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January 30, 2003

**CHRISTINE MOSELEY SHIKER**  
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**VIA HAND DELIVERY**

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

Re: 5401 Western Avenue, N.W.  
Zoning Commission Case No. 02-17C  
**Proposed Findings of Fact, Conclusions of Law and Order**

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Dear Members of the Commission:

On behalf of the Applicant in the above-referenced case, enclosed please find twenty copies of the Applicant's Proposed Findings of Fact, Conclusions of Law and Order for the above-referenced case.

Should you have any questions or need additional information, please do not hesitate to call me.

Very truly yours,

*Christy Shiker*  
Christine Moseley Shiker

cc: Parties to Z.C. Case No 02-17C (***See Attached Proof of Service***)  
Ellen McCarthy, Office of Planning (Via Hand Delivery)  
Stephen Cochran, Office of Planning (Via Hand Delivery)

**ZONING COMMISSION**  
**District of Columbia**  
Case 02-17C  
Exhibit 218

**ZONING COMMISSION**  
District of Columbia  
CASE NO.02-17  
EXHIBIT NO.218

**PROOF OF SERVICE**

I hereby certify that on January 30, 2003, a copy of the foregoing Proposed Findings of Fact and Conclusions of Law was served on the following persons or organizations as stated below:

Advisory Neighborhood Commission 3E      ***(Via U.S. Mail)***  
PO Box 9953  
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(202) 244-0800

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c/o Tad DiBiase (3E03)  
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*Counsel for the following parties:*

*Friendship Heights Organization for Responsible Development  
Hazel Rebold  
Steve and Betsey Kuhn  
Jackie Braitman  
Martin Rojas*

Friendship Heights Organization for Responsible Development  
c/o Laurence Freedman      ***(Via U.S. Mail)***  
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\_\_\_\_\_  
Christine Moseley Shiker, Esq.  
Holland & Knight

**APPLICANT'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

**BEFORE THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**

**ZONING COMMISSION CASE NO. 02-17C  
(Consolidated Planned Unit Development and  
Zoning Map Amendment for 5401 Western Avenue, N.W.)  
[Date of Final Action]**

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Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on November 14, 2002, December 12, 2002, and December 16, 2002, to consider applications from 5401 Western Avenue Associates, LLP, and the Abraham and Louise Lisner Home for consolidated review and one-step approval of a Planned Unit Development and a Zoning Map Amendment (collectively, the "Applications"). The Zoning Commission considered the Applications 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 Applications.

**FINDINGS OF FACT**

**The Applications, Parties and Hearing**

1. On March 22, 2002, Stonebridge Associates 5401, LLC, on behalf of 5401 Western Avenue Associates, LLP, and the Abraham and Louise Lisner Home for Aged Women (the "Lisner Home"), the owners of the subject property (collectively the "Applicant") filed Applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment. The subject property is located at the intersection of Western Avenue, N.W., and Military Road, N.W., and consists of Lot 805 and a portion of Lot 7 in Square 1663 (the "Site"). Lot 805 is zoned R-5-B and is currently developed with the Washington Clinic (the "Washington Clinic Land"). The portion of Lot 7 is zoned R-2 and is currently part of the western edge of the Lisner Home's grounds (the "Lisner Land"). The Applications originally requested rezoning of the Site to R-5-D. Since that time, the Applicant has modified the Applications to request rezoning of only the Washington Clinic Land to R-5-C. No zoning change is requested for the Lisner Land .
2. The Zoning Commission held public hearings on November 14, 2002, December 12, 2002, and December 16, 2002.

3. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 3E, the ANC within which the Site is located, the Friendship Heights Organization for Reasonable Development ("FHORD"), Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, and Martin Rojas. The Commission granted party status to ANC 3/4G, over the Applicant's objection, after waiving the rules to accept the late-filed request for party status. The Zoning Commission denied party status to the Chevy Chase Plaza Children's Center (the "Children's Center"), stating that the Children's Center was part of the Applicant's case. The Zoning Commission also denied party status to the Chevy Chase Citizen's Association, finding that the request did not meet the requirements for the Association to be granted party status. The Zoning Commission determined the parties to the case at the November 14, 2002, public hearing.
4. On October 31, 2002, FHORD submitted its request for party status along with a motion for summary dismissal (Exhibit 94 in the record). In this motion, FHORD argued that the proffered amenities do not meet the standards for approval of a PUD and that the Applications lack the information necessary for consideration by the Zoning Commission.
5. The Applicant filed a response to this motion on November 7, 2002, (Exhibit 104 in the record) opposing the motion for summary dismissal because the proposed amenities package clearly meets the standards for approval of a PUD and the Applicant's three submissions, which are the basis of the Applications, sufficiently evidenced the purposes and objectives of the project, including the proposed form of the development and how the Applications meet the PUD evaluation standards of Section 2403, such that the Commission has sufficient information to move forward.
6. FHORD filed a supplemental memorandum (Exhibit 132 in the record) raising additional bases for the motion for summary dismissal, including calculation of gross floor area and the measurement of height. The Commission heard arguments on the motion at the November 14, 2002, public hearing and concluded that the issues raised in the motion would be reviewed during the course of the hearing and therefore, there was no basis for summary dismissal. The Commission voted 5-0-0 to deny the motion. The specific issues are addressed in Findings 84 through 86.
7. At the November 12, 2002, public hearing, FHORD objected to the posted notice. The Zoning Commission requested further briefing on the notice issue. As discussed in Findings 74 through 83, the Zoning Commission extensively reviewed the notice issue through these submissions and concluded that notice was properly given and that in any event, the parties raising the objection had actual notice of the hearing, as stated in Finding 83 and Conclusion 13.

8. On November 5, 2002, ANC 3/4G also filed a Request for Continuance with the Zoning Commission, seeking additional time in which to prepare its response to the Applications. The Applicant opposed the motion because ANC 3/4G had sufficient opportunity to review and assemble its response to the above-referenced project, as evidenced by its chairperson's participation in early meetings and the extent of the Applicant's work with the community in general. The Commission determined that this motion was moot in light of the Commission's postponement of the proceedings to December 12, 2002, after the Applicant's direct presentation on November 14, 2002. The Commission stated that the proposed schedule actually gave the parties more time to prepare for cross-examination and their presentations.
9. On November 25, 2002, ANC 3E filed a request with the Zoning Commission to change the date of the scheduled December 12, 2002, hearing, citing a conflict with its regularly scheduled monthly ANC meeting. The Applicant objected to this request by letter dated December 3, 2002. The Zoning Commission denied the request to change the date of the scheduled hearing at the December 12, 2002, public hearing. ANC 3E designated a representative, Tad DiBiase, to testify at the hearing. Mr. DiBiase testified at the December 12, 2002, hearing.
10. At its February 24, 2003, meeting, the Zoning Commission took proposed action by a vote of \_\_\_\_ to approve with conditions the Applications and plans presented at the public hearings.
11. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated \_\_\_\_\_, found that \_\_\_\_\_.
12. The Zoning Commission took final action to approve the Applications on \_\_\_\_\_.

**The Site and the Area**

13. The Site is situated in Ward 3 at the intersection of Western Avenue, N.W., and Military Road, N.W., and is comprised of Lot 805 (the Washington Clinic Land) and a portion of Lot 7 in Square 1663 (the Lisner Land). The Washington Clinic Land contains approximately 43,840 square feet of land area. The original Applications included approximately 14,380 square feet of Lot 7. However, due to modifications to the design resulting from work with the community, the portion of Lot 7 was modified and included 15,000 square feet at the time of the hearing.

14. The total Site area subject to the Applications is 58,840 square feet. Its triangular configuration extends east of the intersection approximately 370 feet along Western Avenue and 428 feet along Military Road. An interior lot line boundary is shared with the Lisner Home along the east side of the Site. The Site slopes down from its eastern boundary to the low point at the intersection of the streets. The change in elevation is roughly equal to one floor.
15. The Generalized Land Use Map of the Comprehensive Plan designates the Site as a Housing Opportunity Area, as part of a Regional Center, one of only two such designations in the entire city, and in the institutional land use category.
16. The Washington Clinic Land is currently developed with a three story building with a basement used as the Washington Clinic for the past fifty years and is zoned R-5-B. The Lisner Land is currently part of the Lisner Home's grounds and is zoned R-2.
17. The Site is located in Friendship Heights, approximately 250 feet from the entrance to the four portal Friendship Heights Metrorail and Metrobus stations. The Site is surrounded by commercial, retail and residential development. The character of the area reflects the height, density and use expected at a major node on a major commercial corridor, which includes the Mazza Gallerie Shopping Center, Chevy Chase Pavilion, Friendship Center, and Chevy Chase Plaza.
18. The Site is not a designated historic landmark nor is it within a historic district.

### **Zoning and Development History**

19. In the comprehensive rezoning in 1958, the Site and the areas to the east and southeast were zoned R-2. In 1974, the Washington Clinic Land was rezoned to R-5-B. At that time, the Friendship Heights Metrorail station was planned but not constructed. The property immediately abutting the Site is Lot 7 in Square 1663, which is used for a home for indigent, elderly individuals who are residents of the District of Columbia, known as the Lisner Home. The Lisner Home property is zoned R-2 and the existing building has a height of approximately thirty feet. Neither the Washington Clinic Land nor Lot 7 have been rezoned since 1974.
20. To the south of the Site, immediately across Military Road in Square 1661, are mixed used developments approved through the PUD process. The maximum zoning height in this square is 100 feet. Square 1661 is zoned C-3-B and R-5-D, but has been developed through the PUD process. The square includes townhouses in the eastern portion of the square with maximum heights of forty-five feet. Further to the southwest of the Site is the Mazza Gallery, which is zoned C-3-A and has a maximum height of sixty feet with 3.0 FAR.

21. To the north, immediately across Western Avenue in Montgomery County, Maryland, is a commercial office building with a height of 143 feet and an FAR of 4.0. Adjacent to that site is the Chevy Chase Center, which has been approved for redevelopment, including a 300,000 square foot, ninety foot high mixed-use building. These properties, and those further to the north and northwest, are within Montgomery County, Maryland.
22. Residential developments are found to the east and southeast of the Site and are within the R-2 District. No detached single family residence immediately confronts the above-grade portions of the Project. The closest detached single family residence is over 240 feet away from the building on the south side of Military Road.

### **Existing and Proposed Zoning**

23. The Site is currently zoned R-5-B and R-2. The R-5 Districts are designed to permit a flexibility of design by permitting in a single district all types of urban residential development which conform to the height, density and area requirements established for each district. The R-5-B District permits moderate height and density. The R-5-B District permits a maximum height of fifty feet, with no limit on the number of stories, and a maximum FAR of 1.8. An apartment house in the R-5-B District is permitted as a matter of right, and parking is required at a rate of one space for each two dwelling units. A PUD in the R-5-B District may have a maximum height of sixty feet, with no limit on the number of stories, and a maximum FAR of 3.0, devoted entirely to residential use.
24. The R-2 District includes those areas that have been developed with one-family, semi-detached dwellings. The R-2 District permits a maximum height of forty feet, with a limit of three stories. The Zoning Regulations do not prescribe a maximum FAR in the R-2 District; however, the maximum lot occupancy for all structures, except churches or public schools, is forty percent, creating an effective FAR of 1.2. A PUD in the R-2 District may have a maximum height of forty feet and a maximum FAR of 0.4, devoted entirely to residential use.
25. The requested zoning for the Site is R-5-C for the Washington Clinic Land. The R-5-C District permits medium height and density. The R-5-C District permits a maximum height of sixty feet, with no limit on the number of stories, and a maximum FAR of 3.0. An apartment house in the R-5-C District is permitted as a matter of right, and parking is required at a rate of one space for each three dwelling units. A PUD in the R-5-C District may have a maximum height of seventy-five feet, with no limit on the number of stories, and a maximum FAR of 4.0, devoted entirely to residential use.
26. In response to the community's concerns regarding rezoning of the Site, as discussed in Findings 87 through 106, the Applicant did not request a change in the zoning designation of R-2 for the Lisner Land.

**The PUD Project**

27. The Applicant originally filed the Applications in March, 2002, having first started meeting with community representatives seven month earlier in September, 2001. The project proposed in the PUD Submission, filed with the Zoning Commission on March 22, 2002, at Exhibits 1 through 6 in the record, (the "PUD Submission"), included a for-rent apartment house with a maximum of 225 units with an FAR of 4.1, including approximately 7,200 square feet of ground floor retail fronting on and accessed from Western Avenue (the "Original Proposal"). The maximum height of the Original Proposal was ninety feet on Western Avenue, with the height of the eastern portion of the Original Proposal stepping down to fifty-two feet, eight inches, and ultimately to forty-two feet, eight inches at the southeast corner facing Military Road at 43<sup>rd</sup> Street. Between 218 and 250 parking spaces were proposed in a three level, below-grade parking garage. All access to the parking garage as well as the loading docks was proposed to be from Western Avenue. A primary lobby entrance along with a lay-by were proposed for access from Military Road.
28. On August 19, 2002, the Applicant filed a revised project in its prehearing submission, at Exhibits 33, 33A and 33B in the record (the "Prehearing Submission"). In the Prehearing Submission, the Applicant significantly revised the Original Proposal in response to the Applicant's continuing work with members of the community and the Office of Planning. In the Prehearing Submission, the Applicant made the following major changes: reduced the number of units from between 200 and 225 units to between 185 and 215 units; reduced the total FAR from 4.1 to less than 4.0; modified the design to eliminate the wing of the building closest to the single family neighborhood to the east; increased the setback from the closest single family home from 110 feet to 180 feet; modified the design to preserve all of the existing mature trees on the area formerly designated as a play area; eliminated the 7,000 square feet of retail use; incorporated 3,000 square feet for expansion space for the Children's Center, previously created as an amenity to the Chevy Chase Plaza Planned Unit Development; incorporated a Transportation Management Plan; added off-site road improvements to improve the existing traffic situation in the Friendship Heights area (the "Modified Proposal"). The changes created a development that had less of an impact on the nearby residential community and was more compatible with the surrounding area
29. The Applicant continued to work with ANC 3E, community representatives and the Office of Planning. In response to those comments and negotiations, the Applicant further modified the scope and design of the project in its supplemental prehearing submission filed with the Zoning Commission on October 25, 2002, at Exhibits 79 and 79A in the record (the "Supplemental Prehearing Submission"). The Supplemental Prehearing Submission was filed with the Zoning Commission in accordance with Section 3013.8 of the Zoning Regulations.



30. The Supplemental Prehearing Submission proposed a smaller project than the earlier proposals, including a reduction in density of more than twenty percent, a reduction in height by two stories, and a reorganization of the massing and site placement to reduce impacts on the community. Specifically, the Applicant proposes the construction of a for-sale apartment house with a maximum of 125 units (the "Project"). The Project includes spaces to be used as a child care facility (the "Day Care Center").
31. The Project situates the entire mass of the building on Western Avenue. The building on Western Avenue includes a ground level plus seven stories and has a maximum height of 78.75 feet. The Project consists of a single bar along Western Avenue, with an FAR of 4.15 based only on the Washington Clinic Land and a gross floor area of approximately 182,000 square feet. The total FAR based on the Site is only 3.14 FAR.
32. The building is curved at the intersection of Western Avenue and Military Road across from the Chevy Chase Pavilion in order to create a street presence on Military Road. The Project focuses its density on the Western Avenue frontage, away from the low-rise residential development that exists east and southeast along Military Road. Specifically, the residential building is set back approximately 240 feet from the nearest detached single family dwelling and approximately 170 feet from the nearby townhomes. The footprint of the residential building runs parallel to the Western Avenue property line, while the short exposure of the residential "bar" fronts onto Military Road.
33. The massing of the Project is articulated with setbacks, bay windows, balconies and trellis elements. A distinct massing form and entrance canopies mark residential lobby entrances, while a unique curved façade frames the publicly accessible green lawn. The landscaped southeast "green" opens up to public space along Military Road. This green space represents approximately 24,700 square feet (more than one-half of an acre) of open space to provide not only a significant buffer to the residential neighborhood to the east but to create an attractive passive recreation area. The open space is focused on a central green for use by both the community and the residents of the project. A hardscape path connects the vehicular lay-by and the public sidewalk along Military Road to the entrance of the residential lobby. The residential building's lobby extends through the building at its western edge, providing pedestrian access on both Western Avenue and Military Road.
34. The primary exterior facing material for the Project will be red brick. Several different shades will be used to render the Project's distinct massing elements. Painted aluminum window systems will be incorporated throughout. Cast stone or concrete horizontal trim will articulate some floor levels, copings and window openings, while painted trellis-work will add rich detailing to the façade.

35. The Project includes a two level below-grade parking garage, accessed off Western Avenue, away from the residential community along Military Road. The Project will provide at least 1.1 parking spaces per dwelling unit plus four parking spaces for the day care center. The Project's eight visitor parking spaces will be located in a surface lot adjacent to the Day Care Center. Ingress and egress points to the below-grade parking are aligned with the signalized intersection at Western Avenue and Wisconsin Circle. This configuration results in enhanced operational efficiency and safety at the Site because the alignment will improve sight distances, reduce driver uncertainties, and minimize east-west conflicts. The below-grade parking garage will also include a minimum number of bicycle parking spaces equal to twenty percent of the total number of dwelling units.
36. The Project provides one twelve foot by fifty-five foot loading berth, with a 200 square foot loading platform, and one ten foot by twenty foot service delivery space. The loading facilities are located in the northeast corner of the residential building.
37. The Project provides pedestrian access across the Site via a pedestrian path along the eastern side of the Site, connecting Military Road to Western Avenue. The path is framed by light poles and low retaining walls. The path will provide a short cut between the residential areas on the south side of Military Road and shopping and public transportation destinations located north of Western Avenue.
38. The Project provides a Day Care Center. At the conclusion of the hearings, the Zoning Commission requested additional details related to the design of the Day Care Center. The more detailed plans, found at Exhibit 212 in the record, illustrate that the Day Care Center has been designed to minimize the visual impact of the structure and to blend in with the existing Lisner Home. The proposed one story structure is cut into the existing slope of the ground, thereby minimizing the visual impact of the structure. The enclosing walls have been designed to mimic the form and articulation of the existing retaining walls around the adjacent Lisner Home patio and the brick color, size, texture and pattern match that used for the Lisner Home. The Day Care Center is allocated four parking spaces in accordance with the Zoning Regulations and will use the visitor parking spaces during the morning drop-off and afternoon pick-up to avoid any parking in neighborhood streets.

**Public Benefits and Project Amenities**

39. The following superior benefits and amenities will be created as a result of the PUD project:
  - a. *Housing.* The creation of additional housing in this area of Ward 3 is a significant amenity to the community. The Project constitutes a new residential

development in an area designated as a housing opportunity area by the Land Use element of the Comprehensive Plan and in an area designated as a Regional Center. The location of the Site is ideal for a housing development: the project sits approximately 250 feet from the entrance to the Friendship Heights Metrorail and Metrobus stations and in the heart of the Friendship Heights neighborhood. The Project will be a key part of the total urban living system in this portion of Ward 3, with its proximity to transportation, shopping and recreation. The creation of housing at the Site is also an important opportunity due to the already built nature of Ward 3 and the lack of sites for new residential development.

- b. Affordable Housing.* The Applicant will include affordable housing in the Project to further the important goal of housing in this Housing Opportunity Area as well as the goals of the Comprehensive Plan. Five percent of the increased square footage over that permitted as a matter-of-right (or 5,514 gross square feet) will be devoted to affordable housing for those households who earn no more than the low income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program. This amenity is especially important because it does not simply contribute to a trust or other fund to construct affordable housing in another area of the District, it provides affordable housing in Ward 3 – an area in significant need of affordable housing. In fact, this PUD is the first residential PUD to voluntarily include affordable housing as part of its amenities package.
- c. Day Care Center.* In an effort to achieve the goals of the Comprehensive Plan to expand child care facilities in Ward 3, the Applicant will provide a separate building of approximately 3,000 square feet that will accommodate no more than 44 children at the Day Care Center. The Applicant plans to lease this space for fifty years with a rent not to exceed \$1.00 annually to the Children's Center, which will allow the center to more than double its capacity. The Children's Center is a not-for-profit organization that was created as a result of a public amenity for the PUD for the Chevy Chase Plaza to provide space for a community-based day care facility. To ensure that the space creates no adverse impact because of traffic issues and parking in the neighborhood, the Applicant will provide parking in the adjacent surface spaces during the morning and afternoon drop-off and pick-up periods.
- d. Urban Design and Architecture.* The Applicant has presented an exceptional architectural design and site plan for the Project at this location. The Project locates the entirety of its density on Western Avenue, approximately 240 feet from the nearest single family home. The placement of the building on the Site, exclusively on the Washington Clinic Land and along Western Avenue, minimizes any adverse impacts resulting from the height on the adjacent

community. Furthermore, the Project incorporates a paved, landscaped walkway from Military Road to Western Avenue to provide access for the public from the residential areas to the commercial and retail areas. The path is framed by landscaped plantings and light poles on each side to create a safe, lighted environment for the community.

- e. Open Space and Landscaping.* The Project provides significantly more open space than is required under the R-5-C District and, in fact, provides more open space than is required under the R-5-B District, the current zoning of the Washington Clinic Land. To create this open space, the Project provides an expansive green space in the southern and eastern portions of the Site, encompassing approximately 24,700 square feet devoted to trees, shrubs and groundcover. Moreover, the Project will include significant enhancements to the existing streetscape with plans to improve the landscaping within the fifteen foot building line setback along Military Road and to widen the sidewalk along Military Road. This enhancement to the streetscape also serves to provide additional improved open space as an amenity to the community. The Applicant also proposes improvements to the landscaping on Western Avenue.
- f. Transportation Features.* The Project is located immediately adjacent to the Friendship Heights Metrorail and Metrobus station as well as significant commercial development. Of most importance, this proximity results in a significant portion of site trips being by transit or other non-passenger car modes. Despite the fact that the Project has no adverse impacts on the area, the Applicant proposes a Transportation Management Plan, as described in the Prehearing Submission at Exhibits 33, 33A, and 33B in the record. A Transportation Management Plan in connection with residential development is unique in the District, and this plan incorporates innovative methods to encourage a reduction in passenger car trips, increase transit use, and further the District's policies on transit-oriented development.
- g. Traffic and Safety Improvements.* The Applicant's traffic engineer, O.R. George & Associates, has completed a study identifying roadway improvements which would serve to benefit the community. The Applicant proposes improvements along 43<sup>rd</sup> Street, Military Road and Western Avenue to mitigate and enhance existing traffic operational and safety conditions, as set forth in the Prehearing Submission at Exhibits 33, 33A and 33B in the record. The Applicant will work with the District Department of Transportation to refine and implement these proposed measures intended to improve traffic conditions in the neighborhood.
- h. Parking.* In response to the community's desire for adequate parking, the Project provides for parking at the minimum rate of 1.1 parking spaces per dwelling unit,

which is three times more than that required by the Zoning Regulations, and four parking spaces for the day care facilities, as required by the Zoning Regulations. Based on the traffic consultant's analysis of the most recent available census data and comparable projects, it is concluded that the proposed parking is more than sufficient to meet demand and will help prevent overflow onto neighboring streets. In fact, based upon the traffic consultant's analysis, the Applicant is providing parking at a rate that is at least ten percent, and on average thirty-three percent, higher than comparable residential projects. Further, the Applicant will provide free parking for visitors of the Project as well as free parking for the Day Care Center during the morning and afternoon drop-off and pick-up periods.

- i. Improvements to Chevy Chase Park.* The Applicant will improve the Chevy Chase Park in the District near the Site. Chevy Chase Park was the first park in the District to be revitalized by its community in a public-private partnership. Significant improvements were made to the playground area, baseball field and hard court surfaces. The Friends of Chevy Chase Park (the "Friends") is a volunteer-based group coordinating the efforts of the community to improve and maintain this highly used amenity. The Friends have identified two major upgrades it wants to make to the Park – a track around the existing ball field and enhancements to the playground area. The track (which will require grading and drainage improvements) is to be used for joggers, walkers, teaching children how ride bikes and the like. The enhancements to the playground area include improvements to the picnic and sitting areas. The Applicant will complete these improvements for the community.
- j. Construction Management Plan.* The Applicant agrees to abide by a construction management plan in an effort to minimize any potential adverse impacts resulting from the construction of the project. The construction management plan is discussed in more detail in Findings 171 through 179.

#### **Development Incentives and Flexibility**

40. The Applicant requests the following areas of flexibility from the R-5-C and PUD standards:
  - a.* Approval of a day care center in the R-2 District otherwise requiring Board of Zoning Adjustment pursuant to Section 205 of the Zoning Regulations;
  - b.* Approval of a 13.75 foot increase in the height of the building over that permitted as a matter-of-right in the proposed R-5-C District, including five percent permitted by Section 2405.3, for a total height of 78.75 feet; and

- c.* Approval of a 1.15 FAR increase in residential gross floor area over that permitted for as a matter-of-right in the proposed R-5-C District, including five percent permitted by Section 2405.3, for a total FAR of 4.15 for the residential building on the Washington Clinic Land only.

**Office of Planning Report**

41. By report dated November 4, 2002, corrected November 7, 2002 and further clarified on November 14, 2002, (final report at Exhibit 146 in the record) and through testimony presented at the public hearings, the Office of Planning ("OP") recommended approval of the Applications with specified conditions. The OP strongly recommended approval of the Applications, noting that development of the condominiums proposed, at a density greater than would be allowed under matter-of-right zoning, is consistent with the Comprehensive Plan. The OP found that the Project achieves an unusually high level of public benefits for a residential PUD, without significant negative impacts on the surrounding neighborhood.
42. The OP recommended that the Commission approve the application with certain conditions:
  - a.* The continued refinement of the location of the two Western Avenue entries and of the geometry of the eastern entry;
  - b.* The development of acceptable procedures for the execution and maintenance of the agreement to provide four to six for-sale affordable residences in the building, with total net square footage equal to five percent of the Project's additional net square footage enabled by the approval of the PUD application;
  - c.* The refinement of the Construction Management Plan, including procedures for the selection of the Advisory Committee, and a greater emphasis on ensuring excavation methods that prevent damage to adjacent residences;
  - d.* The provision of complete procedures for the execution of the proposed Transportation Management Plan;
  - e.* The provision of detailed elevation drawings, in color, and sample building materials.
  - f.* The clarification of where parking would be located in a 1.1 ratio if more than 110, up to the maximum of 125 residential units, were constructed.
43. The OP supported the Project because:

- a.* The Project is consistent with the Comprehensive Plan and would bring needed market-rate housing to the District at an appropriate Transit-Oriented Development ("TOD") location that is both a Housing Opportunity Area and a designated Regional Center;
- b.* The location of such housing, with its TOD emphasis, promotes sound land use patterns at local and regional levels;
- c.* This housing will be for home-ownership;
- d.* Consistent with the Ward 3 element of the Comprehensive Plan and the 1974 Friendship Heights Sectional Development Plan, the Project would voluntarily include the first "affordable" housing in a market rate housing project in Ward 3, and with no cash subsidy from the District taxpayers;
- e.* This affordable housing will be for owner-occupants;
- f.* The District Division of Transportation has stated that there would be no measurable traffic or parking impact on the Friendship Heights community;
- g.* The Project will provide additional day care consistent with the Comprehensive Plan;
- h.* The Project will provide a substantial buffer of landscaped open space between the proposed development and the nearby single family homes consistent with the Comprehensive Plan;
- i.* The height of the Project will modulate between the taller development to the northwest and southwest and the single-family homes to the east and southeast;
- j.* The Applicant has agreed to provide an unusually high level of public benefits and amenities, especially for a residential project;
- k.* The Applications meet the requirements and standards of Chapter 24 of the Zoning Regulations; and
- l.* As modified in the Supplemental Prehearing Submission, the Applications represent an exemplary use of the PUD mechanism.

**District Department of Transportation**

44. In its reports dated October 8, 2002, November 13, 2002, January 2, 2003, and through testimony at the December 12, 2002, public hearing, the District Division of

Transportation, (“DDOT”) supported the Applications. The DDOT concluded that as shown by the Applicant’s transportation studies and verified by DDOT, vehicular traffic generated by the project can be accommodated with little or no negative impacts on the area road network. This report also found that the proposed parking is adequate to service the project and minimize parking spillover into the neighboring residential area.

45. In its October 8, 2002, report, the DDOT noted that the access design to the garage and loading facility were not acceptable. In response to that comment, the Applicant revised its proposal to address this issue by creating one entranceway for residents and a separate entranceway to be used for access to the loading area. In addition, the Applicant represented that deliveries will be scheduled at non-rush hour times so as not to interfere with the flow of visitors to the parking lot and parents dropping of children at the day care center. The DDOT found these design modifications acceptable, as stated in its November 13, 2002, report.
46. Furthermore, the DDOT initially had concerns regarding the proposed lay-by on Military Road. In its November 13, 2002, report, the DDOT accepted the proposed lay-by under the condition that management of the day care center sends letters to all parents of the day care center informing them that use of the lay-by as a drop off/pick up is forbidden and under the condition that the Applicant place signs at the lay-by restricting its use to a five minute period.
47. Colleen Smith and Kenneth Laden testified on behalf of the DDOT at the December 12, 2002, public hearing. In her testimony, Ms. Smith concluded that the Project will have no significant impact with regard to capacity and levels of service at the critical intersections of Western Avenue at Wisconsin Avenue and Military Road at Western Avenue. Ms. Smith also testified that the Applicant proposes a transportation management plan, and Mr. Laden stated that this plan is consistent with what the DDOT would recommend.
48. At the December 12, 2002, public hearing, the Zoning Commission requested that DDOT provide information to the Commission as to the applicability of the Residential Parking Permit (“RPP”) program to the residents of this project. By memorandum dated December 26, 2002, found at Exhibit 215 of the record, the DDOT responded to this request and concluded that residents of this project would be able to petition for RPP status once they established residency that would allow them to park in any RPP parking space in Ward 3.
49. In addition, the Zoning Commission requested that DDOT review the 2002 Census data regarding commuting patterns to work to determine whether any communities had approximately fifty percent or more of the commuters using transit. The DDOT provided this information in its memorandum dated December 26, 2002, made part of the record as



Exhibit 215. The DDOT concluded that nine communities had this transit rate. The DDOT concluded that the estimate of a fifty percent transit modal split for a condominium project within several hundred feet of a Metrorail station and several major bus lines is a reasonable estimate. DDOT stated that this estimate is based upon a transit use analysis conducted by the Metropolitan Washington Council of Government for another residential development project in the Friendship Heights area.

50. At the December 16, 2002, public hearing, the Zoning Commission requested that the traffic summary provided by Joe Mehra on behalf of FHORD be submitted to DDOT for review and comment. By memorandum dated January 2, 2003, the DDOT reaffirmed its earlier finding that the Project would not have an unacceptable impact on traffic and found that Mr. Mehra's issues were without merit based on the following:
- a. The DDOT concluded that the August, 2002, counts were secondary counts and were not required by DDOT standards. DDOT stated that the primary analysis based on traffic counts conducted during January and February 2002, combined with the secondary weekend traffic data analysis, adequately represented actual traffic conditions. Furthermore, the DDOT concluded that its primary concerns are of weekday commuting traffic, which DDOT determined was sufficiently addressed by the traffic analysis and studies of the Applicant's traffic consultant.
  - b. The DDOT noted that upon its request, the Applicant's traffic consultant reduced the trip generation rate from sixty-five percent to fifty percent. DDOT concurred with the Applicant's traffic consultant's conclusion that there will be no significant increase in the trip generation for the Site during the AM and PM peak hours. DDOT noted that the Project is within walking distance of retail and commercial activities.
  - c. The DDOT stated that it requires the use of the Highway Capacity Manual (HCM) procedure to calculate levels of service at signalized and unsignalized intersections for site impact analysis. Accordingly, DDOT agrees with the Applicant's traffic consultant's analysis of levels of service using the HCM software.
  - d. The DDOT stated that the growth rate of two percent used for average daily traffic (ADT) data is considered acceptable to the DDOT. The majority of growth occurred on Wisconsin Avenue, north of Western Avenue, but this growth rate (3.4%) is balanced out by the much smaller growth rates (less than 1%) for the four locations that were studied.

- e. The DDOT concluded that the Project would generate approximately fifteen percent fewer AM and PM peak trips compared with the number of trips generated by the existing Clinic use.
- f. The DDOT noted that parking for the Project consists of 141 spaces: 137 spaces for condominium units and four spaces for the day care center (with 10 employees). Under the Zoning Regulations, the minimum total required parking for the proposed development is forty-five spaces: forty-two spaces for the condominium units and three spaces for the Day Care Center (with ten employees). The DDOT concluded that the Applicant is therefore providing ninety-six parking spaces beyond what is required. DDOT stated that it stands by its analysis that this figure is more than adequate for the circumstances.
- g. The DDOT agreed with the Applicant's traffic consultant's analysis and concluded that the parking garage access will be a part of the Western Avenue and the Wisconsin Circle signal system and as such, will be as safe as any signalized intersection. With regard to the loading relocation and the eight visitor parking spaces, DDOT recommended the separation of the garage entrance and the loading access, which was subsequently incorporated into the proposed development. DDOT requested as a condition that deliveries to the proposed development be made during non-rush hours so as not to interfere with the egress and ingress of parents dropping off children at the Center. This condition will eliminate any truck/children conflicts.

### **ANC 3E Report**

- 51. By letter dated November 14, 2001, ANC 3E submitted a resolution opposing the project by a vote of the 3-2 at its monthly public meeting on November 7, 2002. Commissioners present were Jill Diskan, Chris McNamara, Tad DiBiase, Frank Gordon and Leslie Krafft Quynn. The resolution was approved by a vote of 5-0. The resolution can be found in the record at Exhibit 137.
- 52. The resolution specifically states that a majority of the Commissioners think that the Project merits approval, but one of these three Commissioners feels that the ANC position should reflect the sentiment expressed by the neighbors.
- 53. The resolution stated that the ANC 3E heard presentation from the Applicant at three public meetings, including two devoted almost entirely to the proposed PUD, and heard presentations from FHORD and from OP, as well as comments and questions from individual community members.

54. The resolution further states that even though the Applicant has made significant modifications to its original proposal, including reducing the requested square footage, reducing the height, preserving the green space, locating the mass on Western Avenue, increasing the distance from its building to the nearest single family residence, locating the child care facility on the Western Avenue frontage, and adding an affordable housing component, members of the community oppose the requested zoning change and the proposed 8-story, 78.75 foot high, 182,000 square foot project and feel strongly that the proposed development is not consistent with the scale or character of the neighborhood, and that a development allowed under R-5-B zoning, though it would be significantly denser than the surrounding neighborhood, could be consistent with the scale and character of the neighborhood.
55. Tad DiBiase, ANC Commissioner 3E03 testified on behalf of ANC 3E at the December 12, 2002, public hearing. Mr. DiBiase testified that the Applicant negotiated with both the neighborhood and the ANC and improved the Project in many ways. Mr. DiBiase noted that if the Project was looked at in a vacuum, he and at least three other ANC commissioners would have voted to support the Project. Mr. DiBiase testified that the Project is attractive and seems to work well. However, he could not vote to support it due to the zoning history of the neighborhood. Mr. DiBiase noted that, in his opinion, zoning is about expectations and boundaries. He noted that specifically, the neighborhood has expectations as to the zoning and the current zoning boundaries. Mr. DiBiase concluded that the Project does not fit within those expectations and boundaries and is too much for the Site.
56. The Zoning Commission afforded the views of the ANC 3E the "great weight" to which they are entitled, as set forth in Findings 210 through 211.

### **Letters and Testimony in Support**

57. The Children's Center testified at the December 16, 2002, hearing and made written submissions in support of the project. Lisa Danahy, the Executive Director for the Chevy Chase Plaza Children's Center, testified that the Children's Center, an non-profit corporation, was established in 1989 as an amenity in for a PUD granted in Zoning Commission Order No. 519. The Children's Center is located one block from the proposed PUD and will operate the expansion space provided as part of the PUD application. Ms. Danahy testify that the Children's Center is a community-based organization that serves the immediate neighborhood. Eighty-seven percent of the current families live or work in Ward 3 and fifty-eight percent of those family are within ANC 3E. The Children's Center attempted to secure space for expansion for three years and was unable to do so because of economic conditions and lack of available space. Ms. Danahy testified that the collaborative efforts between private businesses, government

and individuals such as what the Applicant is offering is needed in order to bring more affordable, high quality child care to the neighborhood.

58. Chris McNamara, the commissioner for ANC 3E02, testified in support of the Project. Mr. McNamara pointed out that ANC 3E represents approximately 12,000 residents and that at no ANC or community meeting regarding the Project did more than fifty people attend. Mr. McNamara commented that it is difficult to assess the position of the remaining residents. Mr. McNamara also testified that despite the many concessions made by the Applicant, the ANC did not vote to support the project. Mr. McNamara dissented in that vote.
59. Frank Gordon, the commissioner for ANC 3E05, testified in support of the Project. Mr. Gordon testified that the Project is an excellent plan, representing smart growth with appropriate density at a transit hub in a commercial center. Mr. Gordon noted the substantial community amenity and benefits package as well as the Applicant's actively seeking community input, which improved the plan. Mr. Gordon stated that he did not support the previous submissions by the Applicant. Mr. Gordon dissented in the ANC's vote.
60. Sam Black, the current chair of the recognition jury of the Smart Growth Alliance, testified on behalf of the Smart Growth Alliance. The Smart Growth Alliance includes the Chesapeake Bay Foundation, the Coalition for Smarter Growth, the Greater Washington Board of Trade, the Washington Builders Council, and the Urban Land Institute. According to Mr. Black, the Smart Growth Alliance jury recognized this Project for being smart growth. Mr. Black testified that in the Alliance's judgment, the Project is appropriate for a dense, mixed-use neighborhood and will contribute to a mixture of uses. The Project will contribute to a walkable, transit-oriented community. The Alliance supports the public green space component of the Project, and the Smart Growth Alliance criteria strongly supports affordable housing in residential developments.
61. Cheryl Cort, representing the Washington Regional Network for Livable Communities ("WRN") and testifying on behalf of the Coalition for Smarter Growth, of which WRN is a member, testified in support of the Project because the Project takes advantage of adding well-designed housing approximately 300 feet from the Friendship Heights Metrorail Station and commercial corridor, while respecting the scale of the surrounding neighborhood. Ms. Cort also testified that her organizations are very supportive of the proposal to add five percent of affordable housing.
62. Tad Baldwin, a community resident, testified in support of the Project. Mr. Baldwin supported the Project because it represents smart growth, is environmentally sound, increases the tax base of the city, and incorporates affordable housing.

63. Matthew Tobriner, president of the board of the Lisner Home, testified in support of the Project as the closest neighbor.
64. Caren Bohan, a community resident, testified in strong support of the Project. Ms. Bohan supported the Project because it creates additional housing in the District near public transit and incorporates the much-needed Day Care Center which allows the Children's Center to expand its quality child care.
65. Allison Barnard Feeney, a community resident, also testified in strong support of the Project. Ms. Feeney acknowledged that the proposed amenities and benefits offered are uncommonly generous for this type of project and stated that these public benefits clearly exceed any cost to the immediate neighborhood of the additional height over that permitted as a matter-of-right. Ms. Feeney concluded that the Project should be approved because it represents a cooperative effort between the neighborhood and the Applicant and provides solutions for problems of import to the neighborhood.
66. Other community residents testified in favor of the Project, including Kevin PeTit, Larry Thau and Gregory Poe. The record includes letters in support, citing those reasons already identified.

#### **Letters and Testimony in Opposition**

67. Members of FHORD, including Hazel Rebold, Marilyn Simon, Larry Freedman and Betsey Kuhn, testified in opposition to the case. FHORD's primary contentions involved the appropriateness of the rezoning, the impacts of the height and bulk of the Project of on nearby property owners, the impact of traffic on the area, and the level of economic benefit of the Project. Each of these is discussed in detail in the contested issues below.
68. The ANC 3/4G was granted party status, and Robert Gordon testified on behalf of the ANC 3/4G in opposition to the Project. Mr. Gordon testified that ANC 3/4G's primary concerns are the Project's impacts on traffic and its effects on the neighborhood, safety for motorist and pedestrians, and construction impacts.
69. Margaret Mellon, a community resident, testified in opposition to the Project, stating that she believed the Project to be too large for the Site. Ms. Mellon also testified that she believed a matter-of-right development should be presented for consideration. Finally, Ms. Mellon indicated her concern regarding the future development of the Lisner Home property.
70. Ann Jansen, a community resident, testified in opposition to the Project, identifying her primary concern as damage to her home.

71. Dr. Anthony Furano, a community resident, testified in opposition to the Project. His primary concern related to balancing the five percent increase in height and density with the five percent of affordable housing. Dr. Furano stated that this exchange does not seem to be a good precedent for establishing affordable housing in the District.
72. Joel Hunter, a community resident, testified in opposition to the Project. Mr. Hunter requested that the Commission defer a decision until the Military Road-Missouri Avenue Crosstown Traffic Study and the Upper Wisconsin Commercial Corridor Study are completed. Mr. Hunter also stated his concerns regarding traffic.
73. Other community residents, including Luther D. Miller, III and Mary Lindquist, testified in opposition to the Project, reiterating the same issues raised by FHORD. The record includes letters in opposition, citing those reasons already identified. The record also includes a petition in opposition to the PUD, generally based on the Original Proposal.

### **CONTESTED ISSUES**

#### **Notice Issue**

74. At the November 14, 2002, public hearing, FHORD objected to the posted notice, arguing that notice was required on both the Washington Clinic Land and the Lisner Land. After a brief review of the issue by FHORD and the Applicant, the Zoning Commission requested that additional submissions be made.
75. FHORD filed its submission on December 5, 2002, asserting that notice in this case was not properly given and that the hearing should be rescheduled and re-noticed. FHORD first argued that the PUD affects two parcels of property and suggested that the application and notices referencing 5401 Western Avenue obscure the fact that a portion of the Lisner Land was involved in the application and that the posted notice could lead a passerby to believe that only the Washington Clinic Land was involved. FHORD argued that notice should also have been posted on the Lisner Home Building. Section 3105.5 of the Zoning Regulations clearly states that notice must only be posted on existing buildings located on the subject property.
76. In its submission to the Zoning Commission on December 5, 2002, the Applicant asserted that notice was posted in compliance with the Zoning Regulations. Section 3015.3 of the Zoning Regulations requires an applicant to post the property with the notice of hearing at least forty days in advance of the hearing. Section 3015.5 provides that the required notice must be placed upon the Applicant's property in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.

77. As evidenced by Affidavit of Posting filed at Exhibit 63 in the record, the Applicant posted one sign on the property at the 5400 block of Military Road and Western Avenue, N.W. and one sign at 5401 Western Avenue at the entrance to the Clinic on the wall surrounding the clinic building. The signs used verbatim the language of the notice as published by the Zoning Commission in the D.C. Register. This posting was in compliance with the requirements and was completed at least forty days prior to the public hearing.
78. Section 3015.9 of the Zoning Regulations requires the Applicant to maintain the posting by checking the signs weekly and reposting when necessary. As evidenced by the Affidavits of Maintenance filed at Exhibits 139 and 140 in the record, the Applicant maintained and replaced, when necessary, the signs at least weekly. A revised notice was published in the D.C. Register on October 4, 2002. On October 9, 2002, the Applicant replaced the three signs with the revised publication notice. On October 14, 2002, the Applicant posted two additional revised publication notices following a complaint from Ms. Rebold, found at Exhibit 68 in the record. From that date, the Applicant continued to maintain and replace signs as required.
79. The Zoning Commission finds that the subject property does not include the Lisner Home Building, and thus, notice was not required to be posted and should not have been posted on that building.
80. The Applicant asserted that there is actual notice, if in fact the provided notice was insufficient or not in compliance with the Zoning Regulations. Under the relevant case law, actual notice is sufficient to cure any technical violation of the notice requirements. FHORD and other members of the community were well aware the Applicant's proposal. The Applicant began working with the community seven months prior to filing the application and has continued to actively engage the community in the process since that time. More recently, ANC 3E considered the application at its monthly meetings in September, 2002, and in October, 2002, and at a special meeting on November 7, 2002. ANC 3/4G considered the application at its monthly meeting in October, 2002. At each of these meetings, the public hearing date was announced. Furthermore, the record is replete with letters in support and in opposition from members of the community. Similarly, the public hearing itself was attended by a significant number of community members. Therefore, it is clear that the FHORD and the community at large has had actual notice of the hearing, whether or not the Applicant complied with the posting regulations.
81. The Zoning Commission finds that FHORD and other members of the community had actual notice.

82. Finally, the Applicant argued that the notice issue is now moot. At its November 14, 2002, hearing, the Zoning Commission commenced the public hearing process for the above-referenced case, permitting only the Applicant's presentation to be made. The Zoning Commission then publicly continued the public hearing to Thursday, December 12, 2002. Therefore, all parties and persons involved have had complete legal and actual notice at least sixty days in advance of the upcoming hearing, and thus, there is no possible prejudice.
83. The Zoning Commission finds that the Applicant properly posted notice on the property, and that the community received actual notice of the hearing. The Zoning Commission also finds that the issue of whether notice was properly posted for the PUD is now moot by virtue of actual notice and participation at the public hearing of the parties and persons in support and in opposition.

**Request for Summary Dismissal Based on Computation of Gross Floor Area and Measurement of Height**

84. The opposition raised issues regarding the calculation of gross floor area, including projecting bays and mechanical shafts, and the proper measurement of height, in both its Supplemental Memorandum in Support of its Motion to Dismiss (Exhibit 132 in the record) and in its Rebuttal Submission (Exhibit \_\_ in the record).
85. At the November 14, 2002, public hearing, counsel for the Applicant argued that prior to the issuance of a building permit, the Applicant must comply with the Zoning Regulations and conditions set forth in this Order. Counsel for the Applicant also argued that each of the opposition's arguments are without merit. First, the bay projections extend outside the private property line into public space as permitted by the Building Code and are not included in gross floor area. Second, under the Zoning Regulations, certain spaces within a building are not required to be included in gross floor area, including mechanical shafts. The Applicant's architect estimates that these areas equal approximately two percent of the total space in the building. Third, the Zoning Regulations provide that when a building fronts on more than one street, any front may be used to determine the maximum building height.
86. The Zoning Commission considered these arguments at the November 14, 2002, public hearing and determined that counsel for the Applicant had adequately responded to each issue. The Zoning Commission finds that, prior to the issuance of a building permit, the Zoning Administrator will determine that gross floor area and measurement of the height of the residential building will be in accordance with the Zoning Regulations as limited by the conditions of this order.



**Rezoning Is Appropriate**

87. In the original Applications to the Zoning Commission, the Applicant requested rezoning of the entire site to R-5-D. After significant work with the community and the OP, the Applicant modified its Applications to request a rezoning of the Washington Clinic Land to R-5-C and maintain the R-2 zone designation on the Lisner Land.
88. In 1958, the Site was originally zoned R-2. The Washington Clinic Land was rezoned in 1963 to C-3-A, reflecting changes in the growing Friendship Heights area at that time. In 1974, the Washington Clinic Land was downzoned from C-3-A to R-5-B. At this time, the Zoning Commission also changed the Zoning Map to zone the area around the core intersection of Wisconsin and Western Avenues with a band of C-2-B and C-2-A. The eastern portion of Square 1661, Square 1663 and Square 1657 (the bus garage) were zoned R-5-B. The residential areas to the east and west of the commercial strips were maintained in the R-2 Districts.
89. The opposition argued that the R-5-B zoning be maintained on the Washington Clinic Property. The opposition based this argument primarily on the notion that the neighborhood has a right to the maintenance of the zoning enacted in 1974. The opposition presented expert testimony by George H. Oberlander, AICP, as to the 1974 zoning. Mr. Oberlander concluded that the Site's close proximity to the Metro on the west and a few, if any, additional housing units that may be created by the rezoning, is outweighed by the need to protect the existing proximity of the well-established one-family housing on the east and the south. Mr. Oberlander testified that this is the specific intent of the current zoning, as the Site was already rezoned to balance the higher density commercial development on Wisconsin Avenue and the surrounding low-density neighborhoods. Mr. Oberlander opined that the 1974 rezoning of the Site "struck just the right balance."
90. The Applicant argued, however, that the 1974 zoning is based on an almost thirty year old analysis that is outdated and has been overtaken by changes in the area. Contrary to the opposition's position, the Applicant provided expert testimony that the primary and basic consideration for the 1974 downzoning was the traffic capacity of the arterial streets. Steve Sher, the Applicant's expert in land planning, testified that although the zoning was put in place after the adoption of the Metrorail system, the rezoning took place before the construction of the Friendship Heights Metrorail Station. Using projections of the use of this Metrorail station, the Zoning Commission based its traffic analysis on the carrying capacity of the arterial streets on a thirty percent modal split, finding in Zoning Commission Order No. 87 that the subway was expected to carry only thirty percent of all peak hour commuter trips in and out of the area. The Zoning Commission based the downzoning of the Site to R-5-B on that analysis.

91. Mr. Sher also testified that the Friendship Heights, Tenleytown and Bethesda Metrorail Stations were all opened in 1985. Since that time, it has become clear that the capacity and use of that Metrorail station has far exceeded what the Commission anticipated in 1974. According to the 1989 WMATA "Development Related Ridership Survey II Report," the transit modal split for suburban residential land uses within the Beltway were found to range from 48.5% to 73.7% with the average being 60.0%. Since 1985, 2002 data provided by WMATA indicates that the average passenger boarding for this station has increased by approximately sixty-two percent.
92. According to testimony by O.R. George & Associates, the Applicant's traffic expert, the appropriate modal split is sixty percent, or as high as sixty-five to seventy percent.
93. The DDOT also recommended in its December 26, 2002, memorandum that use of a modal split of fifty percent was appropriate for predicting the impact of future traffic.
94. Mr. Sher also testified that the Comprehensive Plan, which sets forth the planning policies for the District, was not adopted until 1984. The Land Use Element of the Comprehensive Plan, which designates the Site as a Regional Center and in a Housing Opportunity Area, was adopted in 1985. The Ward 3 Plan, which sets forth the more specific policies for the area, was also not in place at the time of the 1974 rezoning. Thus, the District's current planning policies did not exist at the time the Site was rezoned in 1974. Furthermore, the Zoning Commission did not adopt the 1974 sectional development plan.
95. The Applicant presented testimony and evidence that the proposed rezoning is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641.01 of the D.C. Code.
96. Mr. Sher, the Applicant's land planning expert, testified that the appropriate zoning for this Site is a designation that places the highest residential density on the Site without creating adverse impacts. The Applicant presented testimony and evidence that the Project does not create adverse impacts on the nearby community (See Findings 107 through 115). Specifically, Mr. Sher testified that the Project reflects the same pattern of density and juxtaposition of height of this area and as is seen along Connecticut Avenue, while also respecting the specific site context and overall community.
97. Roger Lewis, an expert in architecture and urban planning, testified that the intensity of this Project on the Site is appropriate smart growth, which is walkable, transit-oriented development and encourages denser, mixed-use development and/or redevelopment in areas already well served by existing infrastructure and, specifically, along transit corridors.

98. The Zoning Commission finds that the R-5-B zone designation is based on premises that are no longer valid and as result the current zoning is no longer appropriate. The Zoning Commission finds that there is far greater transit usage than that assumed by the Commission in 1974 when the area was downzoned. The Zoning Commission also finds that the Comprehensive Plan was not in effect at the time of the 1974 rezoning and that the sectional development plan proposed at the time of the rezoning was not adopted by the Commission. Therefore, The Zoning Commission finds that the assumptions used by the Commission at the time of the 1974 rezoning are no longer valid.
99. The Zoning Commission also finds that zoning is not static; instead, it is a dynamic process which reflects the current conditions and factors at the time it is put in place.
100. The Zoning Commission finds that rezoning the Washington Clinic Land is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641-.01 of the D.C. Code as follows:
- a. The proposed zone is not inconsistent with the Comprehensive Plan, as stated in Findings 199 through 209;
  - b. The proposed zone will not produce objectionable traffic conditions, as stated in Findings 116 through 124;
  - c. The requested rezoning will promote the health and general welfare by stabilizing land values, including the provision home ownership in keeping the character of the surrounding area, and facilitating Metro ridership, as testified to by the Applicant's traffic expert and DDOT and as stated in Finding 49; and
  - d. The proposed rezoning will not lead to the overcrowding of land, as stated in Findings 156 through 159.
101. The Zoning Commission finds that the location of the Site, the character of the surrounding area and the District's planning goals and objectives, including the policies supporting transit oriented development, support the request for R-5-C zoning on this Site.

**Maintenance of Transition Zone**

102. The opposition also argued that the Zoning Commission should maintain the defined transition zone between the commercial and high density area and the nearby low density residential area. Specifically, the opposition noted concerns with respect to the future rezoning and redevelopment of the Lisner Home's property. Mr. Oberlander testified on behalf of the opposition that this transition zone was put in place during the small area

- planning around the time of the 1974 rezoning. The opposition alleged that the zoning of Square 1661 reflects this transition zone.
103. The Applicant's expert in land use testified that the R-5-C zoning on the Washington Clinic Land adjacent to the R-2 zoning on the Lisner Land creates an appropriate transition zone in light of the District's current planning policies and goals. The 1974 sectional development plan, which set forth the transition zone argued by the opposition, was not adopted by the Zoning Commission. Furthermore, the Applicant provided evidence that Square 1661 is in fact split-zoned C-3-B/R-5-D as established by Zoning Commission Order Nos. 517, 519 and 824 and that such zone designation is consistent with a transition zone incorporating R-5-C zoning.
  104. The OP testified that in a regional commercial center, medium density residential zoning is part of a transition and buffer for lower-density residential developments. Specifically, the transition zone is maintained by the zoning pattern of commercial to medium density residential to a lower density residential. The Office of Planning stated that R-5-C zoning is medium density residential. The Office of Planning concluded that the R-5-C zone designation on the Washington Clinic Land adjacent to the R-2 zoning on the Lisner Land and adjacent Lisner property also zoned R-2 is the appropriate place for the transition boundary, in light of the Comprehensive Plan and the District's current planning policies and goals, including transit oriented development and increased District residency. The OP also testified that it would advise that the R-2 zoning on the Lisner property be maintained as a transition zone as small area planning continued for the Friendship Heights area. Furthermore, the OP concluded that the Project with its one-half acre of open space under the R-5-C zoning provides the ideal buffer and transition space.
  105. The Zoning Commission adopts the OP's conclusions and finds that the R-5-C zoning on the Washington Clinic Land adjacent to the R-2 zoning on the Lisner Land maintains a transition zone that is appropriate for the area. Although the 1974 sectional development plan has guided some planning decision in the area, the Zoning Commission must exercise its own discretion today in determining in the appropriate zoning and development for the area. The Zoning Commission finds that the R-5-C zoning is not inconsistent with the Comprehensive Plan, as stated in Findings 199 through 209, furthers the District's current planning policies and goals, such as transit oriented development, and creates an appropriate transition zone.
  106. In addition, the Zoning Commission finds that redevelopment of the Lisner Home property is not before it at this time. Because each case must be considered on its own merits, the Zoning Commission makes no findings with respect to the possible, future redevelopment of the Lisner Home property. The Zoning Commission, however, finds

that the Applications set no precedent for consideration of the possible, future redevelopment of the Lisner Home property.

**Impact of Height and Density on Adjacent Residential Area**

107. Hazel Rebold, the owner of the closest detached single family house, asserted that the Project would adversely impact her home and other single family homes nearby. Through a series of photographs, made part of the record as Exhibit 200, Ms. Rebold testified that the Project would be out of scale and character with the existing neighborhood.
108. Shalom Baranes, the Applicant's expert in architecture, testified regarding the significant increase in green, lawn space along the southern edge of the Project and the height of the residential building. The absolute elevation of the Project has been lowered from 414 feet to 400.75 feet as a result of the reduction in height to 78.75 feet. This elevation is almost identical to the cornice line of the adjacent Embassy Suites hotel, which is at an elevation of 400.1 feet. The hotel's cornice line is at the ceiling of the top floor of the hotel and is approximately sixteen feet below the top of the mansard roof line. The Project's height is also significantly below the cornice line of the office building at Chevy Chase Pavilion facing the single family residential neighborhood, which is at an elevation of 423.1 and thirty-seven feet less than the office building's mansard roof line.
109. Furthermore, the Applicant presented testimony and evidence as to the appropriateness of the size of the Project when reviewed in context and in relation to the existing and approved developments in the area. The Project will not cast a shadow on any residential property or impact the light or air of any existing or approved development. Furthermore, the sections in the Applicant's Post-Hearing Submission, at Exhibit 212 in the record, illustrate the minimal visual impact on a person when viewing the Project from the east. Those sections also illustrate that if townhouses were built as a matter-of-right, the visual impact on the closest single family dwelling could be more intrusive.
110. Mr. Lewis testified that the Project appropriately marks the transition from and appropriately mediates between the established-lower density residential neighborhoods to the high-density, still developing commercial and multi-family residential node of Friendship Heights. Mr. Lewis testified that the Project's height, geometry and multiple façade treatments harmonize and are in scale with the nearby structures and abutting properties. Furthermore, Mr. Lewis testified that the Project's configuration preserves a significant amount of usable, south-facing, landscaped open space, which will serve an amenity for the Project's residents and the neighborhood.

111. Mr. Sher testified that the only property abutting the Site is devoted to institutional use, with all other properties being separated by at least a ninety foot wide street. Mr. Sher also testified that the use, height and density are all compatible with the surrounding area:
- a. *Compatible Use.* The residential building and Day Care Center are replacing medical offices, and the closest uses to the north and south are hotel, office and retail uses;
  - b. *Compatible Height.* The existing buildings to the south and north of the Project are of greater height than the Project, and the Project is substantially removed from the nearest single family dwellings, being approximately 180 feet from the nearest townhome on the west side of 43<sup>rd</sup> Street and approximately 240 feet from the nearest detached single family dwelling on the east side of 43<sup>rd</sup> Street.
  - c. *Compatible Density.* The proposed FAR for the all-residential Project is lower than the existing and approved commercial projects to the south and west, equivalent to the density to the north, and above, but removed from, the single family neighborhood to the east.
112. The OP also testified regarding the appropriateness of the height and density of the Project. Specifically, the OP concluded that the proposed open, green space provides more of a buffer from the more intense development at the core of Friendship Heights than would other alternatives, with no building being the best buffer.
113. The OP also concluded that the Project's height will modulate between the taller development to the northwest and southwest and the single family homes.
114. The Zoning Commission concurs with the Applicant's testimony and evidence, as stated in Findings 108 through 111, and OP's conclusions, as stated in Findings 112 and 113. The height and density of the Project are appropriate for the area and serve as a transition between the established-lower density residential neighborhoods and the higher-density commercial area. The only property abutting the Site is devoted to institutional use, with all other properties being separated by at least a ninety foot wide street.
115. The Zoning Commission finds that the height and the density of the Project will not have adverse impact on the adjacent areas. The Zoning Commission finds that the building is not too big for the Site.

### **Impacts on Traffic**

116. The opposition argued that the Project would create unacceptable traffic impacts on the neighborhood. The opposition presented expert testimony in an effort to establish potential adverse impacts on traffic related to the Project.

117. ANC 3/4G presented generalized concerns that the development would cause an increase in congestion and result in more traffic on neighborhood streets. ANC 3/4G did not present any expert testimony on traffic issues.
118. Cullen Elias, O.R. George & Associates, the Applicant's expert in traffic engineering and transportation planning, testified that the road network serving the Project currently operates at acceptable levels of service and will continue to do so upon build out of the Project, factoring in planned projects for the area as well as including a two percent annual growth rate to account for reasonable growth. Mr. Elias testified that the Project will generate fifteen percent fewer peak hour trips than what the existing improvements generate. Mr. Elias concluded that the Project will not be objectionable to the adjacent properties.
119. The DDOT in its supplemental memorandum to the Zoning Commission dated January 2, 2002, stated that the Project would generate approximately fifteen percent fewer morning and evening peak hour trips as compared with the number of trips generated by the existing Washington Clinic use. The DDOT, therefore, concluded that the Project has less impact on traffic than the existing use. The DDOT filed two reports with the Zoning Commission (dated October 8, 2002, and November 13, 2002) as well as testified at the December 12, 2002, public hearing in support of the PUD application. The DDOT concluded that vehicular traffic generated by the Project can be accommodated with little or no negative impact on the area road network.
120. The opposition argued that the Applicant's analysis of traffic impacts is flawed and indicated that the Project would create adverse traffic conditions. Joe Mehra, P.E., an expert in traffic engineering and transportation planning, testified on behalf of the opposition and critiqued the analysis presented by the Applicant's expert in traffic engineering and transportation planning.
121. Mr. Mehra raised the following issues, as set forth in the record at Exhibit 198: the traffic data used by Mr. Elias for his traffic analysis was based on counts take during the summer and the weekend analysis did not include critical intersections; an incorrect trip generation rate was used for surrounding development; an inappropriate reduction of day care trip generation was used; the traffic analysis should have should have used the SYNCHRO Model or the CORSIM Model instead of the Highway Capacity Software Model; Mr. Elias underestimated future traffic; the Chase Tower Development was not included in the analysis; future levels of service were inaccurate, including the combined traffic assignment for the background trips and the trip distribution and assignment for the Project; the proposed parking did not meet the projected parking demand based on the vehicle availability ratio for the census tract in the Friendship Heights area of Montgomery County; and operational and safety deficiencies would occur at the main

entrance to the proposed garage, as well as the entrance to the Day Care Center and loading area.

122. The Applicant's traffic expert responded to each issue raised by Mr. Mehra in Exhibit 212 of the record, concluding that Mr. Mehra's critiques are without merit.
123. The DDOT reviewed Mr. Mehra's report and provided a response to his contentions in a report dated January 2, 2003. In this report, the DDOT reaffirmed its earlier finding that the Project would not have an unacceptable impact on traffic and concluded that Mr. Mehra's contentions were without merit. A summary of this report can be found at Finding 50.
124. The Zoning Commission adopts the DDOT's reports and conclusions confirming the findings and analysis of the Applicant's traffic expert, as stated in Findings 44 through 50. The Zoning Commission therefore finds that the Project will not have an adverse or unmanageable impact on the street system and other traffic conditions in the area.

#### **Pending and Upcoming District Traffic Studies**

125. The opposition argued that the Zoning Commission should not move forward on the Applications until such time as specific traffic and transportation studies being conducted by the District are completed.
126. The DDOT notes that the following studies are currently being conducted: a transportation study for Military Road and Missouri Avenue, a transportation study in Friendship Heights, and a transportation study for McKinley Avenue. The DDOT concluded that the Zoning Commission need not wait for the results of these studies to move forward on the proposed PUD. The DDOT testified that to the extent a study is applicable, the PUD would be included in the analysis from this point forward.
127. The Zoning Commission relies on the DDOT's conclusion and finds that there is no basis to delay action on the Applications. The law requires that the Zoning Commission determine whether a project has any adverse impacts and whether such impacts are capable of being mitigated. The Zoning Commission has consistently determined to proceed on the basis of the best information available at the time. As stated in Findings 116 through 124, the Zoning Commission finds that there are no adverse traffic impacts resulting from the Project that are not capable of being mitigated and, therefore, finds that there is no basis to delay action on the Applications.

#### **Parking**

128. The opposition asserts that the proposed parking is not sufficient to meet the demands of the Project. Furthermore, the opposition asserts that the parking garage is physically



incapable of providing a maximum of 142 parking spaces, which is the number of spaces the Applicant proposes should the Project include 125 condominium units (1.1 ratio plus four spaces for the Day Care Center).

129. The Applicant has agreed to provide parking at a ratio of 1.1 space per dwelling unit, plus four parking spaces for the day care center. The Applicant has also agreed to reserve eight surface visitor spaces for day care center drop-off and pick-off.
130. The Applicant's traffic consultant testified that the proposed parking ratio for the residential building is three times more than that required by the Zoning Regulations. According to the parking study undertaken by the Applicant's traffic consultant (in the Prehearing Submission at Exhibits 33, 33A, and 33B in the record.), the average parking supply and demand ratios for the specified developments in the District are significantly lower than that proposed by the Project.
131. Furthermore, Mr. Baranes testified that the Project can satisfy a condition that would require a parking ratio of 1.1 spaces for the maximum number of units within the criteria set forth in the architectural plans and drawings.
132. In its report dated January 2, 2003, the DDOT noted that proposed parking for the Project was considerably more than that required by the Zoning Regulations, and DDOT concluded that that the proposed parking is more than adequate for the Project.
133. The Zoning Commission finds that the R-5-C District requires parking at a rate of one space per three dwelling units. Parking for the Day Care Center is required at one space per four employees. The Zoning Commission finds that the parking proposed by the Applicant, at 1.1 spaces per dwelling unit plus four spaces for the Day Care Center, will adequately serve the parking needs of the residents and visitors of the apartment house as well as the employees of the day care center. The Zoning Commission further finds that the Applicant will be required to provide parking in this amount and, thus, will be required to locate these spaces within its below-grade parking garage, with the exception of the eight spaces.

#### **Housing as an Amenity**

134. The opposition argued that housing cannot be considered an element of the Community Amenity and Benefits Package because it could be provided as part of a development under the matter-of-right standards.
135. The Applicant argued that Section 2403.9(f) of the Zoning Regulations specifically identifies housing as an amenity and does not differentiate this amenity on the basis of whether the same number of housing units could be provided under the matter-of-right zoning. Furthermore, the Zoning Commission has previously concluded in recent cases

that housing constitutes an amenity for development of residentially-zoned properties, including Zoning Commission Order No. 831 (3133 Connecticut Avenue, N.W. – The Kennedy-Warren), Zoning Commission Order No. 870 (7<sup>th</sup> and G Streets, S.W.); and Zoning Commission Order No. 945 (EYA Development Inc., Bryan School).

136. The Applicant also argued that although residential uses are permitted under the matter-of-right zone, the opposition failed to acknowledge that there is no guarantee that housing would be provided. The R-5-B zone permits a broad range of institutional uses, including a medical clinic, hospital, museum, or church. Because the R-5-B District does not require residential uses, the Applicant could develop the Site with non-residential uses.
137. The OP noted that the Project provides more housing units than are permitted under the matter-of-right zoning and that these units would be within a housing opportunity area and a regional center, adjacent to a Metrorail station.
138. The Zoning Commission recognizes that the provision of housing in a housing opportunity area constitutes a public benefit and project amenity and reaffirms its finding in previous, recent cases that housing is an important public benefit. Furthermore, the Zoning Commission finds that although residential uses are permitted as a matter-of-right, the Site could be developed with numerous other non-residential uses, including a medical clinic, hospital, museum or church. The Zoning Commission finds, therefore, that despite the fact that residential uses are permitted as a matter of right, the provision of housing on the Site in a housing opportunity is an important public benefit and project amenity.

#### **Affordable Housing as an Amenity**

139. In response to a request from the OP, the Applicant proffered the provision of affordable housing in its Supplemental Prehearing Submission as an additional public benefit and project amenity. Specifically, the Applicant committed to devote five percent of the increased square footage over that permitted as a matter-of-right to affordable housing for those households who earn no more than the low income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program. As the Project is proposed, this commitment translates into 5,514 square feet of the Project (approximately four to six units, depending upon the configuration and size) being devoted to affordable housing for those households who earn no more than the low income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program.
140. The opposition argues that the affordable housing amenity does not constitute an amenity for the community because the Applicant's submission did not include sufficient specificity as to the operation of the program, including regarding certification of

eligibility, selection of buyers, restrictions on sale of affordable units, and sale of affordable units after the restriction period.

141. In response to the opposition's argument, the Applicant submitted a revised and more detailed statement of the proposed affordable housing program after considerable work with the OP and the Department of Housing and Community Development. ("DHCD"). The detailed statement is located at Exhibit 212 in the record and sets forth specific details as to the size and configuration of the units, the initial unit price, the certification of eligibility, the selection of buyers, the restrictions on sale of the affordable units, and the sale of the affordable units after the restriction period.
142. The opposition also argued that the affordable housing amenity does not constitute an amenity for the community because the amenity is an "inefficient" means of providing affordable housing, arguing that the inefficiency results from devoting larger, more expensive units to affordable housing.
143. In response, the Applicant argued that it provided this amenity after significant work with the OP and the DHCD, in accordance with the policies currently in place in the District. Furthermore, this application appears to be the first residential project to voluntarily include an affordable housing component, in furtherance of the Ward 3 element of the Comprehensive Plan which states that affordable housing is to be treated as an important public amenity.
144. The OP concluded that the proposed affordable housing constitutes a clear public benefit. The OP testified that the projected four to six affordable housing units are an excellent start for affordable housing components contained in a project of this size and nature. The OP noted that the Project would bring about the first-ever voluntary construction of affordable housing units in a market rate housing project in Ward 3. The OP also identified areas in which it would like additional implementation details; however, the OP concluded that the lack of specificity was understandable due to the late-request for this amenity to be included.
145. In its response to the Applicant's Post-Hearing Submission, the opposition argued that affordable housing is not an amenity because there is no means to ensure owner occupancy or to ensure resale to a qualified purchaser, the program does not require reevaluation of an owner's income level after purchase, and the program is only for a twenty year period.
146. The Zoning Commission finds that the Applications appear to be the first in the District of Columbia to voluntarily include an affordable housing component where the units will be included in the building. The Zoning Commission further finds that affordable housing is an important policy goal of the District, and the Project can serve as the

foundation for a long-term policy for the District. Therefore, the Zoning Commission finds that the inclusion of affordable housing in the Project is an important and substantial public benefit and project amenity.

147. Furthermore, the Zoning Commission finds that proposed program to implement the affordable housing amenity is a thoughtful and appropriate means to achieve the goal of providing affordable housing in Ward 3. The Zoning Commission does not agree with the opposition's argument that the provision of larger, more expensive units for affordable housing is inefficient. The Zoning Commission finds that the results of this amenity are affordable units in a mixed-use area near shopping and mass transit and furthering mixed populations in an important area of Ward 3. In addition, the opposition has not provided any evidence that the issues raised in Finding 145 are deficiencies existing in current affordable housing programs in the District. The Zoning Commission does not agree with the opposition's critiques of the program as stated in Finding 145 and finds that the proposed program is consistent with the limits imposed by other District housing programs and therefore appropriately implements the amenity.

#### **Day Care Center as An Amenity**

148. The opposition testified that the Day Care Center does not constitute a public benefit and project amenity because it has little value and significant costs. Specifically, the opposition argues that the Day Care Center is not an amenity because there is no guarantee that the Day Care Center will benefit the community and because the Day Care Center does not constitute "affordable" day care. The opposition also argued that in providing the Day Care Center, the Applicant is permanently eliminating the potential residential development of 15,000 square feet of land zoned R-2 in this housing opportunity area.
149. The Applicant testified that it would provide a condition regarding the use of the Day Care Center to target the day care center's services to benefit the community.
150. The Zoning Commission finds that neither the Zoning Regulations nor the Comprehensive Plan require that a day care center must provide affordable or subsidized day care (as compared with market rate day care) in order for such facility to constitute an amenity for a PUD application and the opposition's argument that a day care facility providing market rate services is not an amenity is without merit. The Zoning Commission finds that the Day Care Center will target its services to the nearby community, as required by Condition 5. The Zoning Commission recognizes that the provision of space for day care facilities, regardless of whether it is market rate or affordable, constitutes a public benefit and project amenity, as previously found in Zoning Commission Order Nos. 519, 629, 829, and 851. Therefore, the Zoning Commission finds that the Day Care Center is an important amenity.

151. The Zoning Commission further finds the opposition's argument regarding the loss of valuable land without merit. The Zoning Commission notes that the Comprehensive Plan recognizes as a major policy the need for more quality child care facilities and an objective for Ward 3 is to increase the supply of child care facilities in commercial areas within the ward. Thus, the Zoning Commission finds that the Day Care Center is an appropriate and beneficial use of the land.

#### **Tree Preservation as an Amenity**

152. In discussions with the Applicant, the opposition requested that the Original Proposal be modified to save twelve existing mature trees on the site as proposed at that time. In response to the community's concerns, the Applicant's Modified Proposal redesigned the footprint of the building and its underground parking facilities in order to save twelve existing mature trees on the southeastern portion of the Site. The Site has now been redrawn to accommodate the Project as proposed, such that six of the existing mature trees saved as part of the redesigned project are no longer within the boundaries of the Site. The opposition argues that, as a result of the boundary change, tree preservation no longer constitutes an amenity to the community.
153. The Applicant argued in its Post-Hearing Submission that the Project still proposes to retain the six mature trees within the boundaries of the Site and does not disturb or remove the other six trees no longer on the Site. The Applicant also argues that throughout the entire process, it has agreed to retain ten existing trees along Western Avenue and Military Road as well as incorporate significant new landscape improvements that will also serve as a benefit to the community.
154. The OP concurred with the Applicant, finding that the preservation of the existing mature trees clearly constitutes a project amenity that would not be possible without the flexibility provided by the PUD. The OP testified that development under the matter-of-right zoning would likely result in townhouses coming right up to Military Road and the destruction of most, if not all, trees on Lisner Land and portions of the Washington Clinic Land.
155. The Zoning Commission finds that the Project retains at least six mature trees within the boundaries of the Site and that the retention of these trees constitutes a public benefit and project amenity entitled to consideration by the Commission.

#### **Open Space as an Amenity**

156. The opposition argues that because there is currently no building constructed on the southeast portion of the Site where the open, green space is proposed, the Zoning Commission should not consider the open space as an amenity.

157. The Applicant testified that the Washington Clinic development includes a large-sized, surface parking lot covering much of the eastern portion of the site. As proposed, the Project includes a green space with landscaping, pedestrian paths and a central meeting area in place of this parking area. This green space is approximately 24,700 square feet, or more than one-half acre, in size.
158. The OP testified that the proposed open space is an important public benefit. The OP noted that the proposed PUD enables the height and bulk of the Project to be shifted toward Western Avenue, approximately 240 feet from the nearest single family residence and allows the development of the open space buffer that was first envisioned in the 1974 sector plan. The OP concluded that it will be a valuable amenity.
159. The Zoning Commission notes that Section 2403.9(a) of the Zoning Regulations identifies the creation or preservation of open space as an amenity to be considered by the Zoning Commission. Therefore, the Zoning Commission finds that the proposed green space is an important amenity consistent with Condition 9 to be considered by the Zoning Commission whether it constitutes new open space or the preservations of open space.

#### **Traffic and Pedestrian Improvements as an Amenity**

160. The opposition argued that proposed modifications to traffic and pedestrian patterns in the area proposed by the Applicant in its amenity package do not constitute an amenity because such improvements serve only to mitigate traffic impacts created by the Project. The opposition further argued that the configuration of the Project would result in safety hazards.
161. The Applicant's traffic consultant testified that it completed a study identifying modifications and proposed improvements which would result in the mitigation of existing traffic operational and safety conditions on 43<sup>rd</sup> Street, Military Road and Western Avenue. These improvements are not needed to mitigate traffic resulting from the proposed development. Furthermore, the Applicant testified that it would work with the DDOT to refine and implement the proposed improvements and modifications.
162. The DDOT testified that the Project would have no adverse impacts on the area without these proposed improvements. The DDOT further testified that the peak hour traffic generated from the Project is in fact less than that generated by the Washington Clinic. In its January 2, 2003, report, the DDOT indicated that it had no objections or concerns regarding safety related to the Project.
163. The OP testified that since these transportation measures are not required to shield the neighborhood from adverse traffic impacts, the proposed transportation enhancements

constitute project amenities rather than simple mitigation measures. The OP also finds that any pedestrian safety enhancements constitute legitimate project amenities.

164. The Zoning Commission finds that the proposed improvements are not needed to mitigate traffic generated as a result of the Project and that such improvements are targeted at existing traffic concerns. The Zoning Commission therefore finds that the proposed improvements will serve to create a safer and more easily accessed community and constitute a clear public benefit.

### **Parking as an Amenity**

165. The opposition argues that additional residential parking cannot constitute an amenity for consideration by the Zoning Commission.
166. The Applicant presented, as part of the Community Amenity and Benefits Package, the provision of additional residential parking. The Applicant testified that this amenity was proffered in response to the community's request and to alleviate the community's concern that parking from the Project would spillover into the neighborhood.
167. The Applicant's traffic consultant presented evidence that the market demand for parking is less than 1.0 space per unit in its traffic report made part of the Prehearing Submission at Exhibits 33, 33A, and 33B in the record. The Applicant, therefore, testified that any parking above that ratio constitutes an additional benefit to the community.
168. Douglas Firstenberg of Stonebridge Associates, Inc., and an expert in real estate development, testified that the appropriate range of parking for this type of development is 0.5 to 1.0 spaces per unit.
169. The OP testified that parking is an amenity. The OP noted that the provision of a high parking ratio helps to satisfy neighbors that there will be no parking spillover into the adjacent residential community. However, the OP stated that the continuation of such a pattern in parking in other developments may actually be detrimental to the larger public good.
170. The Zoning Commission finds that the Zoning Regulations require one parking space for every three apartments, while the Project proposes a parking ratio of 1.1 space per residential unit. Based on the Applicant's testimony, the Zoning Commission finds that the parking provided is greater than the market demand for parking. Although the Commission notes the OP's concern with the provision of additional parking in future developments posing a problem for the public good, the Zoning Commission concludes that based exclusively on its review of this PUD, the additional parking provided responds to neighborhood concerns and constitutes an amenity for consideration by the Commission.

**Construction Management Issues**

171. In its Prehearing Submission, the Applicant submitted its proposed construction management plan. The proposed construction management plan was derived from agreements executed and successfully implemented previously within the community. These prior agreements were entered into by Friendship Neighborhood Coalition with McCaffery Interests, Inc. & Eakin/Youngentob Associates, Inc., for the development of Square 1661 immediately to the south of the Site, and the 41<sup>st</sup> Street Advisory Committee with P. N. Hoffman, Inc., for the development of the Tenley Hill apartment project.
172. Among other things, the proposed construction management plan included significant remedies related to payment for damage caused by the Applicant; a pre-approved list of engineering survey firm, with final firm selected by the Owners and paid by the Applicant; and stringent jobsite rules including (but not limited to) site management, cleanliness, deliveries, work hours, traffic restrictions, parking and truck travel/queuing. The original construction management plan also stated that all construction related vehicular access to the Site would be limited to Western Avenue.
173. The opposition argued that the proposed construction management plan is inadequate. Specifically, Ms. Rebold testified that the proposed construction management plan is inadequate for the protection of the owners of property, as set forth in Exhibit 200 in the record.
174. Betsey Kuhn testified regarding her concern about possible damage to her home and also stated that the construction management plan was inadequate. Ms Kuhn's primary concerns were that the owner be permitted to select the engineering firm for the pre- and post-construction surveys so that the owners would have confidence that an independent survey has been performed and that the Applicant not use blasting or pile-driving for construction on the Site.
175. In response to the opposition's testimony, the Applicant submitted a revised construction management plan in its Post-Hearing Submission, at Exhibit 212 in the record. In addition to those items previously incorporated into the construction management plan, the Applicant added more detail and additional provisions to the construction management plan, including extending the survey area to 300 feet from the Site, requiring construction monitoring services, and prohibiting pile-driving. The Applicant agreed to implement these items above, which respond to the significant majority of the opposition's stated concerns and carry an estimated value in excess of \$100,000.
176. The OP concluded that the originally proposed construction management plan constitutes a project amenity.



177. The Zoning Commission finds that the concerns related to damage to homes from construction on the Site are irrelevant to the proposed PUD and zoning map amendment; that is, those concerns would be the same for a matter-of-right development of the Site which included any below-ground excavation. The Commission further finds that construction related issues are most properly within the scope of the Building Code and common law remedies for damages which the Applicant or its agents may cause. Nevertheless, the Zoning Commission finds the Applicant's Revised Construction Management Plan, including the Applicant's agreement to prohibit pile-driving and provide for pre- and post-construction surveys by a mutually agreed upon engineering firm for homes up to 300 feet from the Site, to be a generous and good-faith effort to address concerns raised by neighboring residents.
178. The Zoning Commission further finds that the Applicant's agreement to limit all construction related vehicular access to the Site to Western Avenue will eliminate construction traffic along Military Road. The final routing of trucks is subject to the approval of the District Department of Transportation.
179. The Zoning Commission finds that the other provisions requested by the opposition, including a buy-out clause and to whom fines are paid, are also outside the scope of the zoning process and cannot serve as a basis for consideration of this PUD. Nevertheless, the Zoning Commission finds that the Applicant has attempted to address community concerns and has spelled out an appropriate construction management plan with credible enforcement procedure for violations which will benefit the community.

#### **Compliance with PUD Standards**

180. FHORD asserted that the application did not provide sufficient benefits to the community to warrant approval of the PUD. This argument was advanced in large part based on the request for an additional five percent in height and density.
181. The Applicant argued that it proposes a substantial Community Amenity and Benefits Package for the Project, as described in Finding 39 and further reviewed in Findings 134 through 179 above. The Applicant presented evidence that the value of the package (for those items that have a quantifiable value) is in excess of \$1,700,000, as set forth in the Exhibit 212 of the record. To be balanced against these benefits are the areas of the flexibility requested by the Applicant, as set forth in Finding 40.
182. The OP concluded that the Applicant has agreed to an unusually high level of public benefits and amenities, especially for a residential project. The OP conservatively estimated the quantifiable amenities to be well over \$1 million in out of pocket public benefits, with the possibility that these benefits are valued at another \$500,000.

183. The OP specifically testified that concentrating the height and density on Western Avenue, which requires the five percent flexibility, permits the large open space to serve as a buffer for the neighborhood and permits the retention of existing mature trees. The OP concluded that the additional five percent flexibility is essential to the successful functioning of the Project, especially in light of the addition of affordable housing.
184. The OP testified that the Project is an exemplary example of what a PUD is intended to do with physical design. The OP stated that by designing a higher building than would otherwise be permitted, the Applicant has used the PUD mechanism to enable the creation of a significant landscape, open-space buffer between the proposed structure and the lower density neighborhood, one of the design solutions envisioned in the 1974 Friendship Heights Sectional Development Plan.
185. The OP concluded that the public benefits of the Project more than justify the zoning flexibility requested.
186. The Zoning Commission notes that the Zoning Regulations require that an application for a PUD be evaluated and approved or disapproved according to the standards set forth in Chapter 24 of DCMR. The Zoning Commission must judge, balance and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects according to the specific circumstances of the case.
187. The Zoning Commission finds that the Applicant's proffered project amenities and public benefits as described in Finding 39 sufficiently offset any potential adverse effects of the Project, even without considering the exceptional architectural design of the Project.
188. The Zoning Commission finds that the Applicant seeks a five percent increase in height and density, as is permitted by Section 2405.3 of the Zoning Regulations. The increase in height over that permitted as a matter-of-right in the R-5-C District is essential to the successful functioning of the Project and is necessary to permit the residential building to be set back from the neighboring residential area and the more than one-half acre of open space. The increase in FAR is necessary so that the Lisner Land is not rezoned and the transition zone is maintained, both being important to the community. As compared to the Original Proposal and the Modified Proposal, the Project has more than 45,000 square feet less gross floor area.
189. The Zoning Commission finds that the Applicant's request for additional height and density is sufficiently offset by the proffered project amenities and public benefits. The additional height and density proposed is balanced by the package of amenities presented by the Applicant, including providing housing and affordable housing in a Housing Opportunity Area and the provision of significant open space.

**Development as a Matter-of-Right**

190. The opposition strongly argued that the Applicant should be required to proceed with a project as a matter-of-right or, if reviewed for its adverse impacts, as a PUD under the matter-of-right zone district. The opposition argued that the height and density of a matter-of-right project, or possibly a project developed as PUD under the matter-of-right zone district, would be better.
191. The Applicant presented testimony and evidence that the Project proposed as a PUD in the R-5-C District results in many benefits that would not occur with development of the Site as a matter-of-right. Development of the Site as a matter-of-right requires no review by the community or the District, and therefore, the developer could proceed without consultation with the city or the community. Second, development as a matter-of-right would allow more site coverage and less common open space, resulting in a loss of open space to the community. Third, development as a matter-of-right would permit a much larger medical clinic (more than twice as large), which could create significant negative impacts on the area, especially in terms of traffic and parking. On the other hand, development as a matter-of-right would permit townhouses to be developed on Military Road, potentially with multiple curb cuts. Finally, development of the Site as a matter-of-right results in the loss to the community and the District of affordable housing, improvements to the Chevy Chase Park, expansion of the day care facilities, significant landscape improvements, economic benefits, traffic and pedestrian safety improvements, and any type of construction management plan.
192. The OP testified in favor of the proposed PUD, finding that the increase in height and density result in important benefits to the community and the District. The OP noted that the alternatives would likely be either a matter-of-right fifty foot high institutional use of just under 80,000 square feet; a sixty foot high, 3.0 FAR R-5-B PUD that would occupy more of the Site than the Project and likely not include many of the public benefits, such as affordable housing, proposed by the Applicant; or a fifty foot high, matter-of-right structure with no design review, without any public benefits and, likely, several curb cuts along Military Road. The OP also testified that the open space in a matter-of-right development would not likely be publicly accessible; rather, it would likely be private backyards or courtyards.
193. The Zoning Commission adopts the Applicant's testimony and evidence and the OP's analysis and finds that because there are no unacceptable adverse impacts, the community and the District are substantially benefited by development of the Site under a PUD when compared with development as a matter-of-right.

**Economic Benefits**

194. The opposition presented detailed economic analysis by Dr. Marilyn Simon, an expert in economics. Dr. Simon presented a detailed review of Bolan Smart's economic analysis in both testimony and in written submission. Among other things, Dr. Simon concluded that the Project would provide approximately \$400,000 to \$500,000 in additional annual revenue over her calculations for a project under the matter-of-right provisions.
195. Bolan Smart Associates, the Applicant's expert in real estate economics, testified as to the economic benefits of the Project. In his report, Mr. Smart identified that the principal direct tax revenues to the District resulting from the Project total approximately \$1,819,700 per year. In addition, the combination of recordation and transfer fees associated with the proposed condominium sales, coupled with the development processing fees and permits, could generate well in excess of \$1,200,000 of direct District fee revenues during the early stages of development. In addition, close to 150 construction jobs are estimated to be created. Finally, Mr. Smart estimated that the net effect of developing new homes in the Project would be to facilitate the equivalent of a 162 person increase in the District's population, furthering the District's goal of increasing the population.
196. Mr. Smart also noted that assuming Dr. Simon's inputs are correct, the additional revenue would still be calculated at approximately \$600,000 to \$800,000 over a development as a matter-of-right. Furthermore, this additional revenue is recurring and will likely increase over time. According to Bolan Smart Associates, even under Dr. Simon's calculations, this annual increase in revenue would be sufficient to support upwards of \$10,000,000 in expanded District bonding capability.
197. In its report, the OP stated while there may be differences over specific assumption in economic models, the Project appears to have a positive economic benefit for the District as compared to either a matter-of-right development or the existing Washington Clinic.
198. The Zoning Commission finds that, using the most conservative numbers presented at the public hearing by the opposition, the Project would generate, at the least, \$400,000 in increased revenue for the District, excluding any one-time construction related benefits. The Zoning Commission finds that this economic benefit is significant and represents a positive impact of the Project.

**Consistency with the Comprehensive Plan**

199. The opposition asserted that the Project does not comport with the policies and objectives of the Comprehensive Plan. FHORD focused on specific elements of the Ward 3 element and generally concluded that the Project is inconsistent with these provisions.

200. The opposition presented expert testimony by George H. Oberlander, AICP, who testified that the Project was inconsistent with the following provisions of the Ward 3 element of the Comprehensive Plan providing guidance to the Zoning Commission:
- a. Section 1400.2 has as its major theme protecting the Ward's residential neighborhoods. Specifically, this element seeks to ensure that stability is maintained and that the low-density, high quality character of the ward is maintained.
  - b. Section 1400.2(b)(1) states that while people of the ward recognize and generally take pride in the ward's contribution to the economy, their single, greatest concern is the possibility of unrestrained development diminishing the quality of life. This section further states that major development is often accompanied by undesirable effects, particularly increased traffic, which presents problems and has spillover effects penetrating nearby residential neighborhoods.
  - c. Section 1400.2(b)(3) calls for maintaining strong residential neighborhoods.
  - d. Section 1402.1(h) states that while new housing is needed, all development proposals must be evaluated to avoid adverse impacts on neighborhood stability, traffic, parking, and environmental quality.
  - e. Section 1406.2(d) states that land use and future development must be carefully controlled to protect the existing scale and low density character and to enhance other qualities of the ward.
201. Mr. Oberlander also testified that the Section 1401.7(b) specifically identifies the Lord & Taylor parking lot, the Metro lot on Wisconsin Avenue, and the 4300 block of 43<sup>rd</sup> Street as being the three sites made part of the housing opportunity area designation.
202. Mr. Oberlander also testified that the Zoning Commission should not act on the Applications pending the OP preparing a small area plan for Friendship Heights. Mr. Oberlander testified that such a plan, if made part of the Comprehensive Plan, should precede consideration of the Applications.
203. Mr. Sher, the Applicant's expert in land planning testified that the Project was not inconsistent with the Comprehensive Plan, presenting a detailed analysis of his findings in his testimony to the Commission and in his report at Exhibits 79 and 79A in the record, which are summarized as follows:
- a. The Generalized Land Use Map designates the Site in a Housing Opportunity Area, which is an area where the District expects and encourages either new housing or rehabilitated housing. These housing opportunity area are not the only

areas where new housing units will be come available, but represent locations of significant concentrations. Most Metrorail stations outside the Central Employment Area, and some within, will support additional housing units. The conversion of existing nonresidential buildings for housing and the return of vacant units to the housing market are two additional devices which will result in additional housing units.

- b.* The Generalized Land Use Map designates the Site in a Regional Center, defined to be those areas located along major arterials service by transit, with the largest commercial functions outside the Central Employment Area, and with large office components.
- c.* The Generalize Land Use Map designates the Site within the institutional land use category, which reflects the existing uses.
- d.* The Project meets the policies of the Housing element, to stimulate a wider range of housing choices and strategies through the preservation of older stock and production of new units, to extend affordable homeownership to low- and moderate-income households, and to increase the supply of child care facilities in such residential areas.
- e.* The Project furthers the policies of the Environmental Protection element to promote improvement of air quality by promoting land use patterns and transportation services which decrease reliance on automobiles for community and other routine trips and to protect the quality of land areas by encouraging the planting and retention of private trees.
- f.* The Project meets the goals of the Transportation element to simplify and economize transportation services, to provide appropriate and adequate traffic circulation systems that include and emphasize mass transportation options in new residential developments, and to demonstrate that adequate parking will exist.
- g.* The Project meets the goals of the Urban Design element to create appropriate arrangements of materials, height, scale and massing to complement the immediate arrangements, to preserve and enhance the outstanding physical qualities of District neighborhoods, and to develop a unifying system of well-designed streets, sidewalks, parks and pedestrian ways.
- h.* The Project is consistent with the Ward 3 element in the following ways:
  - (1) The Project furthers the major theme of the Ward 3 element in that it protects and preserves the low density, high quality character of the ward.

- (2) The Project furthers the Economic Development element of Ward 3 by stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside the Central Employment Area should be consistent with the Land Use Element and accompanying maps.
- (3) The Project furthers the Housing element of Ward 3 by focusing the development of new housing on underutilized land in the ward designated as housing opportunity areas, providing the greatest housing densities on those corridors that have the best access to transportation and shopping, encouraging a mix of populations, permitting increased densities (consistent with design scale and infrastructure capacity) in exchange for incorporating low- and moderate-income or elderly housing in development projects, giving zoning preference to projects that include housing near each of the ward's Metrorail stations, and treating housing, when consistent with this ward plan and when for low, moderate or fixed-income households, as an important public amenity.
- (4) The Project furthers the Environmental Protection element of Ward 3 by minimizing reliance on automobiles, promoting pedestrian transit and public transportation, and furthering an aggressive policy of replacing trees and planting new trees.
- (5) The Project furthers the Transportation element of Ward 3 by reviewing transportation impacts as a critical factor in this development, improving the level of service at street intersections to "B," or "C" at worst, for the protection and improvement of the quality of life, air quality and residential character of the ward, and limiting medium and high density residential uses to the major arterials well served by either Metrorail or Metrobus.
- (6) The Project furthers the Urban Design element of Ward 3 by carefully controlling the development to protect the existing scale and low density character and to enhance the maintenance of existing natural open spaces and other qualities of the ward, relating the overall height of new construction to that of adjacent structures, relating the size and proportions of new construction to the scale of adjacent buildings, and providing buffers between high density residential development and residential districts.
- (7) The Project furthers the Land Use element of Ward 3 by maintaining and expanding the housing stock, increasing the supply of child care facilities, directing development to the housing opportunity areas, and giving zoning preference to projects which include housing in the ward near each of the ward's Metrorail stations.

- i.* The Project also furthers the District's goals for transit-oriented development and the policies and programs of Smart Growth.

204. The OP reported that the Applicant's proposal is consistent with the goals of the Comprehensive Plan, presenting a detailed analysis of its conclusions in OP's testimony to the Commission and in the OP report at Exhibit 146 in the record, citing the following specific components of the proposal:

- a.* The Project is consistent with the policies and goals of the Land Use element because the policies envision Friendship Heights as an area that should be permitted to develop and evolve as long as the adjacent neighborhood is adequately protected. It is public policy to increase mixed-use development at Metrorail stations such as Friendship Heights in order to reduce the larger-scale pattern of increasing automobile usage and air quality degradation. In addition, the Project would concentrate new residential development in close proximity to a Metrorail and Metrobus station and provide a 240 foot deep, landscaped, half-acre buffer between the new construction and the nearest single-family home. The Project retains a number of mature trees. Finally, based on the DDOT's evaluation, the Project would not have an adverse impact on traffic.
- b.* The Project is consistent with the policies and goals of the Economic Development element. In addition to construction costs, the proposed development would provide a maximum of 125 units for a significant increase in housing. The Project will likely support a net increase in upper income residents paying taxes to the District as well as provide four to six affordable units. Furthermore, the Project includes a Day Care Center to be targeted to the neighborhood residents.
- c.* The Project is consistent with the policies and goals of the Housing element. Specifically housing in the District is viewed as a key part of a total urban living system and the Comprehensive Plan states the need to designate area where significant housing development can appropriately occur, encouraging multi-unit housing near Metrorail stations. The Project will contribute significantly to realizing the policy of increasing housing in this area, which is a mixed-use Regional Center concentrated around a Metrorail station. The Housing element also provides for zoning incentives, as appropriate, for developments including affordable housing as well as providing zoning preferences for sites that include housing near appropriate Metrorail Stations. The discretionary increase in density and the related PUD conditions are zoning incentives for the inclusion of affordable housing units within the Project. Additionally, the development of new housing units in Friendship Heights is congruent with the emerging policy objective of increasing the District's population.



- d.* The Project is consistent with the Environmental element of the Comprehensive Plan. The DDOT estimates that at least fifty percent of the peak hour traffic generated by the development would use Metro. With a broad range of shopping, services and employment within easy walking distance as well as the Metro, this development would be in one of the most Metro-accessible locations in the region. In addition, the concentration of development in a taller building enables the preservation of mature trees and provides for more pervious surface than other development patterns serving an equivalent number of people.
- e.* The Project is consistent with the Transportation element of the Comprehensive Plan, being located in close proximity to the Friendship Heights Metrorail station and adjacent to numerous bus lines in a significant mixed-use area furthers TOD goals. Moreover, focusing development around the Metrorail station puts less pressure on increasing the density of residential areas farther away from Metro. The DDOT determined the Project's traffic impact to be negligible, even without the signalization and signage enhancements proposed by the Applicant.
- f.* The Project is consistent with the Urban Design element, which has as objectives to preserve and enhance the outstanding physical qualities of District neighborhoods, to maintain those areas that have a positive physical image and to provide that new development and renovation within or adjacent to these areas is complementary in scale and character. The landscaped open space permanently provided on almost 50% of the Site is consistent with the Comprehensive Plan and the 1974 Sector Plan, not an official part of the Comprehensive Plan. The open space in the southern and eastern part of the Site is made possible by the concentration of development in the northern and western sections of the Site, closer to Western Avenue and Metro and in a somewhat taller, denser structure along Western Avenue than would be the case without a PUD. The Project also provides a pedestrian connection from the residential areas to the Metro station and commercial areas, consistent with the 1974 Sector Plan. Finally, development along Wisconsin Avenue, particularly in Friendship Heights, is concentrated along the major north-south corridor. The residential character behind the corridors is actually in sharp, low-density contrast to that of the main avenue. The provision of a landscaped buffer of approximately 180 to 240 feet in distance between the proposed project and the nearest townhouse or detached single family house will serve to keep a verdant context for the single family homes.
- g.* The Project is consistent with the Ward 3 element, which stresses that Ward 3 is fortunate in many ways compared to the rest of the City. The Project is consistent with those sections that support the construction of new "infill" housing and those section that stress that housing is to be built around appropriate Metrorail station

areas. The element states that zoning preference should be given to projects that include housing near each of the ward's Metrorail Stations – consistent with design, scale and infrastructure capacity. The Project is also consistent with those sections that stress that housing should be built in designated Housing Opportunity Areas and those sections that stress the need for affordable housing and home-ownership. The Project's inclusion of affordable housing furthers the public action objective that states that affordable housing should be treated as an important public amenity.

- h.* The Project is consistent with the Ward 3 element's housing-related sections, which focus on development of new housing on underutilized land that has been designated as part of housing opportunity areas, or is well-served by Metro and public transit. It notes the need for "affordable" housing, and includes a policy to permit increased residential densities (consistent with design scale and infrastructure capacity) in exchange for incorporating low-and moderate income or elderly housing in development projects. However, the Ward 3 element also notes that development proposals, even in housing opportunity areas, must be evaluated to avoid adverse impacts on neighborhood stability, traffic, parking, and environmental quality. The Project has no adverse impacts on any of these areas.
  - i.* The transportation-related sections of the Ward 3 element state that all major developments, including PUDs should require a transportation system management program or physical improvements that prevent deterioration of intersection operations below at a Level of Service "C". (§§1404.3 (i) and 1404.5 (a)). Improvements to existing levels of service may be considered a project amenity (§1404.3 (i)). The DDOT concluded that the Project does not have an adverse impact on traffic.
  - j.* The Ward 3 element states that amenities that may be considered optional for most PUDs are considered as requirements in the Ward 3 element. These include superior design, tax revenues and first-source employment agreements. The Project, which has a superior design, does provide public benefits from tax revenues. The Applicant did not offer a first source agreement, but the OP concludes that the Project provides an unusually high level of benefits and amenities for a residential project.
205. The Zoning Commission adopts the analysis of the OP and the Applicant's Land Planner and finds that the Project is not inconsistent with the Comprehensive Plan.
206. The Zoning Commission finds that the Project is not inconsistent with each area of the Comprehensive Plan identified by Mr. Oberlander as follows:

- a.* The design of the Project ensures the stability of the low-density, high-quality nature of the ward with a design that relates to both the low-density residential neighborhood as well as the more intense commercial areas in the Friendship Heights regional center.
  - b.* The Project will have no unacceptable adverse or undesirable effects that will spill over into the nearby residential area . As discussed in Findings 116 through 124, the Project will have no adverse impact on traffic, and as discussed in Findings 107 through 115, the height and density of the Project will not create any unacceptable adverse impacts.
  - c.* The Project will help maintain a strong residential neighborhood. The height and density of the Project creates a transition zone, while the open, green space creates a buffer between the residential and the commercial areas.
  - d.* The Zoning Commission has evaluated the Project to determine if it would result in adverse impacts on neighborhood stability, traffic, parking, and environmental quality and finds that the Project will have no adverse impact on these areas.
  - e.* The Project will not adversely impact the existing scale and low density character. The Project will enhance many qualities of the ward, including providing housing at an appropriate location, providing affordable housing, and expanding the number of child care facilities in the ward.
207. The Zoning Commission further finds that Mr. Oberlander's argument that any decision by the Commission prior to the OP preparing a small area plan for Friendship Heights is without merit. The law requires that the Zoning Commission determine whether a project is not inconsistent with the Comprehensive Plan. The Zoning Commission has consistently determined to proceed on the basis of the best information available at the time. The Zoning Commission finds that there has been substantial planning analysis undertaken and finds that there is no basis to delay action on the Applications.
208. The Commission finds that the PUD is consistent with many of the Comprehensive Plan's major themes and that the development is not inconsistent with Comprehensive Plan. The PUD process ensures that the development has an exceptional design that respects and improves the physical character of the District, which is a major theme of the Comprehensive Plan. The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The Project takes advantage of this asset by its proximity to the Friendship Heights Metrorail and Metrobus stations. In addition, the Comprehensive Plan encourages stabilizing and improving the District' neighborhoods, which this Project does.

209. The Zoning Commission further finds that, under §112.1(c), the Land Use element is to be given greater weight than all other elements, including the Ward 3 element. The Zoning Commission finds that, as stated in Findings 203(h) and Findings 204(g) through 203(j), the Project is consistent with the Ward 3 element.

**Response to Issues and Concerns of ANC 3E**

210. In its report, the ANC 3E identified that the basis for its opposition to the Project as stated in Findings 51 through 54. With respect to those issues and concerns, the Zoning Commission finds that:
- a. Appropriateness of the rezoning is addressed in Findings 87 through 106;
  - b. Consistency of the Project with the scale and character is addressed in Findings 107 through 115; and
  - c. Benefits of the Project as compared to a matter-of-right development is addressed in Findings 190 through 193.
211. On behalf of ANC 3E, Mr. DiBiase testified as to additional issues regarding the Project. With respect to those issues and concerns, the Zoning Commission finds that:
- a. The appropriateness of the rezoning is addressed in Findings 87 through 106;
  - b. The neighborhood's right to the zoning based on expectations and current boundaries is addressed in Findings 87 through 106; and
  - c. Whether the Project is too big for the Site is addressed in Findings 107 through 115.

**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 BZA.

3. The development of this 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.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. Residential use is appropriate for this Site, which is located in a Housing Opportunity Area, in a Regional Center, and within immediate proximity to mass transit. The impact of the Project on the surrounding area is not unacceptable. As set forth in the findings of fact, the Project has been appropriately designed to respect the surrounding areas, including the low-density residential areas to the east and southeast and the commercial centers to the north, west and south. Accordingly, the Project should be approved.
6. The Applications can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applications seek an increase in height and density as permitted by 11 DCMR § 2405.3. The project benefits and amenities, particularly the provision of housing and affordable housing in a Housing Opportunity Area, the open space, and the day care center, are a reasonable trade-off for the development.
8. Approval of the Applications is appropriate because the Project is consistent with the present character of the area.
9. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan, including the designation of the Site in a Housing Opportunity Area, in a Regional Center, and in the institutional land use category.
10. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's report and testimony. The Commission has addressed, through the conditions imposed in this order, the ANC's specific issues and concerns.

11. The approval of the Applications 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 Zoning Map of the District of Columbia.
12. The rezoning of the Washington Clinic Land to R-5-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, Section 6-641-.01 of the D.C. Code.
13. Notice was provided in accordance with the Zoning Regulations and applicable case law.
14. The Applications are 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 Applications for consolidated review of a Planned Unit Development for Square 1663, Lots 805 and a portion of Lot 7 and for a Zoning Map amendment from R-5-B to R-5-C for the Washington Clinic property located in Square 1663, Lot 805. This approval is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by Shalom Baranes and Associates, dated October 25, 2002, as supplemented by drawings dated December 5, 2002, and January 6, 2003, marked as Exhibits 79, 79A, 175, and 212 respectively in the record, (the "Plans") as modified by the guidelines, conditions and standards herein.
2. The PUD shall be a residential building, consisting of approximately 182,000 square feet of gross floor area, with no more than 125 units. The Project shall not exceed a density of 4.15 FAR based exclusively on the site area of the Washington Clinic Land. The building shall not exceed a height of 78.75 feet, as measured in accordance with the Zoning Regulations. The Project may include a roof structure with a height not to exceed eighteen feet, six inches as indicated in the Plans and in accordance with the Zoning Regulations.
3. The Applicant shall provide affordable housing as described in Finding 39(b) and Findings 139 through 147 and in Exhibit 212 in the record. To the extent that minor modifications need to be made in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development to make such changes to comply with the same.

4. The Applicant shall include a day care center for a maximum of 44 children. The Applicant will provide the Day Care Center space to the selected operator by a lease for fifty years with a rent not to exceed \$1.00 annually. The Day Care Center shall be constructed on the Lisner Land, in accordance with the architectural plans and drawings referenced in Condition No. 1. The Day Care Center shall have a maximum gross floor area of 3,000 square feet, not to exceed 0.4 FAR exclusively on the Lisner Land.
5. The Day Care Center shall be operated so that enrollment is open to children of employees working within one-quarter mile of the Project and to children of community residents on an equal basis with the goal of achieving a 50-50 ratio between the groups. If the Day Care Center must make an organizational or other change to continue operations, the Day Care Center will continue to promote the 50-50 mix between neighborhood children and children of employees working within one-quarter mile of the Project, with the goal of ensuring that neighborhood children participate in the Day Care Center on an equal or preferred basis with children of employees working within one-quarter mile of the Project..
6. The Project shall include a minimum number of parking spaces in the amount of 1.1 parking spaces per dwelling unit, including eight parking spaces devoted to visitor parking. The eight visitor spaces may be provided on a surface lot in accordance with the Plans. The eight visitor spaces shall be free of charge to visitors. The Project shall also include four parking spaces to be devoted to employees and/or staff of the Day Care Center. The eight visitor spaces shall be reserved for use by the Day Care Center during the morning drop off period (7:30 a.m. through 9:30 a.m.) and the afternoon pick up period (4:00 p.m. through 6:00 p.m.).
7. The Project shall include one twelve foot by fifty-five foot loading berth, with a 200 square foot loading platform, and one ten foot by twenty foot service/delivery space as shown on the Plans. No deliveries to the Project shall be made during the Day Care Center's morning drop off period (7:30 a.m. through 9:30 a.m.) or the Day Care Center's afternoon pick up period (4:00 p.m. through 6:00 p.m.), so as not to interfere with the egress and ingress of parents dropping off children at the Day Care Center or with rush hour traffic.
8. If the Applicant constructs a lay-by along Military Road, as depicted in the Plans, the Applicant shall require the operator of the Day Care Center to send letters to all parents of the Day Care Center informing them that use of the lay-by for drop off of children or pick up of children at the Day Care Center is forbidden. In addition, the Applicant shall request the DDOT to place signs at the lay-by restricting its use to a five minute period.
9. The Project shall include approximately 24,700 square feet devoted to open, green space, which is readily accessible to the public and has no physical barriers to its entry, as

depicted on the Plans. The Project shall also include a pedestrian path connecting the residential area with the commercial area, as depicted on the Plans. Landscaping improvements shall be in accordance with the Plans. The Applicant or its successors shall maintain all landscaping improvements.

10. The Applicant shall retain those trees on the Site indicated on the landscaping plan as indicated on the Plans.
11. The Applicant shall include landscaping improvements as indicated on the Plans within the fifteen foot building line setback along Military Road. The Applicant or its successors shall maintain all landscaping improvements.
12. Landscaping and improvements to public space along the street elevations of the building shall be in accordance with the plans submitted to the record and as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping improvements.
13. The Applicant shall submit to the DDOT its traffic mitigation plan as set forth at Exhibit \_\_\_ in the record. Any of the proposed traffic calming measures approved by the DDOT shall be accomplished by the Applicant or at the Applicant's expense.
14. The Project shall include a raised pedestrian crosswalk across the new curb cut and a stop sign at the entrance approach to Western Avenue shall be provided to enhance operational efficiency and safety of this driveway.
15. The Applicant shall implement a Transportation Management Plan as set forth in Finding 39(f). To the extent that modifications must be made to the Transportation Management Plan, the Applicant shall receive the approval of the DDOT to effectuate such changes.
16. The Applicant shall make or cause to be made the following improvements to the Chevy Chase Park in the District near the Site: an asphalt track around the existing ball field and enhancements to the playground area, including improvements to the picnic and sitting areas. These improvements shall be completed prior to the issuance of a certificate of occupancy for the residential building.
17. The Applicant shall follow the Revised Construction Management Plan filed as Exhibit 212 of the record.
18. The Applicant shall work with the DDOT to optimize the signal light at the intersection of Western and Wisconsin Avenues. The improvements required to optimize the signal light at the intersection of Western and Wisconsin Avenues and approved by the DDOT shall be accomplished by the Applicant or at the Applicant's expense.



19. The Applicant 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, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
  - b. To make minor modifications to the location and design of the Day Care Center, provided that the building is consistent with the location shown on the Plans;
  - c. To vary the number and location of parking spaces, not to decrease below the minimum of 1.1 parking spaces per unit plus four parking spaces for the Day Care Center;
  - d. 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;
  - e. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit.
20. No building permit shall be issued for this PUD until the Applicant has 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 Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successor in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.
21. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
22. 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.
23. Pursuant to the Human Rights Act of 1977, D.C. Code § 1-2531 (1991), the Applicant is required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

Vote of the Zoning Commission taken at its public meeting on \_\_\_\_\_:  
\_\_\_\_\_(Chairperson Carol J. Mitten, Vice Chair Anthony M. Hood, John G. Parsons, Peter G.  
May, James H. Hannaham)

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 \_\_\_\_\_.

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**CAROL J. MITTEN**  
Chairman, Zoning Commission

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**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning