

WILKES, ARTIS, HEDRICK & LANE

CHARTERED

ATTORNEYS AT LAW

SUITE 1100

1806 K STREET, N. W.

WASHINGTON, D. C. 20006-2897

(202) 457-7800

February 25, 2000

CABLE ADDRESS: WILAN  
FAX: 202-457-7814

WRITER'S DIRECT DIAL:

ANNAPOLIS, MARYLAND  
BETHESDA, MARYLAND  
FAIRFAX, VIRGINIA  
GREENBELT, MARYLAND  
WALDORF, MARYLAND

**Via Hand Delivery**

D.C. Zoning Commission  
441 4<sup>th</sup> Street, N.W.  
Suite 210  
Washington, D.C. 20001

Re: Zoning Commission Case No. 99-5C

Dear Members of the Zoning Commission:

Enclosed please find twenty hard copies as well as one disk copy of the draft findings of fact and conclusions of law, as requested by the Commission at the February 10, 2000 public hearing on the above-captioned matter.

Please contact either of the undersigned if you feel we can be of any assistance. Thank you.

Very truly yours,

*Phil T. Feola/SES*

Phil T. Feola

*Sarah E. Shaw*

Sarah E. Shaw

Enclosures

cc: ANC 5A  
Office of Planning  
James Reyes

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DIST

ZONING COMMISSION  
ZONING COMMISSION  
CASE No. 99-5C  
District of Columbia  
CASE NO. 99-5  
EXHIBIT NO. 43

**DRAFT**

**ZONING COMMISSION ORDER NO. 871**  
**Case No. 99-5C**  
**(Consolidated Planned Unit Development and Zoning Map Amendment**  
**for Fort Lincoln New Town Corporation and**  
**Premium Distributors of Washington, D.C., L.L.C.)**  
**\_\_\_\_\_, 2000**

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on February 10, 2000, to consider an application from the Fort Lincoln New Town Corporation and Premium Distributors of Washington, D.C., L.L.C. for a consolidated review and approval of a Planned Unit Development ("PUD") and a related amendment to the Zoning Map of the District of Columbia for property located in Square 4325, Parcel 173/143, pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

**FINDINGS OF FACT**

1. On August 6, 1999, the Fort Lincoln New Town Corporation and Premium Distributors of Washington, D.C., L.L.C. ("Premium") (collectively, the "Applicant"), in cooperation with the District of Columbia Redevelopment Land Agency, filed an application with the District of Columbia Zoning Commission for the consolidated review and one-step approval of a PUD and related map amendment, from R-5-D to C-M-1, for the property located in Square 4325, Parcel 173/143 ("Subject Property"). (Statement of the Applicant, dated August 6, 1999, p. 1 ("Statement").)

DISTRICT OF COLUMBIA  
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2. On October 18, 1999, the Zoning Commission determined to set down the application for a public hearing.
3. A description of the project, including a description of the Subject Property, and notice of the public hearing was published in the D.C. Register on December 31, 1999 and mailed to all property owners within 200 feet of the Subject Property and Advisory Neighborhood Commission (ANC) 5A. (D.C. Register, dated December 31, 1999 pp.10620-10624.)
4. 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 (BZA).
5. The Subject Property is located within the Fort Lincoln Urban Renewal Area and is currently controlled by the District of Columbia and administered by the Department of Housing and Community Development. (Statement, p. 1.)
6. The Subject Property is comprised of 13.42 acres (584,652 square feet) of land area and is currently vacant. The Subject Property is located between Fort Lincoln Drive, N.E. and Commodore Joshua Barney Drive, N.E.,

approximately 120 feet south of Eastern Avenue, N.E., just southwest of the District of Columbia border with Prince George's County, Maryland. (Pre-Hearing Statement, dated November 18, 1999, pp. 1, 4 ("Pre-Hearing Statement").)

7. The Subject Property is situated in Ward 5 and is located in the mixed use moderate density commercial and production and technical employment land use categories of the Comprehensive Plan. (Pre-Hearing Statement, p. 13.)
8. Directly north and south of the Subject Property is vacant land. To the northwest of the site is the center of the Fort Lincoln New Town area and the Thurgood Marshall Elementary School. To the southwest are the Anacostia Park and the Anacostia River. (Pre-Hearing Statement, p. 4.)
9. The Subject Property is currently zoned R-5-D. The Applicant seeks to rezone the Subject Property to C-M-1. (Pre-Hearing Statement, p. 6.)
10. The R-5-D District permits all types of residential development. The R-5-D District permits a maximum FAR of 3.5 and a maximum height of ninety feet. The C-M-1 District is a commercial-light manufacturing district. The C-M-1 District permits an FAR of 3.0 and a height of forty feet, three stories. The C-M-1 District PUD guidelines permit an FAR of 3.0 and a maximum height of sixty feet. (Statement, p.6.)
11. The Subject Property is proposed to be developed with one building of 164,000 square feet of gross floor area and a total FAR of 0.30.

Approximately 32,000 square feet will be devoted to office and administrative space and 132,000 square feet will be used as warehouse distribution space. The facility will be approximately thirty-eight feet in height from the finished warehouse floor to the highest point of the building. The majority of the building will consist of one story, with a small portion of the building having two stories. The project will include parking for 132 cars and sixty-eight trucks. (Pre-Hearing Statement pp. 1, 8.)

12. The proposed project includes the following public benefits and project amenities:
  - a. approximately one million dollars in increased tax revenue to the District of Columbia; (Pre-Hearing Statement, p. 9.)
  - b. approximately 150 jobs will be retained in the District, of which approximately fifty percent are currently held by District residents; (Pre-Hearing Statement, p. 9.)
  - c. superior building design and extensive landscaping; (Pre-Hearing Statement p. 9; Exhibit \_\_.)
  - d. Premium will establish an annual scholarship of \$10,000 for a student at Thurgood Marshall Elementary school, to be placed in an interest-bearing escrow account to help fund the student's college education; (Pre-Hearing Statement p. 10.)

- e. Premium will donate all of its excess computers and printers to Thurgood Marshall Elementary School each time it upgrades its equipment, approximately every two to three years; (Pre-Hearing Statement, p. 10.)
  - g. the provision of a First Source Employment Agreement with the D.C. Department of Employment Services and a Memorandum of Understanding with the Department of Human Rights and Local Business Development. (Statement p.10.)
13. Premium is a beer distributor for Washington, D.C. and Montgomery County, supplying beer to area bars and retailers. Premium itself has no retail component. Currently, Premium is forced to work out of three different buildings due to its increased space demands. Through the proposed project, Premium will be able to consolidate all of its operations into one warehouse facility. (Testimony of J. Reyes, Tr. \_\_\_\_.)
14. The proposed project will allow Premium to maintain its presence in the District instead of building a similar facility in one of the nearby suburban jurisdictions. There is no legal requirement for Premium to keep such an extensive facility in the District of Columbia and Premium could maintain a simple storage space in the District, with very few employees, and still meet its legal requirement for a physical presence in the District. (Testimony of J. Reyes, Tr. \_\_\_\_.)

15. Premium has been working extensively with the Redevelopment Land Agency and the Fort Lincoln New Town Corporation to reach a workable agreement to obtain the Subject Property. The project has the support of the project received from both ANC 5A and Fort Lincoln Citizens Association. (Testimony of J. Reyes; Tr. \_\_.)
16. The benefits provided by the project, include keeping many jobs in the District as well as generating new jobs; increasing tax revenue by transferring government property to private ownership; investing in an Enterprise Zone and encouraging other businesses to do likewise; and improving the aesthetics of a major District gateway. Approximately fifty percent of Premium's employees are District residents and approximately seventy-five percent are minorities. (Testimony of J. Reyes, Tr. \_\_\_\_.)
17. John R. Lutostanski of VIK A Incorporated, who was recognized by the Commission as an expert in landscape architecture and site planning, described the topographical aspects of the Subject Property, including the quality of the soil and the way in which the Subject Property slopes, leading to a wide variation of land elevations. Mr. Lutostanski explained that given the unique aspects of the Subject Property, it is well suited to the proposed, single, large building use. (Testimony of J. Lutostanski, Tr. \_\_.)
18. Kyle U. Oliver also of VIK A Incorporated, who was recognized as an expert in civil engineering, explained Premium's plans for stormwater

management on the Subject Property. Mr. Oliver stated that there are no immediate plans by the District of Columbia to construct a regional stormwater facility for the Fort Lincoln area, so Premium will create a permanent on-site stormwater management dry pond. This pond will handle the majority of all on-site stormwater. The outfall will be released through an existing fifty-four inch line. An existing forty-two inch concrete stormwater pipe, located in the right-of-way of unbuilt Eastern Avenue, will convey the stormwater away from Fort Lincoln under the Fort Lincoln Cemetery, to the northeast, into the Anacostia River.

(Testimony of K. Oliver, Tr. \_\_.)

- 19 Mr. Oliver further explained that in developing this plan, it was discovered that the portion of the forty-two inch pipe, which is located in the right-of-way of unbuilt Eastern Avenue, is broken, and concerns were raised by the National Park Service as to the potential for stormwater back-up in this pipe and the impact such back-up could have on nearby wetlands. In response to these circumstances, Mr. Oliver stated that Premium has agreed to repair existing defects at the beginning of the forty-two inch pipe and provide subsurface maintenance to the interior portion of the pipe to allow for positive drainage from this pipe to the Anacostia River.

(Testimony of K. Oliver, Tr. \_\_.)

20. Steven E. Sher, recognized by the Commission as an expert in land use planning and zoning, submitted written testimony and testified that the



proposed PUD and map amendment, from R-5-D to C-M-1, will allow the proposed warehouse use. He stated that the Subject Property is located in the Fort Lincoln Urban Renewal Area. He further discussed the history of the Fort Lincoln Urban Renewal Plan, indicating that it originally included the Subject Property as part of a town center, a high rise, high density shopping, office, entertainment and cultural facilities center. When the Fort Lincoln Urban Renewal Plan was readopted in 1994, significant amendments were made, changing the designated uses of the Subject Property to service and employment, thereby specifically allowing for the warehouse use proposed by the Applicant. (Testimony of S. Sher, Tr. \_\_.)

21. Mr. Sher also addressed the project's consistency with the Comprehensive Plan. Specifically, Mr. Sher explained that the original September, 1985, Generalized Land Use Map of the Comprehensive Plan designated the site for mixed use medium density residential and medium density commercial; however, the current May, 1995, Generalized Land Use Map designates the site for mixed use moderate density commercial and production and technical employment categories, a designation compatible with the proposed warehouse use. Through written testimony, Mr. Sher described ways in which the proposed use of the Subject Property advances other elements and themes of the Comprehensive Plan. Mr. Sher concluded that the proposed project is not inconsistent with the Comprehensive Plan. (Testimony of S. Sher, Tr. pp. \_\_ ; Exhibit \_\_ .)

22. Mr. Sher further testified that the project requests no development incentives or variations from the standards of the C-M-1 District, that the project is far below the maximum density and that the C-M-1 District is the most appropriate for consistency with the Fort Lincoln Urban Renewal Plan and the Comprehensive Plan. (Testimony of S. Sher, Tr. pp. \_\_\_\_; Exhibit \_\_.)
23. The project architect, Brad L. Witko of Herring and Trowbridge Architects, was recognized as an expert in architecture. He described the building plans for the project and stated that the facility would be constructed with high quality materials. (Testimony of B. Witko, Tr. \_\_.)
24. Adam Steiner, landscape architect for the project, described the planned landscaping and how it would provide a visual buffer around the facility. (Testimony of A. Steiner, Tr. pp. \_\_.)
25. Martin J. Wells, recognized as an expert in traffic engineering, submitted a traffic impact analysis, a truck management plan and testified at the public hearing. Mr. Wells addressed questions about the traffic impacts of the project on the surrounding neighborhoods. Mr. Wells explained the truck management plan, describing how trucks would enter and leave the Subject Property. Mr. Wells stated that the proposed truck management plan will keep the trucks associated with the project off of nearby residential streets. Mr. Wells concluded that there will be no adverse traffic, parking or loading impacts caused by the project on the existing

traffic operations or the adjacent neighborhoods. (Pre-Hearing Statement;

Testimony of Martin J. Wells, Tr. pp.; Exhibit \_\_.)

26. The District of Columbia Office of Planning (OP), by memorandum dated February 4, 2000, and by testimony presented at the public hearing, recommended approval of the application subject to certain conditions outlined in the February 4<sup>th</sup> memorandum. OP concluded that the project is not inconsistent with the Comprehensive Plan and the Generalized Land Use Map and is consistent with the Fort Lincoln Urban Renewal Plan and corresponding maps. OP found that the project is consistent with the PUD evaluation standards as defined in DCMR Section 2400. (Testimony of Office of Planning, Tr. \_\_\_\_; Exhibit \_\_.)
27. OP testified that many of the concerns it had with the project have been adequately addressed by Premium, but that certain of its concerns remained. OP expressed concerns over the impact the project would have on the view from the planned residential development to the northwest of the proposed warehouse facility. OP recommended that the landscaping along this portion of the Subject Property be increased. (Testimony of Office of Planning, Tr. \_\_\_\_; Exhibit \_\_.)
28. OP also stated that Fort Lincoln Drive and Commodore Joshua Barney Boulevard had not been formally dedicated to the District of Columbia. OP recommended that a written agreement in which Premium assumes the responsibility for maintenance of these roads until such time as they are

formally dedicated to the District of Columbia, should be required before the project is approved. (Testimony of Office of Planning, Tr. \_\_\_\_; Exhibit \_\_\_\_.)

29. The Department of Health, by memorandum dated February 9, 2000, approved the proposed sediment control and stormwater management plan for the project. (Exhibit \_\_\_\_.)
30. Advisory Neighborhood Commission 5A submitted a resolution in support of the application to the record of this case. By action taken October 7, 1999, ANC 5A voted unanimously to support the application.  
  
Additionally, Robert King, Advisory Neighborhood Commissioner for Single Member District 5A-12, testified enthusiastically in support of the proposed project and submitted a separate letter in support of the proposed project. (Testimony of Robert King, Tr. \_\_\_\_; Exhibits \_\_ and \_\_.)
31. There was no opposition to the application.
32. At the close of the hearing, based on issues raised by the Commission and the Office of Planning, the record of the case was left open for the following:
  - a. site section demonstrating the distance between the proposed warehouse facility from the planned housing development to be built to the northwest of the Subject Property;
  - b. revised landscape plan showing increased landscaping along the Fort Lincoln Drive North;

- c. a proposed zoning condition regarding the maintenance of undedicated roads; and
- d. copy of the DOES Agreement.

The Applicant filed these materials with the Office of Zoning on February 18, 2000.

- 33. The Applicant's post-hearing site section, together with the revised landscape plan, demonstrate that due to the lower elevation of the Subject Property, the topographical changes between the two properties, the 355 to 445 foot distance from the nearest house to the warehouse and the proposed landscaping, the warehouse facility will not adversely impact the planned housing site. (Exhibits \_\_ and \_\_.)
- 34. The Commission concurs with the position of Premium, the Fort Lincoln New Town Corporation, the Redevelopment Land Agency, OP and ANC 5A that the consolidated planned unit development and map amendment applications should be approved.
- 35. The Commission finds that the Applicant has met its burden of demonstrating the appropriateness of the public benefits and other meritorious aspects of the proposal. Those benefits include increased tax revenue for the District, maintenance and potential increase in jobs for District residents, a scholarship program for and computer donations to Thurgood Marshall Elementary School, a First Source Employment Agreement with the D.C. Department of Employment Services and a

Memorandum of Understanding with the Department of Human Rights  
and Local Business Development.

36. The Commission finds that the proposed height and bulk of the project is appropriate for the Subject Property and will not adversely impact the surrounding area.
37. The Commission finds that the proposed warehouse facility is consistent with the Fort Lincoln Urban Renewal Plan designating the Subject Property as a service and employment center.
38. The Commission finds that this warehouse development is not inconsistent with the Comprehensive Plan, including the Generalized Land Use Map, which designates the Subject Property as appropriate for mixed use moderate density commercial and production and technical employment land uses.
39. The Commission further finds the C-M-1 District to be an appropriate zoning category to achieve the goals of the project.
40. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by action dated \_\_\_\_\_, found \_\_\_\_\_.

### **CONCLUSIONS OF LAW**

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interest of the District of Columbia.
2. The development of this PUD project 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.
3. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
4. The proposed PUD meets the minimum area requirements of Section 2401.1 of the Zoning Regulations.
5. Approval of this PUD application is appropriate because the application is generally consistent with the present character of the area.
6. The Commission takes note of the position of Advisory Neighborhood Commission 5A, and in its decision has accorded to the ANC the “great weight” consideration to which it is entitled.
7. The approval of the application 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.

8. The proposed application can be approved with conditions to ensure that development will not have an adverse effect on the surrounding area.
9. The application 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 this application for consolidated review of a planned unit development for Square 4325, Parcel 173/143 and the related map amendment from R-5-D to C-M-1. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by the architectural firm of Herring and Trowbridge Architects, and the landscape architecture firm of Lewis Scully Gionet, marked as Exhibits \_\_\_\_ and \_\_\_\_, as modified by the guidelines, conditions and standards of this order.
2. The project shall be a moderate density commercial development, consisting of a single building housing a warehouse and related offices.
3. The total floor area ratio (FAR) of the project shall not exceed 0.30, as shown on the plans marked as Exhibit \_\_\_\_.



4. The height of the project shall not exceed thirty-nine feet, measured from the warehouse floor to the highest point of the roof, as shown on the plans marked as Exhibit \_\_\_\_.
5. The project shall provide parking for approximately 132 cars and sixty-eight trucks as shown on the plans marked as Exhibit \_\_\_\_.
6. Premium shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including partitions, slabs, doors, hallway columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change the exterior configuration of the building, and to vary the location and types of parking spaces provided and other modifications to the below grade space to accommodate the needs of the Applicant and handicapped persons and required structural and mechanical building elements.
7. Premium shall institute and enforce the truck management plan, included in the record at Exhibit \_\_\_\_, for all of its drivers for delivery and/or pickups. Drivers violating this truck management plan shall be subject to discipline and possible termination.
8. Premium shall construct a permanent on-site stormwater management dry pond, the outfall of which will be released through an existing fifty-four inch line, with the stormwater conveyed away from the Subject Property

through the Fort Lincoln Cemetery to the northeast and into the Anacostia River as shown on the plans marked as Exhibit \_\_\_\_.

9. Premium shall repair the existing defects at the beginning of the existing forty-two inch concrete stormwater pipe ("Pipe") located in the right-of-way of unbuilt Eastern Avenue adjacent to the site and shall provide subsurface maintenance to the interior portion of the Pipe to permit positive drainage of stormwater from the Pipe to the Anacostia River until such time that the District of Columbia builds a regional stormwater system that supercedes the need for the Pipe.
10. Premium shall landscape the Subject Property in accordance with the revised landscape plan submitted as part of the post-hearing submissions and found at Exhibit \_\_\_\_ of the record.
11. Premium shall maintain those portions of Fort Lincoln Drive and Fort Lincoln Drive North that are adjacent to the site until such time as those streets are formally accepted by the District of Columbia as public streets.
12. Premium shall establish an annual scholarship of \$10,000 for a student at Thurgood Marshall Elementary school, to be placed in an interest-bearing escrow account to help fund the student's college education.
13. Premium will donate all of its excess computers and printers to Thurgood Marshall Elementary School each time it upgrades its equipment.
14. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of

utilizing District of Columbia residents for at least 51 percent of the jobs created by the project.

15. The Applicant shall enter into a Memorandum of Understanding with the Department of Human Rights and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by small, local and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security of the project to be created as a result of the project.
16. The change of zoning from R-5-D to C-M-1 for the subject property shall be effective upon the recordation of a covenant as required by 11 DCMR 2409.3, and discussed in Paragraphs 16 and 17 of this Order.
17. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this order, or amendment thereof, by the Zoning Commission.
18. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the Applicant has filed a certified copy of the covenant with the records of the Office of Zoning.

19. The consolidated 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, application must be filed for a building permit as specified in 11 DCMR 2408.8 and 2409.1. Construction shall start within three years of the effective date of this order.
20. Pursuant to D.C. Code Section 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the Applicants are required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the Applicants fail to comply with any provision of D.C. Law 2-38 as amended.

Vote of the Zoning Commission taken at its public hearing on April 10, 2000:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The order was adopted by the Zoning Commission at its public hearing on April 10, 2000, 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

\_\_\_\_\_.

\_\_\_\_\_  
Anthony J. Hood  
Chairperson  
Zoning Commission

\_\_\_\_\_  
Jerrily R. Kress, FAIA  
Director  
Office of Zoning