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October 5, 2006

VIA HAND DELIVERY

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


**Re: Applicants' Proposed Findings of Fact, Conclusions of Law and Order -
Zoning Commission Case No. 05-30**


Dear Members of the Commission:

On behalf of the West Group Development Company LLC and The Jarvis Company (the "Applicants"), we hereby submit one original and twenty copies of the Applicants' Proposed Findings of Fact, Conclusions of Law and Order for Case No. 05-30.

Thank you for your review of this application. We look forward to the Commission's consideration of this application at the October 16, 2006 public meeting.

Sincerely,


Norman M. Glasgow, Jr.


Kyrus L. Freeman

Enclosures

cc: Cherita Whiting, Advisory Neighborhood Commission 4B (w/encl. – via UPS)
Jennifer L. Steingasser & Karen Thomas, D.C. Office of Planning (w/encl. – via Hand)

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ZONING COMMISSION
District of Columbia
CASE NO. 05-30
ZONING COMMISSION
District of Columbia
EXHIBIT NO. 92
CASE NO. 05-30
EXHIBIT NO. 92

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-30
Case No. 05-30

**Consolidated Planned Unit Development – 6000 New Hampshire Avenue, N.E. –
West*Group Development Company LLC and The Jarvis Company, LLC**

[Date of Final Action]

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on July 20, 2006 and September 7, 2006, to consider an application from West*Group Development Company LLC and The Jarvis Company, LLC, the developers, on behalf of 6000 New Hampshire Avenue LLC, the owner of the subject property (collectively referred to herein as the "Applicants"), for consolidated review and one-step approval of a planned unit development ("PUD") and related zoning map amendment from R-1-B to R-5-A. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Applications, Parties, and Hearings

1. On September 12, 2005, the Applicants filed an application with the Commission for consolidated review and approval of a planned unit development (PUD) for property consisting of Parcels 126/24 and 126/74, and Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714, and Lot 858 in Square 3719 ("the Subject Property"), as well as an amendment of the Zoning Map from the R-1-B to the R-5-A District for the Site. As shown on the site plan, the Applicants are conveying a portion of Parcel 126/74 to the owner of Lot 38 in Square 3719 in exchange for a portion of Lot 38. The Applicants are also conveying a portion of Parcel 126/74 in exchange for a portion of Lot 23 in Square 3719. The owners of these properties consented to the inclusion of this land in the PUD. The Subject Property consists of approximately 505,062 square feet of land area and is located in the northeast quadrant of the District. Parcel 126/24 is a small, triangular piece of land that is generally bounded by Chillum Place and Peabody Street. Parcel 126/74 and Lot 858 in Square 3719 are generally bounded by Rittenhouse Street, New Hampshire Avenue, Peabody Street, Chillum Place, and Sligo Mill Road. Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714 are bounded by Peabody Street, New Hampshire Avenue, a 15-foot public alley, and 1st Street. As originally submitted on September 12, 2005, the proposed project contemplated the construction of 199 residential units—27 detached single-family homes, 111 townhomes, and 61 condominium apartments—containing approximately 417,802 square feet of gross floor area and a floor-area ratio ("FAR") of 0.83. As discussed below, these plans have been completely superseded by subsequent plans.

2. At its public meeting held on November 14, 2005, the Commission voted to schedule a public hearing on the application.
3. On March 30, 2006, the Applicants submitted a Pre-Hearing Statement, along with revised Architectural Plans and Elevations, marked as Exhibit 26 of the record in this case (the "March 30th Plans"). The March 30th Plans supersede the plans originally filed with the application. These revisions to the site plan eliminated eleven of the originally planned townhouses, reducing the total number of units in the development from 199 to 188. These changes reduced the overall FAR of the development from 0.83 to 0.78.
4. On June 28, 2006, the Applicants submitted a Supplemental Pre-Hearing Statement, marked as Exhibit 36 of the record in this case, further refining the March 30th Plans. These refinements removed an additional townhouse (reducing the total number of dwelling units to 187), closed a proposed driveway, and included details requested by the D.C. Department of Transportation. The overall FAR of the project was reduced from 0.78 to 0.77.
5. After proper notice, the Zoning Commission held a public hearing on the application on July 20, 2006 and September 7, 2006. The parties to the case were the Applicants; Citizens Aware Block Organization; and Advisory Neighborhood Commission ("ANC") 4B, the ANC within which the property is located.
6. The Applicants presented five witnesses at the Commission's hearing of July 20, 2006 including N. William Jarvis, The Jarvis Company, LLC; Geoffrey Ferrell, Ferrell Madden Associates; Arthur Lohsen, Franck Lohsen McCrery; Edward Papazian, Kimley-Horn and Associates, Inc.; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP. Also available to testify were Robert Jeter, Kimley-Horn and Associates; and M. Scott Mingonet, Urban Resource Group. Based upon their professional experience, as evidenced by the resumes submitted for the record, and prior appearances before the Commission, Messrs. Jarvis, Ferrell, Lohsen, Papazian, Sher, Jeter, and Mingonet were qualified by the Commission as experts in their respective fields.
7. Keith White of the Lamond Community Action Group testified in support of the project.
8. The Citizens Aware Block Organization was the only party in opposition to the project.
9. A number of individuals filed letters with the Commission and testified in opposition to the project. The letters and testimony raised a number of issues, but the primary concerns included the following:
 - a. The impact of the increase in the area's population on the character of the surrounding area, as well as a desire that the Subject Property be developed with detached single-family dwellings under the existing zoning.

- b. The impact of the development upon nearby roads peak-hour traffic.
 - c. The impact of development on public facilities and infrastructure.
10. ANC 4B has not taken an official position on the proposed project. At its September 5, 2006 meeting, ANC 4B voted on a motion to reject the proposed PUD. The vote resulted in a 4 – 4 tie. As noted in a subsequent e-mail communication from Gottlieb Simoñ, Executive Director of the Office of Advisory Neighborhood Commissions, marked as Exhibit 86 of the record in this case, all ANC motions fail on a tie vote. As a result, ANC 4B failed to adopt an official position on the proposed PUD.
 11. On September 7, 2006, the Applicants submitted additional revisions to the March 30th Plans. These revisions are marked as Exhibit 83 of the record in this case, and include reducing the total number of dwelling units from 187 to 169, providing more detail regarding the "great lawn," and reducing the overall FAR to 0.73.
 12. The Applicants submitted a Post-Hearing Statement on September 21, 2006, marked as Exhibit 88 of the record in this case, which revised the site plan to remove six parking spaces, as requested by the Commission at the hearing. The submission also provided supplemental data regarding accident information for the surrounding area and revised trip-generation rates based upon the Applicant's reduction in the number of units from 187 to 169.
 13. At its public meeting held on Monday, October 16, 2006, the Zoning Commission took proposed action by a vote of _____ to approve with conditions the applications and plans that were submitted to the record.
 14. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated _____, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
 15. The Zoning Commission took final action to approve the application on _____ by a vote of _____.

The PUD Project

16. The proposed PUD contemplates the construction of a residential development of 169 units—including 38 detached single-family dwellings, 73 townhomes, and 58 condominium apartments—containing approximately 369,684 square feet of gross floor area. Moreover, the project will include 14 units (3 townhomes and 11 condominiums) offered as affordable housing units. The affordable apartment units will be distributed vertically and horizontally throughout the two apartment buildings. The three affordable townhouse units will be interior units randomly distributed with not more than one per group of town houses. The project will have an overall FAR of 0.73 and a maximum building height of approximately 40 feet for the townhouses and single family homes.

The required parking under the Zoning Regulations is approximately 169 spaces; the Project will provide 268 on-site parking spaces and 70 additional spaces on the private streets in the development.

17. The Subject Property consists of Parcels 126/24 and 126/74, and Lots 69, 70, 71, 72, 73, 801, 824, and 826 in Square 3714, and Lot 858 in Square 3719, and contains approximately 505,062 square feet of land area. The Subject Property is currently improved with two vacant buildings that previously housed the Masonic and Eastern Star Nursing Home and Infirmary, but were most recently used as offices for Med-Star Health. The Applicant intends to convert these vacant structures into condominium apartment buildings.
18. The project includes a number of well-designed green spaces to complement the low-density residential character of the surrounding neighborhood. These landscaped areas include a centrally located "great lawn," encompassing approximately 23,580 square feet of open space, as well as a number of smaller parks and gardens. The project includes a total of over 186,000 square feet of green space within the development.
19. The proposed project is consistent with the surrounding zoning and land uses. The Subject Property is located in the northeast quadrant of the District near the Maryland border. The Subject Property is zoned R-1-B and is surrounded primarily by property that is also zoned R-1-B. The Comprehensive Plan designates the area to the north, east, and south of the Subject Property in the low-density residential land use category. The area to the west of the property is designated in the low-density residential and production and technical employment land use categories.

Matter of Right Development Under Existing Zoning

20. The Subject Property is currently zoned R-1-B. The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. 11 DCMR § 200.1. The R-1 District is subdivided into R-1-A and R-1-B, providing for districts of low and high density, respectively. 11 DCMR § 200.3. The R-1-B District permits a maximum height of forty feet and three stories. 11 DCMR § 400.1. Lots in the R-1-B District are required to have a minimum lot area of 5,000 feet, and a minimum lot width of fifty feet. 11 DCMR § 401.3. A maximum FAR is not prescribed in the R-1-B District. 11 DCMR § 402.4. One-family detached dwellings are permitted in the R-1-B District pursuant to Section 201.1(a). 11 DCMR § 201.1(a). Parking is required at a rate of one parking space for each dwelling unit. 11 DCMR § 2101.1. Under the PUD guidelines for the R-1-B District, the maximum permitted height for a residential use is forty feet, and the maximum FAR is 0.4. 11 DCMR §§ 2405.1, 2405.2.

Matter of Right Development Under Proposed Zoning

21. Under the proposed PUD, the zoning of the Subject Property would become R-5-A. The R-5 Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district all types of urban residential development if they conform to the established height, density, and area requirements. 11 DCMR § 350.1. The R-5-A District is designed to permit low height and density developments. 11 DCMR § 350.2. The R-5-A District permits a maximum height of forty feet and a maximum FAR of 0.9 for all structures. 11 DCMR §§ 400.1, 402.4. Parking in the R-5-A District is required at a rate of one space for each dwelling unit. 11 DCMR § 2101.1. Under the PUD standards for the R-5-A District, the maximum permissible height is sixty feet. 11 DCMR § 2405.1. The PUD standards for the R-5-A District permit a maximum FAR of 1.0 for residential uses. 11 DCMR § 2405.2.

Development Incentives and Flexibility

22. The Applicants requested the following areas of flexibility from the Zoning Regulations:

- a. *Flexibility Pursuant to Sections 410 and 2516 of the Zoning Regulations.* Section 410.1 of the Zoning Regulations provides that in an R-5 District, if approved by the Board of Zoning Adjustment as a special exception, a group of one-family dwellings, flats, or apartment houses, or a combination of these buildings, with division walls erected from the ground or lowest floor up, may be erected and deemed a single building for the purpose of the Zoning Regulations. 11 DCMR § 410.1. Section 2516 of the Regulations allows multiple buildings on a single, subdivided record lot, which is useful where—as here—there are large, deep lots having a smaller amount of street frontage.

As shown on the proposed site plan marked as Exhibit 83 of the record in this case, the Applicants propose to erect the townhomes in groups of buildings. All buildings in each group will be erected simultaneously, and all front entrances of the group will abut either a street, front yard, or front court. However, since the Subject Property has a large land area compared to the amount of street frontage, the Applicants propose that the Zoning Commission treat each grouping of townhomes as a single building for the purpose of the Zoning Regulations so that each individual dwelling need not satisfy all the area and bulk provisions.

- b. *Flexibility from Yard Requirements.* Pursuant to Section 405.9 of the Zoning Regulations, side yards provided in the R-5-A District must have a minimum width of not less than eight feet. A rear yard with a minimum depth of twenty feet is also required. 11 DCMR § 404.1. For lots having no street frontage, a front yard equal to the minimum required rear yard is also required by § 2516.5(b). The Applicants request flexibility from these requirements because a number of the yards provided are less than the required width. As shown on the Architectural Plans and Drawings, marked as Exhibit 83 of the record in this case, the Applicants have designed the layout of the proposed development to meet as many of the applicable zoning requirements as possible. However, due to design

and massing features of the project, and the clustering of units to ensure open space, a number of units do not have complying yards. However, the project includes a significant amount of open space, as the overall lot occupancy is approximately 26.6%, and approximately 36.9% of the Subject Property is devoted to open, green space.

Public Benefits and Amenities

23. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

- a. *Housing and Affordable Housing.* The single greatest benefit to the area, and the city as a whole, is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The proposed PUD will contain approximately 369,684 square feet of gross floor area dedicated to residential uses. The Applicants intend to convert the two vacant buildings on the Subject Property that previously housed the Masonic and Eastern Star Nursing Home and Infirmary, but were most recently used as offices for Med-Star Health, into condominium buildings. The adaptive reuse of these buildings as housing—as opposed to office uses—is more compatible with the surrounding residential uses and enhances the residential character of the neighborhood. Moreover, the Applicants are committed to ensuring that people with low and moderate incomes share the homes and benefits to be provided by the proposed PUD. Therefore, the project will include 14 units offered as affordable units. Three of the affordable units will be townhomes and eleven will be condominium units. The affordable condominium units will be distributed vertically and horizontally throughout the two apartment buildings. The affordable townhouse units will be distributed randomly with not more than one affordable unit in each group of townhouses. Eligible purchasers will be families and individuals whose annual incomes are no more than 80% of the area median income.
- b. *Urban Design, Architecture, Landscaping and Open Space.* The high quality of architectural design in the proposed development exceeds that of most matter-of-right projects. The Applicants have commissioned the exceptional architectural design firms of Ferrell Madden Associates, Franck Lohsen McCrery Architects, and Eric Colbert & Associates to create buildings that will further the goals of urban design and enhance the streetscape and surrounding neighborhood.

The project has an overall lot occupancy of 26.6%. This is 13.4% less than the matter-of-right lot occupancy of 40% in both the R-1-B and R-5-A Districts. The open spaces are distributed throughout the site, and include Civic Greens that serve as common focal open space.

The proposed project includes an extensive landscaping program. Street trees are to be planted in relatively close proximity, lining the streets with their trunks and shading the walks and fronts of the houses with their canopies. Elm trees, which

have been devastated by disease, are to be reintroduced in the form of new, disease-resistant cultivars such as the Liberty Elm. Red Maple trees surround the public green spaces, accenting them as special places with their dramatic foliage. Evergreen trees are used as screening elements, to contain undesirable views and provide privacy where appropriate.

- c. *Employment and Training Opportunities.* Expanding employment opportunities for residents and local businesses is a priority of the Applicants. Indeed, The Jarvis Company, LLC, is a certified LSDBE and has substantial experience in outreach to disadvantaged businesses and a proven track record in working with communities to maximize economic and employment opportunities during development. Moreover, the Applicants have entered a First Source Employment Agreement with the Department of Employment Services, marked as Exhibit E in the Applicants' Pre-Hearing Statement. The Applicants have also entered into a Local, Small, and Disadvantaged Business Enterprises (LSDBE) Memorandum of Understanding with the District's Office of Local Business Development, marked as Exhibit F in the Applicants' Pre-Hearing Statement.
- f. *Other Public Benefits and Project Amenities.* The Applicants have committed to make contributions totaling \$150,000 to various schools and community groups, consistent with the Parties' Memorandum of Understanding, as outlined below:
1. \$5,000 for a sign or signs that will be identifiers of the Lamond community; such sign or signs to be delivered to the Lamond Community Action Group for approval by the DC Department of Transportation regarding placement;
 2. \$60,000 for ten (10) desktop computers to LaSalle Elementary School; ten (10) desktop computers to Whittier Elementary School; and thirty (30) laptop computers to Coolidge High School (the budget for each computer being one thousand, two hundred dollars (\$1,200));
 3. \$20,000 to the Lamond-Riggs Athletic Association, for the acquisition of trophies and uniforms in the youth programs operated by this entity, and for the establishment of a tutoring program sponsored and administered by this entity;
 4. \$20,000 to the new Lamond Recreation Center for ten (10) laptop computers (the budget for each computer being one thousand, two hundred dollars (\$1,200)) and a contribution to the Center's programs focused on the senior citizens in the Community; and
 5. \$45,000 to the Friends of the Lamond Riggs Library, for signage at the Library, lighting on the exterior of the Library, security systems at the Library, and improvements to the ventilation system.

Compliance with the Comprehensive Plan

24. The proposed PUD advances the purposes of the Comprehensive Plan, is consistent with the Generalized Land Use Map, and furthers and complies with the major themes and elements for the District and Ward 4 in the Comprehensive Plan. The project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of quality residential development that is affordable to a range of incomes and the replacement of a primarily unimproved property with development that will enhance the built environment.
25. The proposed rezoning is consistent with the Generalized Land Use Map, which designates the Subject Property in the low-density residential land use category. The project will have an overall FAR of 0.73, which is below the effective density of 1.2 FAR (40% lot occupancy times three stories) permitted in the R-1-B District. Furthermore, the R-5-A District is designated as a low-density multifamily dwelling district under the Zoning Regulations. The number of units proposed is less than fifteen units per acre. The R-1-B District permits approximately 8.5 units per acre, the R-2 District permits approximately fourteen units per acre, and the R-3 District permits approximately twenty-two units per acre. The proposed development is therefore within the limits of the range of single-family zones.

Further, the overall density of the broad swath designated for low-density residential land uses along the northeastern boundary of the District would remain essentially unchanged. Since the Generalized Land Use Map does not drill down to establish the density permitted on each site, the Zoning Commission can appropriately increase the density on a particular site as long as the overall character and density are maintained. The Subject Property is the only large undeveloped residential site in this area. Allowing the density proposed with the clustered site plan will result in a variety of housing types for different segments of the local housing market, consistent with other policies of the Comprehensive Plan discussed below.

26. The PUD is also consistent with many of the Comprehensive Plan's major themes, as follows:
 - a. *Stabilizing and Improving the District's Neighborhoods.* The proposed PUD will significantly increase the availability and variety of housing in the District. Moreover, the proposed residential use will create a stable and vibrant neighborhood. Finally, the inclusion of a number of affordable housing units will increase housing opportunities in Ward 4 and the District.
 - c. *Increasing the Quantity and Quality of Employment Opportunities in the District.* The Applicants are committed to expanding employment opportunities for residents, and will be entering both a First Source Employment Agreement with the Department of Employment Services and a Local, Small, and Disadvantaged Business Enterprises (LSDBE) Memorandum of Understanding with the District's Office of Local Business Development.
 - d. *Respecting and Improving the Physical Character of the District.* The Applicants' proposal respects and improves the physical character of the District

through the construction of a well-planned and carefully designed development that provides a mix of housing types and includes affordable housing units.

- e. *Reaffirming and Strengthening the District's Role as an Economic Hub.* The Comprehensive Plan encourages maximum use of the District's location for both private and public growth to promote economic development. Housing construction for all income levels is paramount to the success of the economic goals of the District. This mixed-income, mixed-housing type project furthers this theme by incorporating residential development to promote the economic health and well-being of the region.
- f. *Preserving and Ensuring Community Input.* The Comprehensive Plan also encourages the active involvement and input of local communities. The Applicants have met a number of times with the ANC and local community groups to review the project plans and develop an amenities package.

27. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

- a. *Housing Element.* According to the Housing element of the Comprehensive Plan, 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 for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. See 10 DCMR § 300.4. Also as stated in the Housing Element of the Comprehensive Plan, the District recognizes its obligation to facilitate the availability of adequate, affordable housing to meet the needs of current and future residents. The District strives to stimulate a wider range of housing choices and strategies through the production of new units for a variety of household types. See 10 DCMR §§ 300.1 – 300.2.

The proposed PUD meets this goal by providing approximately 369,684 square feet of gross floor area dedicated to residential uses. Moreover, the Applicants are committed to ensuring that people with low and moderate incomes share the homes and benefits to be provided by the proposed PUD. Therefore, the project will include 14 units offered as affordable housing units. Three of the affordable units will be townhomes and eleven will be condominium units. The affordable units will be integrated throughout the development. Eligible purchasers will be families and individuals whose annual incomes are no more than 80% of the area median income.

- c. *Urban Design Element.* The Urban Design element states that it is the District's goal 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. See 10 DCMR § 701.1.

The Urban Design element also has an objective of encouraging new construction or renovation/rehabilitation of older buildings in areas with vacant or underused land or structures in order to create a strong, positive physical identity. *See* 10 DCMR § 712.1.

The proposed PUD has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the surrounding development. *See* 10 DCMR § 708.2.

The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. *See* 10 DCMR § 709.1. The new private streets are laid out to minimize traffic through the site, encouraging safe speeds and providing off-street parking. Alleys are provided behind all units, allowing rear-loaded garages, trash collection, and utility connections behind the units, rather than on the front.

- d. *Land Use Element.* The Land Use element encourages a substantial amount of new housing 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. Policies designed to support residential neighborhoods include promoting the enhancement and revitalization of District neighborhoods for housing and related uses, ensuring a broad range of residential neighborhood options, and providing wide-ranging assistance for neighborhoods of relatively poor quality by joint public and private action and concentrated governmental attention and resources. 10 DCMR §§ 1104.1(a), (c), and (e), and 1118.6. The proposed PUD responds to these goals with the development of a high-quality residential project that includes housing opportunities for a range of incomes.

28. The Project also fulfills and furthers the specific objectives for this area, as set forth in the Comprehensive Plan for Ward 4:

- a. *Ward 4 Housing Element.* A primary objective for housing in Ward 4 is to provide for the housing needs of low- and moderate-income households, and the Ward 4 housing element calls for stimulating new and rehabilitated housing to meet all levels of need and demand. 10 DCMR §§ 1508.1(a), 1509.1(a). The proposed PUD will contain a total of approximately 369,684 square feet of gross floor area dedicated to residential uses. Moreover, the Applicants are committed to ensuring that people with low and moderate incomes share the homes and benefits to be provided by the proposed PUD. Therefore, the project will include 14 units offered as affordable housing units. Three of the affordable units will be townhomes and eleven will be condominium units. The affordable units will be integrated throughout the development. Eligible purchasers will be families and individuals whose annual incomes are no more than 80% of the area median income.

- b. *Ward 4 Transportation Element.* An objective for transportation in Ward 4 is to support the living environment and commerce of the ward and the District and to support development objectives for expanded housing opportunities for ward residents. 10 DCMR § 1514.1(a). Moreover, one of the policies in support of transportation is to continue to require developers to provide appropriate traffic studies and mitigation measures prior to major development. 10 DCMR § 1515.1(a)(2)(D).

The Applicants submitted a traffic impact study with the original PUD application, marked as Exhibit 2 of the record in this case. As indicated in the study, the proposed development will have no effect on the intersection levels of service and they will continue to operate at levels of service A and B. The traffic impact study analysis also concludes that the amount of proposed parking spaces satisfies both the Zoning Regulations and the practical requirements of the development and, as a result, there will be no spillover parking into the surrounding community.

- c. *Ward 4 Urban Design Element.* The objectives for urban design in Ward 4 include preserving and enhancing the physical qualities and character of the ward's neighborhoods through preservation and enhancement of its built environment, and encouraging well-designed developments in areas that are vacant, underused, or deteriorated. 10 DCMR §§ 1520.1(a), (b). The Applicants have commissioned the architectural design firms of Ferrell Madden Associates, Franck Lohsen McCrery Architects, and Eric Colbert & Associates to create impressive buildings that will further the goals of urban design and enhance the streetscape and surrounding neighborhood. The development was planned to be an appropriate and fitting example of Washingtonian residential architecture. A purposeful mix of unit types is employed, including condominium units of varying sizes, townhomes, and detached single-family residences. All are to be brick on all four sides, reflecting the homes in the surrounding neighborhoods. When complete, the new structures should blend seamlessly not only with each other, but also with the residences found in the neighboring communities.
- d. *Ward 4 Land Use Element.* A key land use concern in Ward 4 is preserving, protecting, and stabilizing the ward's residential neighborhoods. 10 DCMR §§ 1528.11(a), 1529.1(a). The proposed PUD responds to these goals with the development of a high-quality project that includes housing opportunities for a range of incomes.

Office of Planning Report

29. By report dated June 30, 2006, the Office of Planning ("OP") recommended approval of the PUD application. OP found that the proposed PUD is consistent with the intent of the Zoning Regulations, the specific PUD criteria outlined in the Zoning Regulations, and the Comprehensive Plan. OP also found that the benefits and amenities associated with this PUD proposal exceed the degree of zoning relief required, and that the proposed

development would be an asset to the community. OP recommended approval of the application and the Applicant's proposed amenities package that includes:

- a. Submission of a legally binding Homeowner's Agreement regarding maintenance of private streets, subject to DDOT's legal review; and
 - b. Installation of traffic mitigation measures, including installation of required signs and traffic signals.
30. The Applicants submitted revisions to the Inclusionary Housing Commitment Standards, marked as Exhibit 84 of the record of this case, which sets forth the manner in which the Applicants will provide affordable housing.

Other Government Agency Reports

31. The D.C. Fire and Emergency Medical Services Department ("FEMS") submitted a memorandum, dated May 17, 2006, indicating that the streets in the proposed development would be adequate for fire and EMS response as long as personal vehicles in the development are properly parked. FEMS recommended that all fire hydrants in the proposed development be placed on street corners, rather than in the middle of street blocks.
32. The D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum dated June 2, 2006, noting that existing water mains and sanitary sewers can adequately supply water to, and manage sanitary flows from, the proposed development. DCWASA indicated it will not own, operate, or maintain the private storm water management system the Applicants intend to construct for the project.
33. The Department of Housing and Community Development ("DCHD") submitted a letter, dated June 7, 2006, indicating that DCHD supports the proposed PUD.
34. The District Department of Transportation ("DDOT") submitted a memorandum, dated July 6, 2006, indicating that DDOT has no objections to the current 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.

Contested Issues

35. As stated above, a number of parties and individuals (the "Parties in Opposition") testified in opposition to the Application. Letters and petitions indicating the nature of their concerns are included as Exhibits 12, 15, 18, 21-25, 38, 40, 44-45, 61-62, 66-67, 69, and 88 of the record in this case. The major overall concerns raised by the Parties in Opposition were (a) increased traffic congestion; (b) unacceptably high development density; (c) inadequate storm water management and drainage; (d) the use of homeowners association fees to maintain common areas in the development; (e)

insufficient time to review agency reports; (f) the lack of community input; and (g) the possibility that the proposed dog park would attract rodents.

36. The Commission has carefully reviewed and consolidated each of the submissions made by the Parties in opposition, as well as their testimony presented at the public hearing, and makes the following findings:

- a. *Increased Traffic Congestion:* The Parties in Opposition have argued that the proposed development will dramatically increase congestion on adjacent roadways. DDOT has noted in its report, however, that nearby signalized intersections would continue to operate at an acceptable level of service—"level of service B"—or better, following the project's completion. Moreover, the Applicants' traffic expert has submitted detailed reports (See Exhibit 2, Tab F thereto; Exhibit 26, Tab B thereto; and Exhibit 88, Tab B thereto) concluding that the area intersections will all operate at acceptable conditions with the development in place. The report also indicates that proposed development will have no effect on the intersection levels of service and they will continue to operate at levels of service A and B, and that the proposed multiple driveways and vehicle circulation system will provide the opportunity for the dispersal of site traffic and will operate in a safe and efficient manner. Moreover, sufficient on-site parking will be provided on the Subject Property, which will result in no spillover of parking into the surrounding community. The Commission accepts the expert conclusions, and therefore finds that the proposed development will not significantly increase traffic congestion in the area or otherwise have an adverse impact.
- b. *Increased Density:* The Parties in Opposition also claim that the density of the proposed PUD will conflict with the residential character of the surrounding community. However, the Commission finds that the effective maximum density under the subject property's current zoning classification (R-1-B) is 1.2 FAR (40% lot occupancy times three stories). The proposed project, on the other hand, has an FAR of only 0.73. The Parties in Opposition also stated the proposed development will result in a higher population density than development as a matter of right. However, the Commission finds that even if true, that fact alone is an insufficient basis for rejecting the project. Unless an increase in population density attributable to a new development is associated with other negative impacts—such as increased traffic congestion or unacceptable burdens on public infrastructure and facilities—the increased density is not a proper ground for rejecting the development. None of the agencies reviewing this project, however, raised any concerns about such impacts. Moreover, as discussed above, the R-5-A District is designated as a low-density multifamily dwelling district under the Zoning Regulations. The number of units proposed is less than fifteen units per acre. The R-1-B District permits approximately 8.5 units per acre, the R-2 District permits approximately fourteen units per acre, and the R-3 District permits approximately twenty-two units per acre. The proposed development is therefore within the limits of the range of single-family zones. The Commission thus finds that the project's proposed density is not inconsistent with the

land use map designation for the Subject Property and will not have an adverse impact on the surrounding county.

- c. ***Storm Water Management:*** The Parties in Opposition argued that the proposed development would exacerbate the drainage problems that currently affect the Subject Property. The proposed development, however, includes a storm water management system and underground sand filtration system. The Applicant performed drainage calculations in accordance with the DCDOH Stormwater Management Guidebook and determined that the post-development discharge rates for the Subject Property will be at or below the pre-development rates for both two-year and fifteen-year storm events. Additionally, DCWASA did not express any concerns about potential drainage problems attributable to the proposed development. The Commission finds that the project will not adversely affect drainage on the Subject Property.
- d. ***Homeowners Association Fees:*** Some of the Parties in Opposition contested the assessment of homeowners association fees to potential purchasers of homes in the development. The Commission does not find that the assessment of homeowners association fees, a portion of which will be used to maintain common areas in the development, will have an adverse impact on the development or the surrounding community. Indeed, the community center and green spaces in the development will be available for use by members of the surrounding community. The Parties in Opposition have also failed to propose any alternative method of funding these expenses. The Commission does not view the collection of homeowners association fees in the proposed development as a legal basis for rejecting the PUD.
- e. ***Insufficient Time to Review Agency Reports:*** The Parties in Opposition stated they were not provided sufficient time to review the various agency reports regarding the proposed development. These reports, however, were filed well in advance of the deadline prescribed by 11 DCMR § 3012.3 and have been a matter of public record since filed. Therefore, the Commission finds that the Parties in Opposition were provided an adequate period of time to review the agency reports.
- f. ***Lack of Community Input:*** The Parties in Opposition stated that the Applicants failed to fully engage the community in the development process, and that the community benefits package offered with the development fails to address the needs of the surrounding community. The Applicants, however, have met with the ANC and other community groups on no less than twenty occasions to review the project plans and develop an amenities package, as shown by Exhibit 51 of the record. The PUD project was modified a number of times in response to community feedback, as demonstrated by the various site plans submitted and the Memorandum of Understanding reached. The Commission therefore finds that the Applicants have engaged in efforts to solicit community input, and they have incorporated that input into the proposed project where feasible.
- g. ***The Dog Park:*** The Applicants intend to improve the currently vacant land on Parcel 126/24 with a landscaped dog park. One of the individuals in opposition opposed this

use. The Commission finds that the proposed dog park is a part of the Applicant's overall green space plan, which is a valuable project amenity, and will not adversely affect the public interest.

CONCLUSIONS OF LAW

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 the 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 Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which 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 PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development 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.

9. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. In this case, however, ANC 4B has not taken an official position on the proposed PUD.
10. The application for a PUD is 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 and approval of a planned unit development ("PUD") and an application to amend the Zoning Map from the R-1-B to the R-5-A District for the Site, subject to the following guidelines, conditions and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Franck Lohsen McCrery Architects, dated March 30, 2006, marked as Exhibit 26 in the record (the "Plans"); as modified by Exhibit 83 and Exhibit 88; and as further modified by the guidelines, conditions and standards herein.
2. The PUD shall be a residential development as shown on the approved plans. The PUD shall have a maximum FAR of 0.73 and a combined gross floor area of no more than 369,684 square feet. The project shall contain no more than 169 dwelling units, including 38 single-family dwellings, 73 townhomes, and 58 condominium apartments. The Applicants shall be permitted to adjust the layout, configuration and number of apartment units, provided the total number of units (169) is not exceeded.
3. The maximum height of the townhomes and single family homes shall not exceed 40 feet.
4. Affordable housing shall be provided as specified in the Planned Unit Development Inclusionary Housing Commitment Standards included as Exhibit 84 of the record of this case.
5. The project shall include a minimum of 268 off-street parking spaces.
6. The Applicants shall include landscaping, streetscape, and open-space treatment for the project as shown on the Plans. The Homeowners Association to be formed shall maintain and keep in good, clean, attractive, and sanitary condition the areas of common responsibility. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement of all landscaping and other flora, structures, and improvements, streets, and rights-of-way, and other green spaces, parks, or open areas shown on the plans, marked as Exhibit 26 of the record in this case, and such portions of any additional property included within the area of common responsibility as may be dictated by the Homeowners Association documents. All costs required to maintain and keep in good, clean, attractive, and sanitary condition the areas of common responsibility shall be

allocated among the units as part of an assessment in a ratio to be determined by the Homeowners Association.

7. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicants or their successors shall maintain all landscaping in the public space.
8. The Community Room shall be open to both the general public and residents of the development pursuant to terms, procedures, and conditions to be adopted by the Homeowners Association, including, but not limited to, terms and restrictions concerning facility and meeting room capacity, operating hours, reservation fees, deposits and usage restrictions.
9. No building permit shall be issued for this PUD until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA) evidence demonstrating that the Applicant has purchased, or provided the funding to purchase, the items identified in the community amenities package, marked as Exhibit 80 in the record.
10. The Applicants shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - c. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
 - d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum number specified.
11. No building permit shall be issued for this PUD until the Applicants have recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

12. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicants have filed a copy of the covenant with the records of the Zoning Commission.
13. 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.
14. 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 Applicants 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 September __, 2006, the Zoning Commission approved the application by a vote of _ - _ -
(_____).

The Order was adopted by the Zoning Commission at its public meeting on _____, by a
vote of _ - _ - (_____).

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 _____.

CAROL J. MITTEN
Chairman,
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning