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Dennis R. Hughes
(202) 419-2448
dennis.hughes@hklaw.com

June 24, 2004

Hand Delivery

Zoning Commission of the District of Columbia
441 4th Street, NW
Suite 210S
Washington, DC

Re: Zoning Commission Case No. 03-24
2126 Wyoming Avenue, NW

Dear Members of the Commission:

Enclosed for your records, please find a certified copy of the recorded PUD Covenant for the above-referenced case, which was recorded with the Recorder of Deeds on June 23, 2004 as Document No. 2004087834. A copy of the recorded Covenant is also being provided to the Office of the Zoning Administrator. Consistent with paragraph 8 of your decision in Zoning Commission Order No. 03-24, please authorize the Office of Zoning to release the record of this case to the Zoning Division of the Department of Consumer and Regulatory Affairs, as appropriate.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions.

Sincerely,

Dennis R. Hughes

Enclosure
cc: Denzil Noble, Acting Zoning Administrator

ZONING COMMISSION
District of Columbia
CASE NO. 03-24
EXHIBIT NO. 46

ZONING COMMISSION
District of Columbia
CASE NO.03-24
EXHIBIT NO.46

PUD COVENANT

THIS COVENANT, made as of this 31st day of May, 2004, by and among The Kalorama D.C. Group LLC, a District of Columbia limited liability company (hereinafter ("Kalorama") and KS Wyoming L.L.C., a District of Columbia limited liability company (hereinafter "KS") (Kalorama and KS hereinafter also collectively referred to as "Developer") and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").

RECITALS:

WHEREAS, Kalorama and KS are the owners of all of that real property in the District of Columbia known as Record Lot 314 (formerly known as Record Lots 99 and 100 and also formerly known as Assessment and Taxation Lot 911) in Square 2528 (hereinafter the "Subject Site") with premises address of 2126 Wyoming Avenue, NW, more fully identified on Exhibit A hereto, and the respective ownership interest of Kalorama (Assessment and Taxation Lot 917) identified on Exhibit B, and ownership interest of KS (Assessment and Taxation Lot 916) on Exhibit C;

WHEREAS, Developer intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia (hereinafter referred to as the "Zoning Regulations") in accordance with Order No. 03-24 of the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission"), effective February 27, 2004 in Case No. 03-24 (hereinafter referred to as the "Order"); and

WHEREAS, Section 2409.3 of the Zoning Regulations requires that Developer enter into this Covenant with the District of Columbia assuring Developer's (and its respective successors

in title) development and use of the Project as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission's approval of the Project and Amendment to the Zoning Map of the District of Columbia under the Order (as the same may be amended and/or modified from time to time) are incorporated herein by reference and made a part hereof as Exhibit D and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with the conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia (hereinafter referred to as the "Zoning Administrator") may authorize. Developer covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Developer should fail to file for a building permit and/or to commence construction of the approved Project within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order, the Zoning Commission may duly consider an application for an extension of time in accordance with Section 2408.10 of the Zoning Regulations .

3. Default. In the event that Developer fails to file for a building permit and/or to commence construction of the approved Project within the time specified in Sections 2408.8 and

2408.9 of the Zoning Regulations and the Order or within any extension of time granted by the Zoning Commission in accordance with Section 2408.10 of the Zoning Regulations, the benefits granted by the Order shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

4. Future Conveyance. Developer covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. Developer shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a

lapse of said Order by its terms, the District shall, upon the request of Developer, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

{Signatures Follow}

IN WITNESS WHEREOF, The Kalorama D.C. Group LLC, has, as of the day and year first above written, caused this Covenant to be signed with its corporate name by Heidi Li Feldman, Manager of The Kalorama D.C. Group LLC, and does hereby appoint the said Heidi Li Feldman to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.

THE KALORAMA DC GROUP LLC

By: Heidi Li Feldman
Heidi Li Feldman
Manager

ATTEST:

DISTRICT OF COLUMBIA, ss:

I, Jerilyn A. Spach, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Heidi Li Feldman, Manager of The Kalorama D.C. Group LLC, party to the foregoing Covenant bearing date as of the 21st day of May, 2004, the said Heidi Li Feldman being named as attorney-in-fact for said organization in the foregoing and annexed Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said Covenant to be the act and deed of said organization and that she delivered the same as such.

GIVEN under my hand and seal this 21st day of May, 2004.

Jerilyn A. Spach
Notary Public
JERILYN A. SPACH
NOTARY PUBLIC OF DISTRICT OF COLUMBIA
My Commission Expires May 31, 2008

My commission expires: _____.

IN WITNESS WHEREOF, KS Wyoming L.L.C. has, as of the day and year first above written, caused this Covenant to be signed with its corporate name by Gary Squire, Manager of KS Wyoming L.L.C., and does hereby appoint the said Gary Squire to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.

KS WYOMING L.L.C.

By: _____
Gary Squire
Manager

ATTEST:

_____

DISTRICT OF COLUMBIA, ss:

I, Ernst-Friedrich Ziegle a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Gary Squire, Manager of KS Wyoming, L.L.C., party to the foregoing Covenant bearing date as of the 20th day of May, 2004, the said Gary Squire being named as attorney-in-fact for said organization in the foregoing and annexed Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said Covenant to be the act and deed of said organization and that he delivered the same as such.

GIVEN under my hand and seal this 20th day of May, 2004.

_____
Notary Public

My commission expires: _____.

Ernst-Friedrich Ziegle
Notary Public District of Columbia
My Commission Expires 09/14/07

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary Of The District of Columbia, who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA,
a Municipal Corporation

Tabatha Braxton

By: Sherry Hobbs Newman
Secretary Of The District of Columbia

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Sherry Hobbs Newman, who is personally well known to me as the person named as Secretary of the District of Columbia in the foregoing Covenant bearing date of the 22 day of June, 2004 and hereunto annexed, personally appeared before me in said District and, as Secretary Of The District of Columbia aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the District of Columbia.

GIVEN under my hand and seal this 22 day of June, 2004.

Tabatha Braxton
Notary Public, D.C.

My commission expires: TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007.

APPROVED:

Denzil L. Noble /mr
Zoning Division
Department of Consumer and Regulatory Affairs,
Building and Land Regulation Administration

APPROVED AS TO LEGAL SUFFICIENCY:

Ala Beyte
Assistant ~~Corporation Counsel~~, D.C.
1499799_v5 Attorney General)

DESCRIPTION

BEING a tract of land situated in the City of Washington District of Columbia and being Lot numbered three hundred fourteen (314) in Square 2528 as per a plat of subdivision recorded in Book 197 at Page 175 among the land records of the Office of Surveyor of the District of Columbia being subject to an agreement establishing the building line at forty feet from the line of Garfield Street (now Wyoming Avenue) recorded in Liber 1178 at Folio 354 in the Land Records of the District of Columbia.

SQUARE 2528

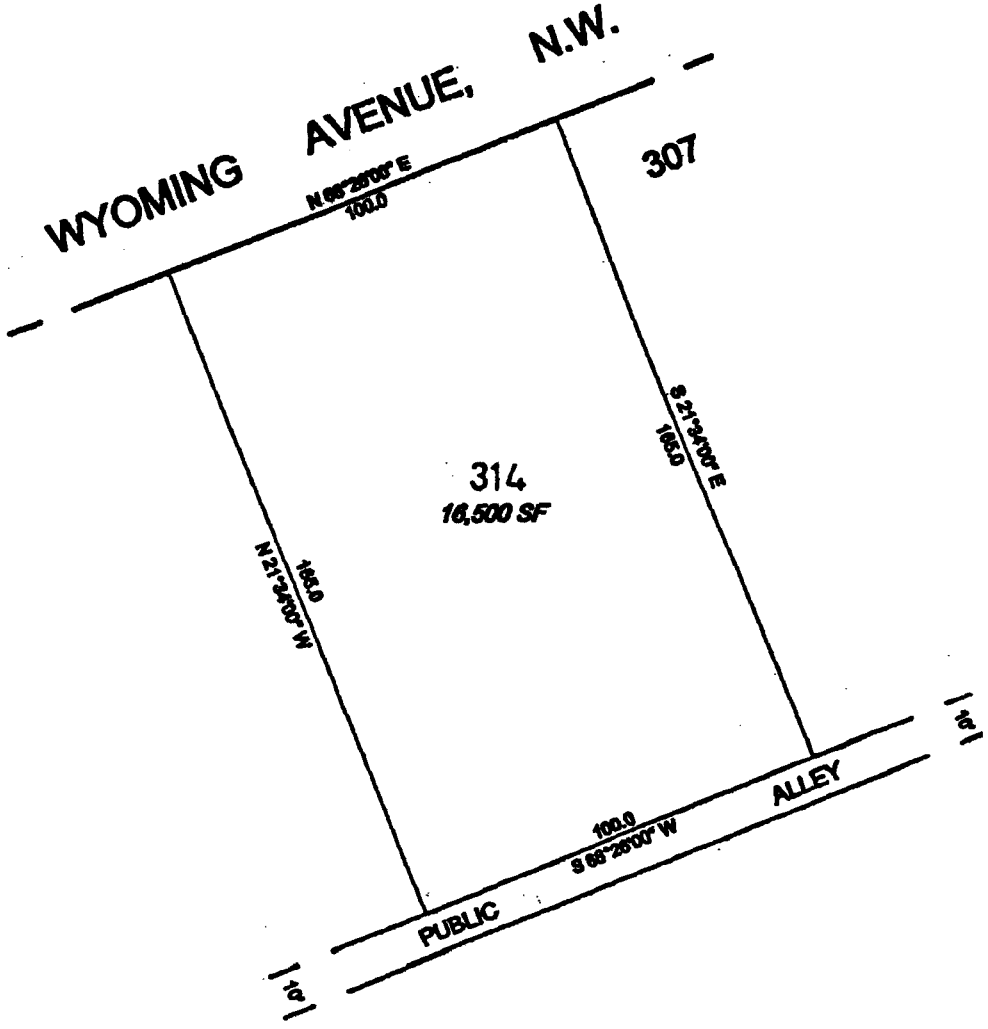


Exhibit A (page 2)

DESCRIPTION

BEING a tract of land situated in the City of Washington District of Columbia and being part of Lot numbered three hundred fourteen (314) in Square 2528 as per a plat of subdivision recorded in Book 197 at Page 175 among the land records of the Office of the Surveyor of the District of Columbia being subject to an agreement establishing the building line at forty feet from the line of Garfield Street (now Wyoming Avenue) recorded in Liber 1178 at Folio 354 in the Land Records of the District of Columbia, and being more particularly described as follows.

BEGINNING at a point being the northwest corner of said Lot 99 as recorded in subdivision Book Governor Shepard at Page 156 among the land records of the Office of the Surveyor of the District of Columbia, said point also being in the southerly line of Wyoming Avenue, N.W. a public street and said point being distant 200.0 feet from the westerly line of Connecticut Avenue, N.W.; thence

Along the southerly line of Wyoming Avenue, N.W. North 68° 26' 00" East, 68.60 feet to a point for corner; thence

South 21° 34' 00" East, 77.11 feet to a point for corner; thence

South 68° 26' 00" West, 4.70 feet to a point for corner; thence

South 21° 34' 00" East, 30.36 feet to a point for corner; thence

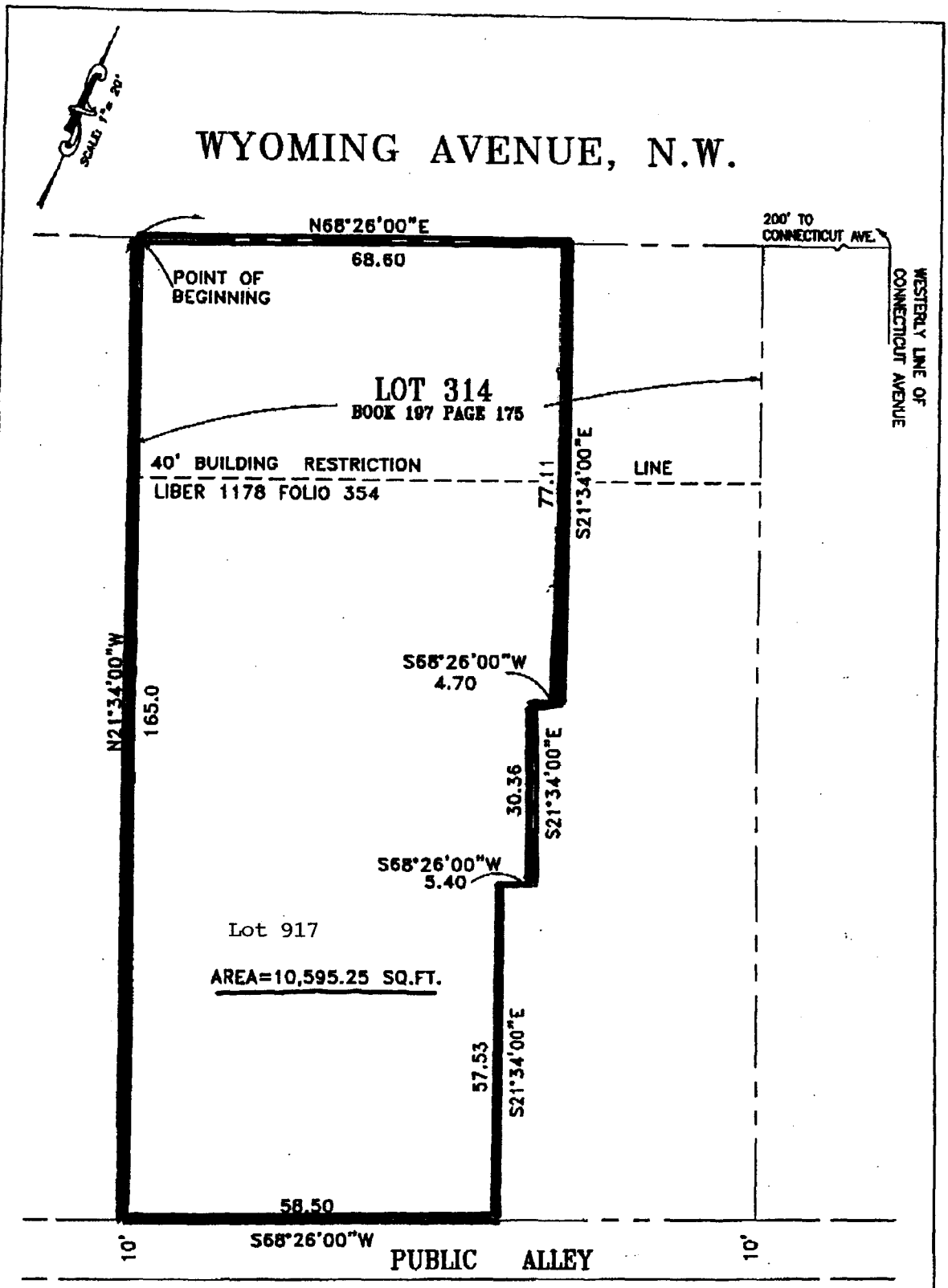
South 68° 26' 00" West, 5.40 feet to a point for corner; thence

South 21° 34' 00" East, 57.53 feet to a point in the northerly line of a 10 foot public alley; thence continuing along the alley line

South 68° 26' 00" West, 58.50 feet to a point for corner; thence

North 21° 34' 00" West 165.0 feet to the POINT OF BEGINNING, containing 10,595.25 square feet of land or 0.2432 acres.

NOTE: At the date hereof, the above-described property is described for assessment and taxation purposes in the records of the Office of Tax and Revenue for the District of Columbia as Lot 917 in Square 2528.



2126 & 2128 WYOMING AVENUE,N.W. PART OF LOT 314 SQUARE 2528 WASHINGTON, D.C.	REFERENCES PLAT BK. PLAT No. LIBER FOLIO FIELD BOOK PAGE No.	WEST CONSULTING GROUP, INC. 4424 MONTGOMERY AVENUE, BETHESDA, MARYLAND 20814 (301) 654-7907 654-7908 (FAX)	
		DATE OF SURVEY:	SCALE: 1"= 20'
		WALL CHECK HOUSE LOC. BOUNDARY	DRAWN BY: LEL JOB No. 04 - 009

DESCRIPTION

BEING a tract of land situated in the City of Washington District of Columbia and being part of Lot numbered three hundred fourteen (314) as per a plat of subdivision recorded in Book 197 at Page 175 among the land records of the Office of the Surveyor of the District of Columbia being subject to an agreement establishing the building line at forty feet from the line of Garfield Street (now Wyoming Avenue) recorded in Liber 1178 at Folio 354 in the Land Records of the District of Columbia, and being more particularly described as follows:

BEGINNING at a point being the northeast corner of said Lot 99 as recorded in subdivision book Governor Shepard at Page 156 among the land records of the Office of the Surveyor of the District of Columbia, said point also being in the southerly line of Wyoming Avenue, N.W. a public street and said point being a distance of 100.0 feet from the westerly line of Connecticut Avenue, N.W.; thence

South 21° 34' 00" East, 165.0 feet to a point in the northerly line of a 10 foot public alley; thence continuing along the said alley line

South 68° 26' 00" West, 41.50 feet to a point for corner; thence

North 21° 34' 00" West, 57.53 feet to a point for corner; thence

North 68° 26' 00" East, 5.40 feet to a point for corner; thence

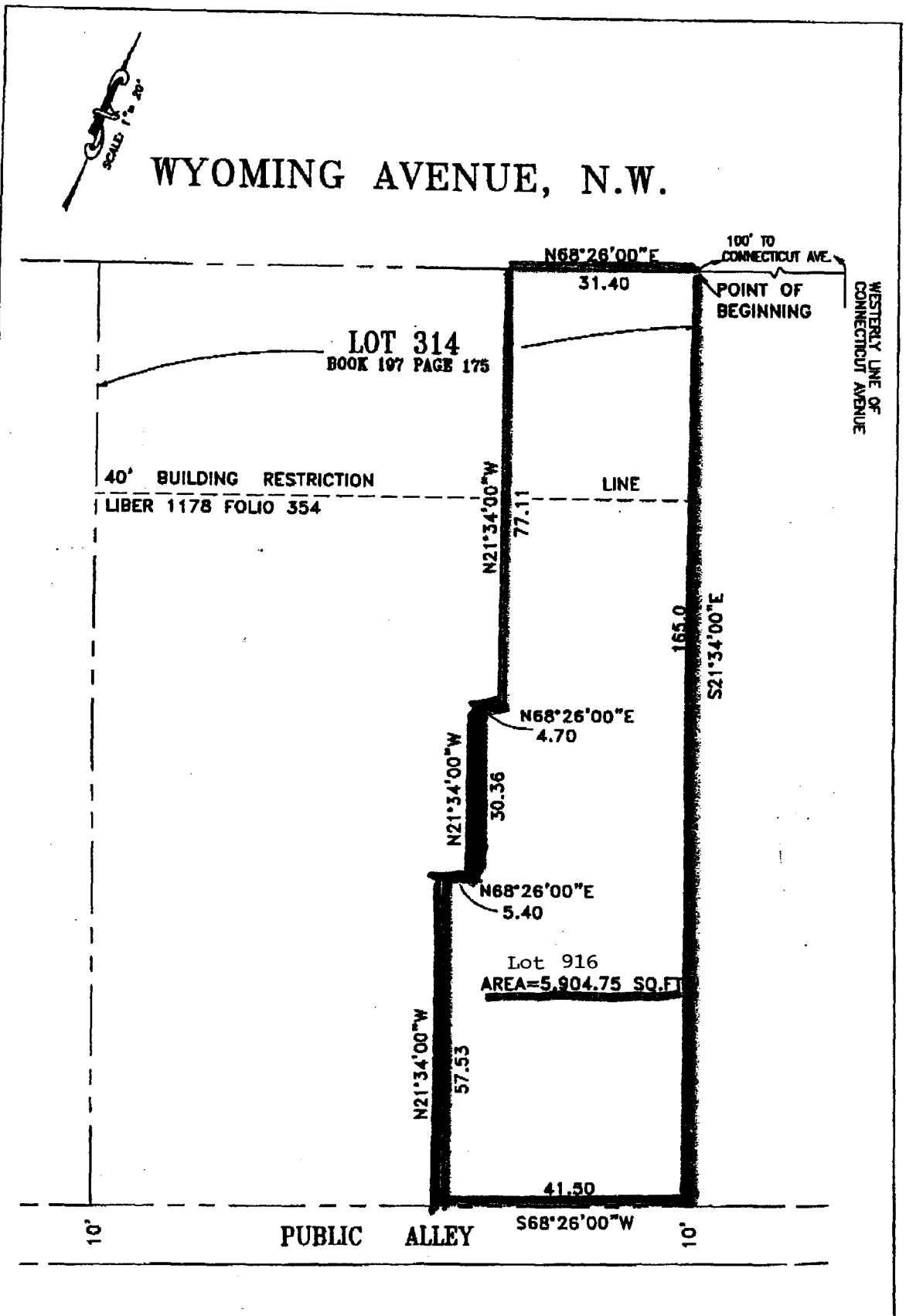
North 21° 34' 00" West, 30.36 feet to a point for corner; thence

North 68° 26' 00" East, 4.70 feet to a point for corner; thence

North 21° 34' 00" West, 77.11 feet to a point in the southerly line of Wyoming Avenue, N.W.; thence continuing along the southerly line of Wyoming Avenue, N.W.

North 68° 26' 00" East, 31.40 feet to the POINT OF BEGINNING and containing 5,904.75 square feet of land or 0.136 acres

NOTE: At the date hereof, the above-described property is described for assessment and taxation purposes in the records of the Office of Tax and Revenue for the District of Columbia as Lot 916 in Square 2528.



2126 & 2128 WYOMING AVENUE, N.W. PART OF LOT 314 SQUARE 2528 WASHINGTON, D.C.	REFERENCES PLAT BK. PLAT No. LIBER FOLIO FIELD BOOK PAGE No.	WEST CONSULTING GROUP, INC. 4424 MONTGOMERY AVENUE, BETHESDA, MARYLAND 20814 (301) 654-7907 654-7908 (FAX)	
		DATE OF SURVEYS WALL CHECK HOUSE LOC. BOUNDARY	SCALE: 1"= 20' DRAWN BY: LEL JOB No. 04-009

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. 03-24
CASE NO. 03-24
(Consolidated Planned Unit Development and Zoning Map Amendment for 2126 Wyoming Avenue, NW)
January 12, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on October 16, 2003, to consider applications from The Kalorama D.C. Group, LLC, for consolidated review and approval of a planned unit development and related zoning map amendment from the R-3 District to the R-5-D District. The Commission considered the applications pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("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 applications.

FINDINGS OF FACT

The Applications, Parties and Public Hearing

1. On July 14, 2003, The Kalorama D.C. Group, LLC (the "Applicant"), owner of Square 2528, Lot 911 (the "Subject Property"), filed applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment (collectively, the "Applications").

2. At its July 31, 2003 public meeting, the Zoning Commission (the "Commission") determined to set the Applications for public hearing.

3. The Zoning Commission held a public hearing for the Applications on October 16, 2003. At the end of the public hearing, the Applicant was requested to submit certain additional information regarding its proposed plans and materials, which materials were submitted to the Commission on October 30, 2003.

4. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2D, the ANC within which the Subject Property is located.

Exhibit D

5. At its November 12, 2003, meeting, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the Applications and plans presented at the public hearing and in the Applicant's post-hearing submission, filed with the Zoning Office on October 30, 2003 and included in the Official Record at Exhibit 37.

6. 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 November 26, 2003, found that granting the Applications would not adversely affect the identified Federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

7. The Commission took final action by a vote of 4-0-1 to approve the Applications at its public meeting on December 8, 2003.

The Subject Property and Surrounding Area

8. The Subject Property is located at 2126 Wyoming Avenue, NW (Lot 911 in Square 2528), within the city block bounded by California Street on the south, Connecticut Avenue on the east, 23rd Street on the west and Wyoming Avenue on the North.

9. The Subject Property has a rectangular shape, with 100 feet of frontage along Wyoming Avenue and a depth of 165 feet. The Subject Property is bounded to the south by an alley that varies in width between 10 and 16 feet. The resulting total land area for the Subject Property is approximately 16,500 square feet, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the R-5-D District. The site is relatively flat with the existing grade raised approximately 7-8 feet above the curb elevation along Wyoming Avenue.

10. The Subject Property is improved with a three-story, 34.3-foot tall Flemish-revival mansion, which formerly housed the Field School.[1] The mansion building was constructed in 1907 as a single-family residence and had been used as a school since the 1930s. A two-story carriage house is located at the rear of the site.

11. The Subject Property is located within the Sheridan-Kalorama neighborhood, a predominantly residential area bounded roughly by Connecticut Avenue to

[1] Building height calculated from finished grade at the middle of the front of the building to the ceiling of the top story.

the east, Florida and Massachusetts Avenues to the south, and Rock Creek Park to the north and west. Sheridan-Kalorama is comprised of a wide variety of housing types, from row house to suburban mansion to high-rise apartment building. Extensive development of the Sheridan-Kalorama neighborhood began at the end of the nineteenth century and continued into the early twentieth century. The neighborhood contains the most extensive collection of revival-style architecture in the District, including the existing building on the Subject Property, with its Flemish-revival design. In 1989, the Sheridan-Kalorama Historic District was added to the District's Inventory of Historic Sites, pursuant to the District of Columbia Historic Landmark and Historic District Protection Act (the "Preservation Law").

12. Due to the location of the Subject Property within the Sheridan-Kalorama Historic District, all proposed new construction and all proposed exterior alterations to the existing buildings on the Subject Property are subject to review and approval by the District of Columbia Historic Preservation Review Board ("HPRB") pursuant to the Preservation Law.

13. During the twentieth century, a number of residential buildings within the Sheridan-Kalorama neighborhood were transformed from residential use and utilized as private schools, foreign missions, and other institutional uses. A number of large apartment houses are also located in the immediate vicinity of the Subject Property, especially close to and along Connecticut Avenue, some of which date to the early twentieth century, while others are of newer construction.

14. Beginning at 23rd Street, NW, to the west of the Subject Property, the south side of Wyoming Avenue is improved with row buildings, containing a mix of single-family and multi-family residential, along with several foreign missions. From a point east of its intersection with Thornton Place, development along the south side of Wyoming Avenue transitions from this row building pattern to semi-detached dwellings, including the mansion building on the Subject Property, then to the Jurys Normandy Inn building at 2118 Wyoming Avenue, NW, and finally back to row buildings fronting onto Connecticut Avenue.

15. The north side of Wyoming Avenue, from Thornton Place to Connecticut Avenue, includes a variety of building styles and sizes, both modern and historic. There are apartment houses at both ends, with three foreign mission buildings occupied by the Algerian Embassy and with a number of detached buildings in between, several of which are currently vacant but which have been historically used for private school and foreign mission uses.

16. A similar mixture of uses is found on Kalorama Road, the next block north of Wyoming Avenue. By contrast, the building mix on California Street, immediately south of Wyoming Avenue, is predominantly large apartment houses, including the six-story Brighton (2123 California Street) and the nine-story apartment building at 2000 Connecticut Avenue (northwest corner of California Street and Connecticut Avenue).

17. The Generalized Land Use Map of the Comprehensive Plan designates the Subject Property as moderate-density residential.

Existing and Proposed Zoning

18. The Subject Property is located in the R-3 District, which is designed essentially for row dwellings. Pursuant to §400 of the Zoning Regulations, the maximum permitted height in the R-3 District is 40 feet and three stories.[2] Minimum lot dimensions for the Subject Property, per §401 of the Regulations, are 2,000 square feet and 20 feet in width for row dwellings; 3,000 square feet and 30 feet in width for semi-detached dwellings; and 4,000 square feet and 40 feet in width for all other structures. Pursuant to §403.2, a maximum 40% lot occupancy is permitted.

19. The Applicant requests rezoning of the Subject Property to R-5-D. The Subject Property is located adjacent to R-5-D zoning to its east. R-5 Districts are general residence districts created to permit design flexibility by allowing all types of urban residential development. Pursuant to §400 of the Zoning Regulations, the maximum permitted height in the R-5-D District is 90 feet with no limit on the number of stories. There are no minimum lot dimension requirements in the R-5-D District according to §401.3. Pursuant to §402 of the Zoning Regulations, the maximum density is 3.5 FAR. According to §403.2 of the Regulations, 75 percent lot occupancy is permitted in the R-5-D District.

The PUD Project

20. The Applicant filed the Applications in July 2003, after having first initiated discussions with community representatives 13 months earlier, in June 2002. Throughout the application process, the Applicant has maintained open and ongoing dialogue with the ANC, with interested neighbors and with representatives of various interested community organizations.

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[2] Building height calculated from finished grade at the middle of the front of the building to the ceiling of the top story.

21. The Applicant proposes the rezoning to R-5-D in combination with the PUD in order to permit the development of multi-family housing on the site, which is not permitted in the R-3 District.

22. The Applicant proposes to renovate and convert the historic former mansion into two townhouses, to renovate and convert the existing carriage house at the rear of the site into two enclosed parking garages for two vehicles each, as well as for storage, and to construct a three-story, four-unit condominium apartment building (the "New Building") on the vacant eastern portion of the site (collectively, the "Project"). The Project will also include outdoor parking for four cars on a parking pad adjacent to the alley at the rear of the Subject Property, one for each of the four condominium units in the New Building.

23. Alteration to the mass of the existing mansion building will be minor. The total additional density for the existing building will be approximately 670 square feet of gross floor area.

24. The design of the New Building is intended to provide a suitable and complementary addition to the surrounding historic buildings and to act as a buffer to the historically non-contributing Jurys Normandy Inn building at 2118 Wyoming Avenue, NW. The contemporary design of the New Building takes a number of cues from nearby buildings and features. However, it is similar in scale to many of the historic townhouse structures on the street and incorporates both horizontal and projecting elements that reference adjacent historic buildings. These elements include an entry door recess, masonry details that reinforce existing horizontal lines, projecting bays, punched multi-light windows, and recessed balconies. The top level is designed to incorporate large amounts of glass to reduce the apparent scale of the new building and to create a transition from the larger mass of the hotel to the east to the lower existing eave lines on the historic mansion to the west. The building mass is also designed to allow an appropriate amount of courtyard space between the New Building and the mansion.

25. The Applicant and its Architect have worked closely with the historic preservation community to develop a design that is compatible with the character of the historic district. The Project's design has received support from the Sheridan-Kalorama Historical Association ("SKHA"). The HPRB approved the design concept and massing for the Project on September 25, 2003, as compatible with the historic character of the Sheridan-Kalorama Historic District. As directed by the HPRB, the New Building has been designed to read separately from the mansion building, and also to isolate the new construction from the abutting Jurys hotel.

26. The materials proposed for the New Building are of high quality and are consistent with the historic fabric of the neighborhood. The exterior materials include neutral color brick masonry walls with stone lintels, trim and sills, projecting bays clad in coursed limestone, and divided-light metal windows. The projecting balconies include stone flooring and steel or wrought iron railings.

27. A primary goal of the landscaping for the Project is to create an urban courtyard garden surrounding the mansion and the New Building. Currently, a large amount of the existing open space is covered by paving, most of which will be removed as part of the Project. The driveway along the west property line will be retained approximately 20 feet beyond the existing *porte cochere*, which will maintain the historic relationship of this structure to the mansion and to the street. The landscape design incorporates much of the existing plant material. The courtyard planting will be foundation bushes and perennials, with ornamental trees in strategic locations.

28. Notwithstanding the rezoning to R-5-D, the proposed density of the Project is 1.31 FAR, approximately one-third of that which is permitted in the R-5-D District. The proposed building height is consistent with the permitted maximum height in the R-3 zone. The proposed number of units and the proposed density are less than the theoretical density that would be permitted under the R-3 zoning as a matter of right. The rezoning of the Subject Property to the adjacent R-5-D designation is requested in order to allow the construction of a single four-unit multiple-dwelling building on the site, rather than separate townhouses on the vacant portion of the lot. This development configuration was achieved after extensive discussions with both the community and the Office of Planning's zoning and historic preservation divisions. In terms of intensity of use, the proposed six-unit residential Project will be far less intense than the prior school use, which brought as many as 288 students, faculty and staff to the Subject Property and through the neighborhood on a daily basis.

Public Benefits and Project Amenities

29. The following superior benefits and amenities will be created as a result of the Project:

    a. ***Housing.*** The Project will replace an institutional use with up to six new residential units of appropriate size and scale in this residential neighborhood, for a total of approximately 21,615 square feet of residential space on the Subject Property.

b. ***Urban Design and Architecture.*** The Applicant has presented an architectural design and site plan for the Project that are appropriate and compatible for this location. The Project provides for the sensitive rehabilitation of the existing mansion building and carriage house for residential uses, to include accessory parking. The Project also involves the sympathetic architectural massing, transitioning and detailing of the new infill construction on the adjacent vacant portion of the site. This results in an improved streetscape by masking the blank side wall of the six-story (+roof structure) neighboring Jurys Normandy Inn and the unarticulated rear elevation of the nine-story apartment house immediately south of the Subject Property.

c. ***Site Planning and Efficient Land Utilization.*** The Project represents an appropriate renovation and reintroduction of residential use for the existing mansion building on the site, and a wise use of undeveloped space in an otherwise fully-developed streetscape, which space is at the junction of two zoning districts - one high density (R-5-D) and the other of a lower density (R-3). The three-story, four-unit New Building represents rational, prudent site planning and efficient and economical land utilization of an appropriate scale and density on the site.

d. ***Open Space and Landscaping.*** The extensive paving currently occupying a large portion of the site will be replaced by a generous amount of new plantings. A primary goal of the landscaping for the Project is to create an urban courtyard garden surrounding the mansion and the New Building. The overall Project design also makes unique and efficient use of the open space created between the mansion and the New Building, providing the requisite side yard space for the New Building while at the same time allowing the New Building to be designed with the greatest available amount of fenestration and other building openings, consistent with the Building Code and the historic preservation approvals.

e. ***Historic Preservation.*** The Project incorporates significant historic preservation benefits. The Project provides for rehabilitation of two significant contributing buildings to the Sheridan-Kalorama Historic District. As set forth above, the Project involves only a minor change in the massing of the historic mansion building. The driveway along the west property line will be retained approximately 20 feet beyond the existing *porte cochere* in order to maintain the historic relationship of the mansion with the street. In addition to preserving the historic fabric of the mansion building and the carriage house in keeping with

the Preservation Law, the Applicant will also restore and preserve the residential use for which the Subject Property was originally designed.

f. ***Uses of Special Value to the Neighborhood or the District as a Whole.*** The conversion of the Subject Property from an institutional use to a residential use is of special value to the neighborhood. Early in the planning process, the Applicant solicited the input of the community as to the preferred use for the site. As a result, the Applicant has determined to proceed with the small scale residential project outlined in the PUD. The community representatives preferred the single building development to either a matter of right townhouse-style development or continuation of an institutional use on the site. The Project will ensure the future residential use of the Subject Property rather than continuation of a more intense school or similar institutional use.

g. ***Other Public Benefits and Project Amenities.*** As an additional benefit/amenity to the community, the Applicant has committed to make the following contributions totaling $90,000:

(1) The Applicant will contribute to Friends of Mitchell Park, Inc. the sum of $75,000.00 to be used solely for the following purposes: (a) $50,000.00, to be devoted exclusively to the purchase of six circular teak benches and two circular teak tree benches for installation in Mitchell Park (within the ANC 2D district), plus necessary modifications to the standard sizes of these benches in order to fit the designated spaces in the park, as well as costs for shipping and delivery of the benches; and (b) $25,000.00, to be devoted exclusively toward the purchase of a safety surface for the playground area, in lieu of the standard mulch surface that is typically used by the Department of Parks and Recreation. This grant will facilitate a matching grant of $25,000.00 from the Interior Department for this safety surface. The two funds together will cover almost 100% of the cost of the safety surface for the playground area.

(2) The Applicant will grant $15,000.00 to the Sheridan-Kalorama Call Box Restoration Committee to be used to identify, protect, renovate and reuse the District's fire and police call boxes within the ANC 2D district. The Committee will retain an artist to install art work on the exterior of the call boxes, together with historic documentation, to convey a sense of the history of the Sheridan-Kalorama community.

30. The Project is consistent with many of the Comprehensive Plan's major themes. The Project is consistent with the Generalized Land Use Map, which designates the Subject Property for moderate-density residential uses. The conversion of a former school into a multi-family residential development will stabilize the residential use in this neighborhood. It will provide additional housing opportunities at an appropriate size, scale and location, while preserving and rehabilitating two "contributing" buildings in the Sheridan-Kalorama Historic District.

31. The Project is also consistent with many of the Comprehensive Plan's major elements, as follows:

a. *Economic Development Element.* According to the Economic Development Element, the District places a high priority on stimulating and facilitating a variety of commercial, retail and residential development investments appropriate to 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). The proposed development will provide high-quality residential development in an area that is within short walking distance of both the Dupont Circle and Woodley Park Metrorail Stations. The proposed development will also serve to attract and retain residents, which will further increase the tax base and create revenue for the District of Columbia.

b. *Housing Element.* Housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. 10 DCMR §300.4. The Subject Property supports the housing goals of the Comprehensive Plan and furthers the total urban living system of the District through its proximity to Metrorail and its provision of attractive in-town urban residential units.

c. *Transportation Element.* A basic philosophy of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. 10 DCMR §500.2. The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. 10 DCMR §502.1(a). The location of the Project in close proximity to the Dupont Circle and Woodley Park/Zoo/Adams Morgan Metrorail Stations furthers this goal. The Project also supports the District's goal of adequate parking through its provision of eight (8) on-site parking spaces for up to six residential units. The parking is provided in the existing carriage house and on a parking pad to the rear of the site, both of which are accessed from the public alley.

d. *Urban Design Element.* The Project will be developed consistent with the surrounding historic residential neighborhood in terms of materials, height, scale and massing. 10 DCMR § 708.2. The Project's massing and scale are sensitive to the established patterns of development in the area. 10 DCMR §710.2(e).

e. *Land Use Element.* The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail Stations, in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. 10 DCMR § 1100.2(b). The Site furthers this goal due to its proximity to the Dupont Circle and Woodley Park/Zoo/Adams Morgan Metrorail Stations.

32. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 2, as follows:

a. *Ward 2 Economic Development Element.* The proposed development creates additional residential opportunities in the ward while increasing income and property tax revenues, thereby enhancing the image of the ward as a place to do business and reside.

b. *Ward 2 Housing Element.* The proposed development creates additional housing that will enhance the residential neighborhood and neighborhood-level retail and service uses that will support the residents, consistent with the Ward 2 housing goals.

c. *Ward 2 Transportation Element.* The proposed development's provision of at least one parking space for each residential unit will help alleviate parking problems within the ward due to the lack of adequate street parking for residents.

d. *Ward 2 Urban Design Element.* The proposed development has been designed to enhance the physical character of the area and complement the materials, height, scale and massing of the surrounding neighborhood.

e. *Ward 2 Residential Land Use Element.* The Project supports the Residential Land Use Element by establishing a new residential use that will significantly enhance the character of the existing historic residential neighborhood.

Office of Planning Report

33. By report dated October 6, 2003, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Applications. The OP determined that the Applications are not inconsistent with the Comprehensive Plan, will maintain housing within the neighborhood and will bring needed housing to the District.

The proposed rezoning will promote a sound land use pattern in the area and enable the rehabilitation of a contributing building to the Sheridan-Kalorama Historic District.

34. The OP noted that the Subject Property is identified on the Comprehensive Plan Generalized Land Use Map for moderate-density residential use, which is typically accompanied by R-3, R-4, and R-5-B zoning. The OP further noted that the minimum lot area required for a PUD in the R-5-B District is one-half acre (21,780 square feet). Because the Subject Property consists of 16,500 square feet, it would be eligible for a PUD in the R-5-D District, which is defined as medium-high density rather than moderate density. Density permitted for PUDs within the moderate-density zones range from 0.6 FAR in the R-3 District to 3.0 FAR in the R-5-B District. The density proposed for the Project (1.31 FAR) is well within the range of permitted density for the moderate-density land use category of the Comprehensive Plan.

35. The OP acknowledged that it had been contacted by interested residents of the Sheridan-Kalorama neighborhood, who indicated their strong preference for residential use of the Subject Property, rather than for diplomatic or other institutional use.

36. In its October 6, 2003 report, the OP recommended that the Commission approve the Applications with the condition that the Applicant work with ANC 2D to determine the specific dispersal of the $90,000 benefit funds.

37. The Commission concurs with the report of the OP. As further stated below, the Commission finds the Applicant and the ANC are working together to determine the specific dispersal of the benefit funds.

ANC 2D

38. By letters dated July 20, 2003 and October 14, 2003, and through testimony at the Public Hearing from Single Member District 2D-02 Representative and ANC Vice Chair and Treasurer Mary Eva Candon, ANC 2D indicated its support for the Applications.

39. In its July 20, 2003 letter, the ANC indicated that the Project had been considered at the ANC's regularly-scheduled monthly public meeting held June 9, 2003, wherein a quorum was present. At that meeting, the ANC reviewed the height, scale and massing of the New Building and found that the Project represents a wise use of the vacant building and lot, and that the impact of the Project on city services and facilities would be acceptable. The ANC further determined that the specific benefits and amenities of the Project are superior and will benefit the surrounding neighborhood and the general public to a significantly greater extent than would likely result from development or re-use of the site for matter of right use. For all these reasons, the ANC determined that the Project will add to the attractiveness, convenience, and comfort of the Project occupants and the immediate neighbors, and the ANC recommended that the Commission approve the Applications.

40. By its letter dated October 6, 2003, the ANC expressed its particular support and preference for the public benefit package offered by the Applicant, namely the establishment of a $90,000 fund to be disbursed to a community project or projects identified by the ANC after adequate community input and discussion.

41. After the Commission's public meeting, ANC 2D accelerated the process to solicit, collect and evaluate applications for funding from community groups and make recommendations to the Applicant. After evaluating the ANC recommendations, the Applicant determined to contribute $75,000.00 to Friends of Mitchell Park, Inc. and $15,000.00 to the Sheridan-Kalorama Call Box Restoration Committee, as described in paragraph 29(g) above.

Development Flexibility

42. Subsection 2405.7 of the Zoning Regulations provides, "notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment. Further, §2405.8 of the Zoning Regulations provides, "Approval of the Board shall not be required for any such use approved by the Commission under §2405.7, and the Commission shall not be required to apply the special exception standards normally applied by the Board." Accordingly, the Applicant requests the Commission's approval of certain project features pursuant to 11 DCMR §2405.7, namely:

a. Approval of multiple buildings on a single record lot, pursuant to §2516.1 of the Regulations;

b. Approval to provide a penthouse structure not satisfying the setback requirements from the east side of the New Building (§§ 400.7 and 411.11);

c. Approval of existing mansion building not satisfying the side yard requirements on the east side in accordance with § 405.3 of the Zoning Regulations[3]; and

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[3] The Applicant did not include zoning relief from the side yard requirements among the zoning flexibility sought. During the proceedings, the Applicant explained the omission by contending that the mansion is a row dwelling that does not require a side yard under the Regulations. However, the Commission disagrees. The Commission finds that the mansion is a semi-detached dwelling, with a lot line wall at its eastern side. As such, the Commission finds that the mansion is subject to the side-yard requirements contained in § 405.3 of the Regulations. Section 405.3 plainly requires a side-yard unless the semi-detached dwelling shares a common division wall with an existing building. The Commission is mindful of the Board of Zoning Adjustment's (BZA's) contrary decision in the Appeal of Southeast Citizens for Smart Development, 50 DCR 810 (September 26, 2003). In that case, the BZA determined that a side yard was not required where one side of a semi-detached dwelling was situated on the lot line next to an existing building, but was not actually attached to

d. Approval of mansion and new apartment building with non-complying projections of bays and porches in the space between the two buildings (§§ 405.3 and 2502).

43. The Zoning Commission finds that rezoning the Subject Property is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641.01 of the D.C. Code as follows:

a. The proposed zone is not inconsistent with the Comprehensive Plan;

b. The proposed zone will not produce objectionable traffic conditions; and

c. The proposed rezoning will not lead to the overcrowding of land.

CONCLUSIONS OF LAW AND OPINION

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of this Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The Project meets the minimum area requirements of §2401.1 of the Zoning Regulations.

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the building. The Commission believes that the BZA may have placed too much emphasis on the definition of "Dwelling, one family, semi-detached", which includes within its text a description of a dwelling "one side of which is . . . a lot line wall."

5. The Project is within the applicable height, bulk and density standards of the Zoning Regulations. The Project involves the creative utilization of space and superior architectural design in providing much needed additional urban residential use. Accordingly, the Project should be approved. The impact of the Project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the historic building in terms of height and mass and is complementary to adjacent buildings.

6. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Project's benefits and amenities are a reasonable trade-off for the zoning flexibility requested on the site. The Project responds to both the historic building and the surrounding residential use.

8. In evaluating the Project according to the standards set forth in 11 DCMR §2403, the Zoning Commission concludes that the Applications qualify for approval. Judging, balancing and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefit herein, in conjunction with the amenities discussed above, are appropriate in this case.

9. Approval of this Project is appropriate because the proposed development is consistent with the present character of the area.

10. Approval of this Project and change of zoning is not inconsistent with the Comprehensive Plan.

11. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the affected ANC's recommendations. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

12. The Applications for a PUD and map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.

13. The Applications for a PUD and map amendment 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 application for consolidated review of a Planned Unit Development and for a Zoning Map amendment from R-3 to R-5-D for the property located at 2126 Wyoming Avenue, NW (Square 2528, Lot 911). This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Wnuk Spurlock Architects, and submitted to the Commission with the Applicant's October 10, 2003 post-hearing submission, located at Exhibit 37 of the Official Record, as modified by the guidelines, conditions and standards herein.

2. The Project shall be a multi-family residential development consisting of approximately 21,615 square feet of gross floor area.

3. Building materials for the Project shall be provided consistent with the samples provided to the Commission as part of the Applicant's October 30, 2003 post-hearing submission, at Exhibit 37 in the Official Record.

4. Landscaping for the Project shall provided consistent with the Landscape Plan provided as Drawing A-10(c) of the revised drawings submitted as part of the Applicant's October 30, 2003 post-hearing submission, at Exhibit 37 in the Official Record.

5. The Applicant will contribute to Friends of Mitchell Park, Inc. the sum of $75,000.00 to be used solely for the following purposes: (a) $50,000.00, to be devoted exclusively to the purchase of six circular teak benches and two circular teak tree benches for installation in Mitchell Park (within the ANC 2D district), plus necessary modifications to the standard sizes of these benches in order to fit the designated spaces in the park, as well as costs for shipping and delivery of the benches; and (b) $25,000.00, to be devoted exclusively toward the purchase of a safety surface for the playground area, in lieu of the standard mulch surface that is typically used by the Department of Parks and Recreation. This grant will facilitate a matching grant of $25,000.00 from the Interior Department for this safety surface. The two funds together will cover almost 100% of the cost of the safety surface for the playground area. The Applicant will also contribute $15,000.00 to the Sheridan-Kalorama Call Box Restoration Committee to be used to identify, protect, renovate and reuse the District's fire and police call boxes within the ANC 2D district. The Committee will retain an artist to install art work on the exterior of the call boxes, together with historic documentation, to convey a sense of the history of the Sheridan-Kalorama community. The public benefits detailed above shall be funded upon recordation of the PUD Covenant and issuance of the building permit for the Project. Evidence of the funding shall be submitted to the record in this case within ten (10) days

of issuance of the building permit. Said funds shall be totally expended by December 31, 2004.

6. The Applicant shall have flexibility with the design of the Project in the following areas:

   a. To vary the location and design of all interior components provided no change is made to the exterior configuration of the Project, and that there are no more than two units in the mansion and no more than four units in the New Building;

   b. To combine the two proposed units in the mansion into a single unit, based upon market demand;

   c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on commercial availability at time of construction;

   d. To make minor refinements to exterior details and dimensions to comply with District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;

   e. To vary the final design, exterior features, details and material of the Project to comply with the requirements of the final HPRB approval; and

   f. To vary the final selection of the landscaping materials to provide equivalent plant material dependent upon market availability.

7. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

8. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

9. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

10. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On November 12, 2003, the Zoning Commission approved the Applications by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Peter G. May, and John G. Parsons to approve; James H. Hannaham not present, not voting).

The order was adopted by the Zoning Commission at its public meeting on December 8, 2003, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Peter G. May, and John G. Parsons to approve).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the *D.C. Register*; that is on FEB 27 2004.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

Holland & Knight LLP
Attn: Dennis Hughes, Esq.
2099 Pennsylvania Ave NW
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Washington DC 20006-6801

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JUN 23 2004

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