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March 24, 2003

**WHAYNE S. QUIN**  
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**VIA HAND DELIVERY**  
Zoning Commission for the  
District of Columbia  
Suite 210  
441 4th Street, N.W.  
Washington, D.C. 20001

Re: 5401 Western Avenue, N.W.  
Zoning Commission Case No. 02-17C  
**Supplemental Post-Hearing Submission**

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Dear Members of the Commission:

At its public meeting held on February 24, 2003, the Zoning Commission requested certain additional information regarding the above-referenced application from the Applicant and the District Department of Transportation (DDOT). Stonebridge Associates 5401, LLC, the Applicant in the above-referenced case (the "Applicant"), hereby responds to the questions raised by the Zoning Commission.

A. Would the Applicant agree to a condition that required active promotion of the elements of its Transportation Management Plan, including the provision of FlexCar, by including those elements in its marketing materials?

The Applicant hereby agrees to such a condition and proposes that Condition No. 15 contained in the Applicant's proposed Findings of Fact and Conclusions of Law be revised to read as follows:

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

ZONING COMMISSION  
District of Columbia  
Case 02-17C  
Exhibit 223

ZONING COMMISSION  
District of Columbia  
CASE NO.02-17  
EXHIBIT NO.223

shall receive the approval of the DDOT to effectuate such changes. The Applicant shall include in its promotional and marketing materials a summary of the elements of the Transportation Management Plan, including the availability of car sharing services such as FlexCar. The applicant shall give a copy of the Transportation Management Plan to each purchaser of a unit. (added language underlined)

- B. Would the Applicant agree to a condition that requires the Applicant to sell residential units and parking spaces separately (i.e., not as a package) so that a purchaser without a car is not required to purchase a parking space?

The Applicant hereby agrees to such a condition and proposes that Condition No. 6 contained in the Applicant's proposed Findings of Fact and Conclusions of Law be revised to read as follows:

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. Parking spaces shall be offered for sale separately from dwelling units and no purchaser of a dwelling unit shall be required to purchase a parking space. 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.) (added language underlined)

- C. Would the Applicant agree to the proposed DDOT condition restricting loading to off-peak hours for the day care center?

The Applicant has already proposed such a condition as set forth in the following Condition No. 7 contained in the Applicant's proposed Findings of Fact and Conclusions of Law:

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. (underlining added for emphasis)

- D. What additional conditions can be included in the affordable housing amenity to better ensure that it is enforced?

Following further discussions with the Office of Planning, the Applicant has included provisions for the District government to have rights to enforce the affordability covenants and otherwise work with the Applicant to set up and monitor the program. A revised version of the Applicant's proposed Affordable Housing Program is attached as Exhibit 1. Condition No. 3 contained in the Applicant's proposed Findings of Fact and Conclusions of Law would therefore be revised to reference the exhibit number assigned to this revised version.

- E. Will the Applicant suggest conditions to ensure that the open space in the project is generally accessible to the public? Will the Applicant ensure that no private playground will be provided on the site for the day care center?

The Applicant hereby proposes that Condition No. 6 contained in the Applicant's proposed Findings of Fact and Conclusions of Law be revised to read as follows:

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 open space shown on the plans shall not be fenced in or enclosed. No playground for the exclusive use of the day care center shall be permitted on the site. Prohibitions on (1) enclosing the open space and (2) a playground for the exclusive use of the day care center shall be included in the declaration of condominium. 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. (added language underlined)

- F. Are there any changes that can be made to the construction management plan to better respond to the opposition's concerns? How does the

Applicant respond to ANC 3/4G's request that truck traffic not use Military Road or Western Avenue?

Prior to the original closing of the record, the Applicant modified the Proposed Elements of its Construction Management Plan to:

- Provide for the creation of a Community Advisory Committee;
- Extend the survey area to 300 feet for adjacent residential properties beyond the Site property line;
- Include the submittal of the scope of work to be performed in the pre-construction survey;
- Establish the requirement for construction monitoring services, most importantly as it relates to sheeting/shoring operation, dewatering, excavation and installation of foundation components;
- Implement a program to monitor the structural settlement of Surveyed Homes and mitigate potential impact;
- Prohibit driving of piles;
- Require monthly meetings of the Community Advisory Committee with representatives from the Developer and General Contractor in attendance;
- Provide for all subcontractors/material suppliers to be issued written instruction on truck routing and to prohibit repeat offenders from entering the Site; and
- Extend the allowable post-construction survey period up to thirteen months after Certificate of Occupancy has been issued.

The Construction Management Plan as originally proposed provided for:

- Significant remedies related to payment for damage caused by Developer;
- Pre-approved list of engineering survey firm, with final firm selected by Owners and paid by Developer, and
- Stringent jobsite rules including (but not limited to) site management, cleanliness, deliveries, work hours, traffic restrictions, parking and truck travel/queuing.
- Limiting construction truck traffic access to the site to be to and from Western Avenue and requiring construction truck traffic to use Western Avenue west of the site and River Road and Wisconsin Avenue north of the site.

In order to make clear the routes to be followed by construction trucks, the Applicant hereby submits as Exhibit 2 a map showing the routes to be used, which involve use of Western Avenue west of the site to Wisconsin Avenue or River Road northbound.

The proposed Construction Management Plan was initially modeled from two of the most recent projects in ANC 3E (including a project in Square 1661), neither of which was reported to have any construction management problems. The Plan, as now presented, contains more restrictions, resulting in additional costs borne by the Applicant, than in either of the other two projects. Under a matter-of-right development, there would be no Construction Management Plan to benefit and protect the neighborhood.

G. Does traffic leaving the building and the day care center threaten pedestrians along Western Avenue and on Military Road at Western Avenue?

The current proposed configuration of driveway access is the best method for getting traffic into and out of the site. There is no access proposed from the north side of Military Road, which has a much greater level of pedestrian traffic than does the south side of Western Avenue. As noted above, truck traffic will be prohibited from the loading dock peak commuting hours, when there is also the greatest pedestrian traffic. The south side of Western Avenue east of the site is improved with the Lisner Home, which is followed by the Livingston Park. Neither of those uses generates significant walking traffic along the sidewalk in front of the site. The Applicant has further proposed to enhance the crosswalk at the intersection of Western Avenue and Military Road (as part of its traffic mitigation plan) and to provide a raised pedestrian crosswalk and a stop sign at Western Avenue leaving the site (see Applicant's proposed Findings of Fact and Conclusions of Law, Condition No. 14). All of these factors and improvements should insure that pedestrians are not threatened by traffic leaving either the principal building or the day care center.

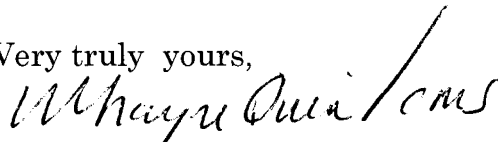
H. Would the Applicant consider a monetary donation to the park as opposed to constructing the improvements?

The Applicant hereby agrees to make a donation of \$75,000 to the non-profit Friends of Livingston Park and proposes that Condition No. 16 contained in the Applicant's proposed Findings of Fact and Conclusions of Law be revised to read as follows:

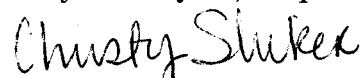
16. Prior to the issuance of the building permit for the residential building, the Applicant shall contribute \$75,000 to the non-profit Friends of Livingston Park for use in making improvements to the Park in the District near the Site. ~~The Applicant shall make or cause to be made the following improvements 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.~~ (added language underlined; deleted language struck-through)

We appreciate the Commission's consideration of this Post-Hearing Submission and believe that we have appropriately responded to all of the Commission's questions. We therefore respectfully request that the Commission approve the proposed map amendment and consolidated planned unit development, incorporating the revised conditions set forth above.

Very truly yours,



Whayne S. Quin, Esq.



Christine Moseley Shiker

#### Attachments

cc: Ellen McCarthy, Office of Planning (Via Hand Delivery)  
Stephen Cochran, Office of Planning (Via Hand Delivery)  
Ken Laden, District Department of Transportation (Via Hand Delivery)  
Parties to the Case (*See Attached Proof of Service*)

**PROOF OF SERVICE**

I hereby certify that on March 24, 2003, a copy of the foregoing Supplemental Post-Hearing Submission as well as a copy of the Memorandum from the Office of Planning dated March 20, 2003 (filed March 21, 2003), and a copy of the Memorandum from the District Department of Transportation dated March 20, 2003 (filed March 21, 2003), were served on the following persons or organizations as stated below:

Advisory Neighborhood Commission 3E           ***(Via U.S. Mail)***  
PO Box 9953  
Washington, D.C. 20016  
(202) 244-0800

Advisory Neighborhood Commission 3E           ***(Via Hand Delivery)***  
c/o Tad DiBiase (3E03)  
4901 44<sup>th</sup> Street, N.W.  
Washington, D.C. 20016

Advisory Neighborhood Commission 3/4G       ***(Via Hand Delivery)***  
5601 Connecticut Avenue, N.W.  
Washington, D.C. 20015  
(202) 363-5803  
Fax (202) 686-4366

Andrea Ferster and Cornish Hitchcock ***(Via Hand Delivery [5 copies])***  
1100 17<sup>th</sup> Street, N.W. 10<sup>th</sup> Floor  
Washington, D.C. 20036  
(202) 974-5142  
Fax (202) 331-9680

*Counsel for the following parties: Friendship Heights Organization for Responsible Development, Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, and Martin Rojas*

Friendship Heights Organization for Responsible Development  
c/o Laurence Freedman                               ***(Via U.S. Mail)***  
4104 Legation Street, N.W.  
Washington, D.C. 20015

  
Christine Moseley Shiker, Esq.  
Holland & Knight

5401 Western Avenue, N.W.  
Washington, D.C.  
Summary of Affordable Housing Program  
Revised March 24, 2003  
*with Refinements to the Monitoring and Enforcement Mechanisms*

*Monitoring and enforcement mechanisms in addition to the Applicant's January 6, 2003, submission underlined.*

- Size: Applicant has committed to provide 5% of the FAR approved for the residential building in excess of the matter of right development, or 5,514 gross square feet (5% of 103,088 FAR square feet representing the difference between the requested 182,000 FAR square feet less 79,912 matter-of-right FAR square feet).
- Unit Configuration: The size and configuration of the units shall be determined in the final floor plan for the Project. It is expected that the units will be approximately 900 – 930 “saleable” square feet, contain two bedrooms and will be located on the first floor above the “ground” level.
- Initial Unit Price: The final contract price of an affordable unit will be determined by the District government consistent with the average affordable housing analysis for four person households as illustrated on Exhibit A.
- Certification of Eligibility: Eligible buyers – for both initial purchases and for resale - are defined as those households that meet the following criteria:
- Having household income not exceeding the “low income” limit by household size allowed by the U.S. Department of Housing and Urban Development for the Section 8 Program, or the appropriate successor program, for the Washington, D.C. Metropolitan Statistical Area (attached is a copy of the Fiscal Year 2002 Income Limits Summary);
  - Purchasing their primary residence;
  - Have no ownership interest in any other housing;
  - Commit to continuous owner occupancy; and
  - Purchasers must also qualify for the necessary home mortgage and fund the required down payment.



Potential homebuyers can be certified for income-eligibility by making application to the home purchase assistance programs of the Department of Housing and Community Development (DHCD).

Certification shall make households eligible for selection by lottery (see below).

**Selection of Buyers:** Applicant shall hold a lottery of all qualified families to be selected as the Initial Unit Purchasers. Applicant will provide notice of the lottery through advertisements in local newspapers and other vehicles reasonable to ensure broad exposure to potentially eligible purchasers. The Department of Housing and Community Development will also advise existing applicants to its home purchase assistance programs of this affordable housing opportunity. The Initial Unit Purchasers and the Initial Unit Price shall be determined by the District government in consultation with the Applicant six months prior to the projected completion of the Affordable Units.

**Restriction on Sale Affordable Units:** The Affordable Units will be restricted through a deed restriction, covenant and/or other legal means in their resale for a period of 20 years to: (1) income-eligible homebuyers, a list of whom may be obtained from the Department of Housing and Community Development's applicant pool for home purchase assistance programs; (2) a maximum Purchase Price equal to the Initial Unit Price plus the cumulative change in the consumer price index and the cost of permanent improvements to the Unit; and (3) Sale within a given 20 year affordability restriction period shall create a new 20 year affordability restriction period.

**Sale After Restriction Period:** Upon the expiration of the 20-year restricted selling period, the then current owner of the Unit may sell the Unit without restriction but the sales proceeds shall be allocated as follows:

First, to the seller in the amount of their original sales price plus the cumulative change in the consumer price

index, the cost of permanent improvements to the Unit, the closing costs paid by the seller at their closing and a reasonable sales commission.

The remainder shall be split equally between the seller and a District of Columbia government fund dedicated to the provision of affordable housing.

#### Monitoring and Enforcement<sup>1</sup>:

Restrictive covenants shall be active until the affordable housing trust fund receives the appropriate contribution from the sale of a unit.

The District government shall retain all rights to enforce the provisions of the affordability covenants, according to the provisions of this document or such enforcement mechanisms as the District government may deem appropriate. The District government shall have the right to recapture any enforcement costs.

#### Changes to Procedures After Initial Sale of Units:

The substance of any of the above Clauses that are included in deed restriction terms may not be modified without the consent of both the unit owner(s) and the District government. Administrative, monitoring and enforcement mechanisms not included in deed restrictions may be modified at the sole discretion of the District government.

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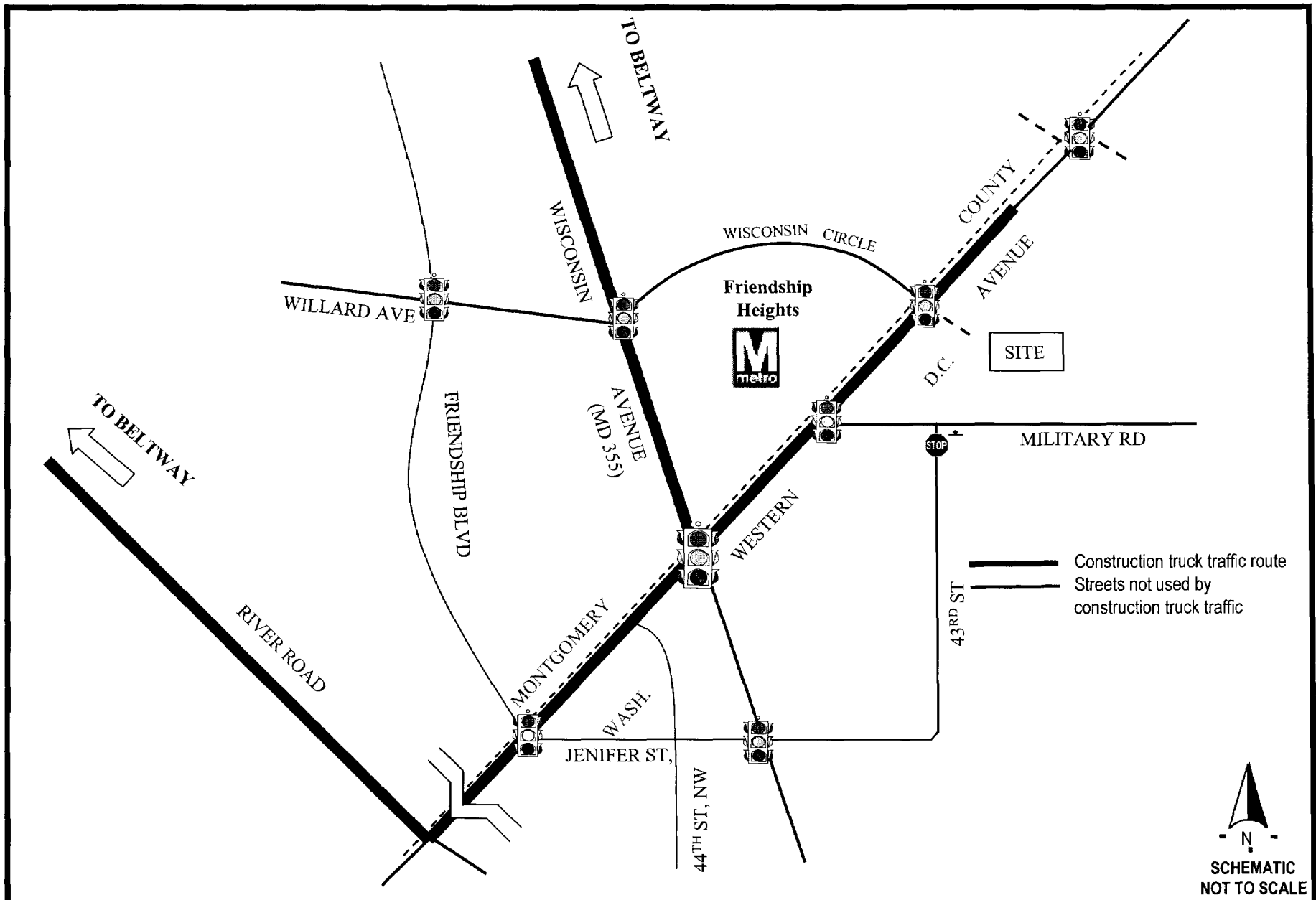
<sup>1</sup> The District Department of Housing and Community Development has committed to monitor and enforce the affordability of the units. The Applicant's understanding is that this will be addressed by the Office of Planning in its report.

5401 Western Avenue  
Affordable Housing Financial Analysis

No. of Units	5
Unit Size	920
Bedrooms	2
Interest Rate	7.00%
Debt Constant	7.98%
Taxes	1,300 (annual)
Condo Fee	200 (monthly)
Down Payment	5.00%

Household Size	4
Income Limit for Section 8 Low Income Washington, DC MSA	54,400
Available	30.00%

Available Annually for Mortgage Payment, Taxes, Condo Fee	16,320
	<u>12</u>
Available Monthly	1,360
Taxes	(108)
Condo Fee	<u>(200)</u>
Mortgage Payment	1,052
Debt Constant	<u>7.98%</u>
Loan Amount	158,073
Down Payment	<u>8,320</u>
Sales Price	166,393



5401 WESTERN AVENUE, N.W.

Construction Truck Routing  
 5401 Western Avenue Planned Unit Development, Northwest Washington, DC