

Z.C. Case No. 05-38B

**BEFORE THE ZONING COMMISSION
FOR THE
DISTRICT OF COLUMBIA**

**PREHEARING STATEMENT OF THE APPLICANT
IN SUPPORT OF AN
APPLICATION
TO MODIFY A PLANNED UNIT DEVELOPMENT
APPROVED PURSUANT TO ZONING COMMISSION
CASE/ORDER NOS. 05-38 & 05-38A**

April 7, 2015

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DEVELOPMENT TEAM

Owner/Applicant	Mill Creek Residential Trust, LLC 6110 Executive Boulevard Suite 315 Rockville, MD 20852
Architecture	SK+I Architecture 4600 East-West Highway Suite 700 Bethesda, MD 20814
Civil Engineering	Bowman Consulting 2121 Eisenhower Avenue Suite 302 Alexandria, VA 22314
Landscape Architecture	Land Design 200 S. Peyton Street Alexandria, VA 22314
Transportation Engineering	Gorove/Slade Associates, Inc. 1140 Connecticut Avenue, N.W. Suite 600 Washington, DC 20036
Land Use Counsel	Holland & Knight, LLP 800 17 th Street, N.W. Suite 1100 Washington, D.C. 20006

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LIST OF EXHIBITS

Exhibit	Description
A	Revised Architectural Plans and Elevation Sheets
B	List of the Applicant's Witnesses and Estimated Time Required For Presentation of the Applicant's Case
C	Outline of Testimony of Sean Caldwell, on behalf of Mill Creek Residential Trust, LLC
D	Outline of Testimony and Resume of Dr. Abed Benzina and Dennis Connors, on behalf of SK+I Architecture
E	Outline of Testimony and Resume of M. Scott Delgado, on behalf of Bowman Consulting
F	Outline of Testimony and Resume of Matthew Clark, on behalf of Land Design
G	Outline of Testimony and Resume of Daniel B. VanPelt, on behalf of Gorove/Slade Associates, Inc.
H	List of Maps, Plans or Other Documents Readily Available To The Public, Which May Be Offered Into Evidence
I	List of Names and Addresses of All Property Owners Within 200 Feet of the Subject Property
J	DDOT Scoping Form

CERTIFICATION OF COMPLIANCE
WITH SECTION 3013 OF THE ZONING REGULATIONS

The Applicants hereby certifies that this application, one original and ten copies of which were filed with the Zoning Commission on April 1, 2014 complies with the provisions of Section 3013 of the Zoning Regulations as set forth below, that the application is complete.

<u>Subsection</u>	<u>Description</u>	<u>Page</u>
3013.1(a)	Information Requested by Zoning Commission and Office of Planning	Pgs. Herein
3013.1(b)	List of Witnesses	Exhibit B
3013.1(c)	Outline of Testimony of Applicant's Witnesses/Resumes	Exhibit B-G
	Sean Caldwell Mill Creek Residential Trust, LLC	Exhibit C
	Dr. Abed Benzina SK+I Architecture	Exhibit D
	M. Scott Delgado Bowman Consulting	Exhibit E
	Matthew Clark Land Design	Exhibit F
	Daniel B. VanPelt Gorove/Slade Associates, Inc.	Exhibit G
3013.1(e)	Reduced Plan Sheets	Exhibit A
3013.1(f)	List of Maps, Plans or other Documents Readily Available That May Be Offered Into Evidence	Exhibit H
3013.1(g)	Estimated Time Required for Presentation of Applicant's Case	Exhibit B
3013.6(a)	List of Names and Addresses of All Property Owners Within 200 Feet of The Subject Property	Exhibit I

The undersigned HEREBY CERTIFIES that all of the requirements of Section 3013 of the Zoning Regulations have been complied with. In accordance with Section 3013.8, this application will not be modified less than twenty days prior to the public hearing.

Respectfully Submitted,

HOLLAND & KNIGHT LLP

By: _____
Kyrus L. Freeman

I. INTRODUCTION

This Prehearing Statement of the Applicant (the "Prehearing Statement") and the attached documents are submitted on behalf of Mill Creek Residential Trust, LLC (the "Applicant"), on behalf of John Hancock Life Insurance Company, USA, the owner of Lots 855, 856, 857, 858 and 859 in Square 499 (the "PUD Site"), in support of its application to the Zoning Commission of the District of Columbia (the "Zoning Commission") for modifications to an approved Planned Unit Development ("PUD") at the PUD Site.

Pursuant to Zoning Commission Order No. 05-38, dated May 14, 2007 and effective October 26, 2007, the Zoning Commission approved a PUD and related Zoning Map amendment to rezone the PUD Site from the R-5-D District to the C-3-C District (the "Initial PUD Approval"). The Initial PUD Approval authorized up to 570 residential units spread across four residential buildings, including two existing buildings on Lots 856 and 858 designed by the noted architect I.M. Pei (the "Pei Towers"). The two new mixed-use buildings on Lots 855 and 859 were approved at a maximum height of 112 feet with approximately 569 vehicle parking spaces located in below-grade structures. The overall density approved as part of the Initial PUD Approval was 4.38 floor area ratio ("FAR"), or 592,471 square feet of gross floor area, with approximately 8,900 square feet of gross floor area devoted to ground floor retail and residential amenities.

Pursuant to Zoning Commission Order No. 05-38A, dated December 8, 2008 and effective January 2, 2009, the Zoning Commission approved a number of modifications to the approved PUD (the "Modified PUD Approval"). The Modified PUD Approval authorized the following amendments to the initial PUD: (i) refinements to the approved facades and roof structures of the various buildings; (ii) removal of the for-sale residential component that was originally

approved; (iii) relocation of a pool; (iv) an increase in the maximum number of units to 580 (256 existing units plus 324 new units); and (v) modifications to the community amenities package (Z.C. Order No. 05-38, Finding of Fact No. 2).

The current PUD modification application seeks approval to make further modifications to the project. The revised project will reduce the height of the new residential buildings from 112 feet to 85 feet each and will reduce the PUD's overall density from 4.38 FAR to 3.40 FAR. The new building on the north side of the PUD Site (the “North Tower”) will have six stories, including a mezzanine on the ground floor; the new building on the south side of the PUD Site (the “South Tower”) will have seven stories, including mezzanines on the ground and top floors. The Applicant will also modify the facades of the new buildings to improve their relation to the context of the surrounding neighborhood.

The new residential towers will contain a combined total of approximately 231,605 square feet of gross floor area, with approximately 212,965 square feet of gross floor area devoted to residential uses, approximately 5,220 square feet of gross floor area devoted to retail use, approximately 5,845 square feet of gross floor area devoted to service space, and approximately 7,575 square feet devoted to the lobby and amenities. The overall gross floor area for the new building and the Pei Towers combined is 449,045 square feet. The number of residential units for the overall project will be reduced from 580 to 516 (256 existing units plus 260 new units, plus or minus ten percent).

The number of parking spaces will be reduced from 569 spaces to 290 spaces, located in three levels of below grade parking in each new residential building. The proposed parking spaces in the new buildings are intended to serve residents of all four buildings. The parking

garages will be accessed from 6th Street and will meet the off-street parking requirements for the overall project.

The Applicant originally filed its application statement and supporting documents with the Commission on December 22, 2014 (the "Initial PUD Submission"). The Initial PUD Submission sets forth in detail the proposed development, project design, requested areas of zoning and design flexibility, and a discussion of how the project meets the applicable review and approval requirements.

The Office of Planning, by report dated February 27, 2015, recommended that the Commission schedule a public hearing on the application. At the public meeting on March 9, 2015, the Commission voted to set down the application as a contested case. This Prehearing Submission supplements the Initial PUD Submission and includes the information requested by the Commission and the Office of Planning.

II. ISSUES RAISED BY THE OFFICE OF PLANNING AND THE COMMISSION

The Applicant originally filed a PUD Statement and supporting documents with the Commission on December 22, 2015 (the "Initial PUD Submission"). The Initial PUD Submission sets forth in detail the proposed development, project design, requested areas of flexibility, and a discussion of how the project meets the applicable first-stage review and approval requirements.

The Office of Planning, by report dated February 27, 2015, recommended that the Commission schedule a public hearing on the application. At the public meeting on March 9, 2015, the Commission voted to set down the application as a contested case. This Prehearing Submission supplements the Initial PUD Submission and provides the information requested by the Commission and the Office of Planning, as follows:

	Office Of Planning Comment	Action
1.	Provide more information/detail regarding the ground floor, including: a. layout/depth of the ground floor; b. the viability of planting materials in pocket parks; c. landscaping for the proposed ground floor units; and d. a revised rendering of Sheet G-02 showing residential units at the east end of M Street, S.E.	As shown on Sheet A26 of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u>, the Applicant provided a more detailed layout of the ground floor plans, showing that the ground floor depth varies between approximately 76 feet and 83 feet for both buildings. In addition, as shown on Sheets L10-L19, G01-02, and A19, the Applicant updated the landscape drawings, renderings, and elevations to better define the following: (i) the relationship between the ground floor residential units and the surrounding landscape, sidewalks, and streets; (ii) the depth of soil in the new courtyards for adequate growth of intended plantings; and (iii) improvements to the Great Lawn. The Applicant notes that in its initial PUD Modification submission it proposed to not undertake any redesigns of the Great Lawn, but after further discussions with the existing residents and the Office of Planning, the Applicant now proposes to make improvements to the Great Lawn, as shown on the Landscape Plans. The Applicant also provided a revised rendering of Sheet G02 and a new rendering at Sheet G03 showing the residential units from M and 6th Streets, S.E.
2.	Provide more information/detail regarding the roof plan, including: a. clarification of the different roof heights, the number and height of rooftop structures, and whether the project includes a green roof; b. scope of requested roof structure relief; and c. whether residential units would have access to the “Lower Roof.”	As shown on Sheets A29b-c of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u>, the Applicant clarified the roof plan by (i) identifying the various steps in massing; (ii) incorporating additional explanatory notes; and (iii) adding an enlarged roof plan and aerial roof diagram. As shown on these drawings, each new building will have three individual roof structures, thus necessitating flexibility from 11 DCMR §§ 770.6 and 411.3, which require that all penthouses and mechanical equipment must be

		placed in a single enclosure. The individual roof structures on each building include a stair tower at 10 feet in height, an elevator overrun at 10 feet in height, and mechanical equipment at 11 feet, 7.5 inches in height. Each new building will have a white membrane “cool” roof instead of a green roof. Residential units will not have access to the lower roof level.
3.	Provide more information/detail regarding building materials, including: a. photographic examples of the materials proposed; and b. elevations of the east sides of the buildings.	As shown on Sheet A18c-f of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u> , the Applicant incorporated additional details regarding the building materials. Sheets A18c-d include detailed notes regarding the proposed materials, and Sheets A18e-f show precedent photographic examples of the proposed materials. In addition, Sheets A24 and A24b show the east elevation of the south and north buildings, respectively.
4.	Provide information regarding how the project would rate on a LEED rating scale.	As shown on Sheet A35 of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u> , the new residential buildings are designed to meet the LEED Silver-equivalent rating. The Applicant requests flexibility to vary the sustainable design features of the buildings, provided that the total number of LEED points achievable does not decrease below the equivalent of a LEED Silver designation.
5.	Provide information regarding transportation issues, including: a. the extent of the bicycle parking program; b. whether any additional TDM measures are necessary; c. whether the Applicant is permitted to use the private alley on the adjacent property to the east; and d. how the Pei Towers load, and how the retail would load and	As shown on Sheet A29 of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u> , the Applicant will provide 124 long-term bicycle parking spaces in the G1 level of the parking garage in each new building. Moreover, as indicated on the DDOT Scoping Form attached as <u>Exhibit J</u> , the Applicant’s traffic consultant is working with DDOT to update the transportation report for the project. The report will include data on the project’s vehicle trip generation, site access and

	handle trash.	loading, roadway and streetscape improvements, transit networks, bicycle and pedestrian facilities, and parking availability. The report will also indicate whether additional transportation demand management (“TDM”) measures are necessary for the project. The Applicant will submit its official transportation report no less than 45 days prior to the public hearing. The Applicant is permitted to use the private alley to the east of the PUD Site pursuant to the Declaration of Permanent Easements and Covenants, dated August 17, 2011, and recorded in the Land Records of the District of Columbia as Document No. 20110866041. In this Declaration, the owner of the PUD Site and the owner of the adjacent property to the east of the PUD Site established a perpetual, non-exclusive easement for vehicular ingress, egress, and access over the alley. The Declaration grant both parties’ respective tenants, agents, employees, contractors, and invitees permission to use the easement area for vehicular ingress, egress, and access. Finally, as shown on Sheet A26 of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u>, the Pei Towers load from the loading corridor along the alley. The retail in the new buildings will load from the street, and the Applicant will work with DDOT to determine an appropriate location for an on-street loading zone. Retail trash will be located within the building and will be picked up through the rear loading area.
6.	The Applicant should comply with the current Inclusionary Zoning Regulations, or explain why the Inclusionary Zoning (“IZ”) regulations should not apply to the project.	The Zoning Commission and the Office of Planning indicated that the Applicant should comply with the current IZ regulations, or explain why the IZ regulations should not apply to the project.

	Under the IZ regulations, the new residential towers would be required to devote eight percent of their total residential gross floor area to households earning up to 80 percent of the area medium income (<i>see</i> 11 DCMR §§ 2603.2 and .4), or in this case 17,037 square feet $((0.08) \times (212,965 \text{ square feet of proposed residential gross floor area in the residential towers}))$. The IZ regulations are not applicable to the Pei Towers since the work completed on the towers did not result in the creation of new dwelling units or the addition of gross floor area to those buildings. (<i>See</i> 11 DCMR § 2602.1). The originally-approved PUD included a proffer of 16,000 square feet of affordable housing. <i>See</i> Z.C. Order No. 05-38, Decision No. 12. To date, 9,500 square feet of affordable housing has been delivered in the recently renovated Pei Towers, which as described above are exempt from IZ, and the Applicant proposes to equally distribute the remaining 6,500 square feet of affordable housing between the North Tower and South Tower as part of this application. The Applicant remains committed to providing all of the initial amount of affordable housing proffered, despite the fact that the Applicant proposes to reduce the amount of total gross floor area for the from 592,471 square feet (4.38 FAR) to 449,045 square feet (3.40 FAR), and reduce the total number of residential units from 580 to 516 (a 24 percent reduction in gross floor area and a reduction of 64 units). Given this significant reduction, combined with the fact that the Applicant has already delivered a significant portion of its initial affordable housing commitment, the Applicant believes that the project should not be required to have an increased amount of affordable housing required for the downsized project.
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7.	Confirm that the public benefits and amenities are current.	The proposed public benefits and project amenities will remain largely the same as those approved in Z.C. Order Nos. 05-38 and 05-38A, even though the building envelope and gross floor area is decreasing. One exception is that the Applicant will not construct the previously-approved amenities building. Since the PUD was approved, residents of the Pei Towers have indicated that they no longer need or want the amenities building, since a variety of new neighborhood-serving restaurants, shops, services, and recreation facilities have recently been built in the surrounding neighborhood. These developments include (i) Waterfront Station, located one block from the PUD Site, which includes ground floor retail including a full service grocery store and several restaurants; (ii) Arena Stage, located across 6th Street from the PUD Site, which hosts diverse and innovative theater productions, workshops, presentations, and educational programs; and (iii) approval of The Wharf, which is currently under construction on the southwest waterfront and will incorporate new uses including entertainment, restaurant, and retail uses. The Applicant will continue to work with the Office of Planning and the community to ensure that the public benefits package is up to date. For example, the original PUD proffered \$17,000 each to Bowen Elementary School and Amidon Elementary School, but since that time, those schools have merged. The Applicant will ensure that the list of public benefits and project amenities is amended accordingly.
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	Zoning Commission Comment	Action
1.	The Applicant should comply with the current Inclusionary Zoning Regulations, or explain why the Inclusionary Zoning regulations should not apply to the project.	See section #6 above.

2.	The Applicant should provide additional drawings and renderings that better depict the elements of the project.	As shown on Sheets G-02-03, L10-19, A16-20, A24-26, and A28-29 of the Revised Architectural Plans and Elevation Sheets attached hereto as <u>Exhibit A</u> , the Applicant provided additional drawings and renderings that better depict the elements of the project.
3.	The Applicant should clarify what new/additional amenities are being provided in the building and surrounding neighborhood.	As described above in item #7, the proposed public benefits and project amenities will remain largely the same. The Applicant will work with the Office of Planning and the community to ensure that the modified project's list of benefits and amenities is updated to reflect all relevant changes.

III. ADDITIONAL REQUIREMENTS OF 11 DCMR § 3013

A. List of Witnesses Prepared to Testify on Behalf of the Applicant

In accordance with Sec. 3013.1(b) of the Zoning Regulations, a list of witnesses prepared to testify at the public hearing on behalf of the Applicant is attached as Exhibit B.

B. Summary of Testimony of Witnesses or Reports and Area of Expertise

In accordance with Sec. 3013.1(c) of the Zoning Regulations, the summaries of the testimony of those persons who may be called to testify at the public hearing are attached as Exhibits C through G.

C. List of Maps, Plans or Other Documents Readily Available

In accordance with Sec. 3013.1(f) of the Zoning Regulations, the following maps, plans, or other documents that are readily available to the general public may be offered into evidence at the public hearing:

1. Exhibits Herein
2. Zoning Regulations and Map of the District of Columbia

3. Future Land Use Map of the District of Columbia
4. District of Columbia Comprehensive Plan ("Comprehensive Plan")
5. Metrobus and Metrorail Route Maps and related WMATA and other public transportation materials
6. Orders of the D.C. Zoning Commission and Board of Zoning Adjustment
7. Orders and Reports of District and Federal Agencies
8. Publicly Available Information from District of Columbia

D. Estimate of Time Required for Presentation of Applicant's Case

In accordance with Sec. 3013.1(g) of the Zoning Regulations, the estimated time for the presentation of the Applicant's case is sixty (60) minutes.

E. Names and Addresses of Owners of Property Within 200 Feet of Property

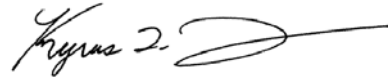
In accordance with Section 3013.6 of the Zoning Regulations, a list of the names and addresses of the owners of all property located within two hundred feet (200') of the Subject Property is attached as Exhibit I.

IV. CONCLUSION

For the foregoing reasons, the Applicant submits that the proposed PUD and zoning map amendment meet the standards of Chapter 24 of the Zoning Regulations and the standards for approval. Accordingly, the Applicant requests that the Commission approve the application.

Respectfully submitted:

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Kyrus L. Freeman", written over a horizontal line.

By: _____

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