

May 12, 2005

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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: Zoning Commission Case Nos. 02-17C and 04-06/02-17A
PUD Covenant – Certified Copy

2005 MAY 12 PM 12:30
OFFICE OF THE ZONING COMMISSION

Dear Members of the Commission:

On behalf of 5401 Western Avenue Residential, LLC, enclosed please find a certified copy of the PUD Covenant that was recorded with the Recorder of Deeds on Wednesday, May 11, 2005, as Document Number 2005064202. The filing of a certified copy of the PUD Covenant is required by Paragraph No. 6 in the PUD Covenant and satisfies Condition No. 21 as stated in Zoning Commission Order No. 02-17 and the conditions set forth in Zoning Commission Order No. 04-06/02-17A.

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

Very truly yours,

Christine Moseley Shiker

Enclosure

cc: Toye Bello, Zoning Administrator (Via Hand Delivery)

ZONING COMMISSION
District of Columbia
CASE NO. 02-17C
EXHIBIT NO. 238

ZONING COMMISSION
District of Columbia
CASE NO.02-17
EXHIBIT NO.238



LT1-5-2005064202-1

1:56:07 PM
D.C. OFFICE OF THE RECORDER
2005 MAY 12 PM 12:31

PUD COVENANT

THIS COVENANT, made as of this 30th day of December, 2004, by and between 5401 WESTERN AVENUE RESIDENTIAL, LLC, a Delaware limited liability company (hereinafter referred to as the "Declarant"), and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").

WITNESSETH:

WHEREAS, the Declarant is the owner of Assessment and Taxation Lot 805 in Square 1663, as more particularly described in Exhibit A; and

WHEREAS, the Declarant is also the owner of Record Lot 8 in Square 1663, as more particularly described in Exhibit B; and

WHEREAS, Lot 805 and Lot 8, as described in Exhibit A and Exhibit B, comprise the entirety of the subject site (hereinafter referred to as the "Subject Site"); and

WHEREAS, an application for a Planned Unit Development and Zoning Map Amendment for the Subject Site was filed and approved by the Zoning Commission; and

WHEREAS, the Declarant intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 02-17 effective August 22, 2003, in Zoning Case No. 02-17C;

WHEREAS, on September 17, 2003, a Petition for Review was filed with the District of Columbia Court of Appeals by the Friendship Heights Organization for Reasonable Development, challenging Zoning Commission Order No. 02-17 (the "Appeal");

WHEREAS, on March 8, 2004, the Zoning Commission approved an application for minor modifications to the approved Project, including providing conditions



LT2-0-0-51

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

[Handwritten signature]
Recorder of Deeds, D.C. MAY 11 2005

regarding parking, reducing the permitted density, reducing the height of the roof penthouse, substituting a new exterior design, and enhancing the construction management agreements, as set forth in Zoning Commission Order No. 04-06/02-17A;

WHEREAS, on October 26, 2004, the District of Columbia Court of Appeals ordered that the Appeal be dismissed on consideration of the stipulation of dismissal filed by the parties; and

WHEREAS, said Chapter 24 and Zoning Commission Order Nos. 02-17 and 04-06/02-17A require that the Declarant enter into this Covenant with the District of Columbia assuring the Declarant's, and its successors and assigns, development and use of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission") in Order No. 02-17, Order No. 04-06/02-17A, and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development and Amendment to the Zoning Map under Order No. 02-17 effective August 22, 2003, and the Zoning Commission's approval of minor modifications of the Planned Unit Development under Order No. 04-06/02-17A effective August 6, 2004, in Zoning Case No. 02-17C (as the same may be amended and/or modified from time to time, collectively the "Orders"), are incorporated herein by reference and made a part hereof as Exhibit C and Exhibit D, respectively, and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by the Orders and in accordance with the conditions and restrictions contained in the Orders, subject to such changes thereto as the Zoning

Commission and/or the Zoning Administrator of the District of Columbia, pursuant to 11 DCMR § 2409.6, may authorize. The Declarant covenants that it will use the Subject Site only in accordance with the terms of the Orders, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Declarant, its successors or assigns should fail to file for a building permit within two years of October 26, 2004, the decision date of the District of Columbia Court of Appeals' final determination of the Appeal as set forth in 11 DCMR § 2403.13 (the "Decision Date"), and to commence construction of the approved Planned Unit Development within three years of the Decision Date, the Zoning Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

3. Default. In the event that Declarant, its successors or assigns fails to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in paragraph two hereinabove or within any extension of time granted by the Zoning Commission for good cause shown, the benefits granted by the Orders shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto,

their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. The Declarant, its successors or assigns shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Orders is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Orders by their terms, the District shall, upon the request of Declarant, its successors or assigns, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, 5401 Western PNH, LLC, has caused this Covenant to be executed by Lamont Hoffman, its Managing Member, for purposes of executing, acknowledging and delivering this Covenant, as the act and deed of said 5401 Western PNH, LLC as Managing Member and on behalf of 5401 Western Avenue Residential, LLC all as of the day and year hereinbefore written.

**5401 WESTERN AVENUE
RESIDENTIAL, LLC**, a Delaware limited liability company,

WITNESS:

By: 5401 Western PNH, LLC
Its: Managing Member

[Signature]

By: [Signature] [seal]
Name: Lamont Hoffman
Title: Managing Member

DISTRICT of COLUMBIA, ss:

I, IRMA THAKKAR, a Notary Public in and for the District of Columbia, do hereby certify that Lamont Hoffman, the Managing Member of 5401 Western PNH, LLC, itself Managing Member of 5401 Western Avenue Residential, LLC, a Delaware limited liability company, party to the foregoing Covenant, personally appeared before me and, being personally well known to me, acknowledged said Covenant to be the act and deed of said limited liability companies and that he delivered the same as such.

GIVEN under my hand and seal this 30th day of December, 2004.

[Signature]
Notary Public

My commission expires: _____ Irma Thakkar
Notary Public

District of Columbia
My Commission Exp. 04/30/09

[NOTARIAL SEAL]

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

DISTRICT OF COLUMBIA,
a municipal corporation

WITNESS:

Tabatha Braxton

By: Sherryl Hobbs Neuman
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Sherryl Hobbs Neuman, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 6 day of May, 2005, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.


GIVEN under my hand and seal this 6 day of May, 2005.

Tabatha Braxton
Notary Public, D.C.

My commission expires: _____
[NOTARIAL SEAL]

TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

APPROVED:

A handwritten signature in black ink, appearing to read "M. BERSEW", written over a horizontal line.

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Alan Beyler

Assistant Attorney General
Office of the Attorney General for the District of Columbia

EXHIBIT A

Legal Description
5401 Western Avenue, NW Washington DC
Lot 805 Square 1663

Beginning at a point, said point marking the Northeasterly intersection of the limits of Western Avenue and Military Road NW, thence North 44° 58' East 334 feet with the Southeasterly line of Western Avenue to a point, thence leaving the Southeasterly Line of Western Avenue along an arc to the right 262.52 feet, said arc having a radius of 334 feet, chord bearing of South 23° 31' East, and chord length of 255.81 feet, to a point on the Northerly line of Military Road NW, thence with the Northerly line of Military Road NW, West 334 feet to the point of beginning and containing 43,840 square feet by record and measurement.



EXHIBIT B

Legal Description of Record Lot 8, Square 1663

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lot numbered EIGHT (8) in Square numbered ONE THOUSAND SIX HUNDRED AND SIXTY-THREE (1663) in the subdivision made by Abraham and Laura Lisner Home for Aged Women as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 199 at folio 27.

EXHIBIT C

Government of the District of Columbia ZONING COMMISSION



ZONING COMMISSION ORDER NO. 02-17 Case No. 02-17

(Consolidated Planned Unit Development and Related Zoning Map Amendment for 5401 Western Avenue, N.W.) May 12, 2003

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 an application from 5401 Western Avenue Associates, LLP and the Abraham and Louise Lisner Home for Aged Women for consolidated review and one-step approval of a planned unit development ("PUD") and a related Zoning Map amendment (the "Application"). The Commission considered the Application 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 Commission hereby approves the Application subject to conditions.

FINDINGS OF FACT

The Application, 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 the Application for consolidated review and approval of a 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 currently developed with the Washington Clinic (the "Washington Clinic Land"), and the portion of Lot 7 included in the Site is currently part of the western edge of the grounds of the Lisner Home (the "Lisner Land").
2. The Commission determined the parties to the case at the November 14, 2002, public hearing. Parties in this case were the Applicant; Advisory Neighborhood Commission ("ANC") 3E, the ANC within which the Site is located; and, in opposition to the Application, the Friendship Heights Organization for Reasonable Development ("FHORD"), Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, Martin Rojas, and ANC 3/4G. The 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 Commission also denied party status to the Chevy Chase Citizen's Association, finding that the request did not meet the requirements for party status.

3. A revised notice was published in the *D.C. Register* on October 4, 2002. On October 9, 2002, the Applicant posted signs with the revised publication notice. On October 14, 2002, the Applicant posted two additional revised publication notices. From that date, the Applicant asserted that the signs were maintained and replaced as required.
4. 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. By submission made December 5, 2002, FHORD asserted that notice was not properly given because the PUD affects two parcels, but the Application and notices referencing 5401 Western Avenue obscured the fact that a portion of the Lisner Land was also involved, and that the posted notice could lead a passerby to believe that only the Washington Clinic Land was involved. FHORD argued that notice also should have been posted on the Lisner Home building. The Applicant, in a submission also made December 5, 2002, contended that notice was posted in compliance with §§ 3015.4 and 3015.5 of the Zoning Regulations. The Applicant submitted an Affidavit of Posting (Exhibit 63) showing that the Applicant posted one sign on the property at the 5400 block of Military Road and Western Avenue, N.W. and another sign at 5401 Western Avenue, N.W. at the entrance to the Washington 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*. The Applicant asserted that the posting complied with the requirements and was completed at least 40 days before the public hearing. The Applicant also submitted Affidavits of Maintenance (Exhibits 139 and 140) stating that the signs were maintained weekly and replaced when necessary.
5. The Applicant also asserted that, even if the provided notice was insufficient, FHORD and other members of the community had actual notice of the PUD proposal, and that actual notice is sufficient to cure any technical violation of the notice requirements. According to the Applicant, FHORD and other members of the community were aware of the proposal, in part because the Applicant began working with the community seven (7) months before the Application was filed and continued to engage the community since then. ANC 3E considered the proposal at its monthly meetings in September and October 2002, as well as at a special meeting on November 7, 2002. ANC 3/4G considered the proposed development at its monthly meeting in October 2002. The public hearing date on the PUD proposal was announced at each ANC meeting. The record contains numerous letters both in support and in opposition to the project from members of the community, and the public hearing was attended by a significant number of community members.
6. The Applicant also argued that the notice issue was now moot. At its November 14, 2002, hearing, the Commission commenced the public hearing process, permitting only the Applicant's presentation and then publicly continued the hearing to Thursday, December 12, 2002. According to the Applicant, all parties and persons involved had

complete legal and actual notice at least 60 days in advance of the upcoming hearing and, thus, there was no prejudice to any party.

7. The subject property does not include the Lisner Home building, and the Applicant was not required to post notice on that building. In addition, the Applicant properly posted notice on the subject property, and that the parties in opposition received actual notice of the hearing. 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 by the parties and persons in support and in opposition.
8. The public hearing on the Application was held on November 14, December 12, and December 16, 2002. In addition to testimony and evidence presented by the parties and government agencies, the Commission heard testimony and received letters both from persons in support of the proposed PUD and from persons in opposition to the Application.
9. The Children's Center testified at the December 16, 2002, hearing and made written submissions in support of the project. Executive Director Lisa Danahy testified that the Children's Center, a non-profit corporation, was established in 1989 as an amenity in a PUD approved in Zoning Commission Order No. 519. The Children's Center is located one block from the proposed PUD and will expand its operation in the space provided as part of the PUD application. Ms. Danahy testified that the Children's Center is a community-based organization that serves the immediate neighborhood; eighty-seven percent (87%) of the current families live or work in Ward 3 and fifty-eight percent (58%) of those families are within ANC 3E. For three years, the Children's Center attempted to secure space for expansion and was unable to do so because of economic conditions and lack of available space.
10. The Commission also heard testimony in support of the project from Chris McNamara, the single-member district representative for ANC 3E02, and Frank Gordon, the single-member district representative for ANC 3E05. Mr. Gordon testified that the project, as ultimately revised, is an excellent plan, representing smart growth with appropriate density at a transit hub in a commercial center. He found the community amenity and benefits package to be substantial and endorsed the Applicant's actively seeking community input, which improved the plan.
11. Sam Black, the chair of the recognition jury of the Smart Growth Alliance, testified on behalf of the Smart Growth Alliance, which 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 as smart growth, because the proposed PUD is appropriate for a dense, mixed-use neighborhood and will contribute to a mixture of uses and to a walkable, transit-oriented community, citing especially the

public green space and affordable housing components of the project. 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, stated that the project would add well-designed housing close to 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 (5%) of affordable housing.

12. Several community residents testified in support of the project. Tad Baldwin supported the project because it represents smart growth, is environmentally sound, increases the tax base of the city, and incorporates affordable housing. Matthew Tobriner, president of the board of the Lisner Home, testified in support of the project as the closest neighbor. Caren Bohan strongly supported the project because it would create additional housing in the District near public transit and incorporate a much-needed day care center. Allison Barnard Feeney praised the proposed amenities and benefits offered by the Applicant, which she stated would exceed any cost to the immediate neighborhood created by 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.
13. The Commission also received letters and heard testimony from community residents opposed to the project. Margaret Mellon stated that the project was too large for the Site and that a matter-of-right development should be considered. Ann Jansen expressed concern about possible damage to her home. Dr. Anthony Furano objected to the Applicant’s proposal to balance a five percent (5%) increase in height and density with a five percent (5%) of affordable housing, stating that the exchange was not good precedent for establishing affordable housing in the District. Joel Hunter stated concerns about traffic and asked the Commission to defer its decision until after completion of the Military Road-Missouri Avenue Crosstown Traffic Study and the Upper Wisconsin Commercial Corridor Study.
14. At its public meeting on March 10, 2003, the Commission requested the submission of certain additional materials. At its April 14, 2003, meeting, the Zoning Commission took proposed action by a vote of 5-0-0 to approve, subject to conditions, the Application and plans presented at the public hearing.
15. The proposed action was referred to the National Capital Planning Commission (“NCPC”) under the terms of the District of Columbia Home Rule Act. NCPC, by action dated May 1, 2003, found that the proposed consolidated PUD and related rezoning would neither adversely affect the identified federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

16. The Zoning Commission took final action to approve the Application on May 12, 2003, by a vote of 5-0-0.

The Site and Surrounding Area

17. The subject property consists of Lot 805 and a portion of Lot 7 in Square 1663. Lot 805 is developed with a three-story building with basement, used as the Washington Clinic for the past fifty (50) years. The included portion of Lot 7 is currently part of the grounds of the Lisner Home, a residence for the elderly.
18. The Site is situated in Ward 3 at the intersection of Western Avenue and Military Road, N.W. and has a land area of approximately 58,840 square feet (43,840 square feet on Lot 805 and 15,000 square feet on Lot 7). 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 along the east side of the Site with the Lisner Home, which is approximately thirty (30) feet high. 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 (1) floor.
19. 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.
20. The Site is neither a designated historic landmark nor is it within a historic district.
21. Square 1661, which is south of the Site immediately across Military Road, is zoned C-3-B and R-5-D but has been developed with mixed-use developments approved through the PUD process. Whereas the maximum zoning height is one hundred (100) feet, Square 1661 contains townhouses in the eastern portion with a maximum height of forty-five (45) feet. Further to the southwest of the Site is Mazza Gallerie, which is zoned C-3-A and has a maximum height of sixty (60) feet and a floor area ratio ("FAR") of 3.0. To the north, immediately across Western Avenue in Montgomery County, Maryland, is a commercial office building with a height of 143 feet and density of 4.0 FAR. Adjacent to the office building is the Chevy Chase Center, which has been approved for redevelopment including a 300,000squarefoot, 90-foothigh mixed-use building. These properties, and those further to the north and northwest, are within Montgomery County, Maryland.

22. Residential developments within the R-2 District are located to the east and southeast of the Site. No detached single-family residence immediately confronts the above-grade portions of the Site; the closest detached single-family residence is more than 240 feet away from the building on the south side of Military Road.

Existing and Proposed Zoning

23. The Washington Clinic Land (Lot 805) is zoned R-5-B, and the Lisner Land (the portion of Lot 7) is zoned R-2. The Application originally requested rezoning of the entire Site to R-5-D but was subsequently modified to seek a PUD-related map amendment to R-5-C for the Washington Clinic Land only, with no change to the existing R-2 zoning for the Lisner Land.
24. The Site and areas to the east and southeast were zoned R-2 in 1958. The Washington Clinic Land was rezoned to R-5-B in 1974, when the Friendship Heights Metrorail station was planned but not yet constructed. Neither the Washington Clinic Land nor Lot 7 has been rezoned since 1974.
25. The R-2 District includes those areas that have been developed with one-family, semi-detached dwellings, and permits a maximum height of forty (40) feet, with a limit of three (3) 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 (40%). A PUD in the R-2 District may have a maximum height of forty (40) feet and a maximum density of 0.4 FAR devoted entirely to residential use.
26. The R-5 Districts are designed to permit a flexibility of design by permitting in a single district all types of urban residential development that conform to the height, density, and area requirements established for each district. The R-5-B District permits moderate height and density, including a maximum height of fifty (50) feet, with no limit on the number of stories, and a maximum density of 1.8 FAR. 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 (1) space for each two (2) dwelling units. A PUD in the R-5-B District may have a maximum height of sixty (60) feet, with no limit on the number of stories, and a maximum density of 3.0 FAR devoted entirely to residential use.
27. The R-5-C District permits medium height and density, including a maximum height of sixty (60) feet, with no limit on the number of stories, and a maximum density of 3.0 FAR. 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 (1) space for each three (3) dwelling units. A PUD in the R-5-C District may have a maximum height of seventy-five (75) feet, with no limit on the number of stories, and a maximum density of 4.0 FAR devoted entirely to residential use.

28. In support of its proposed PUD-related map amendment, the Applicant asserted that the analysis underlying the 1974 zoning map amendment was now outdated and has been overtaken by changes in the area, especially the modal split associated with the Friendship Heights Metrorail station. The Applicant presented testimony and evidence that the requested zoning change would be consistent with the purposes and objectives of zoning as set forth in the Zoning Act, D.C. Official Code § 6-641.01 (2001). According to Steve Sher, the Applicant's land planning expert, the appropriate zoning would place the highest residential density on the Site without creating adverse impacts. The Applicant contended that the project would not create adverse impacts on the nearby community but would reflect the same pattern of density and juxtaposition of height in the area, while also respecting the specific site context and overall community. Roger Lewis, the Applicant's expert in architecture and urban planning, testified that the proposed intensity on the Site was appropriate smart growth; that is, walkable, transit-oriented development that encourages denser, mixed-use development in areas well served by existing infrastructure and, specifically, along transit corridors.
29. The parties in opposition argued that the R-5-B zoning should be maintained on Lot 805. The opposition presented expert testimony about the 1974 rezoning from George H. Oberlander, AICP, who concluded that the Site's close proximity to Metro and the few additional housing units that might be created by the Applicant's requested zoning change were outweighed by the need to protect the existing well-established single-family housing near the Site on the east and south. Mr. Oberlander testified that the intent of the existing zoning appropriately balances the higher density commercial development on Wisconsin Avenue and the surrounding low-density neighborhoods.
30. For reasons discussed below, the Commission finds that the requested PUD-related Zoning Map Amendment of Lot 805 from R-5-B to R-5-C is appropriate, consistent with the purposes of the Zoning Act, and not inconsistent with the Comprehensive Plan. The Commission is not persuaded by the parties in opposition that the 1974 zoning designation should be maintained on Lot 805, but concludes that the PUD-related Zoning Map Amendment is appropriate considering the proximity of the Site to public transit and the scale of commercial development in the vicinity. In doing so, the Commission does not find that the existing underlying zoning is invalid, but that the PUD-related zoning is appropriate given the controls placed on the project through this Order.
31. The parties in opposition argued that the Commission should maintain the defined transition zone between the commercial and high-density area and the nearby low-density residential area, noting concerns about the future rezoning and redevelopment of the Lisner Home's property. 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 would create an appropriate transition zone in light of the District's planning policies and goals.

32. The Office of Planning (“OP”) testified that, in a regional commercial center, medium-density residential zoning is part of a transition and buffer for nearby lower-density residential developments, where the transition zone is maintained by the zoning pattern of commercial to medium-density residential to a lower-density residential. OP stated that R-5-C zoning is medium-density residential, and concluded that the R-5-C zone designation on the Washington Clinic Land adjacent to the R-2 zoning on the Lisner Land and nearby Lisner Home property, also zoned R-2, is the appropriate place for the transition boundary in light of the Comprehensive Plan and the District's planning policies and goals, including transit-oriented development and increased District residency. OP concluded that the project's planned half-acre of open space would provide an ideal buffer and transition space. OP also testified that it would recommend retention of R-2 zoning on the Lisner Home property as a transition zone as small area planning continued for the Friendship Heights area.
33. The Commission credits OP's conclusions and finds that R-5-C zoning on the Washington Clinic Land, adjacent to R-2 zoning on the Lisner Land, will maintain a transition zone appropriate for the area. The Commission makes no findings with respect to any potential redevelopment of the Lisner Home property, but reiterates its conclusion in *Tenley Park LLC* (Zoning Commission Order No. 921, Case No. 00-03C, September 17, 2001; see Conclusion of Law No. 13, 48 D.C. Reg. 10524-10525) that “a map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments.”

The PUD Project

34. The Applicant originally proposed to construct a for-rent apartment house with a maximum of 225 units and approximately 7,200 square feet of ground-floor retail fronting on and accessed from Western Avenue, with a density of 4.1 FAR (the “Original Proposal”; Exhibits 1-6). The maximum height of the Original Proposal was ninety (90) feet along Western Avenue, with the height of the eastern portion stepping down to fifty-two (52) feet, eight (8) inches, and ultimately to forty-two (42) feet, eight (8) inches at the southeast corner facing Military Road at 43rd Street. Between 218 and 250 parking spaces were proposed in a three-level, below-grade parking garage, with access to the parking garage and loading docks provided from Western Avenue. A primary lobby entrance along with a lay-by were proposed for access from Military Road.
35. On August 19, 2002, the Applicant filed a modified proposal that revised the Original Proposal in response to continuing work with the community and OP (the “Modified Proposal”; Exhibits 33, 33A, and 33B). Major changes made in the Modified Proposal included: (a) reductions in the number of apartments from 200-225 units to 185-215 units and in total density from 4.1 FAR to less than 4.0 FAR; (b) design modifications to eliminate the building wing closest to the single-family neighborhood to the east and to preserve all existing mature trees on the area formerly designated as a play area; (c) an

increase, from 110 to 180 feet, in the setback from the closest single-family residence; (d) elimination of the proposed ground-floor retail use; (e) allocation of 3,000 square feet to the Children's Center; and (f) the addition of a transportation management plan and off-site road improvements to improve the existing traffic situation in the Friendship Heights area. The changes were intended to lessen the impact of the development on the nearby residential community and to make it more compatible with the surrounding area.

36. The Applicant continued to work with ANC 3E, community representatives, and OP. In response to comments and negotiations, the Applicant further modified the scope and design of the project in its supplemental prehearing submission filed on October 25, 2002, in accordance with § 3013.8 of the Zoning Regulations (Exhibits 79 and 79A; the "Supplemental Prehearing Submission").
37. The Supplemental Prehearing Submission proposes a smaller project, including a reduction in density of more than twenty percent (20%), a reduction in height by two (2) 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") that includes space for use as a child care facility (the "Day Care Center").
38. The Project will orient the entire mass of the building toward Western Avenue, with a ground level plus seven (7) stories and a maximum height of 78.75 feet. The Project design consists of a single bar along Western Avenue, with density of 4.15 FAR based on the Washington Clinic Land only and a gross floor area of approximately 182,000 square feet. The total density calculated on the entire Site is 3.14 FAR.
39. The proposed building will be curved at the intersection of Western Avenue and Military Road across from the Chevy Chase Pavilion to create a street presence on Military Road. The density of the Project is focused along the Western Avenue frontage, away from the low-rise residential development that exists to the east and southeast along Military Road. The building will be set back approximately 240 feet from the nearest detached single-family dwelling and approximately 170 feet from the nearby townhouses. The building footprint will be parallel to the Western Avenue property line, and the short exposure of the residential "bar" will front onto Military Road.
40. The massing of the Project will be articulated with setbacks, bay windows, balconies, and trellis elements. A distinct massing form and entrance canopies will mark residential lobby entrances, and a curved façade will frame the publicly-accessible green lawn. The landscaped southeast "green" will open up to public space along Military Road. The green space, representing approximately 24,700 square feet (more than a half-acre) of open space, will provide a buffer to the residential neighborhood to the east and create an attractive passive recreation area. A hardscape path will connect the planned vehicular lay-by and the public sidewalk along Military Road to the entrance of the residential

lobby. The residential building's lobby will extend through the building at its western edge, providing pedestrian access at both Western Avenue and Military Road.

41. 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, and painted trellis-work will add detailing to the façade.
42. The Project will include a two-level, below-grade parking garage accessed from Western Avenue. The Applicant will provide at least 1.1 parking spaces per dwelling unit plus four (4) parking spaces for the Day Care Center; eight (8) visitor parking spaces will be provided in a surface lot adjacent to the Day Care Center. Ingress and egress to the garage will be aligned with the signalized intersection at Western Avenue and Wisconsin Circle in a configuration designed to enhance operational efficiency and safety at the Site by improving sight distances, reducing driver uncertainties, and minimizing east-west conflicts. The garage will also provide a number of bicycle parking spaces equal to at least twenty percent (20%) of the total number of dwelling units.
43. The Project will provide one 12-foot by 55-foot loading berth, with a 200 square foot loading platform, and one 10-foot by 20-foot service delivery space. The loading facilities will be located in the northeast corner of the residential building.
44. The Project will provide pedestrian access across the Site via a pedestrian path along the eastern side connecting Military Road to Western Avenue. The path will be framed by light poles and low retaining walls, and will provide a shortcut between the residential areas on the south side of Military Road and shopping and public transportation destinations located north of Western Avenue.
45. The planned Day Care Center was designed to minimize the visual impact of the structure and to blend in with the existing Lisner Home (Exhibit 212). The proposed one-story structure will be cut into the existing slope of the ground. The enclosing walls were 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 will match that used for the Lisner Home.
46. By reports dated November 4, 7, and 14, 2002, (final report at Exhibit 146) and through testimony presented at the public hearings, OP recommended approval of the Application with certain conditions, including the inclusion of affordable housing units in the Project and the provision of transportation and construction management plans. OP strongly recommended approval of the Application, noting that development of the proposed condominiums, at a density greater than would be allowed under matter-of-right zoning, was consistent with the Comprehensive Plan. OP testified that the Project would achieve

an unusually high level of public benefits for a residential PUD without significant negative impacts on the surrounding neighborhood. In concluding that the Application was consistent with the Comprehensive Plan and met the requirements and standards of Chapter 24 of the Zoning Regulations, OP commented favorably on the location and size of the new residential development; the inclusion of affordable housing in a market-rate project; the opportunities for home-ownership, including the affordable units; the inclusion of a day-care center; and the planned buffer of landscaped open space between the proposed development and nearby single-family residences.

47. Hazel Rebold, the owner of the detached single-family house closest to the Site, asserted that the Project would adversely impact her dwelling and other single-family dwellings nearby. Through a series of photographs (Exhibit 200), Ms. Rebold testified that the Project would be out of scale and character with the existing neighborhood.
48. Shalom Baranes, the Applicant's expert in architecture, testified regarding the significant green space planned along the southern edge of the Project and the height of the residential building. The absolute elevation of the Project, as finally modified, would be 400.75 feet above sea level as a result of the reduction in height to 78.75 feet – an elevation almost identical to the cornice line of the adjacent Embassy Suites hotel, which is at an elevation of 400.1 feet but approximately sixteen (16) feet below the top of the mansard roof line. The Project's height would also be significantly below the cornice line of the nearby office building at Chevy Chase Pavilion facing the single-family residential neighborhood, which is at an elevation of 423.1 feet and thirty-seven (37) feet less than the office building's mansard roof line.
49. The Applicant also testified that the Project would not cast a shadow on any residential property or affect the light or air of any existing or approved development, but would appropriately transition 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 would harmonize and be in scale with nearby structures and abutting properties, and its configuration would preserve significant usable, south-facing, landscaped open space. 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 90-footwide street. Mr. Sher also testified that the use, height, and density are all compatible with the surrounding area, noting that the residential building and Day Care Center would replace medical offices, where the closest uses to the north and south are hotel, office, and retail uses; the existing buildings to the south and north of the Project are higher than the proposed PUD, which would be substantially removed from the nearest single-family dwellings; and that the proposed density is lower than that of existing and approved commercial projects to the south and west, equivalent to the density to the north, and greater than, but removed from, the single-family neighborhood to the east.

50. OP concluded the Project's height would modulate between the taller development to the northwest and southwest of the Site and the closest single-family dwellings, with the proposed open space providing a buffer from the more intense development at the core of Friendship Heights than would some other alternatives.
51. The Commission concurs with the Applicant's testimony and evidence as well as OP's conclusions. The height of the Project building, as finally modified by the Applicant, will create an appropriate transition between the nearby lower-density residential neighborhood and higher-density commercial area. The height and density of the Project are appropriate for the area and will not have an adverse impact on the adjacent areas.

Development Incentives and Flexibility

52. The Applicant requests the following areas of flexibility from R-5-C requirements and PUD standards:
 - a. Approval of a day care center in the R-2 District otherwise requiring Board of Zoning Adjustment approval pursuant to § 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 R-5-C District, including five percent (5%) as permitted by § 2405.3, for a total height of 78.75 feet; and
 - c. Approval of an increase in residential gross floor area of 1.15 FAR over that permitted as a matter-of-right in the R-5-C District, including five percent (5%) as permitted by § 2405.3, for a total density of 4.15 FAR for the residential building on the Washington Clinic Land only.

Public Benefits and Project Amenities

53. The following benefits and amenities will be created as a result of the PUD project:
 - a. *Housing.* The Project constitutes a new residential development in a designated Housing Opportunity Area and will provide residential space beyond that permitted as a matter-of-right under the existing zoning.
 - b. *Affordable Housing.* The Project will devote five percent (5%) of the square footage over that permitted as a matter-of-right (that is, 5,514 gross square feet, or four [4] to six [6] units) to affordable housing for households that earn no more than the low-income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program. The continued availability of affordable housing in the Project will be monitored by OP and the D.C. Department of Housing and Community Development.

- c. *Day Care Center.* The Project will provide a separate building of approximately 3,000 square feet for use as a day care center with a maximum total enrollment of forty-four (44) children. The Applicant will lease the space for fifty (50) years, with a rent not to exceed \$1.00 annually, to the Children's Center.
- d. *Urban Design and Architecture.* The density of the Project will be oriented toward Western Avenue, approximately 240 feet from the nearest detached single-family residence, so as to minimize any adverse impacts on the adjacent community resulting from the Project's height. The Project will incorporate a paved, landscaped walkway from Military Road to Western Avenue to provide safe, lighted access for the public between the residential and commercial areas.
- e. *Open Space and Landscaping.* The Project will provide more open space than is required under the proposed R-5-C or the existing R-5-B zoning. An expanse of green space in the southern and eastern portions of the Site will encompass approximately 24,700 square feet devoted to trees, shrubs, and groundcover. The Project will also retain existing mature trees on the Site and enhance the existing streetscape with landscaping improvements on Western Avenue and within the 15-foot building line setback along Military Road as well as a wider sidewalk along Military Road.
- f. *Transportation Features.* The Applicant proposed a transportation management plan incorporating measures to encourage a reduction in passenger car trips, increase transit use, and promote successful transit-oriented development.
- g. *Traffic and Safety Improvements.* The Applicant proposed to work with the District Department of Transportation ("DDOT") to implement improvements along 43rd Street, Military Road, and Western Avenue to improve traffic operational and safety conditions in the neighborhood.
- h. *Parking.* To meet demand and prevent spillover parking on neighborhood streets, the Project will provide at least 1.1 parking spaces per dwelling unit and four (4) parking spaces for the Day Care Center. Eight (8) spaces for visitor parking will be reserved in a surface lot for drop-off and pick-up activities at the Day Care Center during specified times in the morning and afternoon.
- i. *Improvements to Chevy Chase Park.* The Applicant will contribute \$75,000 for improvements to the Chevy Chase Park, located near the Site, in cooperation with the Friends of Chevy Chase Park (the "Friends"), a volunteer-based group coordinating community efforts to improve and maintain this highly used facility. The Applicant's contribution is intended for two (2) major upgrades identified by the Friends for the park: a track around an existing ball field and enhancements to the playground area.

j. *Construction Management Plan.* The Applicant proposed a construction management plan intended to minimize potential adverse impacts resulting from the construction of the Project.

54. For the reasons discussed below, the Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities including the creation and preservation of open space; efficient and economical land utilization; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts; affordable housing; preservation of open space and trees; and uses of special value to the neighborhood and to the District of Columbia as a whole.

Contested Issues

Housing

55. The Applicant noted that § 2403.9(f) of the Zoning Regulations identifies housing as an amenity without differentiating on the basis of whether the same number of housing units could be provided under matter-of-right zoning. The Applicant asserted that the Commission has previously considered housing an amenity for PUDs in Residence Zones, citing ZC Order No. 831 (3133 Connecticut Avenue, N.W. – The Kennedy-Warren); ZC Order No. 870 (7th and G Streets, S.W.); and ZC Order No. 945 (EYA Development Inc., Bryan School). The Applicant noted further that the R-5-B zone permits a range of institutional uses, including a medical clinic, hospital, museum, and church, so that residential development is not guaranteed.
56. OP noted that the Project would provide 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.
57. The parties in opposition argued that housing cannot be considered an element of the Applicant's Community Amenity and Benefits Package because housing can be provided as part of a development under the matter-of-right standards.
58. The Commission finds that the provision of housing above that permitted as a matter-of-right in the existing zone district, particularly in a housing opportunity area, is a public benefit in accordance with § 2403.6 of the Zoning Regulations.

Affordable Housing

59. The Applicant proffered the inclusion of some affordable housing units within the Project as a public benefit and project amenity. Specifically, the Applicant committed to devote five percent (5%) of the increased square footage over that permitted as a matter-of-right

to affordable housing for households that earn no more than the low-income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program. The commitment will result in 5,514 square feet of the Project being devoted to affordable housing, or approximately four (4) to six (6) units, depending upon their configuration and size.

60. The Applicant asserted that the inclusion of affordable housing in the Project would further important goals of the Comprehensive Plan and the housing opportunity area, noting that the Project would not simply contribute to a fund for construction of affordable housing elsewhere but will provide affordable housing in Ward 3 – an area in significant need of affordable housing.
61. OP described the proposed affordable housing as a clear public benefit, and concluded that the projected four (4) to six (6) affordable housing units were an excellent start considering the Project’s size and nature. OP indicated that the continued availability of affordable housing in the Project will be monitored by OP and the D.C. Department of Housing and Community Development (“DHCD”), which committed to conduct appropriate monitoring of the affordable housing component of the Project on behalf of OP. OP stated that the Applicant’s refinements to its affordable housing program were consistent with the approach and enforcement mechanisms to which OP and DHCD are committed.
62. The parties in opposition argued that the affordable housing proffer did not constitute an amenity because the Applicant’s submission was not sufficiently specific about the operation of the program, including certification of eligibility, selection of buyers, and restrictions on sale of affordable units. In response, the Applicant submitted a revised, more detailed statement after considerable work with OP and DHCD. The statement 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, and the restrictions on sale of the affordable units (Exhibit 212). The Applicant subsequently revised the enforcement mechanisms for its proposed affordable housing program to include the participation of District agencies (Exhibit 223).
63. The opposition also argued that the affordable housing proffer did not constitute an amenity because the proposal was an “inefficient” means of providing affordable housing by devoting larger, more expensive units to affordable housing. In response, the Applicant noted that the affordable units were offered after significant work with OP and DHCD, and that the proposed PUD is apparently the first residential project to include an affordable housing component in furtherance of the Ward 3 Element of the Comprehensive Plan, which identifies affordable housing as an important public amenity.
64. The Commission concurs with the Applicant and OP that the inclusion of affordable housing in the Project is an important public benefit, consistent with goals of the

Comprehensive Plan and the Ward 3 Element. The Commission finds that the Applicant's proposal, as revised, is an appropriate and enforceable means to preserve the long-term viability of the affordable housing units included in the Project.

Day Care Center

65. The Applicant proposed to allocate approximately 3,000 square feet of space, in a one-story building separate from the residential building, for use as a day care center with a maximum total enrollment of forty-four (44) children. The Applicant plans to lease the space for fifty (50) years, with a rent not to exceed \$1.00 annually, to the Children's Center, allowing the center to more than double its capacity. The Children's Center is a not-for-profit organization created as a public amenity for the Chevy Chase Plaza PUD to provide space for a community-based day care facility. The Applicant indicated an intent to target the services of the Day Care Center to benefit the surrounding community.
66. The parties in opposition argued that the Day Care Center did not constitute a public benefit or project amenity, because it had significant costs but little value. They asserted that there was no guarantee that the Day Care Center would benefit the community and that the Day Care Center would not constitute "affordable" day care. The opposition also argued that in providing the Day Care Center, the Applicant would permanently eliminate the potential residential development of 15,000 square feet of land zoned R-2 in the housing opportunity area.
67. The Commission concurs with the Applicant that the Day Care Center constitutes a public benefit and project amenity, and that the Zoning Regulations do not require the provision of "affordable" or subsidized day care. As proposed by the Applicant, the Day Care Center is an appropriate use to be provided on the Site, particularly with its emphasis on serving families who live or work in the vicinity, in accordance with Condition No. 5.

Tree Preservation

68. The Applicant's initial modification of the proposed PUD redesigned the footprint of the building and its underground parking facilities to save twelve (12) existing mature trees on the southeastern portion of the Site. After the Project was modified further, the Site was redrawn so that six (6) of the trees were no longer within the boundaries of the Site. The parties in opposition argued that, as a result of the boundary change, tree preservation no longer constitutes an amenity to the community.
69. The Applicant noted that the Project would still retain the six (6) mature trees within the boundaries of the Site and will not disturb the other six (6) trees no longer on the Site. The Applicant also testified that the Project would retain ten (10) existing trees along

Western Avenue and Military Road, and would add significant new landscape improvements that would also benefit the community.

70. OP concurred with the Applicant, finding that the preservation of the existing mature trees clearly constituted a project amenity that would not be possible without the flexibility provided by the PUD process. OP testified that development under the matter-of-right zoning would likely result in the destruction of most, if not all, trees on the Lisner Land and on portions of the Washington Clinic Land.
71. The Commission finds that the Project will retain at least six (6) mature trees within the boundaries of the Site, and that the retention of these trees constitutes a public benefit and project amenity.

Open Space

72. The Applicant testified that the Washington Clinic Land includes a large surface parking lot covering much of the eastern portion. As proposed, the Project will replace the parking lot with a green space with landscaping, pedestrian paths, and a central meeting area. The green space will be approximately 24,700 square feet in size.
73. OP testified that the proposed open space will be a valuable amenity and an important public benefit, noting that, with the height and bulk of the Project shifted toward Western Avenue approximately 240 feet from the nearest single-family residence, the Project will include an open space buffer first envisioned in the 1974 sector plan.
74. The parties in opposition argued that, because there is currently no building constructed on the southeast portion of the Site where the Applicant proposed open green space, the Commission should not consider the open space as an amenity.
75. The Commission finds that the Project's provision of open green space is a public benefit and project amenity in accordance with § 2403.9(a) of the Zoning Regulations, and therefore adopts Condition No. 9.

Traffic

76. Cullen Elias, of 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 and including a twopercent (2%) annual growth rate to account for reasonable growth. Mr. Elias testified that the Project will generate fifteen percent (15%) fewer peak-hour trips than what the existing improvements generate, and concluded that the Project will not adversely affect adjacent properties.

77. The parties in opposition countered that the Applicant's traffic analysis was flawed and that in fact the Project would create unacceptable traffic impacts on the neighborhood, including an increase in congestion and more traffic on neighborhood streets. Joe Mehra, P.E., an expert in traffic engineering and transportation planning testifying on behalf of the parties in opposition, challenged the Applicant's traffic data and analysis (Exhibit 198). Mr. Mehra raised issues pertaining to the timing and location of traffic counts, the trip generation rates used to assess the Project and surrounding developments, projections of future traffic, the appropriate model for traffic analysis, and alleged operational and safety deficiencies at the entrances to the garage, Day Care Center, and loading area of the Project.
78. By reports dated October 8, 2002; November 13, 2002; and January 2, 2003, and through testimony at the December 12, 2002, public hearing, DDOT supported the Application. DDOT concluded that vehicular traffic generated by the Project could be accommodated with little or no negative impacts on the area road network, and that the proposed parking was adequate to service the Project and minimize parking spillover into the neighboring residential area.
79. DDOT initially recommended against the Applicant's proposed design for access to the garage and loading facility. The Applicant then revised its proposal by creating one (1) entranceway for residents and a separate entranceway to be used for access to the loading area, and indicated that deliveries would be scheduled at non-rush hour times so as not to interfere with the flow of visitors to the parking lot or with parents dropping off children at the Day Care Center. DDOT found these design modifications acceptable.
80. Colleen Smith and Kenneth Laden testified on behalf of DDOT at the December 12, 2002, public hearing. 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. Mr. Laden testified that the Applicant's proposed transportation management plan was consistent with what DDOT would recommend.
81. In response to the Commission's request for DDOT review of 2002 Census data regarding commuting patterns to work, in order to determine whether any communities had approximately fifty percent (50%) or more of the commuters using transit, DDOT concluded that nine communities had this transit rate. DDOT also stated that a fifty percent (50%) transit modal split was a reasonable estimate for a condominium project close to a Metrorail station and several major bus lines and within walking distance of office and retail developments, consistent with a transit use analysis conducted by the Metropolitan Washington Council of Governments for another residential development project in Friendship Heights.

82. By memorandum dated January 2, 2003, DDOT reaffirmed its earlier finding that the Project would not have an unacceptable impact on traffic in the vicinity and could be accommodated with little or no negative impact on the area road network. DDOT stated that the Project would generate approximately fifteen percent (15%) fewer morning and evening peak-hour trips than the existing Washington Clinic use. Further, DDOT was not persuaded by contentions raised by Joe Mehra, traffic expert for FHORD, citing differences in methods of measuring and projecting traffic conditions. The Applicant's traffic expert also responded to issues raised by Mr. Mehra, concluding that his criticisms were without merit (Exhibit 212).
83. The parties in opposition also argued that the Commission should not move forward on the Application until certain traffic and transportation studies, currently underway, were completed. DDOT noted that the following studies are now being conducted: a transportation study for Military Road and Missouri Avenue, a transportation study in Friendship Heights, and a transportation study for McKinley Avenue. DDOT advised that the Commission need not wait for the results of the studies before considering the proposed PUD, and indicated that, to the extent a study is applicable, the approved PUD would be included in future analyses.
84. The Commission credits the testimony of DDOT and the Applicant's traffic expert and finds that the Project will not have an unacceptable impact on traffic conditions in the surrounding area, and that any adverse impacts will be mitigated through the Applicant's proposed mitigation measures, including the transportation management plan and provision of bicycle racks in the garage. The Commission also concurs with DDOT that consideration of the Application should not be delayed pending completion of on-going traffic studies, particularly since the Project can be incorporated into the studies.
85. The Applicant's traffic expert completed a study identifying possible improvements intended to mitigate existing traffic operational and safety conditions on 43rd Street, Military Road, and Western Avenue, although not necessary to mitigate traffic resulting from the proposed development. The Applicant proposed to work with DDOT to refine and implement the proposed improvements.
86. DDOT testified that the Project would have no adverse impacts on the area even without the proposed improvements. According to DDOT, the peak-hour traffic generated from the Project would be less than that generated by the existing Washington Clinic use, and DDOT indicated that it had no objections or concerns regarding safety related to the Project.
87. OP testified that, because the proposed improvements were not required to shield the neighborhood from adverse traffic impacts created by the Project, the proposed transportation enhancements constituted project amenities rather than mitigation

measures. OP also stated that any pedestrian safety enhancements would constitute legitimate project amenities.

88. The parties in opposition argued that modifications to traffic and pedestrian patterns in the area proposed by the Applicant did not constitute an amenity because such improvements served only to mitigate traffic impacts created by the Project. The opposition also argued that the configuration of the Project would result in safety hazards.
89. The Commission concurs with OP that the Applicant's proposed improvements, which target existing traffic conditions, are not required to mitigate adverse traffic impacts created by the Project and therefore constitute a public benefit of the proposed PUD. Moreover, the Commission notes that "measures to mitigate adverse traffic impacts" is identified as a public benefit and project amenity in 11 DCMR § 2403.9(c).

Parking

90. The Project will provide at least 1.1 parking spaces per residential unit (a maximum of 138 spaces for 125 units) plus four (4) spaces for the Day Care Center. All parking will be provided in a two-level, below-grade garage, with the exception of eight (8) spaces for visitor parking located in a surface lot adjacent to the Day Care Center. The visitor parking spaces will be reserved for vehicles dropping off and picking up children at the Day Care Center during specified times in the morning and afternoon. The Zoning Regulations generally require one (1) parking space for every three (3) dwelling units and four (4) spaces for Day Care Center use.
91. The Applicant asserted that the provision of residential parking above the one-space-per-unit ratio constituted an amenity and benefit of the proposed PUD, noting the community's concern that parking from the Project would spill over into the neighborhood. The Applicant's traffic expert presented evidence that market demand for parking was less than 1.0 space per unit, while Douglas Firstenberg of Stonebridge Associates, Inc., an expert in real estate development, testified that the appropriate range of parking for this type of development was 0.5 to 1.0 spaces per unit. The Applicant's architect testified that the Project could accommodate 1.1 parking spaces per unit, even with the maximum number of units proposed.
92. OP described parking as an amenity, noting that provision of a high parking ratio would help satisfy neighbors that there would be no parking spillover into the adjacent residential community. However, OP also stated that continuation of such a pattern in parking in other developments might actually be detrimental to the larger public good.
93. DDOT calculated that the Applicant would provide ninety-six (96) parking spaces beyond what is required, which DDOT concluded would be more than adequate for the circumstances. DDOT also indicated that residents of the Project would be able to

petition for Residential Parking Permit (“RPP”) status, allowing them to park in any RPP parking space in Ward 3, once they established residency (Exhibit 215).

94. The parties in opposition asserted that the proposed parking was not sufficient to meet demand, and that the Project’s parking garage was 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). The opposition also argued that additional residential parking cannot constitute an amenity of the proposed PUD.
95. The Commission finds that the parking proposed by the Applicant – 1.1 spaces per residential unit and four (4) spaces for the Day Care Center, with eight (8) visitor parking spaces provided in the surface lot – will adequately serve the parking needs of residents of and visitors to the apartment house as well as the employees of the Day Care Center. The Commission finds further that the provision of parking in the Project in excess of the amount required by the Zoning Regulations is a public benefit and project amenity that will meet the parking demand generated by the Project and prevent spillover parking on neighborhood streets.

Construction Management

96. The Applicant proposed a construction management plan derived from agreements executed and successfully implemented previously at other developments in the community. Among other things, the proposed construction management plan included remedies related to payment for damage caused by the Applicant; a list of engineering survey firms that could be retained by property owners and paid by the Applicant; and jobsite rules applicable to site management, cleanliness, deliveries, work hours, traffic restrictions, parking, truck travel routes, and truck queuing. The Applicant later revised its proposed construction management plan to extend the survey area to 300 feet from the Site, to require construction monitoring services, and to prohibit pile-driving (Exhibit 212).
97. The opposition argued that the Applicant’s construction management plan was inadequate. Hazel Rebold testified that the proposed plan would not adequately protect the owners of property (Exhibit 200). Betsey Kuhn also testified that the proposed plan was inadequate, stating that property owners should be permitted to select an engineering firm for pre- and post-construction surveys and that the Applicant should not use blasting or pile-driving for construction on the Site.
98. OP concluded that the proposed construction management plan constituted a project amenity.

99. The Commission finds that the Applicant's proposed construction management plan, as revised, is a public benefit as a proffer not available under matter-of-right development.

Compliance with PUD Standards

100. According to the Applicant, the public benefits and project amenities associated with the proposed PUD are valued (for those items that have a quantifiable value) in excess of \$1,700,000 (*see Exhibit 212*). To be balanced against these benefits are the areas of the zoning flexibility requested by the Applicant.
101. OP concluded that the Applicant agreed to an unusually high level of public benefits and amenities for a residential project, and estimated the quantifiable amenities to be worth more than \$1 million in out-of-pocket public benefits, with the possibility that the benefits are valued at another \$500,000. OP testified that concentrating the height and density on Western Avenue, which necessitates the five percent (5%) flexibility, permits the large open space to serve as a buffer for the neighborhood and the retention of existing mature trees. OP concluded that the additional five percent (5%) flexibility was essential to the successful functioning of the Project, especially in light of the addition of affordable housing. OP concluded that the public benefits of the Project more than justified the zoning flexibility requested.
102. FHORD asserted that the Applicant's proposal did not provide sufficient benefits to the community to warrant approval of the PUD, based on the request for an additional five percent (5%) in height and density.
103. The Commission finds that the Applicant's proffered project amenities and public benefits sufficiently offset any potential adverse effects of the Project. The Applicant seeks a five percent (5%) increase in height and density, pursuant to § 2405.3 of the Zoning Regulations, which the Applicant describes as essential to the successful functioning of the Project and necessary to have the residential building set back from the neighboring residential area and to the inclusion of a half-acre of open space on the Site. The increase in FAR accommodates the retention of the existing R-2 zoning on the Lisner Land and the preservation of a transition zone between higher density commercial uses and lower density residential uses in the vicinity of the Site. The Commission finds that the Applicant's request for additional height and density is sufficiently offset by the proffered project amenities and public benefits.

Consistency with the Comprehensive Plan

104. Mr. Sher, the Applicant's expert in land planning, testified that the Project was not inconsistent with the Comprehensive Plan (Exhibits 79 and 79A):

- a. The Generalized Land Use Map designates the Site in a Housing Opportunity Area, where new or rehabilitated housing is expected and encouraged in significant concentrations.
- b. The Generalized Land Use Map also designates the Site in a Regional Center, defined as being located along a major arterial, served by transit, with the largest commercial functions outside the Central Employment Area, and with large office components.
- c. The Generalized Land Use Map designates the Site within the institutional land use category, which reflects the existing uses.
- d. The Project meets policies of the Housing Element by stimulating a wider range of housing choices and strategies through the production of new units, extending affordable homeownership to low- and moderate-income households, and increasing the supply of child care facilities in residential areas.
- e. The Project furthers policies of the Environmental Protection Element to promote improvement of air quality by promoting land-use patterns and transportation services that 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:
 - (i) The Project furthers the major theme in that it protects and preserves the low-density, high-quality character of the ward;
 - (ii) The Project furthers the Ward 3 Economic Development Element by stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail

- station areas outside the Central Employment Area, consistent with the Land Use Element and accompanying maps;
- (iii) The Project furthers the Ward 3 Housing Element by focusing the development of new housing on underutilized land within a designated Housing Opportunity Area, providing the greatest housing densities on corridors with 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 Metrorail stations, and treating housing as an important public amenity when consistent with the ward plan and when for low, moderate, or fixed-income households;
 - (iv) The Project furthers the Ward 3 Environmental Protection Element by minimizing reliance on automobiles, promoting pedestrian transit and public transportation, and furthering an aggressive policy of replacing trees and planting new trees;
 - (v) The Project furthers the Ward 3 Transportation Element by reviewing transportation impacts as a critical factor in the development, improving the level of service at street intersections 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 a major arterial well-served by Metrorail or Metrobus;
 - (vi) The Project furthers the Ward 3 Urban Design Element by carefully controlling development to protect the existing scale and low-density character and to enhance the maintenance of existing natural open spaces and other qualities, 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; and
 - (vii) The Project furthers the Ward 3 Land Use Element by maintaining and expanding the housing stock, increasing the supply of child care facilities, directing development to a Housing Opportunity Area, and giving zoning preference to a project that includes housing near a Metrorail station.

105. OP reported that the Applicant's proposal was consistent with the goals of the Comprehensive Plan (*see Exhibit 146*):

- a. *The Land Use Element:* Friendship Heights is envisioned as an area permitted to develop and evolve as long as the adjacent neighborhood is adequately protected, and it is public policy to increase mixed-use development at Metrorail stations to reduce the larger-scale pattern of increasing automobile usage and air quality degradation. The Project would not have an adverse impact on traffic but would concentrate new residential development in close proximity to a Metrorail and Metrobus station; provide a 240-foot-deep, landscaped, half-acre buffer between the new construction and the nearest single-family residence; and retain a number of mature trees.
- b. *Economic Development Element:* The proposed development would contain four (4) to six (6) affordable housing units and a maximum of 125 housing units, likely supporting a net increase in upper-income residents. The Project would also provide a day care center targeted to the neighborhood residents.
- c. *Housing Element:* Housing is a key part of the total urban living system, and the Comprehensive Plan designates areas where significant housing development can appropriately occur, encouraging multi-unit housing near Metrorail stations. The Project would contribute significantly to realizing the policy of increasing housing in the area, a mixed-use Regional Center concentrated around a Metrorail station. The Housing Element provides for appropriate zoning incentives, such as the density increase requested with the proposed PUD, to encourage developments that include affordable housing and that provide housing near appropriate Metrorail stations.
- d. *Environmental Element:* DDOT estimated that at least fifty percent (50%) of the peak-hour traffic generated by the development would use Metro, and a broad range of shopping, services, and employment is within easy walking distance of the Metro-accessible location. The concentration of development in a taller building will allow the preservation of mature trees and provide more pervious surface than other development patterns serving an equivalent number of people.
- e. *Transportation Element:* The Project would be located in close proximity to the Friendship Heights Metrorail station and adjacent to numerous bus lines in a significant mixed-use area. Focusing development around the Metrorail station puts less pressure on increasing the density of residential areas farther away from Metro, and DDOT concluded that the Project's traffic impact would be negligible, even without the signalization and signage enhancements proposed by the Applicant.

- f. *Urban Design Element:* The Project, particularly with respect to its massing and the inclusion of open space and landscaped buffer, is consistent with objectives to preserve and enhance the outstanding physical qualities of District neighborhoods, to maintain areas that have a positive physical image, and to ensure that new development within or adjacent to those areas is complementary in scale and character.
- g. *Ward 3 Element:* The Project will provide new “infill” housing on underutilized land near an appropriate Metrorail station, consistent with design, scale, and infrastructure capacity, as well as providing residential development in a designated Housing Opportunity Area that will include affordable housing and home-ownership opportunities without creating adverse impacts on neighborhood stability, traffic, parking, and environmental quality.

106. The parties in opposition asserted that the Project does not comport with the policies and objectives of the Comprehensive Plan, particularly the Ward 3 Element. The opposition presented expert testimony by George H. Oberlander, AICP, who testified that the Project was inconsistent with provisions of the Ward 3 Element of the Comprehensive Plan concerning the protection of the ward’s residential neighborhoods and maintaining the stability and the low-density, high-quality character of the ward; concern about the possibility of unrestrained development that diminishes the quality of life and is often accompanied by undesirable effects, particularly increased traffic, whose spillover effects penetrate nearby residential neighborhoods; maintaining strong residential neighborhoods; evaluating development proposals to avoid adverse impacts on neighborhood stability, traffic, parking, and environmental quality; and controlling land use and future development to protect the existing scale and low-density character and to enhance other qualities of the ward.
107. The Commission credits the testimony of OP and the Applicant’s expert in land planning in finding that the proposed PUD, including the PUD-related Zoning Map amendment, is not inconsistent with the Comprehensive Plan. The Project will further several goals and major themes of the Comprehensive Plan, including maximizing land use near Metrorail stations and stabilizing and improving the District’s neighborhoods.
108. The Commission is not persuaded by the expert testimony presented by the parties on opposition that the Application is inconsistent with the Ward 3 Element, because the Project design – particularly the transition it will provide between the nearby low-density residential neighborhood and the more intense commercial areas in the Friendship Heights Regional Center – will help ensure the stability of the low-density, high-quality nature of Ward 3. The Project is not likely to have unacceptable effects on the nearby residential area, in part due to the proffered benefits such as the transportation management plan. The Project will further goals of the Ward, such as by providing new housing at an appropriate location, affordable housing, and a child care facility.

ANCs

109. At a properly noticed meeting on November 7, 2002, ANC 3E unanimously approved a resolution indicating the ANC's opposition to the PUD application; the resolution indicates that a majority of the ANC commissioners "think that the project merits approval" but the ANC voted against the Project, by a vote of 3-2, because one commissioner "feels that the ANC position should reflect the sentiment expressed by the neighbors" (Exhibit 137).
110. The resolution indicates that ANC 3E heard presentations from the Applicant at three (3) public meetings, including two (2) 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. The resolution notes that 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." However, the ANC recognized that "members of the community, both individually and through [FHORD], strongly 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."
111. Robert Gordon testified on behalf of the ANC 3/4G in opposition to the Project, stating that ANC 3/4G's primary concerns were the Project's impacts on traffic and its effects on the neighborhood, safety for motorist and pedestrians, and construction impacts.
112. The Commission afforded the issues and concerns of the ANCs the "great weight" to which they are entitled. In doing so, the Commission fully credited the unique vantage point that the ANCs hold with respect to the impact of the proposed PUD on their constituents. However, the Commission concludes that the ANCs have not offered persuasive advice that would cause the Commission to find that the Project is contrary to the Zoning Regulations or would have an adverse impact on the use of neighboring property. As previously discussed, the Commission finds that the requested PUD-related Zoning Map Amendment is appropriate and that the Project is consistent with the requirements of Chapter 24 of the Zoning Regulations.

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, the Commission has the authority to consider the Application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that 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 that 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 the 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 is 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.
6. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The Application seeks an increase in height and density as permitted by 11 DCMR § 2405.3. The project benefits and amenities, particularly the provision of housing in a Housing Opportunity Area in an amount greater than that permitted under the existing zoning, the inclusion of affordable housing, the landscaped open space, and the Day Care Center, are a reasonable trade-off for the requested development flexibility.

8. Approval of the Application is appropriate because the Project is consistent with the present character of the area.
9. Approval of the PUD and the PUD-related map amendment is not inconsistent with the Comprehensive Plan, which designates the Site to be within a Housing Opportunity Area and a Regional Center.
10. In accordance with D.C. Official Code § 1-309.10(d) (2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission has carefully considered the report and testimony of ANC 3E, as well as the testimony provided by ANC 3/4G, which was granted party status in this case. (See Findings of Fact Nos. 110 through 113).
11. Approval of the Application will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
12. Notice of the public hearing was provided in accordance with the Zoning Regulations.
13. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for consolidated review of a Planned Unit Development for Square 1663, Lot 805 and a portion of Lot 7 and for a PUD-related 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 dwelling 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 (18) feet, six (6) inches as indicated in the Plans and in accordance with the Zoning Regulations.

3. The Applicant shall provide affordable housing as described in Exhibit 223. To the extent that minor modifications are needed in the execution of the program to conform to District or Federal housing programs, the Applicant shall work with the DHCD to make such changes to comply with the same.
4. The Project shall include a Day Care Center for a maximum total enrollment of forty-four (44) children, and the Applicant shall provide the Day Care Center space to the selected operator by a lease for fifty (50) 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 a density of 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 (8) parking spaces devoted to visitor parking. Parking spaces shall be offered for sale separately from the affordable dwelling units, and no purchaser of an affordable dwelling unit shall be required to purchase a parking space. The Project shall also include four (4) parking spaces to be devoted to employees and/or staff of the Day Care Center. The eight (8) visitor spaces shall be provided on a surface lot in accordance with the Plans. The eight (8) visitor spaces shall be free of charge to visitors, and 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 12-foot by 55-foot loading berth, with a 200-square-foot loading platform, and one 10-foot by 20-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 DDOT to place signs at the lay-by restricting its use to a five (5) minute period.
9. The Project shall include approximately 24,700 square feet devoted to open, green space that is readily accessible to the public and has no physical barriers to its entry, as depicted on the Plans. The open space 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 against enclosing the open space and 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 in good condition.
10. The Applicant shall retain those trees on the Site as indicated on the landscaping plan included in the Plans.
11. The Applicant shall include landscaping improvements as indicated on the Plans within the 15-foot building line setback along Military Road. The Applicant or its successors shall maintain all landscaping improvements in good condition.
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 DDOT its traffic mitigation plan as set forth in the Prehearing Submission (Exhibits 33, 33A, and 33B). Any of the proposed traffic calming measures approved by 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 shall provide a stop sign at the entrance approach to Western Avenue to enhance operational efficiency and safety of the driveway.
15. The Applicant shall implement the Transportation Management Plan. To the extent that modifications must be made to the Transportation Management Plan, the Applicant shall obtain DDOT's approval 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 in the Project.

16. Prior to the issuance of a building permit for the Project's residential building, the Applicant shall contribute \$75,000 to the non-profit Friends of Chevy Chase Park for use in making improvements to Chevy Chase Park.
17. The Applicant shall follow the Revised Construction Management Plan filed as Exhibit 212, as supplemented by Exhibit 223.
18. The Applicant shall work with 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 DDOT shall be accomplished by the Applicant or at the Applicant's expense as determined by DDOT.
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 (4) 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; and
 - 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 Construction Codes or that are otherwise necessary to obtain a final building permit.
20. No building permit shall be issued for this PUD, nor shall the PUD-related Zoning Map Amendment take effect, 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 successors 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 (2) 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 (3) years of the effective date of this order.
23. Pursuant to the Human Rights Act of 1977, D.C. Law 2-38, as amended, codified at D.C. Official Code § 2-1402.67 (2001), 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.

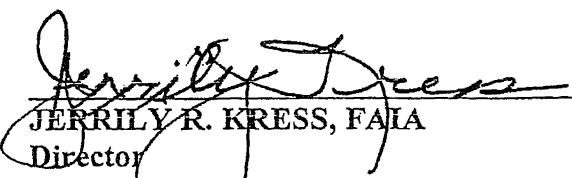
Vote of the Zoning Commission taken at its public meeting on April 14, 2003: 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May, and James H. Hannaham).

The order was adopted by the Zoning Commission at its public meeting on May 12, 2003, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May, and James H. Hannaham).

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 AUG 22 2003.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

EXHIBIT D

Government of the District of Columbia

Office of Zoning



ZONING COMMISSION ORDER NO. 04-06/02-17A

ZONING COMMISSION CASE NO. 04-06

**(Modification to a Consolidated Planned Unit Development
and Zoning Map Amendment for 5401 Western Avenue)**

March 8, 2004

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on March 8, 2004. At the meeting, the Commission approved an application from Stonebridge Associates 5401 LLC (the "Applicant") for minor modifications to an approved planned unit development ("PUD") and related Zoning Map amendment for the proposed new apartment house at 5401 Western Avenue, N.W., pursuant to Chapter 24 and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations ("DCMR"), Title 11, Zoning. Because the modifications were deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

By Z.C. Order No. 02-17, dated August 22, 2003, the Commission approved a PUD and related Zoning Map amendment for property located at the intersection of Western Avenue, N.W. and Military Road, N.W. (the "Site"). The Site consisted of Lot 805 and a portion of Lot 7 in Square 1663. The apartment building approved in Z.C. Order No. 02-17 (the "Project") was to have approximately 182,000 square feet of gross floor area, not to exceed a density of 4.15 FAR, with a maximum building height of 78.75 feet. The roof structure was to be a maximum of 18.5 feet in height above the roof. The Project was to provide a minimum of 1.1 parking spaces per dwelling unit plus four (4) parking spaces for employees and/or staff of the proposed day care center.

On September 22, 2003, the Friendship Heights Organization for Reasonable Development ("FHORD") filed a Petition for Review of Z.C. Order No. 02-17 in the District of Columbia Court of Appeals (Case No. 03-AA-1004). Thereafter, the Applicant entered into settlement discussions with FHORD in an attempt to resolve outstanding issues regarding the Project. FHORD and the Applicant successfully resolved their differences and on February 12, 2004, the parties signed a settlement agreement.

Under the terms of the Agreement, the Applicant agreed to make minor modifications to the Project to reduce the building density, reconfigure the penthouse, impose restrictions on parking, improve the building's design, and enhance the construction management plan. In exchange, FHORD agreed to withdraw its Petition for Review before the D.C. Court of Appeals.

The Applicant, therefore, seeks the Zoning Commission's approval of the following minor modifications:

- To provide not less than 1.1 accessible parking spaces for each proposed dwelling unit, plus four (4) spaces in the garage for the day care center plus eight surface parking spaces adjacent to the day care center, although additional tandem spaces for residents may be provided in the garage;
- To impose conditions on the condominium regime that will be established regarding control of parking in the project;
- To reduce the maximum permitted gross floor area to 173,000 square feet from the approved gross floor area of approximately 182,000 square feet, with a resulting reduction in density from 4.15 FAR to 3.95 FAR on Lot 805, thereby eliminating the necessity for the Commission to approve the five percent (5%) increase in density allowed by § 2405.3;
- To reduce the height of the roof penthouse from 18.5 feet to 10 feet, and approve a reconfigured penthouse with setbacks greater than 1:1 from the edge of the roof;
- To substitute a new exterior design for the building reflecting the reconfigured penthouse; accommodating the reduction in density, the new roof structure configuration, and the reduction in height of the roof structure; and including a water feature in the open space while not resulting in a reduction in the distance from the residential building or the day care building to any neighboring residential building or in a reduction of the amount of open space on the site; and
- To enhance the construction management agreements to provide additional protections for the closest residences to the site.

The requested modifications do not affect the essential elements of the approval given by the Zoning Commission for this project, such as use, height, lot occupancy, setbacks, or number of parking spaces. The change in density is a small reduction and the change in roof structure height is also a reduction with greater setbacks. The request also does not change any of the approved elements of the benefits/amenity package.

These changes resolve the litigation over the Commission's approval of the project and would allow construction of the project to proceed promptly.

Copies of the Request for Minor Modification were delivered to all parties to the approved PUD, including Advisory Neighborhood Commission ("ANC") 3E, FHORD, all of the individuals who were granted party status in the case (Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, and Martin Rojas), and ANC 3/4G. ANC 3E voted unanimously to endorse the proposed modifications as a Consent Calendar item. FHORD and the individual parties likewise supported approval of the modifications as a Consent Calendar item. ANC 3/4G did not submit a written response to the proposed modifications.

The Office of Planning ("OP"), by memorandum dated March 1, 2004, recommended approval of the modifications with certain minor changes to the proposed conditions. On March 8, 2004, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modification to the approved PUD. The Commission included OP's recommendations in the conditions set forth below.

The Commission finds that approving the application is appropriate and is not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modifications are minor and do not change the intent of the previously approved Z.C. Order No. 02-17. Further, the Commission concludes that its decision is in the best interests of the District of Columbia and does not impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

Approval of the modifications is not inconsistent with the Comprehensive Plan. The proposed modifications do not impact the essential elements of the approved PUD, including use, height, lot occupancy, setbacks, or number of parking spaces. The material facts relied upon by the Commission in approving the PUD in Z.C. Order No. 02-17 have not changed. The parties to the case have supported the proposed modifications and have also endorsed action by the Commission on the Consent Calendar. The modifications are of such a nature that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for minor modifications of an approved PUD for the property located at 5401 Western Avenue, N.W. (Lot 805 and a portion of Lot 7 in Square 1663), to modify Z.C. Order No. 02-17 as follows:

1. Condition No. 1 shall be revised to read as follows:

The PUD shall be developed in accordance with the plans, dated February 27, 2004, marked as Exhibit No. 1 of the record in Case No. 04-06, with the day care center developed in accordance with the plans marked as Exhibits 175 and 212 of the record in Case No. 02-17, as modified by the guidelines, conditions, and standards herein.

2. Condition No. 2 shall be revised to read as follows:

The PUD shall be a residential building, consisting of approximately 173,000 square feet of gross floor area, with no more than 125 dwelling units. The Project shall not exceed a density of 3.95 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 ten (10) feet as indicated in the Plans and in accordance with the Zoning Regulations. The design of the roof structure shall not enable the inclusion of occupiable space not otherwise permitted by 11 DCMR § 411.

3. Condition No. 3 shall be revised to read as follows:

The Applicant shall provide affordable housing as described in Exhibit 223. The affordable housing shall be constructed on-site and shall comprise no less than five percent (5%) of the additional gross square footage permitted this project by its approval as a planned unit development under this Order. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with DHCD to make such changes to comply with the same.

4. Condition No. 6 of shall be revised to read as follows:

The proposed building shall provide (i) at least 1.1 accessible parking spaces per dwelling unit, although additional tandem spaces for residents may be provided in the garage; (ii) four (4) parking spaces for the Day Care Center; and (iii) eight visitor parking spaces provided in a surface lot in accordance with the Plans and adjacent to the Day Care Center. These eight (8) visitor spaces shall be provided free of charge to visitors, shall be reserved for use by the Day Care Center during the morning drop-off period (weekdays 7:30–9:30 a.m.) and the afternoon pick-up period (weekdays 4:00–6:00 p.m.), and shall be available for visitor/non-resident parking at all other times. Parking spaces shall be offered for sale separately from the affordable dwelling units, and no purchaser of an affordable dwelling unit shall be required to purchase a parking space.

5. Condition No. 9 shall be revised to read as follows:

The Project shall include approximately 24,700 square feet devoted to open, green space that 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 in any way. No playground for the exclusive use of the day care center shall be permitted on the site. Prohibitions against enclosing the open space and 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, and shall include a fountain or water feature accessible to the public of at least the size shown on the plans. The Applicant or its successors shall maintain all landscaping improvements in good condition.

6. Condition No. 17 shall be revised to read as follows:

The Applicant shall follow the Revised Construction Management Plan filed as Exhibit 212, as supplemented by Exhibit 223, with the following additions:

- A. The Applicant shall contract for construction monitoring services during the course of sheeting/shoring, dewatering, excavation, and the installation of building foundations and below-grade walls. Additionally, the Applicant shall monitor vibrations during its operations and implement a program to evaluate the structural settlement of Surveyed Homes to assure that potentially damaging impacts do not extend to adjacent residential properties. Driving of piles shall be prohibited.
- B. Additionally, prior to the commencement of any blasting at the Site, the Applicant shall have the firm selected to perform the Pre-Construction Surveys perform front-line vibration monitoring by placing vibration monitors on the ground adjacent to the closest structure within the 150-foot monitoring radius, in-line with the blast area, and also at 4228 Military Road, N.W. (Rebold residence) and at 4211 Military Road, N.W. (Kuhn residence). Monitoring shall be observed in real time and, to the extent warranted, immediate action shall be taken to avoid damage to these and other nearby homes.
- C. At least 24 hours prior to any blasting operations on any part of the Site, and with as much prior notice as is practicable, the Applicant shall deliver written notice to the following seventeen (17) addresses:

5343 43rd Street, N.W.

5347 43rd Street, N.W.

5358 43rd Street, N.W.

5360 43rd Street, N.W.
5362 43rd Street, N.W.
5364 43rd Street, N.W.
5366 43rd Street, N.W.
5368 43rd Street, N.W.
4205 Military Road, N.W.
4208 Military Road, N.W.
4211 Military Road, N.W.
4224 Military Road, N.W.
4228 Military Road, N.W.
5360 42nd Place, N.W.
5358 42nd Place, N.W.
5354 42nd Place, N.W.
5339 42nd Place, N.W.

7. Condition No. 19d shall be revised to read as follows:

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, without reducing the quality of the materials;

8. The following new condition shall apply to the approval of the Project:

- A. As a condition for purchasing a condominium interest in the Project or for entering into a lease to occupy a unit in the Project, each owner or tenant shall agree not to seek or obtain a residential street parking permit so long as the owner or tenant resides at the Project.
- B. Each condominium owner and tenant who will reside in a unit in the Project shall disclose to the condominium board (or developer), prior to purchasing a unit or signing a lease, information about his or her automobile ownership and the automobile ownership of any others who will reside in the unit.
- C. Each condominium owner or tenant shall be given a parking license agreement with the condominium association or developer pursuant to which the owner or tenant can license one or more parking spaces subject to availability of such spaces. If sufficient parking spaces are not available, Paragraph A above shall still apply in full force and effect. The owner or tenant may waive his or her right to license a space if no tenant of the unit owns an automobile. The parking license agreement may assign one or more specific parking spaces per unit and shall set forth the terms and conditions of the parking requirements of the PUD, as modified. In the event that a unit is rented and the unit is subject to a parking license agreement, the lease shall state that (a) there is a particular parking space

assigned to the unit, (b) the lease is subject to compliance with the parking license agreement, and (c) the monthly parking fee for the space is as stated.

- D. If, following the sale of all condominium units, there are parking spaces in the garage that have not been assigned pursuant to parking license agreements, the developer or condominium board will use commercially reasonable efforts to encourage the lease or sale of those surplus spaces.
- E. In the event subsequent owners or tenants who reside in a unit own automobiles in excess of available parking spaces available under parking license agreements, Paragraph A above shall still apply in full force and effect.

In all other respects, the conditions set forth in Order No. 02-17, dated May 12, 2003, shall remain in effect.

Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs ("DCRA") for the minor modifications until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 02-17 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Order No. 02-17 and Z.C. Order No. 02-17A, which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the site in accordance with this Order and any amendments thereof.

After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.

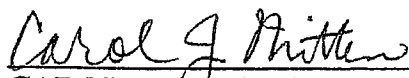
The minor PUD modifications shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR §§ 2409.2 and 2409.3. Construction shall start within three (3) years of the effective date of this Order.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or

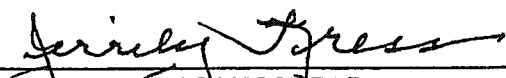
refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

Vote of the Zoning Commission taken at its public meeting on March 8, 2004, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Kevin Hildebrand to approve; James H. Hannaham not present and not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this order shall become final and effective upon publication in the D.C. Register; that is on AUG - 6 2004.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

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