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July 27, 2006

Sharon Schellin
Secretary to the Zoning Commission
Office of Zoning
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

RE: Zoning Commission Case No. 03-03B
Proposed Findings of Fact and Conclusions of Law

Dear Ms. Schellin:

Transmitted herewith is the Applicant's proposed Findings of Fact and Conclusions of Law in Zoning Commission Case No. 03-03B.

Sincerely,
ARNOLD & PORTER LLP

Nathan W. Gross, AICP

Enclosure

Cc: Advisory Neighborhood Commissions 7E and 7C

ZONING COMMISSION
District of Columbia
CASE NO. 03-03B
EXHIBIT NO. 29

ZONING COMMISSION
District of Columbia
CASE NO.03-03B
EXHIBIT NO.29

ZONING COMMISSION ORDER NO. 03-03B
ZONING COMMISSION CASE NO. 03-03B
(Modification to Approved Planned Unit Development for Capitol Gateway Estates)
_____, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on July 17, 2006 to consider a requested modification to the Capitol Gateway Estates planned unit development ("PUD") approved in Zoning Commission Order No. 03-03. The Zoning Commission considered the modification pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulation ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the requested modification.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On December 16, 2006, the District of Columbia Housing Authority and the associated private development team of A & R/THC LLC and East Capitol Gateway LLC filed a request for a Modification to the approved PUD in Zoning Commission Case No. 03-03 for the Capitol Gateway Estates located on a large site on multiple squares in the vicinity of East Capitol Street and Southern Avenue, S.E. The requested modification was to eliminate the approved Community Building as specified in Condition No. 6 of the Order and instead to construct twelve (12) townhouses on the site.

2. After proper notice, the Zoning Commission held a public hearing on July 17, 2006.

3. The parties in the case were the Applicant and Advisory Neighborhood Commissions ("ANC") 7E and 7C, within which the PUD is located.

4. At the conclusion of the public hearing on July 17, 2006, the Zoning Commission took proposed action by a vote of _____ to approve the requested modification.

5. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated ____, found that the proposed modification would not adversely

affect any federal interest nor be inconsistent with the Comprehensive Plan for the National Capital.

6. The Zoning Commission took final action to approve the requested modification on _____, by a vote of _____.

The Requested Modification to Condition No. 6

7. Condition No. 6 in Order No. 03-03 states, "The community center building shall be constructed according to the plans submitted as exhibit 27 of the record. The building shall have a height not to exceed 25 feet and a gross floor area not to exceed 16,000 square feet. The site shall provide 33 off-street parking spaces." The site for the community center building is in Square 5280 and oriented to the southeast corner of the intersection of East Capitol Street and 56th Place, S.E.

8. The Applicant's written submissions and testimony at the public hearing requested that 12 townhouses be constructed on the subject site rather than the community center building. The Applicant indicated that the community center was no longer needed or financially supportable because nearly all of the functions that were intended to be housed in the building had located elsewhere or would be accommodated elsewhere, as set forth below in Findings of Fact numbers 9 through 13.

9. The East Capitol View Community Development Corporation ("CDC") and the East Capitol View Center for Change were intended to be the lead occupants in the community center building. The CDC had programmed space for offices, classrooms including computer training, and a conference room.

10. The CDC also managed the Community Supportive Services Program, which provided counseling and training in life skills for former public housing residents. This HOPE VI program no longer receives funding, as its mission is substantially complete. The space for the supportive services program and the CDC's office space related to it, are no longer needed.

11. The CDC is currently located in a townhouse and will move to the rental tower building at 5929 East Capitol Street, S.E. (one block to the east of the community center site) in the forthcoming Capitol Gateway Towers PUD application as its permanent location in Capitol Gateway Estates.

12. The Center for Change and its Youth Services Program also now have their own building, so that they no longer require space in a Community Building.

13. The other major function that was proposed for the Community Building is the child development center. The daycare provider previously identified has relocated permanently to the Wheeler Creek community, reflecting in part the fact that there is no demand for day care services until there are residents at Capitol Gateway Estates. The day care center will now be located within the 10-acre retail-residential component of the site to be developed, after PUD approval, on

the north side of East Capitol Street in Square 5276, directly across East Capitol Street from the rental towers. The daycare space will be designed to the specifications of the selected daycare provider.

14. The Applicant's architect presented the plans for the proposed 12 townhouses that would occupy the former community center site. He indicated that they are typical of the 62 townhouses approved as part of the larger Capitol Gateway Estates PUD and that associated landscaping would also be typical of the overall PUD pattern. The houses would be three stories high and would include both rental and ownership units.

15. Ten townhouses would front along East Capitol Street (Lots 207-216), and two semi-detached dwellings would front on 56th Place (Lots 205 and 206). Residences along East Capitol Street would be set back at least 30 feet from the curb with front access provided by a three-foot-wide concrete sidewalk. These residences would have rear-loaded garages, accessed from a 15-foot-wide private alley. The semi-detached pair of houses on 56th Place would be set back 20 feet from the curb and would have front-loaded garages because of the open space behind these lots and south of Lot 205.

16. The Applicant indicated that there is an interior lot behind the townhouses fronting on East Capitol Street that will be devoted to open space. At present there are no specific plans for equipment, structures or fencing, and the Applicant's preference is to leave the decision as to the long-term character of the space to be decided by the homeowners' association. After discussion by the Zoning Commissioners, it was agreed that under this approach there would need to be a future application for a modification of the PUD to accommodate any such improvements of this property.

Office of Planning Report

16. By report dated June 30, 2006, the Office of Planning ("OP") recommended approval of the Application, noting that constructing the twelve (12) townhouses in place of the community center "meets the PUD standards outlined in § 2403 and is in accordance with the intent of the Zoning Regulations and the 2nd stage PUD." (p. 2) OP testified that it preferred that the open space referenced by the Applicant be maintained as accessible to the public. After discussion with Zoning Commissioners, it was agreed that the particulars regarding the open space would be determined at the time of a future PUD modification affecting the treatment and use of the green space.

Advisory Neighborhood Commissions 7E and 7C

17. Neither ANC 7E nor 7C filed a report on this Application. However, the representative of the D.C. Housing Authority indicated that regular meetings with the Community Task Force have occurred, including review of the proposed

modification. She also indicated that the Applicant presented the plans to the ANCs.

Public Testimony

18. There was no public testimony by individuals or organizations.

CONCLUSIONS OF LAW

1. Under § 2409.9 of the Zoning Regulations, any modification to a PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Zoning Commission. The proposed modification shall meet the requirements for a second-stage application, except for minor modifications and technical corrections as provided for in § 3030 of the Zoning Regulations. This Application was accordingly processed as a second-stage application.

2. The Zoning Commission finds the Application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the second-stage approval. Accordingly, the Commission grants approval to this second-stage application in accordance with § 2408.6 of the Zoning Regulations.

3. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. Neither of the affected ANCs submitted a report or testified at the public hearing. As a result the Commission cannot consider their respective issues and concerns.

4. The requested modifications are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 **APPROVAL** of the requested modification of the PUD. The approval is subject to the following amendments to Order No. 03-03:

1. Condition No. 6 authorizing construction of the community center building is deleted and is replaced by the following Condition No. 6:

   "6. On the site of the originally approved community center building in Square 5280, 10 row dwellings and two semi-detached dwellings and associated open space shall be constructed in accordance with the plans submitted as Exhibit ___ of the record."

2. Amend the development tabulation in Condition No. 4 to show that the PUD now includes 124 semi-detached dwellings and 72 rowhouses, and a total of 238 dwelling units..

3. Amend Condition No. 5 to provide that "there shall be a minimum of 238 on-site and curbside parking spaces.

For the reasons stated above, the Commission concludes that the Applicant has met the burden of proof, and it is hereby **ORDERED** that the application is **GRANTED**.

Vote of the Zoning Commission taken at its public hearing of this case on July 17, 2006, to **APPROVE** by a vote of _____. The Zoning Commission took final action to adopt this Order at its public meeting of _____ by a vote of _____.