

NORMAN M. GLASGOW, JR.
202-419-2460
norman.glasgowjr@hklaw.com

KYRUS L. FREEMAN
202-862-5978
kyrus.freeman@hklaw.com

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VIA HAND DELIVERY

D.C. Zoning Commission
441 4th Street, N.W., Suite 210
Washington, DC 20001

ZONING COMMISSION
District of Columbia
CASE NO. 05-30
EXHIBIT NO. 99

2007 FEB - 5 PM 2: 59
DC OFFICE OF ZONING
RECEIVED

Re: Zoning Commission Case No. 05-30 - Applicants' Response to Motion for Reconsideration

Dear Members of the Commission:

On behalf of the West Group Development Company LLC and The Jarvis Company (the "Applicants"), set forth below please find the Applicants' response to the Party Block Association's Motion For Reconsideration (the "Motion") of Zoning Commission Order No. 05-30 granting consolidated approval of a planned unit development for 6000 New Hampshire Avenue, N.E.

As a preliminary matter, the Applicants note that the Motion was filed by Party Block Association. However, as indicated in Finding of Fact ("FOF") No. 5, the parties to the case were the Applicants, Advisory Neighborhood Commission ("ANC") 4B, and the Citizens Aware Block Organization. (See also Request for Party Status (Exhibit 39 of the record) and July 20, 2006 Public Hearing Transcript at pages 1-3,7). The Party Block Organization was not a party to this case and the Applicants have no basis to determine whether the Party Block Association and Citizens Aware Block Organization are the same entities, have the same officers and members, same bylaws, or authorization to file the Motion on behalf of Citizens Aware Block Organization. Thus, the Motion was not filed by a party, as required pursuant to Section 3029.5 of the Zoning Regulations which provides, in pertinent part that "[a] motion for reconsideration, rehearing, or re-argument of a final order in a contested case under § 3022 may be filed by a party within ten (10) days of the order having become final." 11 DCMR § 3029.5 (emphasis added). Therefore, the Commission may wish to make an initial determination of whether the Motion is invalid on its face and should be dismissed since it was not filed by a party pursuant to the requirements of Section 3029.5 of the Zoning Regulations.

Furthermore, the Motion was not served on the Applicants, a party to the proceeding, as required pursuant to Section 3029.5 of the Zoning Regulations and a re-filing with proper service would be untimely. The Applicants only learned of the Motion as a result of staff review of the record.

Lastly, in addition to the Motion being facially invalid, all of the substantive issues raised in the Motion have been previously addressed by the Commission, as discussed below in the Applicants' response to the Motion.

Weight to Community Views

The Motion contends that the Commission did not give proper weight to the "community consensus" as purportedly evidenced by the petitions submitted and testimony in opposition to the application. The issue of the petitions was discussed extensively at the public hearing (See July 20, 2006 Public Hearing transcript at pages 124-127; 128-130; and 138-142). While the Zoning Commission recognized that there was opposition to the application, the Zoning Commission's "decision must not be controlled by a head count as in a political election," rather its decision is controlled by whether the Applicants met their required burden of proof. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 285 (D.C. 1974). Both the record of this case as well as Order No. 05-30 clearly demonstrate that the Commission considered the project's compliance with the Comprehensive Plan as well as each applicable PUD evaluation standard set-forth in Chapter 24 of the Zoning Regulations in approving this application. Moreover, in FOF Nos. 8, 34 and 35, the Commission addressed in detail each of the concerns raised by the party and persons in opposition. The Party Block Association presents no grounds to establish that the decision is erroneous and presents no new information that would impact or change the Commission's previous consideration of this issue.

Weight to Advisory Neighborhood Commission 4B

The Motion posits that the Commission did not respond in writing to the ANC resolution (although it does not identify a particular resolution). In addition, the Party Block Association requests that the Zoning Commission respond in writing to the ANC resolution and explain why no official actions, responses or notifications were forwarded to the Party Block Association.

The Advisory Neighborhood Commission Act requires that the written issues and concerns submitted by an ANC be given "great weight" by District government entities. The "great weight" standard applies only to written recommendations which come formally from the ANC. The meeting minutes submitted by ANC 4B

during the September 21, 2006 hearing did not meet the requirements of Section 3012.5 of the Zoning Regulations. Moreover, based upon the information already of record in this case, the Commission also appropriately found in FOF No. 9 that:

ANC 4B did not take an official position on the proposed project. At its September 5, 2006 meeting, ANC 4B voted on a motion to recommend disapproval of the proposed PUD. The vote resulted in a tie. As noted in a subsequent e-mail communication from Gottlieb Simon, Executive Director of the Office of Advisory Neighborhood Commissions, Exhibit 86, all ANC motions fail on a tie vote.

Moreover, in accordance with its requirement to give great weight to the issues and concerns stated by the affected ANC, the Commission concluded in Conclusion of Law ("COL") No. 9 that ANC 4B did not take an official position on the proposed PUD. The Commission's findings and conclusion meets the required burden of proof, and thus there is no basis for reopening the record.

Memorandum of Understanding

The Motion requests that the Commission reconsider its decision since the Memorandum of Understanding (the "Memorandum") (Exhibit 81 of the record), which was "prominently considered and discussed in the Final Order" was submitted under wrongful use of the official ANC title. As a factual matter, the Memorandum is only noted by the Commission in FOF No. 22(d) and Decision ¶ 1. The record establishes that the Applicants clearly stated the Memorandum was not signed by a formal designated ANC representative. (See September 7, 2006 Public Hearing transcript at pages 23, 48-49, 52). Moreover, the Memorandum was not submitted as an official document approved by ANC 4B, but rather as an indication of the public benefits and project amenities proffered by the Applicants. As indicated in FOF No. 22(d), the Commission only considered the Memorandum in connection with the Commission's overall obligation to judge and balance the relative value of the project amenities and public benefits offered and the degree of development flexibility requested. Indeed, a review of the record indicates that the Commission's approval of the project was not based upon who signed the Memorandum. Thus, there is no need to reopen the record for the submission of any further documents concerning the Memorandum.

Other Points of "Detail" and "Clarification"

1) The Motion purports to clarify the amount of time the community spent in negotiations with the Applicants prior to learning of the requested zoning map amendment. This "clarification" however, is not a substantive basis for reconsidering the Commission's approval in this case. Moreover, the public record

is clear that at least from the time of filing this application a zone change was requested.

2, 3) The Motion disputes whether the Applicants' proposed dog park and green spaces are an amenity. The Commission heard testimony and received evidence on this contested issue from both the Applicants and the opposition at the public hearing on this application, and concluded in FOF No. 35(g) that the proposed dog park is a part of the Applicants' overall green space plan, which is a valuable project amenity and will not adversely affect the public interest. The Motion does not present any new evidence or evidence that was not available at the time of the public hearing on this application. Therefore, there is no legal basis for rehearing or reconsider of this issue.

4, 7) The Motion disputes whether the project is consistent with the surrounding zoning and land uses. The Motion also requests that the Commission reconsider its decision to approve the requested zoning map amendment. The Motion generally restates arguments previously presented to the Commission. The Commission heard extensive testimony on this issue and made detailed findings in FOF Nos. 18, 20 and 24 explaining why the project is consistent with the surrounding zoning and land uses. Moreover, the Commission concluded in COL No. 3 that the project carries out the purposes of Chapter 24 of the Zoning Regulations with a well-planned and attractive development that would not be achievable under matter-of-right development. The Commission also concluded in COL No. 8 that the proposed development is consistent with the present character of the area, is not inconsistent with the Comprehensive Plan, and 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. The Motion does not present any new evidence or evidence that was not available at the time of the hearing on this application to refute these extensive findings and conclusions. Therefore, there is no legal basis for rehearing or reconsider of this issue.

5) The Motion reiterates the Party Block Organization's request that the Commission reopen the record to invalidate the Memorandum. As discussed above, the Applicants clearly stated the Memorandum was not signed by a formal designated ANC representative, and the purpose of submitting the Memorandum was to provide information regarding a portion of the project's public benefits and project amenities. As indicated in FOF No. 22(d), the Zoning Commission considered the information included in the Memorandum as part of the Commission's balancing of the public benefits and amenities vis a vis the degree of development flexibility requested. The Commission's approval of this project was not based upon who signed the Memorandum. Therefore, there is no need to reopen

the record for the submission of any further documents concerning the Memorandum.

6) The Motion states that the Commission granted too many variances from the required zoning regulations. As outlined in FOF No. 21, the Commission granted the Applicants flexibility from §§410 and 2516 and from the yard requirements. The Applicants submitted testimony and evidence explaining the need for, and justifying the requested flexibility. The Commission concluded in COL No. 7 that the Applicants' request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan, and that the project benefits and amenities are reasonable trade-offs for the requested development flexibility. The Motion does not present any new evidence or evidence that was not available at the time of the public hearing on this application to dispute this conclusion. Therefore, there is no legal basis for rehearing or reconsider of this issue.

8) The Party Block Association requests that the Commission require DDOT to do "a more extensive" traffic analysis. As noted in FOF No. 33, DDOT submitted a memorandum indicating that DDOT has no objections to the project proposal provided the Applicants install a new traffic signal at the intersection of Quackenbos Place and New Hampshire Avenue and upgrade the reflective striping for all crosswalk connections to the project site. The Commission heard testimony and reviewed evidence from the parties in opposition to the application arguing that the proposed development will dramatically increase congestion on adjacent roadways. However, based upon the DDOT report and detailed reports submitted by the Applicants' traffic expert, the Commission found that the proposed development will not significantly increase congestion on adjacent roadways beyond a matter-of-right development or otherwise have an adverse impact. See FOF No. 35(a). Again, the Motion does not present any new evidence or evidence that was not available at the time of the public hearing on this application to dispute this conclusion. Therefore, there is not a basis to reopen the record with respect to transportation issues or to ask DDOT to prepare an additional report.

9) The Party Block Association requests that the Commission require adequate fire and emergency medical services access and egress. As indicated in FOF No. 30, the D.C. Fire and Emergency Medical Services Department ("FEMS") submitted a memorandum indicating that the streets in the proposed development will be adequate for fire and emergency medical services as long as personal vehicles in the development are appropriately parked. The provision that personal vehicles in the development must be appropriately parked is a standard District requirement. Moreover, Decision ¶ 1 provides that the project must be developed in accordance with the plans approved by the Commission, which FEMS has already

indicated provide adequate access for fire and emergency medical services. Therefore, there is no basis to reopen this matter to add such condition.

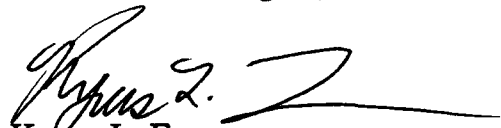
10) The Party Block Association requests that the Commission explicitly state in the Order who will own, operate and maintain the storm water management system. As noted in FOF No. 31, the D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum indicating that it will not own, operate, or maintain the private storm water management system the Applicants intend to construct for the project. Therefore, as the Applicants indicated during the hearing, the storm water management facilities will have to be owned, operated and maintained by the Applicants or their successors or assigns. Thus, there is no need to revise the Order to state that D.C. WASA will not own, operate and maintain the storm water management system.

As set forth above, the Zoning Commission has clearly addressed each of the issues raised by the Party Block Association, and there is ample evidence in the record to support the issuance of Zoning Commission Order No. 05-30. Moreover, the Party Block Association has not presented any new arguments or information that was not been previously considered the Zoning Commission. The fact that the Party Block Association disagrees with the Zoning Commission's findings and conclusions does not render the Zoning Commission's decision erroneous. The Party Block Association's Motion For Reconsideration raises no grounds for reconsideration, and therefore, should be denied.

Sincerely,



Norman M. Glasgow, Jr.



Kyrus L. Freeman

cc: Party Block Organization (via UPS)
Citizens Aware Block Organization (via UPS)
Advisory Neighborhood Commission 4B (via U.S. Mail)
Jennifer L. Steingasser & Karen Thomas, D.C. Office of Planning (via Hand)
Stan Voudrie (West*Group) (via UPS)
Ernest Drew Jarvis, William Jarvis (The Jarvis Company) (via UPS)