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VIA IZIS AND HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: Z.C. Case No. 08-07A - Applicant's Response to Issues Raised in the Party Status
Request submitted by the Concerned Citizens of Anacostia

Dear Members of the Commission:

On behalf of Four Points, LLC and Curtis Properties, Inc. (together, the "Applicant"), this statement is submitted in response to the party status request submitted by the Concerned Citizens of Anacostia ("CCA") in connection with the above-referenced case.

I. Background of Proposed Development

The Applicant submitted an application for the approval of a second-stage planned unit development ("PUD") and modifications to the approved PUD for property located at 2255 Martin Luther King, Jr. Avenue, S.E. (Lot 839 and a portion of Lot 906 in Square 5785) (the "PUD Site"). The Applicant is seeking modifications to the approved first-stage PUD to develop the PUD Site with a six-story, mixed-income residential building ("Building 1"). Building 1 will contain approximately 71 residential units, 80 percent of which will be devoted to households earning up to 60 percent of the area medium income ("AMI"). The building will have a maximum density of 2.85 floor area ratio ("FAR") and will be constructed to a maximum height of 65 feet at its highest point.

Building 1 is the first, second-stage PUD application for the overall PUD approved pursuant to Z.C. Order No. 08-07, which was issued on September 9, 2013 and became effective on October 25, 2013. The approved PUD is a mixed-use project consisting of 1,570,000 square feet of gross floor area comprised of seven new buildings and two renovated existing buildings. Approximately 481,000 square feet of gross floor area will be devoted to residential use; approximately 144,000 square feet of gross floor area will be devoted to retail, service, arts, and limited types of office space; and approximately 945,000 square feet of gross floor area will be devoted to office use (*see* Z.C. Order No. 08-07, p. 23).

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In approving the overall PUD, the Zoning Commission found that the PUD “complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of office, retail, service, and residential uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable.” (Z.C. Order No. 08-07, Conclusion of Law No. 5.) The Commission also found that approval of the PUD and map amendment “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” (*Id.* at Conclusion of Law No. 8).

Development of Building 1 is consistent with the Zoning Commission’s prior findings, will continue to comply with the applicable zoning parameters, and will implement numerous elements of the Comprehensive Plan.

II. Response to Issues Raised by the CCA

A. The PUD Site is not within the Anacostia Historic District

CCA argues that the current application negatively affects the integrity of the Anacostia Historic District. However, the PUD Site is not located within the Anacostia Historic District and is therefore not required to be submitted for review by the Historic Preservation Office (“HPO”) or the Historic Preservation Review Board (“HPRB”). Specifically, D.C. Code §§ 6-1105(a) and 1107(a) (2012 Repl.) provide that building permits for construction or alteration need only be reviewed under the historic preservation regulations when the construction or alteration is “in an historic district or on the site of an historic landmark” (D.C. Code § 6-1107(a)). As shown on the map included as Annex 1 of CCA’s letter to OP dated October 13, 2014, and included in the party status request materials, the PUD Site and most of the land area within the overall PUD are located outside of the boundaries of the Anacostia Historic District. Only two buildings within the PUD (Buildings 8 and 9) are located within the Historic District, and those buildings will go through appropriate historic review processes during their second stage PUD applications. That review process is inapplicable to Building 1. Furthermore, the CCA’s comparison of Building 1 to the redevelopment of property located at 2226-2252 Martin Luther King Jr. Avenue, S.W. (the “Big K Site”) is unfounded because the Big K Site is located within the Anacostia Historic District.

B. Modifications to Building 1 are Minor and Will Not Cause Adverse Impacts to the Neighborhood

As shown in Figure 1 below, the proposed modifications requested for Building 1 are minor and are well within the zoning parameters permitted in the C-3-A District. The Applicant proposes to increase the number of residential units by six, increase the density by 0.28 FAR, and increase the building height by five feet. The Applicant is also proposing to decrease the number of vehicle parking spaces by approximately seven spaces and will increase the number of bicycle parking spaces by 15. With respect to parking, the DDOT report (Exhibit 25) states that the modified application provides a “reasonable supply of parking for the land use and location, given its close proximity to the Metro station” (*see* DDOT Report, p. 5).

The proposed modifications will allow the Applicant to construct additional dwelling units; provide units with a greater number of bedrooms to accommodate families; provide live/work units for local artists; and create community facilities that will be accessible to neighborhood residents. These goals are consistent with the District's housing policies and will further the objectives of the Comprehensive Plan. Moreover, the requested modifications are well within the scope of modifications which the Zoning Commission has approved for other PUDs, which range from minimal changes to significant changes in use, height, and density (*see, e.g. Z.C. Order Nos. 03-12F/03-13F; 05-23A; 06-01B; 06-04C; 07-02B; and 07-21B*).

Figure 1: Approved and Modified Zoning Tabulations for Building 1

	Approved During First Stage	Proposed Modifications for Second Stage	Percent Change	Permitted in Zone C-3-A
Number of Units	65 (+/- 10%)	71 (+/- 10%)	9.2%	N/A
Residential Gross Floor Area	65,000 sf	68,263 sf	5%	95,904 sf (4.0 FAR) (4.5 FAR for PUD; 4.8 FAR for IZ projects)
FAR	2.57	2.85	10.9%	4.0 FAR (4.5 for PUD; 1.8 FAR for IZ projects)
Height	60 feet	65 feet	8.3%	65 feet (90 feet for PUD)
Lot Occupancy	43%	47%	9.3%	75% (80% for IZ projects)
Parking Spaces	33	26	- 21.2%	1 per 2 units
Bicycle Parking Spaces	22	37	68.1%	5% of the required automobile parking spaces

The proposed height and massing of Building 1 are appropriate for the PUD Site and respond to the scale, orientation, and urban fabric of the surrounding area. The height of the building at six-stories serves as a transition between the existing low and mid-rise structures in the surrounding neighborhood to the east and south and to the proposed taller buildings already approved as part of the overall PUD. Building 1 is only five stories along Chicago Street in order to make the scale transition more significant.

The Applicant also notes that the land on which Building 1 is located was originally zoned C-3-A, and thus the approved map amendment did not change the underlying zoning of the PUD Site. The C-3-A District permits a matter-of-right building height of 65 feet (11 DCMR § 770.1), which is the exact height requested. As a PUD, the C-3-A District permits a maximum building height of 90 feet (11 DCMR § 2405.1), which is significantly taller than the height requested. Moreover, portions of the building are shorter than the approved building height under the first stage PUD, which permitted a maximum height of 60 feet plus roof structures, which could be constructed to a maximum height of 18 feet, 6 inches as a matter of right, resulting in a perceived building height of almost 80 feet.

CCA's party status request also states that construction of the overall PUD will impact the view of the city for residents living in the surrounding neighborhoods. However, as stated above, the proposed building height of 65 feet is permitted as a matter-of-right in the underlying District. Moreover, it is well-settled in the District of Columbia that a property owner is not entitled to a view, light, or air across another person's property without an express easement. *See Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) ("American courts have wisely refused to allow the acquisition by prescription of easements of light and air"); *see also Ash v. Tate*, 73 F.2d 518 (D.C. Cir. 1934) (no injunction under District of Columbia law to prevent adjoining landowner from erecting structure that cuts off light and air); Z.C. Order No. 11-03, Finding of Fact No. 91 ("[t]he Commission finds that the viewsheds and property values ... are not protected by any restrictive covenants or by the Zoning Regulations."

Furthermore, the height and bulk of Building 1 is consistent with the Comprehensive Plan designations for the PUD Site. The Future Land Use Map designates the PUD Site for mixed use Medium Density Residential and Medium Density Commercial development (see portion of the Future Land Use Map attached hereto as Exhibit A). The corresponding Districts for these designations allow maximum building heights of 60 feet to 90 feet (10A DCMR §§ 225.5 and 225.10). In contrast, the Future Land Use Map designates the surrounding neighborhoods to the east and south of the PUD as Moderate Density Residential (*see Exhibit A*), which generally defines the areas characterized by single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings (10A DCMR § 225.4). The Moderate Density Residential designation provides less intense corresponding zone districts, which include the R-3, R-4, R-5-A Districts and the R-5-B District in some locations. *Id.* Thus, the Comprehensive Plan designation for the existing residential neighborhoods adjacent to the PUD Site is consistent with the low-rise row dwellings that currently exist in this location. Similarly, development of the PUD with higher-density mixed-use development is consistent with the District's vision for the area, with taller buildings along Martin Luther King Jr. Avenue (*see generally* 10A DCMR § 1807.2(d)).

C. Residential Development is Appropriate for Building 1

The Applicant is not proposing to locate retail on the ground floor of Building 1. Instead, the ground floor will be improved with residential amenity spaces, live/work units for local artists, and traditional residential units. However, future second-stage applications for other buildings within the PUD will include significant amounts of ground floor retail space along Martin Luther King Jr. Avenue and throughout the overall PUD, which will help revitalize the neighborhood's economic viability and improve the pedestrian experience. The Zoning Commission approved this development phasing in Z.C. Order No. 08-07, and the development of Building 1 is consistent with this approval.

As described during the public hearing for the first-stage approval, the purpose of the proposed phasing is to help build a residential base for the neighborhood that will support the retail and strengthen existing businesses without concentrating retail at the early phases of the project. Phase two of development involves primarily infilling a large parking lot at the intersection of Martin Luther King Jr. Avenue and W Street with office space and a significant amount of ground floor retail (*see* Z.C. Case No. 08-07, Transcript dated July 1, 2013, pp. 44-45). Many other buildings within the overall PUD also include a mix of uses with significant ground floor retail. At the first-stage public hearing, the Commission commended the Applicant

for providing such an extensive amount of retail at the PUD Site: "it's a huge project that will revitalize Anacostia and the Martin Luther King Jr. Avenue corridor with ... a substantial amount of retail and office as well" (*see* Z.C. Case No. 08-07, Transcript dated July 1, 2013, p. 34).

Moreover, at the time of the first-stage application, residents of the row dwellings adjacent to Building 1 requested that the Applicant minimize traffic in and through the alley where service entrances and loading for ground floor retail would have to exist (*see* Z.C. Case No. 08-07, Transcript dated July 1, 2013, pp. 145-146). At the public hearing, the Commission stated the importance of providing some use in the ground floor that "could be a benefit to the project overall and would maybe give you some good street frontage... something attractive on the street level... [P]art of the issue is wanting to have that active street front on Martin Luther King Jr. [Avenue]. So anything that could enliven it would make sense" (*Id.* at pp. 147-148). The Commission specifically asked the Applicant to consider a different kind of housing type on the ground level, such as artist studios (*Id.* at pp. 147). In response to the Commission's concerns, the Applicant is providing artist studios on the ground floor, which will activate and enliven Martin Luther King Jr. Avenue in this location and create an interesting and attractive pedestrian experience. This phasing is appropriate for the site and will give the residential base sufficient time to grow to support the ground floor retail in other locations within the overall PUD.

D. The Proposed Affordable Housing for Building 1 is Appropriate for the Site

The CCA also expressed concerns that Building 1 will result in an over concentration of subsidized, income-capped housing. However, the Applicant's proposal to devote 80 percent of the residential gross floor area of Building 1 to affordable dwelling units is consistent with the city's housing and affordable housing goals and implements numerous policies of the Comprehensive Plan, including *Policy 1.1.5: Housing Quality*; *Policy H-1.2.1: Affordable Housing Production as a Civic Priority*; *Policy H-1.2.3: Mixed Income Housing*; *Policy H-1.2.5: Workforce Housing*; and *Policy H-1.4.3: Focusing Housing Investments*. Moreover, the Applicant notes that affordable housing will be spread throughout the overall PUD and will not be overly concentrated in Building 1. The Applicant will identify the number of affordable dwelling units for each building at the time of its second-stage application.

The proposed provision of affordable housing achieves the Comprehensive Plan's overall housing goal of developing and maintaining a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia (10A DCMR § 501.1). More specifically, there is a critical need for affordable housing in Ward 8 and the Far Southeast and Southwest area in particular. The medium income for residents of the Far Southeast and Southwest area, as defined in Chapter 18 of the Comprehensive Plan, is one-half of the city's medium income (10A DCMR § 1805.1). In addition, the unemployment rate for this same area is more than three times the average for the Washington region (*Id.* at § 1805.1). There is thus a greater need for affordable housing in this area of the city and the development of Building 1 will help to satisfy the demand.

Moreover, at its regularly scheduled, duly noticed public meeting on May 6, 2014, at which a quorum was present, Advisory Neighborhood Commission ("ANC") 8A voted 5-1 to

recommend that the Department of Housing and Community Development (“DHCD”) award an allocation of the Housing Production Trust Fund to facilitate the development of Building 1 (*see* ANC 8A letter of support attached hereto as Exhibit B). The ANC letter stated that “Ward 8 has the largest concentration of low income housing in the District, and this development would seek to target a greater diversity of tenants across many income levels.” ANC 8A specifically acknowledged that “in direct response to community input, Four Points has proposed to reserve approximately 14 units (20% of the total) for market rate units.”

By letter dated October 8, 2014, attached hereto as Exhibit C, DHCD informed the Applicant that pursuant to the 2014 Request for Proposals process, DHCD is reserving funding for Building 1. The letter stated that “DHCD believes [the] project will support the District of Columbia’s goals of increasing the supply of decent and affordable housing and fostering neighborhood revitalization.” Thus, the Applicant’s proposal to provide affordable housing at the PUD Site was supported by ANC 8A, is consistent with the Comprehensive Plan, and is consistent with the city’s funding priorities as evidenced by the award of funding from DHCD.

E. Public Benefits and Project Amenities

The Applicant has worked closely with neighbors, members of ANC 8A, and the Chicago Shannon Civic Association (“CSCA”) in order to ensure that the project includes public benefits and amenities that address the needs of the surrounding community. The application also has the support of the Anacostia Economic Development Corporation (*see* letter of support included as Exhibit 26 in the record) and from four nearby property owners (*see* letters of support included as Exhibits 27-30 in the record). The application has also been reviewed by and has support from the Office of Planning (“OP”) (*see* OP report included as Exhibit 24 in the record) and the District Department of Transportation (“DDOT”) (*see* DDOT report included as Exhibit 25 in the record).

The Applicant proposes to provide the following public benefits and project amenities as part of the second-stage PUD for Building 1:

1. Housing and Affordable Housing: The Applicant will provide approximately 68,263 square feet of gross floor area devoted to residential uses comprised of 71 new residential units. The Applicant will devote 80 percent of the residential units, which constitutes 57 units, and approximately 41,644 square feet of gross floor area, to affordable units targeted to households earning at or below 60 percent of the area medium income (“AMI”). Under matter-of-right zoning in the C-3-A District, the Applicant would only have to dedicate eight percent of the residential gross floor area (i.e., 5,461 square feet of gross floor area) to households earning up to 80 percent of the AMI. Thus, the Applicant’s proposal to provide 36,183 square feet of gross floor area over what the Zoning Regulations requires, and at a significantly deeper subsidy, is a substantial amenity for this project.
2. Partnership with Teach For America: The Applicant signed a memorandum of understanding with Teach for America (“TFA”). TFA will assist the Applicant in preparing residential marketing plans tailored to attracting teachers to become residents of Building 1. Through this partnership, TFA will be able to leverage its

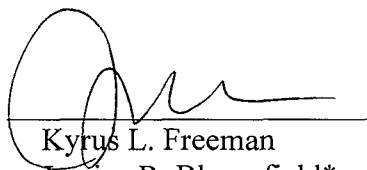
professional network to reach out to local teachers and encourage them to apply for affordable housing at the site. Based on this mutually-beneficial arrangement, the Applicant created a custom design common area on the ground floor of the proposed building to incorporate a teacher work area where tenants can make copies of lesson plans at their convenience, among other amenities.

3. Use of Building 1 by Surrounding Community: The Applicant has agreed to permit ANC 8A and CSCA to use communal space in Building 1 for monthly or quarterly meetings and to use the roof terrace for ANC and CSCA events no less than two times per year.
4. Live/Work Studios: The Applicant will provide live/work spaces in Building 1 to specifically accommodate and attract local artists. The live/work units will address the need for both housing and work space. Providing this type of space will retain the creative industry and entrepreneurial spirit of artists within the community and will spur business development, encourage mixed income housing growth, and aid arts-related business and services in the area. Live/work spaces specifically designed and developed for local artists will encourage community development, neighborhood revitalization, and economic stimulation. The Applicant will coordinate with ARCH Development to assist with the lease up and operation of the building by sourcing income eligible local artists to apply for housing. ARCH Development is a neighborhood-based organization that focuses on the economic regeneration of the historic community Anacostia. ARCH Development will also manage the artist work space provided on the ground floor directly off the residential lobby.
5. CBE and First Source Employment Agreement: Expanding employment opportunities for residents and local businesses is a priority of the Applicant. Both Audubon (the project's financing consultant) and Four Points, LLC are CBEs. In addition, a minimum of 35 percent of the eligible project costs will be contracted with CBE-certified firms. The Applicant will also enter into a First Source Employment Agreement with the Department of Employment Services in conjunction with development of Building 1.
6. Transportation and Public Space Improvements: The proposed development will include a number of elements designed to promote effective and safe vehicular and pedestrian access, transportation management measures, and connections to public transit services. For example, the Applicant has located the vehicular access from the public alley in order to limit potential conflicts with pedestrians and to maximize the pedestrian experience along Martin Luther King Jr. Avenue and Chicago Street. In addition, the Applicant will provide an access easement that connects to Shannon Place for use by existing and new residents. This new easement area constitutes a significant improvement and will help to facilitate safe vehicular movement. The Applicant will also install a number of public space improvements adjacent to the PUD Site, including new street trees, bicycle racks, and streetlight enhancements.

7. Environmental Benefits: The Applicant is fully committed to providing high-quality housing in the District of Columbia. Through the development of this project, the Applicant will expand its commitment by ensuring the environmental, economic and social sustainability of the residents through the implementation of sustainable design features. A number of strategies will be implemented to enhance the inherently sustainable nature of the site's location and to promote a healthy, desirable, and comfortable lifestyle that will fully benefit the project's residents while minimizing the impact on the environment. The proposed development provides a number of environmental benefits and includes street tree planting and maintenance, landscaping, energy efficiency, methods to reduce stormwater runoff, and sustainable engineering practices. The project will be designed to meet rigorous energy and environmental design standards using the Green Communities rating system as a guide and performance metric, and will achieve a minimum of 46 points per Green Communities, which is equivalent to LEED silver certification. Green Communities is a nationally-recognized sustainability strategy designed specifically for affordable housing projects, and the program's sustainability requirements are equivalent to LEED for Homes Mid-Rise.
8. Construction Management Plan: The Applicant has developed a construction management plan that responds to the concerns raised by the surrounding community.

Thank you for your attention to this matter. We look forward to making a full presentation at the December 18, 2014, public hearing on this application.

Very truly yours,

By: 
Kyrus L. Freeman
Jessica R. Bloomfield*

cc: Advisory Neighborhood Commission 8A (with enclosures, Via U.S. Mail)
Maxine Brown-Roberts, D.C. Office of Planning (with enclosures, Via Hand)

*Admitted to practice in Pennsylvania. Practicing in the District of Columbia pursuant to D.C. Court of Appeals Rule 49(c)(8).