

(b) Controlling redevelopment:

(1) Ward 3, its residents, businesses, and institutional establishments are significant contributors to the District's total economy. While the people of the ward recognize and generally take pride in this contribution, their single greatest concern is the possibility of unrestrained development diminishing the quality of life. With two (2) of the city's longest and busiest commercial corridors, Connecticut and Wisconsin Avenues, this sentiment is justified historically. The last (2) decades have witnessed major redevelopment in Friendship Heights, Tenley Circle, Spring Valley, Van Ness (at Connecticut), Wesley Heights, and Woodley Park, and unsuccessful redevelopment efforts in Cleveland Park, Glover Park, and McLean Gardens. Major redevelopment is often accompanied by undesirable effects, particularly increased traffic. This presents problems for small businesses (e.g., loss of parking, higher rents) and has spillover effects penetrating nearby residential neighborhoods. These problems are particularly acute on streets where one side of the street has commercial zoning and commercial uses and the other side of the street has low-density or moderate-density residential zoning and conforming residential uses;

.(2) The economic development goals for Ward 3 differ from those in other wards. The Economic Development Element of the Comprehensive Plan is principally concerned with the generally agreed upon need to stimulate more economic development overall in the District. From the point of view of the District as a whole and the ward in particular, this need does not apply to Ward 3. Rather, the issue in Ward 3 is how to channel the very strong momentum of economic development that exists while protecting and enhancing the primarily residential nature of the ward - a quality of life that in turn attracts additional economic pressures for development; and

.(3) The economic development called for in the Comprehensive Plan will be of greatest benefit and viability to the District as a whole if the following two (2) conditions are present:

(A) Growth is targeted where most needed as reflected in the overall plan for the city. In particular, large-scale retail should be targeted first to other wards of the District; and

(B) Strong residential areas are maintained throughout the city (which makes the District more attractive to the types of organizations that the District considers desirable). Without such areas, many organizations may prefer to locate outside the District;

In addition, the requested zoning change is not justified by close proximity to a Metrorail station. As noted above, the zoning on the Clinic portion of the Site was changed from R-2 to R-5-B after the Friendship Heights Metrorail station was planned, but not yet constructed. The 1974 upzoning provides the ability to provide substantial residential development consistent with the economic development element and the Ward 3 Plan.

The Applicants claim that the proposed development is “sensitive to the nearby residential communities and acknowledges their low rise nature by a significant decrease in height on the eastern portion of the Site.” [Applicants’ Statement, p. 27.] As noted above, the proposed stepdown in height to 42’8” on the eastern portion of the Site is to a depth of only 20 feet and is far less than had been required in other PUDs in this area that border on low density residential district. [See the discussion at Section III.C.2., Urban Design, Architecture, Landscaping and Open Space, above.]

The Applicants note that an objective of the Economic Development element is “to facilitate the establishment of new and the expansion of existing child-care facilities in residential, commercial, and mixed use areas.” [10 DCMR § 209.2(k)] They propose to provide, through a permanent easement, a 5,850 sq. ft. portion of the Site to be used as a playground exclusively by the Chevy Chase Plaza Children’s Center, a market rate child-care center with a 32-child capacity, with a significant portion of the children residing outside the District. We note that this does not facilitate the establishment of new or expand the capacity of existing child-care facilities, and it is inappropriate to consider setting aside 5,850 sq. ft of open space, which is currently available to the neighborhood, for the exclusive use of 32 children, most of whom are from outside the neighborhood, as a “community amenity.”

The Applicants note that the Project will increase the tax base and create revenue for the District of Columbia. [Applicant’s Statement, p. 27-28.] They cite the attached Economic Benefits Report, Appendix G. We note that the Report exaggerates the tax revenues generated by this project, and the Report will be reviewed in a separate letter.

On balance, we believe that the Project is inconsistent with the Economic Development element of the Comprehensive Plan.

2. Housing Element

The Applicants note that the Site is in a Housing Opportunity area and near a Metrorail station. According to Chapter 3 of the Comprehensive Plan, the specific zoning incentives that might be considered for housing opportunities would not apply to this Project. While the Site is appropriate for a substantial housing development, nothing in the Application justifies a zoning change. Significant housing could be provided under current zoning and would not overburden the local infrastructure if properly designed. In addition, we emphasize that after careful study, a portion of this site was upzoned from R-2 to R-5-B in 1974, after the Friendship Heights Metrorail station was planned.

In addition, the Applicants note that as part of the Housing element, the District recognized the need to increase the supply of child care facilities in each residential area. We note that the proposed "tot lot" for the exclusive use of the CCPCC, a market-rate child care center with a capacity of 32 slots, does not increase the supply of child care facilities.

Omitted Element: Environmental Protection Element

As noted above, several elements of the Project would negatively impact the environment. Excavation on the eastern section of the Site will involve the removal of at least 20 trees over 6 inches diameter. Three of these trees are over 30 inches in diameter and 6 of those trees are between 18 and 24 inches in diameter. [Applicants' Statement, Drawing S-1]. The proposal also appears to approach 100% lot coverage of impervious surface inasmuch as the underground parking is under almost all of the Site and there are paved surfaces over much of the few remaining portions of the Site.

Moreover, it appears that excavation of the Site for the proposed development would involve the loss of a very significant number of mature trees (including city-owned trees) and other substantial landscaping. We urge that the Zoning Commission obtain, and consider, a full evaluation of the loss of trees and other environmental impacts of the proposed project.

In their discussion of the Environmental element for Ward 3, the Applicants claim that the play area for the exclusive use of Chevy Chase Plaza Children's Center, a market-rate day care center serving 32 children, meets the following objective:

1403.3 Environmental Protection Goals: The preservation and improvement of the environmental qualities of Ward 3, including maintenance and enhancement of its park and open space system, protection of its healthful verdancy, and encouragement of design solutions that promote both conservation and improvement of the ward's resources, are the primary environmental goals for Ward 3. [10 DCMR § 1403.3]

As noted above, the excavation under the "tot lot" will eliminate a large number of very large, mature trees, and the tot lot will be located on land that is currently open space and used by the neighborhood. There is very limited open space available in this area.

The proposed Project is inconsistent with the Environmental Protection element of the Comprehensive Plan.

3. Transportation Element

The Applicants note that they have eliminated vehicular access to the Site from Military Road and that they are working on a recommendation that the 5300 block of 43rd Street, N.W. be made one-way southbound. This was requested by an individual living on that block.

We noted in our discussion of Transportation Features, above, that the elimination of vehicular access from Military Road and aligning the access on Western Avenue with the Wisconsin Circle Signal is simply the correction of inferior design. The curb cut on Military Road has not been used for a substantial time, and the curb cut on Western Avenue is currently aligned with the Wisconsin Circle signal.

We also note that a major pedestrian entrance to the residential component and a pedestrian entrance to the commercial component are on Military Road, and that this pedestrian access will create a significant traffic burden on Military Road and the surrounding low-density residential community as vehicles will stop on Military Road to drop off passengers and vehicles will drive up and down the local streets and alleys seeking the limited free on-street parking.

The "Neighborhood Traffic Mitigation Study" and the work to get the 5300 block of 43rd Street limited to one-way south is likely to exacerbate traffic problems in the area. Traffic concerns in this area cannot be addressed in a piecemeal manner and if the traffic which is attempting to avoid the gridlock on the 5300 block of Wisconsin Avenue has one less cut-through route, that traffic will be diverted to the neighboring streets and alleys. In addition, local traffic is created by the search for limited free on-street parking, and solutions to these traffic and parking issues for the entire area must be carefully and comprehensively addressed.

The Applicants note that the Project will provide one parking space per apartment and 28 parking spaces for the commercial component. In their exhibits, it is clear that they expect to be using a significant number of tandem and compact car spaces to meet this parking ratio. They also have stated that they will not be providing these spaces for the exclusive use of the occupant of each apartment, but expect to rent these spaces. As noted above, this parking ratio is at or below that which was provided with other PUDs near the Friendship Heights and Tenleytown Metrorail stations. In addition, in those PUDs, the parking spaces were either in townhouse garages or the Z.C. Orders included a condition that: (1) the spaces be used only by the owner or occupant of the apartment, and (2) the contract for the spaces prohibits later rental or separate conveyance of the parking space. Clearly, the parking plan for the Project is inadequate and would likely lead to overburdening of the limited on-street parking in the low-density residential neighborhood directly south, east and southeast of the Site.

With respect to guest parking and customer parking for the commercial component if allowed, the Applicants stated that there would be a system for free validation, but did not give any details that would assure the neighborhood that the system would be effective and that it would continue for the life of the Project. Explicit conditions requiring free validation for at least 2 hours, or more depending on the commercial uses, should be included in any Z.C. Order for a PUD on this site.

For the Ward 3 Elements of the Comprehensive Plan, a major policy in the Transportation Element is: "Improving the level of service at street intersections to "B," or "C" at worst, is important for the protection and improvement of the quality of life, air quality, and residential character of the ward." [10 DCMR §1404.2(g)] We note that even with the flawed traffic study presented, the level of service at several intersections will not meet this standard. We also note that for the Ward 3 Transportation Element of the Comprehensive Plan:

1404.3 (i) For all major development projects, including Planned Unit Developments, special exceptions, and Large Tract Review projects of moderate and greater density (10 DCMR § 2300), and for major chancery expansions, the government should require a transportation system management ("TSM") program that shall prevent any deterioration in the level of service of affected intersections below "C" and that may, as a project amenity, improve existing levels of service at these intersections;

The proposed Project is inconsistent with the Transportation element of the Comprehensive Plan.

4. Urban Design Element

As noted by the Applicants, the Urban Design element of the Comprehensive Plan states the goal:

701.1 It is the goal of the District to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. [10 DCMR § 701.1]

It further gives the following urban design objective:

702.1 The urban design objectives are to do the following:

(b) Preserve and enhance the outstanding physical qualities of District neighborhoods;

For areas with stable character, such as the low density residential neighborhood abutting the subject site, the Urban Design element gives the following objectives:

711 AREAS OF STABLE CHARACTER

711.1 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.

711.2 The policies established in support of the areas of stable character objectives are as follows:

(a) Encourage in-fill development to be complementary to the established character of the area. In-fill development in stable areas should not create sharp changes in physical pattern which might lead to deterioration;

In addition, the Ward 3 Urban Design Element is concerned with transitions between land uses and the integration of new development:

1406.1 (d) Continuing development in Ward 3 requires conscious consideration of urban design to ensure that the quality of life is maintained or improved. Factors such as pedestrian amenities, streetscape design, compatibility and sensitivity to the scale of existing buildings, maintenance of environmental quality, integration of new

development with existing area or neighborhood character, and transitions between land uses are all areas of concern in Ward 3; [10 DCMR § 1406.1(d)]

In the Ward 3 Urban Design element, there is a major policy statement with respect to protecting the scale and low density character of the area:

1406.2 (d) Land use and future development must be carefully controlled to protect the existing scale and low density character, and to enhance the maintenance and improvement of existing natural open spaces and other qualities of the ward.

As noted in the discussion of the Applicant's Section IIIC.2., Urban Design, Architecture, Landscaping and Open Space, at p. 7, above, the design of this Project is not complementary to the established character of the abutting low density residential neighborhood, and is inconsistent with earlier Commission Orders that have required reductions in total height and substantial setbacks on PUDs that abut low density residential districts. The proposed Project is inconsistent with the Urban Design element of the Comprehensive Plan.

5. Land Use Element

The Applicants note that the Project includes a substantial amount of new housing. [Applicants' Statement, p. 32] They also note that the Comprehensive Plan promotes the "replacement of non-residential properties with residential properties. However, the Land Use element of the Comprehensive Plan includes:

1104.1 The policies established in support of the residential neighborhoods objectives are as follows:

(b) 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; [10 DCMR § 1104.1(b)]

Clearly, the proposed Project is contrary to this policy. In addition, we would like to note that substantial housing consistent with the policies of the Comprehensive Plan can be provided on that site without the requested zoning change. In addition, while they propose replacing a non-residential use with a residential use, the Site is zoned residential, and thus should not receive special treatment relating to the inclusion of a residential component.

Further, the Land Use element for Ward 3 states:

1409.1(b) The overall protection and enhancement of established residential and commercial areas are the primary objectives of the District's land use policy for Ward 3. The effects of nonresidential development on the ward's residential neighborhoods, and of non-neighborhood-serving redevelopment on the ward's commercial areas, must be carefully controlled and limited; [10 DCMR § 1409.1(b)]

Clearly, the Project is inconsistent with the Land Use Element of the Comprehensive Plan and the Land Use Element for Ward 3 in the Comprehensive Plan.

V. PREFILING MEETINGS WITH COMMUNITY

The Applicants claim that they had been responsive to community requests. However, a careful examination of the table indicates that they have not made significant changes in response community concerns about the height and density of the Project and

its likely effect on the abutting low-density neighborhood. The developer has offered minor design modifications, but no alternatives that would not require upzoning. The Applicants' Plans and Responses are discussed in more detail above.

CONCLUSION

We have reviewed the Application and conclude, as the Office of Planning concluded, that it does not justify the requested upzoning and does not qualify under the evaluation standards for a PUD. In addition, the Application fails to identify any public interest served by the other requested relief from the zoning laws (or any private hardship alleviated by such relief), and thus the additional requested relief is unjustified as well.

The Application ignores the essential test that residential upzoning is prohibited unless it is impossible to achieve a reasonable amount of residential development as a matter of right under the current zoning, and disregards the crucial facts that the Washington Clinic property was upzoned to R-5-B in anticipation of the Metrorail station and that there is no residential zoning as dense as R-5-D in the Tenleytown-Friendship Heights corridor of Ward 3. Further, the Application and supporting studies analyze the proposed development in the context of the development in the Commercial Business District in Friendship Heights, Maryland, and other Commercial Business Districts in the region with residential components. This approach, however, is not consistent with the Ward 3 Comprehensive Plan and does not properly evaluate the proposed development in its actual context in the District of Columbia-- close to a Metrorail station, but an integrated part of a stable, low-density residential neighborhood. Matter of right residential development would provide the appropriate level of increased density. The Office of Planning's Preliminary Report also concluded that there is no justification for the amount of increased density requested in this Application, as opposed to what could be undertaken as a matter of right.

With respect to the PUD request, we conclude that the proposed project is not "particularly strong" in any of the categories of potential benefits and project amenities enumerated in the zoning regulations. We also conclude that the proposed project is not acceptable in some of the categories. The public benefits offered are actually inferior, rather than superior, in quality and quantity to typical development of the type proposed. Further, we conclude that the proposed development is not consistent with the Comprehensive Plan. Thus, for each of three reasons, under applicable law the Application does not justify a PUD. The Office of Planning's Preliminary Report also concluded that, given the particular amenities and benefits offered and the high degree of zoning flexibility requested, a PUD is not justified.

While the Office of Planning has indicated that it will continue to work with the Applicant to address these problems and deficiencies, if possible, we have a serious and fundamental concern that the Application is fatally flawed and that, absent a new concept for residential development on this land, no amount of tinkering with design elements will render it viable.

REMARKS CONCERNING DRAWINGS FILED AS PART OF ZC 02-17 (STONEBRIDGE ASSOCIATES)

Cover Sheet:

As in other representations of the surrounding neighborhood, the Cover Sheet fails to show the actual relative size of the single family houses directly south of the site. However, the cover sheet does provide an illustration of the significant depth and very low height of the neighborhood retail component of the planned and approved Chevy Chase Center redevelopment, directly across Western Ave. to the north of the subject site.

See EXHIBIT A.

D1:

Although the calculation is not given, the impervious lot coverage appears to be close to 100%. High percentage of impervious lot coverage is recognized to have negative environmental impact.

Impervious surface - an area that impedes the percolation of water into the subsoil and impedes plant growth. Impervious surfaces include the footprints of principal and accessory buildings, footprints of patios, driveways, other paved areas, tennis courts, and swimming pools, and any path or walkway that is covered by impervious material. (39 DCMR 1904) [11 DCMR 199.1, page 18]

The gross floor area for retail use is stated as 2,000 s.f. No part of this area can be defined as a cellar, and the retail area appears to actually be 7,200 s.f.

Gross floor area - the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of walls separating two (2) buildings.

The term "gross floor area" shall include basements, elevator shafts, and stairwells at each story; floor space used for mechanical equipment (with structural headroom of six feet six inches (6 ft. 6 in.) or more); penthouses; attic space (whether or not a floor has actually been laid, providing structural headroom of six feet six inches (6 ft. 6 in.) or more); interior balconies; and mezzanines.

The term "gross floor area" shall not include cellars, and outside balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building. **Habitable room** - an undivided enclosed space used for living, sleeping, or kitchen facilities. The term habitable room shall not include attics, cellars, corridors, hallways, laundries, serving or storage pantries, bathrooms, or similar space; neither shall it include mechanically ventilated interior kitchens less than one hundred square feet (100 ft.²) in area, more kitchens in commercial establishments. [11 DCMR 199.1, page 17]

Cellar - that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent Finished grade. [11 DCMR 199.1, page 12]

No loading berths are provided for the retail component, excluded because this use is less than 10% of the building area. However, the 7,200 s.f. of retail will still require loading berth facilities, and this need must be accommodated.

Note 1. A to the zoning tabulation states that the “gross floor area = gross measured area x .98; this factor provides for a mechanical shaft deduction.” However, as cited above, 11 DCMR 199.1 requires inclusion of this area in the calculation of gross floor area.

Note 1. B explains that parking access ramps have been deducted from the gross floor area. We find no reference in the regulations which would allow for this deduction.

Note 1. C states that “The total area of retail use at the ground floor = 7,200 sf. Of this total, 2,025 sf are included in the gross floor area.” Again, this area is not in a cellar and the entire retail area should be included.

Note 1. D states “Gross floor area at the ground floor is calculated using the perimeter method.” We find no reference for this term in the regulations. “Gross floor area” is defined in 11 DCMR 199.1, which is cited above.

S1, S4:

The proper measuring point, using the Military Rd. front, seems to be EL 322' at the curb opposite the middle of the roofed building. Instead, the Applicants appear to have used the elevation of the curb at the mid-point on Military Rd. including the underground garage (EL 324').

Building, height of - the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet.

In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

In those districts in which the height of the building is limited to sixty feet (60 ft.), in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or parapet, but the allowance for terrace height shall not exceed five feet (5 ft.).

Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

In those districts in which the heights of building is permitted to be ninety feet (90 ft.) or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet (3 ft.) in height. [11 DCMR 199.1, page 12]

S2, S3:

Remarkably, the Applicants have managed to show all of the other properties nearby, except for the single family houses and the townhouses, both located directly across Military Rd. from the subject site.

See EXHIBIT B.

S5:

Although the Applicants state that the retail area would be accessed only from Western Ave., an entrance to the retail component is shown on Military Rd.

L1:

In this landscape plan, we compare the trees shown on the part of the site coming from the Lisner Home (none, except new planting shown at the sidewalk) with the trees shown in drawing S-1 to currently exist in the same area. At least 20 trees over 6 inches in diameter would be removed; 6 of these are between 18 and 24 inches, and 3 trees are over 30 inches.

A1:

We note that the proposed underground 3-level parking garage is 71 feet from the stone retaining wall of the residence at 4228 Military Rd. Excavation for construction would be even closer than this.

See EXHIBIT C.

A3:

Note 3 requests flexibility for up to 40% (approximately 80) of the spaces to be for compact cars, which would significantly diminish the usefulness of these spaces.

Note 4 requests that up to 25% (approximately 50) spaces be permitted to be stacked. These are not equivalent to accessible spaces, and would be of no use to most residents or shoppers.

A8:

The lower drawing omits all of the single family residences on the east side of 43rd St., which are directly south of this site. Two of these houses are closer than the townhouses shown on the west side of 43rd St. All of the houses are shorter and less massive than the townhouses shown.

Also missing from the lower drawing is the higher wing of the proposed building; blue sky is shown instead. This view is similar to their M1 model photograph (photo on the right, view looking west down Military Rd.), where their entire building can be seen for comparison.

However, there is a clear illustration of the 2 story “neighborhood retail” component of the approved plan for the redeveloped Chevy Chase Center, directly across Western Ave. from this site. It shows the great depth back from Western Ave. for which a very low height (2 stories) is maintained.

See EXHIBIT D.

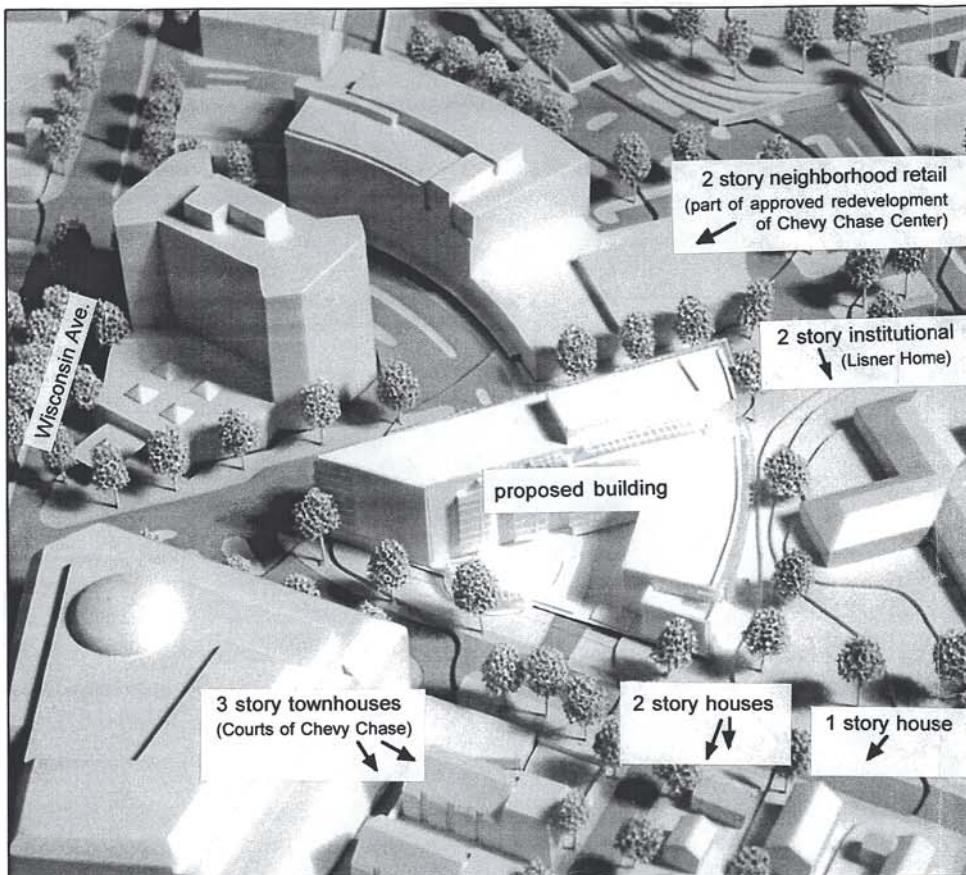
A9:

In the upper drawing, we note that the elevation of the curb at the point of Military and Western is 316', resulting in the building being 8 feet taller there, 98 feet height (roof parapet is EL 414') The mechanical penthouse is another 17'-10" higher (EL 431.83') and is flush with the building wall facing the neighborhood

In the lower drawing, again the single family houses are omitted, even though two of them are closer to this site than the townhouses that are shown.

We note the line of sight that would be required for the closest neighbors to see the sky above the proposed building.

See EXHIBIT E.



5401 WESTERN AVE. WASHINGTON, DC

A PLANNED UNIT DEVELOPMENT

OWNER/DEVELOPER
STONEBRIDGE

ARCHITECTS

SHALOM BARANES ASSOCIATES

LANDSCAPE ARCHITECT

EDAW INC.

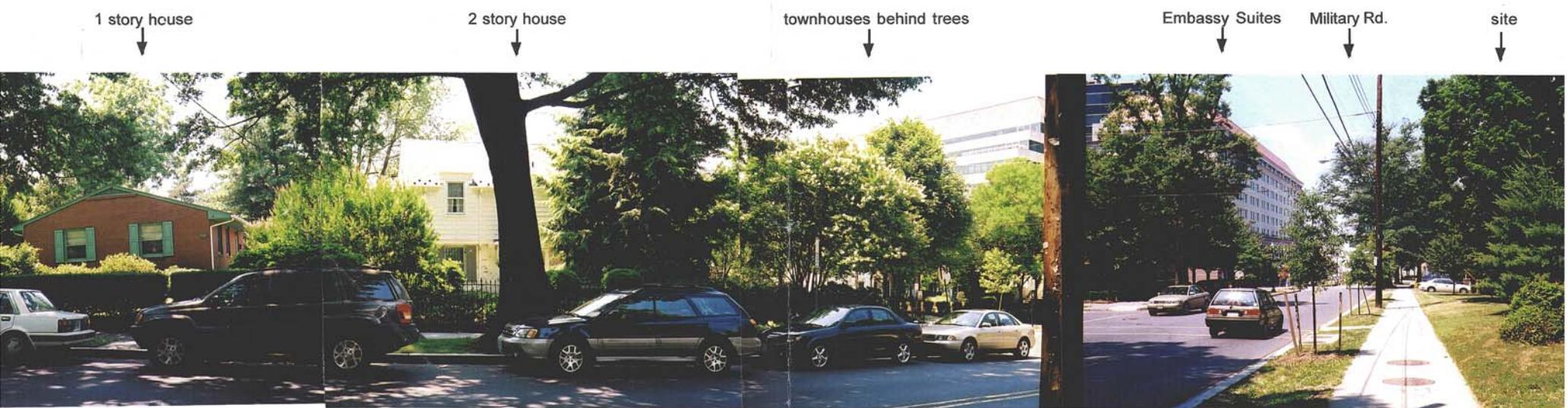
LAND USE COUNSEL

HOLLAND & KNIGHT, LLP

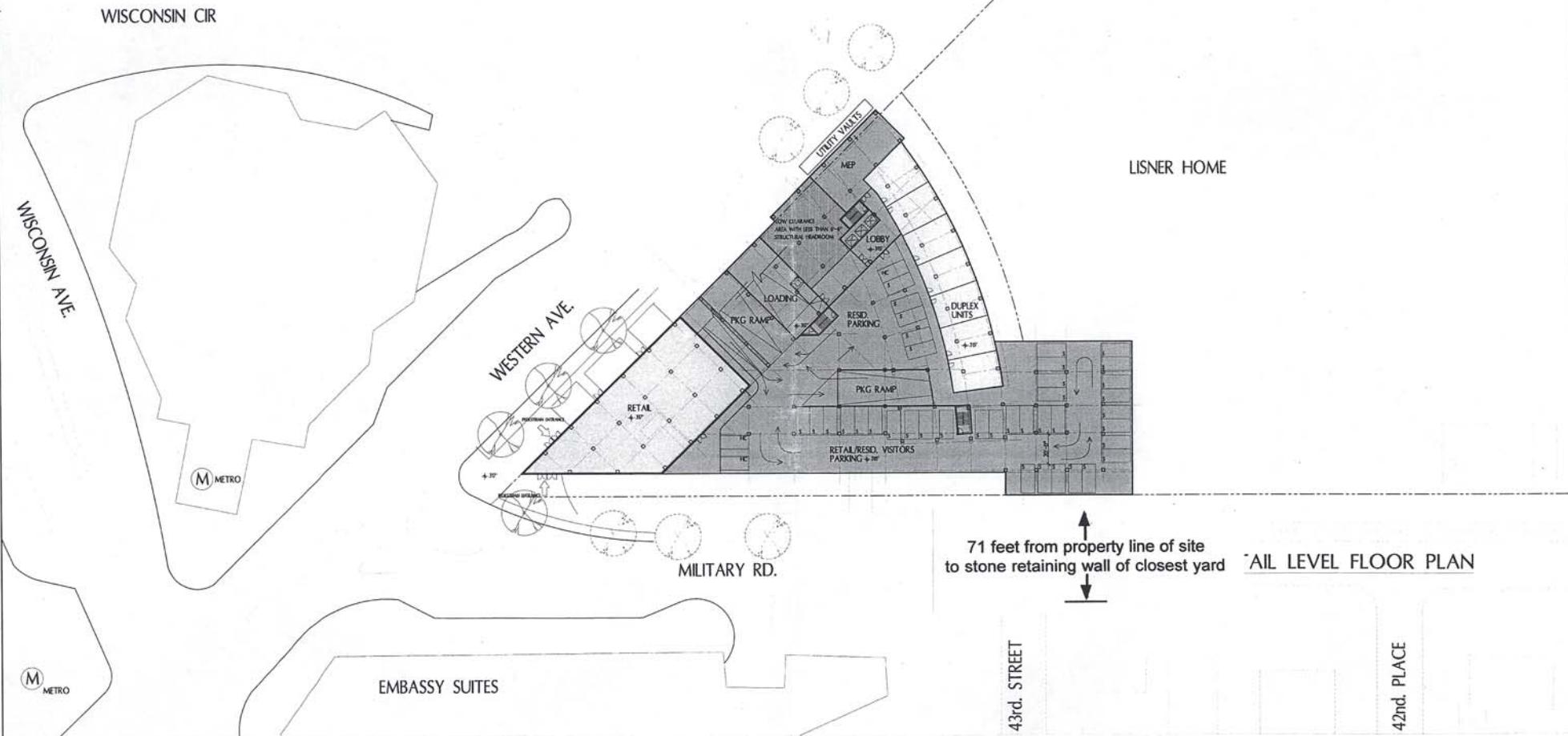
SUBMISSION DATE: MARCH 22, 2002

| NO. | TITLE | DRAWING INDEX | | FILING REQUIREMENTS (DCMR II) |
|-----|--|---------------|----------------------------------|----------------------------------|
| | | SECTION | — | |
| — | COVER SHEET | — | — | — |
| D1 | DEVELOPMENT DATA | — | 2406.11 (b) & (e) | — |
| S1 | SITE SURVEY | — | 2406.11 (e) | — |
| S2 | SITE PHOTOGRAPHS | — | — | — |
| S3 | SITE PHOTOGRAPHS | — | — | — |
| S4 | SITE PLAN | — | 2406.11 (d) 2406.12 (c) | — |
| S5 | SITE CIRCULATION PLAN | — | 2406.11 (e) 2406.12 (f) | — |
| M1 | MODEL PHOTOGRAPHS | — | — | — |
| L1 | LANDSCAPE PLAN | — | 2406.11 (d) 2406.12 (d) | — |
| A1 | RETAIL LEVEL PLAN | — | 2406.12 (e) & (f) | — |
| A2 | FIRST LEVEL PLAN | — | 2406.12 (e) & (f) | — |
| A3 | PARKING LEVEL ONE AND PKG. LEVEL TWO FLOOR PLANS | — | 2406.11 (e) 2406.12 (e) & (f) | — |
| A4 | SECOND TO FOURTH AND FIFTH FLOOR PLANS | — | 2406.12 (e) | — |
| A5 | SIXTH AND SEVENTH FLOOR PLANS | — | 2406.12 (e) | — |
| A6 | EIGHTH, NINTH AND ROOF FLOOR PLANS | — | 2406.11 (d) 2406.12 (c) & (e) | — |
| A7 | SOUTH AND NORTH-WEST ELEVATIONS | — | 2406.12 (e) | — |
| A8 | SOUTH-EAST AND NORTH-EAST ELEVATIONS | — | 2406.12 (e) | — |
| A9 | TRANSVERSE AND LONGITUDINAL SECTIONS | — | 2406.12 (e) | — |

EXHIBIT B



LOOKING WEST ON MILITARY RD.



5401 WESTERN AVE.

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

PUD SUBMISSION DATE: MARCH 22, 2002

SHALOM BARANES ASSOCIATES

STONEBRIDGE

A1

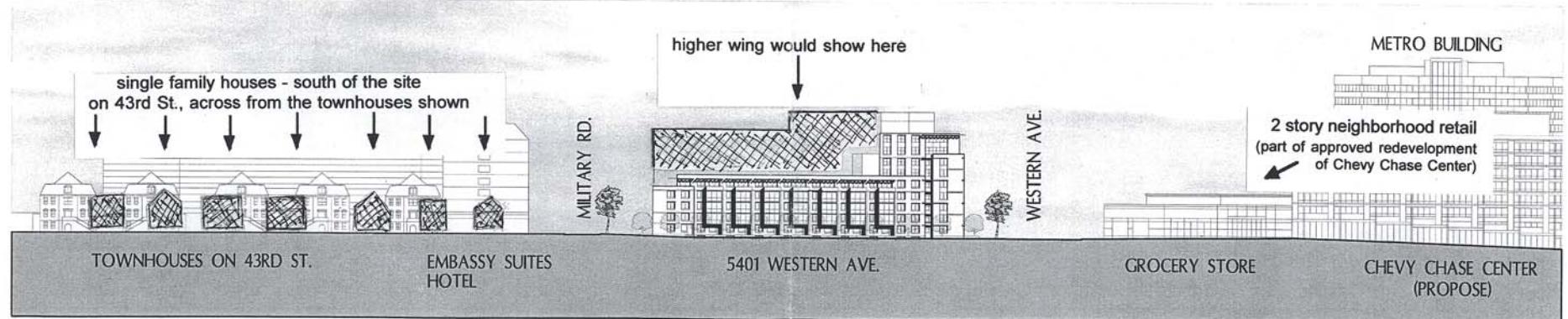
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EXHIBIT D



**SOUTHEAST ELEVATION
FROM COURTYARD**



**NORTHEAST DEVELOPED ELEVATION
FROM PEDESTRIAN PATH**



5401 WESTERN AVE.

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

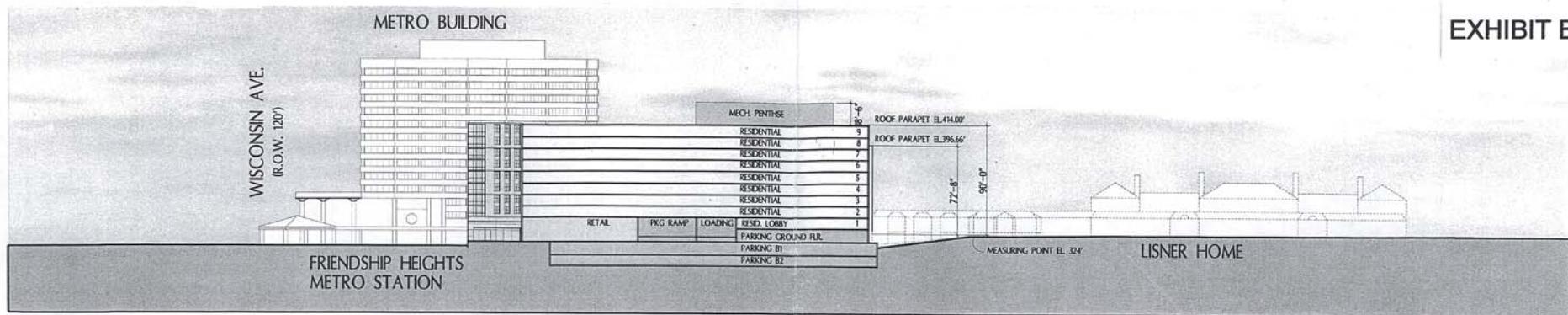
PUD SUBMISSION DATE: MARCH 22, 2002

STONEBRIDGE A8

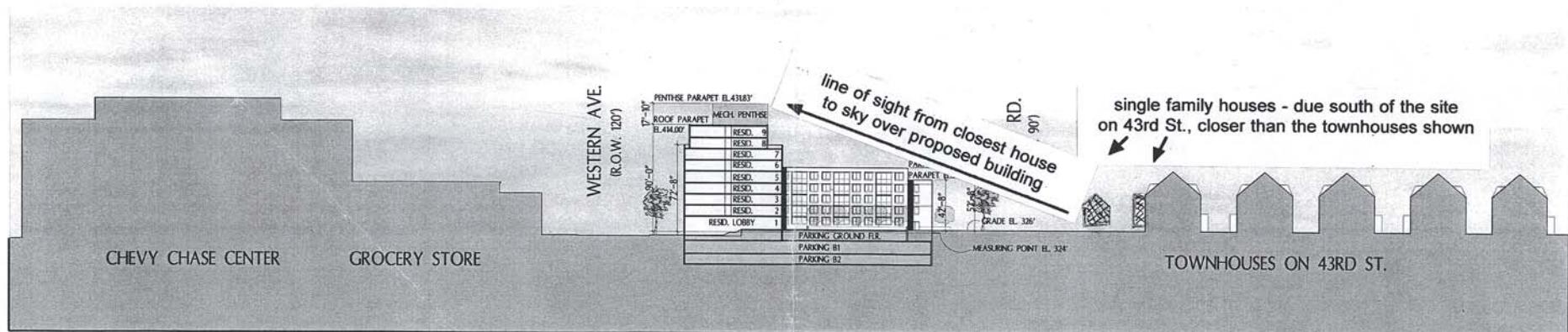
SHALOM BARANES ASSOCIATES

0 20' 40' 80'

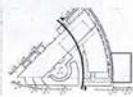
EXHIBIT E



LONGITUDINAL SECTION



TRANSVERSE SECTION



BUILDING AND CONTEXT SECTIONS

5401 WESTERN AVE.

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

PUD SUBMISSION DATE: MARCH 22, 2002

STONEBRIDGE A9

SHALOM BARANES ASSOCIATES

0 20' 40' 60'